

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. MC/ST/2021-22/11991]

UNDER SECTION 15-I OF 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:-

Todi Securities Pvt. Ltd. (PAN No.AABCT4191R) having address at Room No.12, 1st Floor, Martin Burn House, 1, R.N. Mukherjee Road, Kolkata – 700001

In the matter of Todi Securities Pvt. Ltd.

BACKGROUND

1. SEBI had passed Adjudication order no. RA/JP/02/2015 dated April 29, 2015 against Todi Securities Pvt. Ltd. (hereinafter referred to as “**Noticee**”) imposing penalty of Rs.1,00,00,000/-(Rupees One Crore only) under Section 15HA of the SEBI Act and Rs. 10,00,000/-(Rupees Ten Lakh only) under Section 15HB of the SEBI Act upon the Noticee for violations of regulation 3, 4 (1) & 4 (2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as ‘**PFUTP Regulations**’) and clause A(2), (3) & (4) of the Code of Conduct under Schedule II {read with erstwhile regulation 7 (now regulation 9(f)) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (‘hereinafter referred to as ‘**Stock Broker Regulations**’).
2. Hon’ble Securities Appellate Tribunal (SAT), in appeal no. 403 of 2015, vide order dated February 10, 2017, while setting aside the Adjudication Order dated April 29, 2015 remanded the case to Adjudicating Officer for passing fresh order on merits

and in accordance with the Law against the Noticee. The Hon'ble SAT observed that:

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

APPOINTMENT OF ADJUDICATING OFFICER

3. Pursuant to aforementioned order of Hon'ble SAT, the undersigned was appointed as Adjudicating Officer *vide* Order dated February 8, 2021 to inquire into and adjudge under Section 15HA and 15HB of SEBI Act, the aforesaid alleged violations against the Noticee. The appointment of the AO was communicated vide order dated February 10, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice No. E&AO/RA/JP/2642/2015 dated January 22, 2015 (hereinafter referred to as “**SCN**”) was issued to the Noticee under rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (‘Adjudication Rules’), to show cause as to why an inquiry should not be held and penalty be not imposed under section 15HA and 15HB of the SEBI Act for the alleged violations of regulation 3, 4 (1) & 4 (2) (a) of the PFUTP Regulations, and clause A(2), (3) & (4) of the Code of Conduct under Schedule II {read with erstwhile regulation 7 (now regulation 9(f)) of the Stock Broker Regulations.
5. It was stated in the SCN that based on unusual trading pattern of USD/INR in derivatives segment, and a sharp increase in trading volume through self-trades at United Stock Exchange (**USE**), SEBI had conducted inspection of books of

accounts and other records of the Noticee relating to currency derivative segment of USE during January 23 to 25 of 2012 at the registered office of Noticee. The period covered under the inspection was from April 1, 2011 to October 31, 2011 (**Inspection Period**).

6. The trading pattern of Noticee (self-trades in its proprietary account in currency derivatives) was confirmed on the basis of details of order/trade logs for the period April 2011 to October 2011. Concentration of trading of Noticee on USE is shown at table below.

| Month of 2011 | Trade concentration of TSPL | Number of active trading members at USE |
|---------------|-----------------------------|---|
| Apr | 13.84% | 72 |
| May | 11.53% | 79 |
| Jun | 11.19% | 75 |
| Jul | 9.13% | 80 |
| Aug | 9.36% | 87 |
| Sept | 18.32% | 90 |
| Oct | 19.80% | 84 |

7. It was observed during inspection that trading volumes of the Noticee were reasonably uniformly distributed across MCX-SX and USE. Noticee made profits at USE in all the months during the period under consideration except in the month of August 2011. Details of profits made across Exchanges are as under:

| Month (2011) | NSE-CD | | USE | | MCX-SX | Overall |
|--------------|-----------|----------------|---------|----------------|------------|-----------------------|
| | Premium | Mark to Market | Premium | Mark to Market | | |
| Apr | -1,45,355 | 9,30,112 | 2000 | 40,02,877 | -22,12,840 | 25,76,795.00 |
| May | 1,02,910 | 3,79,282 | | 49,74,162 | -15,02,700 | 37,47,835.00 |
| Jun | 35,687 | 5,84,677 | | 19,98,782 | 8,91,222 | 35,10,370.00 |
| Jul | -1,33,527 | -22,686 | | 79,30,480 | -32,69,655 | 45,04,611.45 |
| Aug | 5,48,630 | -19,20,229 | | -23,21,385 | 92,45,849 | 55,52,865.00 |
| Sep | -3,27,585 | 21,01,617 | | 1,06,26,430 | 16,17,756 | 1,40,18,219.70 |
| Oct | 16,735 | -3,84,555 | | 91,41,321 | -63,13,037 | 24,60,462.90 |

8. Inspection brought out that the Noticee had four terminals/trader IDs namely T1, T2, T3 and T4 whereas T1 is an admin id allotted in the name of Noticee. All these terminals were located at the same address i.e. Martin Burn House, 1, R N Mukherjee Road, Kolkata. There were 51 approved users in TSPL during the inspection period. Investigation revealed that Noticee had also traded with Jaypee Capital Services Ltd. (JCSL), an entity which also executed self-trades as observed in an inspection conducted separately by SEBI. Turnover of Noticee's trades / self-trades and its comparison with that of USE and JCSL is given at below table.

