

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SM/AD/2021-22/ 15332-15333]

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 BY ADJUDICATING OFFICER) RULES, 1995

In respect of

1. **Gajanan Enterprises**
[PAN: AAKFG7595A]
2. **B. P. Equities Private Limited**
[PAN: AAACB4602L]

In the matter of Ess Dee Aluminium Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted an investigation into the trading activities of certain entities in the scrip of Ess Dee Aluminium Limited (hereinafter referred to as '**Company/ EAL/By Name**'), a listed company whose scrip is listed on both BSE Ltd. (hereinafter referred to as "**BSE**") and National Stock Exchange of India Ltd. (hereinafter referred to as "**NSE**") (collectively referred to as "**Exchanges**"), for the period from September 01, 2012 to June 30, 2013 (hereinafter referred to as "**investigation period/IP**"). The focus of investigation was to ascertain whether there was any violation of the provisions of the securities laws.

2. During the investigation, SEBI observed that certain entities including Gajanan Enterprises (hereinafter referred to as “**Noticee 1**”) had executed self-trades during the investigation period leading to false and misleading appearance of trading in the scrip of EAL. Therefore, it was alleged that Noticee 1 had violated Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”). It was further observed that B. P. Equities Private Limited (hereinafter referred to as “**Noticee 2**”) had acted as stock broker and counterparty stock broker for the aforementioned self-trades executed by Noticee 1. (Noticee 1 and Noticee 2 are hereinafter collectively referred to as “**Noticees**”). It was, therefore, also alleged that Noticee 2 by acting as broker and counterparty broker for self -trades of Noticee 1 had violated Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as “**Stock Brokers Regulations**”).
3. Therefore, SEBI initiated adjudication proceedings against Noticees and appointed Mr. D. Ravi Kumar (hereinafter referred to as “**erstwhile AO**”) as Adjudicating Officer to inquire and adjudge under Section 15HA of SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”) the aforesaid alleged violations of PFUTP Regulations by Noticee 1 and under Section 15HB of SEBI Act, the aforesaid alleged violations of Stock Brokers Regulations by Noticee 2.
4. Show Cause Notices bearing Ref. No. A&E/EAD-3/DRK-DS/8048/2014 dated March 13, 2014 and A&E/EAD-3/DRK-DS/8243/2014 dated March 18, 2014 (hereinafter referred to as “**SCNs**”) was served on Noticee 1 and Noticee 2 respectively by “Hand Delivery Acknowledgement Due”(hereinafter referred to as “**HDAD**”) in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing

Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to show cause as to why an inquiry should not be initiated against Noticees and why penalty, if any, should not be imposed on them.

5. Thereafter, erstwhile AO, vide Adjudication Order dated March 31, 2015 concluded that Noticee 1 had violated the aforesaid provisions of PFUTP Regulations and imposed a penalty of Rs. 20,00,000 (Rupees Twenty Lakh only) on it. Similarly, the erstwhile AO vide Adjudication Order dated March 30, 2015 concluded that Noticee 2 had violated Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of the Stock Brokers Regulations and imposed a penalty of Rs. 11,00,000 /- (Rupees Eleven Lakh only) on it.
6. The aforesaid Adjudication Orders were challenged by Noticees in the Hon'ble Securities Appellate Tribunal (hereinafter referred as '**SAT**') in Appeal No's 410 and 411 of 2015 and Hon'ble SAT vide its order dated February 10, 2017 (hereinafter referred to as "**SAT Order**"), quashed, *inter alia*, the aforementioned Adjudication Orders against Noticees and remanded the matter back to SEBI for passing fresh order on merits and in accordance with law. The relevant extracts of the aforementioned order of Hon'ble SAT are reproduced hereunder:

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

3. Accordingly, 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.

4. All the appeals are disposed of in the aforesaid terms with no order as to costs."

APPOINTMENT OF ADJUDICATING OFFICER

7. In accordance with the aforesaid order of Hon'ble SAT, SEBI, vide order dated January 25, 2021, appointed undersigned as the Adjudicating Officer under Section 19 of SEBI Act read with Section 15I(1) and Rule 3 of Adjudication Rules to inquire into and adjudge under the provisions of Section 15HA of SEBI Act and Section 15HB of SEBI Act, the aforesaid alleged violations by Noticee 1 and Noticee 2 respectively.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

8. Thereafter, copies of SCNs issued by erstwhile AO were once again sent to Noticees through Speed Post Acknowledgement (hereinafter referred to as "**SPAD**") as well as through digitally signed emails dated July 20, 2021 and the same were duly served on them. Noticees was given fourteen (14) days' time to make their submissions in respect of the allegations made in SCNs.
9. The allegations contained in the SCNs against Noticees are as summarized hereunder:
- a. *It is observed that the trades of Noticee 1 contributed to ` 30.25 to New High Price discovery (6.06% of NHP) at BSE and at NSE the trades contributed to `56.85 to the New High Price discovery (11.37% of NHP). It is further observed that during the investigation period Noticee 1 had dealt in EAL in the following manner :*

Sr. No.	Exchange	No. of shares buy/ sell	Contribution to the total market volume (in %)
1.	BSE	2,65,815 (buy)	1.79
2.	BSE	2,86,070 (sell)	1.93
3.	NSE	3,45,719 (buy)	0.95
4.	NSE	3,42,323 (sell)	0.94