| <i>Turnover figures given below are for USD-INR futures contracts in rupees crores</i> | | | | | | | | | |
|--|-----------------------|-------------------------|---|----------------------------------|--|--------------------------------------|--|---|---|
| Month (2011) | Total turnover on USE | Turnover of TSPL on USE | TSPL's turnover as % of total turnover on USE | Turnover for self-trades of TSPL | Self-trades as % of its total turnover | Turnover for TSPL's trades with JCSL | Trades with JCSL as % of TSPL's total turnover | Turnover for TSPL's trades with other members | Trades with other members as % of TSPL's total turnover |
| a | b | c | d (=c/b) | e | f (=e/c) | g | h (=g/c) | i | j (=i/c) |
| Apr | 1,97,690 | 27,365 | 14% | 15,751 | 58% | 9,197 | 34% | 2,417 | 9% |
| May | 3,84,456 | 44,350 | 12% | 18,584 | 42% | 21,412 | 48% | 4,354 | 10% |
| Jun | 4,49,298 | 50,291 | 11% | 17,085 | 34% | 27,347 | 54% | 5,859 | 12% |
| Jul | 5,51,613 | 50,380 | 9% | 13,384 | 27% | 31,118 | 62% | 5,879 | 12% |
| Aug | 6,44,776 | 60,357 | 9% | 7,562 | 13% | 40,686 | 67% | 12,109 | 20% |
| Sep | 3,70,571 | 67,854 | 18% | 13,125 | 19% | 33,820 | 50% | 20,909 | 31% |
| Oct | 1,35,645 | 26,868 | 20% | 3,997 | 15% | 13,554 | 50% | 9,317 | 35% |
| Total | 27,34,050 | 3,27,466 | 12% | 89,488 | 27% | 1,77,134 | 54% | 60,843 | 19% |

9. It was found that Noticee's turnover had increased significantly from Rs. 27,365 crores to Rs. 67,854 crores between April till September 2011. Its turnover in proportion to total turnover of all the trading members on USE ranged between 9.13% and 19.81% (with an average being 11.98%) during the inspection period. During the month of April 2011, self-trades of Noticee contributed 57.56% to its total turnover which saw a downturn during the subsequent months. Noticee's trades

with JCSL constituted 33.61% of its total turnover during April 2011 which constantly increased, thereafter, reaching a maximum of 67.41% during August 2011.

10. Inspection revealed that during the initial months of inspection period, Noticee's trades comprised primarily of self-trades and these self-trades had accounted for nearly 15% to 58% of its turnover during the inspection period. Terminal wise contribution to the Noticee's turnover including self-trade turnover (based on data submitted by USE) and the details of time difference between the self-trades / turnover of Noticee's trades, are given in the tables below:

Terminal wise contributions to total trade volume:

| Terminal | Total No. of buy trades | Terminal's buy trades as % of total trades | Total No. of sell trades | Terminal's sell trades as % of total trades | Total turnover (in Rs. crores) | Terminal's turnover as % of TSPL's total turnover |
|--------------|-------------------------|--|--------------------------|---|--------------------------------|---|
| T2 | 178692 | 49.62% | 179333 | 49.88% | 163117.48 | 49.81% |
| T3 | 180590 | 50.15% | 179440 | 49.91% | 164091.78 | 50.11% |
| T4 | 804 | 0.22% | 776 | 0.22% | 256.37 | 0.08% |
| Total | 360086 | 100.00% | 359549 | 100.00% | 327465.64 | 100.00% |

Time difference analysis for self-trades:

| Sl. No. | Time difference between orders (in seconds) | No. of trades | As % of all self-trades of TSPL | Turnover (in Rs. crores) | As % of total self-trade turnover of TSPL | As % of total turnover of TSPL |
|--------------|---|---------------|---------------------------------|--------------------------|---|--------------------------------|
| 1 | 0 | 7,680 | 15.80% | 52302.70 | 58.45% | 15.97% |
| 2 | 1 | 8,596 | 17.68% | 11279.64 | 12.60% | 3.44% |
| 3 | 2 | 5,683 | 11.69% | 5617.59 | 6.28% | 1.72% |
| 4 | 3 | 3,811 | 7.84% | 3176.06 | 3.55% | 0.97% |
| 5 | 4 | 6,803 | 13.99% | 5569.06 | 6.22% | 1.70% |
| 6 | 7 | 3,810 | 7.84% | 2868.77 | 3.21% | 0.88% |
| 7 | 10 | 12,237 | 25.17% | 8674.67 | 9.69% | 2.65% |
| Total | | 48,620 | 100.00% | 89488.49 | 100.00% | 27.33% |

11. Orders placed within the time difference of zero second was around 16 % of all the self-trades in terms of the number of trades. The turnover contributed by such trades was about 59 % of its total turnover generated by all self-trades. The total turnover of the trades executed within 10 seconds, amounted to approximately 27% of its total turnover during the period covered.
12. Noticee had executed large sized trades on 57 trading days out of a total 139 trading days during the period (i.e. 41% of the trading days). All these trades were self-trades of the Noticee and on 41 days out of the above, proportion of large trades to the total trades of the Noticee ranged from 31% to 76%. Large trades were considered as the trades where the number of contracts per trade were more than 4000 and up to a maximum permissible level of 10,000 contracts. Also, there were 38 instances where the maximum limit of 10,000 contract size per order were traded by the Noticee and all these trades were self-trades. The count of such large sized trades were determined based on data furnished by Noticee which are as under:

| Range of contract size | Number of trades with such large contracts |
|-------------------------------|---|
| 4,000-5,000 | 663 |
| 5,001-6,000 | 3 |
| 6,001-7,000 | 16 |
| 7,001-8,000 | 31 |
| 8,001-9,000 | 4 |
| 9,001-10,000 | 156 |
| Total | 873 |
| | |
| Only 10,000 | 38 |

13. Noticee was, therefore, alleged to have violated Regulation 3, 4 (1) & 4 (2) (a) of the PFUTP Regulations, and clause A(2), (3) & (4) of the Code of Conduct under Schedule II {read with erstwhile regulation 7 (now regulation 9(f)) the Stock Broker Regulations.

14. The relevant clauses of PFUTP and Stock Broker Regulations are reproduced 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;*

Stock Brokers Regulations:

Schedule II of erstwhile regulation 7 (now regulation 9(f))

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

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

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

15. In response to the SCN, the Noticee had filed the reply dated February 06, 2015, and was granted an opportunity of hearing on March 20, 2015. Order in the matter was passed on April 29, 2015, which was appealed by the Noticee before Hon'ble SAT.

16. Pursuant to the order of Hon'ble SAT dated February 10, 2017, directing to pass fresh order in accordance with the Law, the noticee was granted opportunity of hearing on April 7, 2021. The Noticee submitted its reply vide letter dated April 5, 2021 and authorized Mr. Vinay Chauhan, Advocate, to appear for hearing. During the hearing, the authorized representative of the Noticee reiterated the submissions made in the letter dated April 5, 2021.

17. The key submissions made by the Noticee are reproduced as under:

- i. The impugned proceedings suffer from enormous laches. Admittedly, the alleged violations relate to trading during the period April 2011 to October 2011. The present Notice was issued on January 22, 2015 (i.e. almost 4 years after the impugned transactions). The aforesaid inordinate delay severely prejudiced the Noticee.
- ii. Subsequently, an order came to be passed by the Adjudicating Officer, SEBI on April 29, 2015, which was challenged by way of appeal before SAT. Hon'ble Tribunal vide its order dated February 10, 2017 had inter-alia directed that *"...orders impugned in these appeals are quashed and set aside and remanded to SEBI for passing fresh order on merits and in accordance with Law."*
- iii. Since February 2017, there was no movement in the case. Noticee is of the bonafide impression that the matter has been closed. Now, on March 4, 2021, after a period of more than 4 years from the date of the Hon'ble Tribunal's order, Noticee received the communication granting hearing in the matter, which is totally unreasonable and unfair. Same is also in complete violation of letter and spirit of Hon'ble Tribunal's order. On this ground alone the proceedings needs to be and ought to be discontinued and Notice needs to be dropped.
- iv. It is well settled now that even though there is no limitation prescribed in the SEBI Act and Regulations for the completion of investigations or for the issuance of a Show Cause Notice, the authority is required to exercise its powers within a reasonable period. Facts of the present case will amply demonstrate that the powers have not been exercised by SEBI within a reasonable period and therefore, in the facts and circumstances of the case, proceedings need to be discontinued and dropped and no penalty needs to be imposed.

- v. In support of this contention, Noticee made reference to Hon'ble SAT order dated March 31, 2008 in the matter of Libord Finance Ltd. vs. SEBI, SAT order dated November 5, 2008 in the matter of Shri. Ashok K Chaudhary vs. SEBI, SAT order dated August 27, 2013 in the matter of H B Stockholdings Ltd. vs. SEBI, SAT order dated September 4, 2019 in the matter of AstraZeneca Pharma India Ltd. and anr. vs SEBI; SAT order dated January 31, 2020 in the matter of Ashlesh Gunvantbhai Shah vs. SEBI, etc.
- vi. The trading volume of Noticee was high. Most of the trades were executed in their proprietary account. Noticee was engaged in arbitrage and jobbing trading in its proprietary book in all segments of the exchanges through multiple dealers. Noticee had a large team of jobbers and due to high volumes, certain matching of trades might have taken place. This is a normal feature in case of high volumes of jobbing transactions done within a very short period. Dealers deal independently on the exchange platforms and are not aware of the trades done by other dealers.
- vii. In case of online trading, the front end software is provided by the exchange. Noticee has no control over the system except placing orders or modifying / cancelling it. All other parameters are set by the exchange. Even surveillance to a major extent is part of the system provided by the exchange. Noticee had been doing trades on NSEIL/ BSE platform also. Noticee had been doing trades on NSEIL/BSE platform also and these exchanges had been providing Noticee with various kind of alerts like exceeding margin, matching of transactions, price variations/movements beyond normal limit, abnormally high transactions etc.
- viii. On May 12, 2012, SEBI passed an Order inter-alia observing that there were grave and serious allegations against USE and its

shareholder/Member - JCSL. Based on the observations in the said Order, SEBI issued a warning to USE to be more cautious and SEBI did not carry out any further proceedings against USE. As per the SEBI Order dated May 12 2012 against USE, a large number of shortcomings were alleged to be found during the inspection at USE, of which the relevant facts in the matter are summarized as follows:

- (a) SEBI issued a Show Cause Notice dated December 29, 2011 wherein inter alia it was alleged that there was absence of robust surveillance system at USE. The SCN also brings out that the then existing state of affairs at USE were not in the interest of securities market.
- (b) The SEBI Circular dated April 21, 2003 casts the responsibility on the Managing Director to monitor all surveillance related functions of USE.
- (c) It has been alleged in the SCN that the USE has failed to monitor concentration of the large size trades during the period of July, 2011 to August, 2011 at USE which had ranged from 6.25% to 45.84%.
- (d) The trading member JCSL and Todi Securities Pvt. Limited had accounted for more than 90% of the large sized trades on daily basis. These two trading members were the top trading members on USE accounting for more than 80% of the total turnover on USE in May, 2011, which increased to nearly 90% in July, 2011.
- (e) JCSL had alone accounted for 77% to 80% of the total turnover during the period of July, 2011 to August, 2011 at USE, which in the absence of a robust surveillance system to monitor the trend of domination of trades by one trading member, resulted into a

significant level of self-trades through very large number of trading terminals from multiple locations.

- (f) USE failed to prevent such high concentration among a few trading members, even after one year of its operation and there was an attempt by a single trading member namely JCSL of artificial boosting of exchange volumes.
- ix. Findings of SEBI as per the Order were:
- (a) Surveillance systems at the USE had detected the concentration of trades by a single member, which was not usual.
 - (b) Board of USE knew regarding the concentration.
 - (c) The issue of concentration of trades was also discussed in the inspection report dated July 04, 2011, which admittedly was considered by the board members in their meeting held on August 24, 2011.
 - (d) Inspection report states that USE is a four dealer/ member exchange where these dealers/ members trade among each other with negligible client participation.
 - (e) After SEBI communicated its reservations about the concentration by two of the trading members, it was brought down. But the fact remains that USE turned a blind eye towards the volumes that were generated on its platform.
- x. From the said SEBI Order, it is clear that USE knew about the trading concentration but turned a blind eye and did not issue any alerts to its members, that there were only Four members who were dealing on the USE, that JCSL was artificially boosting exchange volumes. Further USE

has been let off with a warning and no action has been taken against JCSSL. Factum of non-issuance of alerts by USE, at the relevant time to its members, is significant in the facts and circumstances of the case and the allegations of self- trades etc., as levelled in the Notice be ,inter alia, viewed against the said backdrop.

- xi. Noticee also pointed out that at the relevant time:
- (a) Noticee had no idea that only a handful of members were trading on the exchange platform of USE.
 - (b) Noticee had no knowledge of counter parties on the USE.
 - (c) USE had never sent any alerts that there were self-trades during the trading which are sent by any surveillance team including that of exchange. Only the exchange has the capability to determine whether any self-trades are taking place but if such trades are taking place, why did the USE not issue alerts.
 - (d) Noticee came to know about the trade volumes only after SEBI pointed out the trades.
 - (e) Noticee was not involved in any matching or artificial trading activities as we had been engaged in arbitrage and jobbing activities in the currency derivatives segment of all the exchanges - NSEIL, BSE & MCX-SX, where it has membership.
 - (f) The exchanges sent regular feedbacks immediately on execution of any large transactions. In the case of the impugned transactions, at no point of time, USE had raised any issue but are raising the issue only subsequently.

- xii. Further, during the relevant period, Noticee's total trades vis-a-vis alleged self-trades, in the currency derivatives segment on the exchanges were as follows:

| Period | Total Turnover of the currency on all exchanges (Rs. crore) | Alleged Self Trades (Rs. Crore) | % age of Self trades with total Turnover |
|---------------|--|--|---|
| Apr 2011 | 722274.62 | 15,751 | 2.18 |
| May 2011 | 1000498.34 | 18,584 | 1.86 |
| Jun2011 | 1039010.80 | 17,085 | 1.64 |
| Jul2011 | 1243306.09 | 13,384 | 1.08 |
| Aug 2011 | 1365466.94 | 7,562 | 0.55 |
| Sep 2011 | 977705.21 | 13,125 | 1.34 |
| Oct 2011 | 577800.67 | 3,997 | 0.69 |

- xiii. From the aforesaid, it is clear that the alleged self- trades vis-a-vis market turnover were exceedingly insignificant and the same were too insignificant to have any kind of impact on the volumes in the currency derivatives market.
- xiv. Noticee had been doing arbitrage and jobbing in currency derivatives segment of all exchanges NSEIL, BSE & MCX-SX in its proprietary accounts.
- xv. Admittedly, it is SEBI's own case that our trading volumes were reasonably uniformly distributed across MCX-SX and USE .Therefore, Noticee's trading volumes on USE were not abnormal or not in sync with our volumes on other exchanges, so as to give rise to any impression of being motivated for the purpose of creating artificial volumes as alleged .
- xvi. Admittedly, it is SEBI's own case that Noticee has made both profits and losses while trading on USE .Therefore, to insinuate that self-trades were executed intentionally or deliberately is misplaced. It is incomprehensible that a broker will keep executing self -trades intentionally in order to make

losses. Factum of making of losses during the relevant time, also, strongly demonstrates that self-trades got executed incidentally while trading, and were not outcome of intentional execution.

xvii. At the relevant time Noticee was not aware that JCSL was its counter party. At no point of time, Noticee was aware of the counterparty to the trades, whether it was JCSL or anybody else, as all the trades were executed through the anonymous screen based trading platform of the Exchange. Noticee was not in the position to know the identity of the counterparty and it was only exchanges or SEBI that was aware of the counterparties to any trade at all points of time. Merely because JCSL was the counter party to Noticee trades or that JCSL had executed self-trades etc. no adverse inferences can be drawn against Noticee. Further, the alleged increase in Noticee trading turnover in USE was in normal course and was not outcome of any nefarious design as insinuated. Further, merely because others were not trading on USE, resulting in Noticee's turnover on USE becoming relatively high, also cannot be a ground to suspect something amiss in Noticee's trading. The alleged self-trades were incidental and not deliberate. Further, the alleged trades with JCSL, also were happening in normal course and were not something which was pre-planned. Same was function of number of brokers trading on the exchange. As it transpires now, that Noticee and JCSL were amongst the few brokers who were trading on USE in healthy quantum, therefore, it was but natural that Noticee would end up trading with JCSL. In the circumstances, there was nothing unusual or abnormal about Noticee's trades with JCSL, since Noticee's trades have to match with somebody in the market.

xviii. Noticee denied that its trades were primarily self-trades and these self-trades have accounted for nearly 15% to 58% of its turnover during the inspection period as alleged. The statement is bald, sweeping and is on

the basis of incorrect interpretation of data and erroneous understanding of the trading dynamics of the currency derivatives trading. Due to large amount of trading by Noticee on the currency segment of USE, some of the orders of the dealers have resulted into self-trades. Further, given Noticee's large presence in the segment, certain trades have matched in a short timeframe. In any event the issue of alleged self-trades has to be viewed from market turnover perspective i.e. what is the percentage of self-trades vis -a-vis total market turnover.

- xix. SEBI has failed to appreciate, that comparison of Noticee's self-trades with its total trades is misleading and totally out of context. Said comparison has no nexus with the impact on the market.
- xx. Despite having full knowledge of such alleged self-trades being executed, the USE or SEBI never issued any alerts at the relevant time but is now accusing Noticee of alleged self-trades by placing data on record in the hindsight, which otherwise Noticee had no access to at the time of trading. Both the USE and SEBI never raised this issue or flagged any alert despite having a robust surveillance mechanism to monitor the same.
- xxi. Noticee made the following further submissions:
 - (a) Only a small percentage of trades have resulted in the alleged self-trades, which were done in the ordinary course of trading dehors sinister intent or design.
 - (b) Noticee did not have any mechanism to prevent the trading among two user Ids of a single proprietary account.
 - (c) It is not the case wherein the member - broker has deliberately placed orders in the nature of self-trades. None of the impugned trades were placed for creating any artificial price rise or fall. All the

impugned trades were transacted since we were an active arbitrageur on the currency segment of the exchange, and a very insignificant number of them have resulted in self-trades without the knowledge of the arbitrageur as the counter party to the trade is not known to any trader.

- (d) The trading done was purely an arbitrage positions and the then mechanism on any of the exchange did not restrict trading among two user Ids of a single proprietary account on the anonymous screen based trading terminals. Trading through multiple user Ids of a single proprietary account is an accepted practice among market participants and at no point of time any exchange or SEBI has restricted any member or broker from trading through multiple Ids, which could result in self-trades.
- (e) The matching of the trades was beyond the control of Noticee since the trades were executed bonafidely and had no intention to execute self-trades.
- (f) The arbitrageurs execute the trades based on the opportunities available in the market and the trades are executed without interfering with the price -discovery mechanism of the exchange in any manner. The exchanges do not distinguish between the common user Ids belonging to the same proprietary account, which results in allegations of self-trades. In no way, it is possible for the arbitrageur to be aware of the counterparty to the trade.
- (g) The instances of self-trades in matter are very few in order to be seen as an objectionable trades. The percentage volume of self-trades vis a vis the total market volumes on USE is negligible and is not

capable of creating artificial volume. Further, there are no adverse observations regarding price manipulation, synchronised trading, reversal trading etc.

- (h) There was nothing to be gained by the Noticee by engaging in intentional self-trades on account of the fact that such percentage/volume of self-trades in currency derivatives was exceedingly miniscule compared to the total volumes. Further, most importantly, it may be noted that the rate of USD-INR is fixed by RBI and therefore it is not possible to manipulate the price of the contract in any manner.
 - (i) There is nothing to indicate, except for surmises and conjectures that the impugned self-trades were executed with an intent to create misleading appearance of trading in the securities market.
 - (j) The present matter of trading in currency derivatives (in which typically sophisticated investor's trade) should not be equated with trading in equity segment of Exchanges (wherein by and large investors of all hues - both small and big, trade).
 - (k) Noticee's volumes on exchange vis-a-vis total turnover of the exchange, are a function of number of other active brokers trading. Because, admittedly, less number of brokers were actively trading on USE, our otherwise normal turnover looks inflated, and the same should not be held against the Noticee.
- xxii. Noticee also highlighted that the Bombay Stock Exchange vide its circular dated January 16, 2015 introduced the Self-Trade Prevention Check (STPC) functionality in equity derivatives segment with effect from February

2, 2015. The BSE Circular no. 20150116-29 dated 16-01-2015 stated: "*If an incoming order is likely to match with a passive order belonging to the same member and client code combination in the same order book, the system shall cancel such incoming order thus preventing a self trade.*" Similarly, National Stock Exchange vide its Circular No. NSE/CD/29752 dated May 19, 2015 has stated that it proposes to introduce a new facility in the Currency Derivatives Segment for prevention of self-trades. The aforesaid Circulars itself show admission on the part of the exchanges that such self-trades can only be prevented at the Exchange's end and the broker/member do not have any control or knowledge whatsoever to prevent such trades. In any event, because of steps taken by Exchanges, the execution of self- trades is a thing of past.

- xxiii. Noticee has not made any gains or derived unfair advantage, as a result of alleged violations. There is nothing to indicate in the Notice, that Noticee has made any unfair gains. Noticee has also not caused any loss to the investors or group of investors. The alleged violations if any are technical and given the changes introduced by the exchanges, self-trades are a thing of past.
- xxiv. All are in the middle of pandemic today. Business houses are facing severe operational constraints and existential threats. Therefore also, at this juncture, given the facts and circumstances of the case, it would be in the fitness of things and also in consonance with the well settled principles of proportionality and fairness, that no monetary penalty be imposed on Noticee. Noticee has been going through a severe rough patch for last couple of years and has already surrendered some of its memberships. Its employee strength has come down to 2 employees as on date. Any penalty at this juncture would spell death knell for Noticee.

xxv. At the time of hearing, the Noticee also made reference to SAT order dated June 28, 2019 in the matter of Jaypee Capital Services Ltd. vs. SEBI, SEBI order dated May 11, 2012 in respect of United Stock exchange and SAT order dated February 26, 2019 in the matter of Crosseas Capital Services Pvt. Ltd. vs. SEBI.

18. As the inquiry in the matter has been completed, I now proceed to decide the case on the basis of SCN issued, reply made by the Noticee and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS:-

19. The issues that arise for consideration in the present case are :

Issue No. I Whether Noticee is in violation of Regulation 3, 4 (1) & 4 (2) (a) of the PFUTP Regulations, and clause A(2), (3) & (4) of the Code of Conduct under Schedule II {read with erstwhile regulation 7 (now regulation 9(f)) the Stock Broker Regulations?

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HA and 15HB of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the SEBI Adjudication Rules?

Issue No. I **Whether Noticee is in violation of Regulation 3, 4 (1) & 4 (2) (a) of the PFUTP Regulations, and clause A(2), (3) & (4) of the Code of Conduct under Schedule II {read with erstwhile regulation 7 (now regulation 9(f)) the Stock Broker Regulations?**

20. Before considering the issue on merits, there is a preliminary issue of delay and laches raised by the Noticee. It is a matter of fact that the matter has arisen at present subsequent to the order of Hon'ble SAT dated February 10, 2017. While the impugned trades took place during April 2011 to October 2011, an order was passed by SEBI on April 29, 2015. This was subsequently remanded to SEBI on February 10, 2017. Noticee made reference to several orders of Hon'ble SAT including SAT order dated March 31, 2008 in the matter of Libord Finance Ltd. vs. SEBI, SAT order dated November 5, 2008 in the matter of Shri. Ashok K Chaudhary vs. SEBI, SAT order dated August 27, 2013 in the matter of H B Stockholdings Ltd. vs. SEBI, SAT order dated September 4, 2019 in the matter of AstraZeneca Pharma India Ltd. and anr. vs SEBI; SAT order dated January 31, 2020 in the matter of Ashlesh Gunvantbhai Shah vs. SEBI, to argue that the proceedings need to be discontinued and dropped on account of delay.
21. Given the circumstances of the present proceedings, the time taken from the period of 2011 to 2017 is attributable to proceedings culminating in an order and the legal process of appeal before Hon'ble SAT. It is a matter of fact that the present notice has been issued after 4 years from the date of remand of SEBI order by Hon'ble SAT. As seen from material before me, this delay is attributable to procedural issues. However, as noted by the Noticee itself, there is no limitation prescribed in the SEBI Act and Regulations for the completion of investigations or for the issuance of a Show Cause Notice. I further note that given the circumstance of the case, no prejudice is caused to the Noticee merely on account of delay in proceedings. In the absence of any prescribed limitation period, it would not be appropriate to dismiss violation of law merely because of delay in proceedings.
22. The allegation against the Noticee arise from the large proportion of self-trades carried out by the Noticee in USD-INR contracts on USE. Noticee's self-trades had accounted for nearly 15% to 58% of its turnover during the inspection period. It is alleged that the self-trades artificially raised the volume in USD-INR contracts,

thereby created misleading appearance of trading in the currency derivatives segment at USE.

23. The terminal wise contribution to the Noticee's turnover including self-trade turnover is reproduced as under:

Terminal wise contributions to total trade volume:

| Terminal | Total No. of buy trades | Terminal's buy trades as % of total trades | Total No. of sell trades | Terminal's sell trades as % of total trades | Total turnover (in ₹ crores) | Terminal's turnover as % of TSPL's total turnover |
|--------------|-------------------------|--|--------------------------|---|------------------------------|---|
| T2 | 178692 | 49.62% | 179333 | 49.88% | 163117.48 | 49.81% |
| T3 | 180590 | 50.15% | 179440 | 49.91% | 164091.78 | 50.11% |
| T4 | 804 | 0.22% | 776 | 0.22% | 256.37 | 0.08% |
| Total | 360086 | 100.00% | 359549 | 100.00% | 327465.64 | 100.00% |

24. I see from the above table that that terminal-2 and 3 contributed more than 99% of the trading volume of Noticee. Almost equal number of buy and sell orders were entered from the 2 terminals.

25. Time difference between self-trades and turnover of Noticee's trades, are reproduced in below table:

Time difference analysis for self- trades

| SI No. | Time difference between orders (in seconds) | No. of trades | As % of all self-trades of TSPL | Turnover (in ₹ crores) | As % of total self-trade turnover of TSPL | As % of total turnover of TSPL |
|--------------|---|---------------|---------------------------------|------------------------|---|--------------------------------|
| 1 | 0 | 7,680 | 15.80% | 52302.70 | 58.45% | 15.97% |
| 2 | 1 | 8,596 | 17.68% | 11279.64 | 12.60% | 3.44% |
| 3 | 2 | 5,683 | 11.69% | 5617.59 | 6.28% | 1.72% |
| 4 | 3 | 3,811 | 7.84% | 3176.06 | 3.55% | 0.97% |
| 5 | 4 | 6,803 | 13.99% | 5569.06 | 6.22% | 1.70% |
| 6 | 7 | 3,810 | 7.84% | 2868.77 | 3.21% | 0.88% |
| 7 | 10 | 12,237 | 25.17% | 8674.67 | 9.69% | 2.65% |
| Total | | 48,620 | 100.00% | 89488.49 | 100.00% | 27.33% |

26. It is significant to note from the above table that almost 16% of Noticee's total trades and around 58% of the Noticee's self-trades took place with a time difference of zero seconds. This indicates that the buy and sell orders for such trades were entered simultaneously. A further 12.6 % self-trades took place with a time difference of 1 second. All self-trades took place with a time difference of 10 seconds. This indicates near simultaneous buy and sell order entry by the Noticee's traders.
27. Noticee in its reply has mainly argued that self-trades took place as there were mainly 4 active brokers trading on USE, that self-trades were un-intentional, that the Noticee was engaged in arbitrage trading/ jobbing and had similar trading volumes on BSE, NSE and MCX-SX. Noticee has also contended that it was not aware that JCSSL was its counterparty and that no alerts of any kind were generated by the exchange. Noticee has cited its self-trades as a percentage of total trading in currency derivatives across all 4 exchanges to argue that self-trades contributed insignificant volumes.
28. The issue to be decided here is whether self-trades carried out by the Noticee were intentional with a view to artificially inflate trading volumes at USE. In this context, I find the comparison by the Noticee of its self-trades with total currency derivatives turnover across all 4 exchanges to be incorrect. I note from data on record that the Noticee contributed the following volumes of trading on USE through self-trades:

| Month (2011) | Total turnover on USE | Turnover for self-trades of TSPL | TSPL's self-trades as % of total turnover on USE |
|---------------------|------------------------------|---|---|
| Apr | 197,690 | 15,751 | 8.0% |
| May | 384,456 | 18,584 | 4.8% |
| Jun | 449,298 | 17,085 | 3.8% |
| Jul | 551,613 | 13,384 | 2.4% |

| | | | |
|--------------|------------------|---------------|-------------|
| Aug | 644,776 | 7,562 | 1.2% |
| Sep | 370,571 | 13,125 | 3.5% |
| Oct | 135,645 | 3,997 | 2.9% |
| Total | 27,34,050 | 89,488 | 3.3% |

29. I note from the above data that the Noticee through iself-trades contributed between 1.2% to 8% of USE turnover during the months of April to October 2011, and averaged 3.3% over the entire period.

30. Noticee has referred to the order of Hon'ble SAT passed on June 28, 2019 in the matter of JCSL upholding SEBI order dated September 28, 2017 imposing penalty of Rs. 2 crores on JCSL jointly and severally with Mr. Gaurav Arora. I note from the said order that self-trades of JCSL were 59.77% of the total volume in USE during the inspection period April, 2011 to October, 2011. SAT in its order noted that

“Here is a case of self-trades of upto 15 lakh units in a derivative contract of the Exchange in six months which comes to almost 60% of the total volume of the Exchange during the period. By no imagination this can be treated as accidental matching of a few trades particularly when such high volumes and high ratios are there on record for a number of trading days covering the six months of inspection period. The appellants cannot take shelter under ignorance of such high volumes of self-trades executed by its own algo trading even if the algo trading argument is accepted.”

31. While the self-trade percentage of Noticee averaged 3.3% during the period April-October 2011, I note that the proportion was much higher in April-May 2011 at 8% and 4.5% respectively. Subsequently the proportion of self-trades has come down.

32. The Noticee has not claimed that the trades were algo trades. The trades were carried out by the Noticee's traders entering opposing buy and sell orders simultaneously. Even if the Noticee's argument is accepted that it was doing arbitrage trading across exchanges, it is not credible that 58% of its buy and sell orders were entered exactly at the same time on USE, with zero second time difference, and additional 12.6% orders were entered at 1 second time difference. Hence, I find that this pattern of order entry indicates intentional self-trades.
33. In this regard, Noticee has stated that it is not physically possible to execute buy and sell trade in the same terminal with a time difference of zero seconds. Further, the data submitted by USE, which has been the basis for drawing inferences, is erroneous and there has been no independent verification of the same by SEBI. SEBI itself has raised serious doubts over the credentials of USE as an Exchange through its orders. I note that SCN does not state that orders have matched from the same terminal. As brought out in preceding paras, orders have been placed through 2 terminals. Other than raising doubt over credentials of USE, Noticee has not given any evidence to question or doubt the veracity of the data. Therefore, this contention of the Noticee is not acceptable.
34. As per the SCN, the Noticee's trades with JCSL constituted 33.61% of its total turnover during April 2011 which constantly increased thereafter and reached a maximum of 67.41% during August 2011. Here, I note that JCSL at 70% volume contribution was the largest volume contributor on USE and hence, it was inevitable that a large proportion of Noticee's trades would match with JCSL, even though there were 72 to 90 active trading members during April-October 2011. Noticee contributed 12% to the USE trading volumes in this period.
35. In light of the aforesaid, I find that self-trades of the Noticee were not purely unintentional and resulting from jobbing or arbitrage. The proportion of self-trades to

its own trading and the time difference between the buy sell order of maximum 0 to 1 second for 70% of the trades established that the order entry was being carried out for matching with own orders. I further note that the volume contribution of Noticee's self-trades to USE ranged from 1.2% to 8%, averaging at 3.3%. Self-trades as a percentage of total volume is an important parameter to determine intentional trades, and proportion as high as 8% indicates not only intention but also lack of diligence on the part of Noticee.

36. In light of the above, I find that Noticee indulged in executing self-trades to artificially raise the volume in USD-INR contracts during the inspection period to create misleading appearance of trading in the currency derivatives segment at USE. The Noticee being a registered stock broker / registered intermediary while indulging into aforesaid misleading trades, also failed to exercise due skill, care and diligence in the conduct of its business as a stock broker as mandated under the code of conduct under Stock Brokers Regulations. Therefore, I am of the view that the Noticee had violated regulation 3, 4 (1) & 4 (2) (a) of the PFUTP Regulations and clause A(2), (3) & (4) of the Code of Conduct under Schedule II of Stock Brokers Regulations.

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15HA and 15HB of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the SEBI Adjudication Rules?

37. As it has been established that the Noticee violated Regulation 3, 4 (1) & 4 (2) (a) of the PFUTP Regulations and clause A(2), (3) & (4) of the Code of Conduct under Schedule II of Stock Brokers Regulations, Noticee is liable for imposition of

monetary penalty under Section 15HA and 15HB of the SEBI Act, which are reproduced below:

SEBI Act:

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 practices, whichever is higher.

Penalty for contravention where no separate penalty has been provided.

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

38. While determining the quantum of penalty under section 15HA and 15HB of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act have to be given due regard:

SEBI Act:

Factors to be taken into account by the adjudicating officer

15J. While adjudging quantum of penalty under section 15-I, 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.*

39. I note that the material on record does not reveal any disproportionate gains or unfair advantage made/ taken by the Noticee or loss caused to the investors as a result of the violations. SCN states that the Noticee made profits at USE for all the months during the inspection period except in the month of August 2011. However, these profits are not attributed transactions of self-trades. It is relevant to mention no quantifiable unfair / disproportionate gain is made in self-trading as the buyer and the seller remains the same person and no change of ownership takes place. I further note that while Noticee contributed on average 3.3% of the USE turnover through self-trades, JCSL contributed the bulk of turnover at 59.77%. Hence, the Noticee contributed a much smaller proportion of misleading self-trades to USE as compared to JCSL. As a registered broker, it was incumbent on the Noticee to take all steps to avoid such trades.
40. Therefore, taking into account the aforesaid factors, and considering the facts and circumstances of the case, I am of the view that a penalty of Rs.10,00,000/- (Rupees Ten Lakh only) under Section 15HA of the SEBI Act and Rs. 2,00,000/- (Rupees Two Lakh only) under Section 15HB will be commensurate with the violations committed by the Noticee.

ORDER

41. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, I hereby impose the penalty of Rs.10,00,000/- (Rupees Ten Lakh only) under Section 15HA of the SEBI Act and Rs. 2,00,000/- (Rupees Two Lakh only) under Section 15HB of the SEBI Act upon the Noticee, **M/s. Todi Securities Pvt. Ltd.**, for violation of Regulations 3, 4 (1) & 4 (2) (a) of the PFUTP Regulations and clause A(2), (3) & (4) of the Code of Conduct under Schedule II of Stock Brokers Regulation.

42. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:-

ENFORCEMENT → Orders → Orders of AO → PAY NOW

43. The Noticee shall forward the said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – II of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:
- a) Name and PAN of the entity (Noticee)
 - b) Name of the case / matter
 - c) Purpose of Payment – Payment of penalty under AO proceedings
 - d) Bank Name and Account Number
 - e) Transaction Number
44. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: May 28, 2021
PLACE: MUMBAI

MANINDER CHEEMA
ADJUDICATING OFFICER