- b. *It is observed that Noticee 1 had executed self-trades leading to false and misleading appearance of trading in the scrip of EAL. The details of self-trades executed by Noticee 1 in EAL are as follows:*

Entity Name	Stock Exchange	Stock Broker On Both Buy and Sell Side	Total Self Trade Volume	No. of self-trades executed	No. of Self Trade from the same terminal	No. of days on which self-trades done	% of Self Traded Quantity to market Volume	Net LTP Contribution by self-trades (in ₹)
Gajanan Enterprises Ltd.	BSE	BP Equities Pvt. Ltd.	23,898	703	453	49	0.16	-2.2
Gajanan Enterprises Ltd.	NSE	BP Equities Pvt. Ltd.	21,446	1886	419	47	0.06	36.65

- c. *Noticee 2 had acted as stock broker and counterparty stock broker for Noticee 1 who executed self-trades during the investigation period leading to false and misleading appearance of trading in the scrip of EAL.*
- d. *Hence, it is alleged that Noticee 1 had violated 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of PFUTP Regulations. It is also alleged that Noticee 2*

had violated Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of the Stock Brokers Regulations.

10. Noticee 1, vide, letters dated September 23, 2021, April 05, 2014, May 14, 2014 and July 02, 2014 submitted its reply to the SCN dated March 13, 2014. Similarly, Noticee 2, vide letters dated September 23, 2021, April 07, 2014, May 14, 2014 and July 02, 2014 submitted its reply to the SCN dated March 18, 2014. The contents of the aforementioned replies of Noticees are summarized hereunder:

Noticees's Replies dated September 23, 2021

- a. *Self-trades in the current case were purely incidental and executed unintentionally. In fact, self-trades constitute a negligible 0.005% (BSE) and 0.006% (NSE) of the total volume of in ESSDEE during the period covered under investigation. Such negligible % of self-trades volume executed unintentionally cannot be said to have violated PFUTP regulations.*
- b. *The percentage concentration of self-trades was much more in many other matters where SEBI has formed a view that these are not in violation of PFUTP Regulations and this case also deserves a similar treatment.*
- c. *Noticees also placed reliance on the decision of Hon'ble SAT dated January 24, 2014 in the case of Smt. Krupa Sanjay Soni vs SEBI where it was held that "a few instances of self-trades in themselves would not, ipso facto, amount to an objectionable trades" .*

Noticee 1's reply dated April 05, 2014

- a. *Noticee 1 trade through multiple dealers who carry out jobbing, arbitrage and positional trading in securities on one or more Exchanges. This is carried out through multiple trading strategies that are deployed while executing the transactions. One such strategy is momentum trading, wherein Noticee 1 identify the movement in a security and take a position based on the movement.*
- b. *Noticee 1's volume in the security of EAL was meagre 1.86% (BSE) and 0.94% (NSE) of the market volume, which can no way create any false or misleading appearance of trading in any security. The internally matched trades from the same terminals during the said period were a negligible 0.005% (821 shares) for BSE and 0.006% (2380 shares) for NSE. The table below gives a comparison of market volume and our volume in this regard.*

Exchange	Exchange Volume	Volume of Noticee 1	% Volume of
BSE	14857890	275944	1.86
NSE	3647551	344021	0.94

- c. *It is mentioned in the SCN that there are 419 self-trades on NSE & 453 self-trades on BSE from the same terminal. However, the fact remains that there are only 106 self-trades on BSE from same terminal.*
- d. *As Noticee 1 trade through multiple terminals, the dealers are not aware of the orders placed by other dealers. In some cases the buy order of one dealer inadvertently matches with that of other terminals, which it believe should not be treated as self-trades.*

- e. *The net LTP contribution by Noticee 1's self-trades was a miniscule Rs.-2.2.If Noticee 1 had intention to influence the price movement then it would have contributed in the price rise and not in the price fall. This goes ahead to substantiate that the self-trades were merely incidental and purely unintentional. Though there is some positive impact of Noticee 1's self-trades on NSE, the above fact that it was merely incidental and purely unintentional still holds good as there is no reason for anybody to intentionally influence the price positively on one Exchange and negatively on another.*
- f. *Every transaction impacts the price either positively or negatively and hence contribution to movement of price should not be a valid parameter to judge the activity of a market participant till the time there is a consistent pattern of order placement, time interval, price gap, order quantity and such other parameters, which are, inexistent in the current case.*
- g. *Noticee 1's act of trading in scrip of EAL, or for that matter in any security is only as per its predefined trading strategy. A few incidental self-trades could take place during the execution of our trading strategy, but these negligible number of unintentional self-trades (BSE-0.005% and NSE-0.006%) no way fall under the definition of fraud and hence we cannot be said to have dealt in securities in a fraudulent manner.*

Noticee 2's reply dated April 07, 2014

- a. *Noticee 1 is one of leading clients of Noticee 2 and has a large trading and investment portfolio. They trade in multiple securities in large quantities and their trading activity is regularly monitored to ensure that the trading is within the framework of laws.*

- b. *The dealers of Noticee 2 trade on behalf of Noticee 1 as per its predefined strategy. The trades in EAL were a result of one such trading strategy called the momentum strategy, where they enter the scrip if it shows a strong one side movement.*
- c. *The transactions of Noticee 1 are regularly monitored and Noticee 2 have not observed any reason to believe that Noticee 1 has intentionally executed self-trades with an intention of false and misleading appearance of trading.*
- d. *The following characters of the trading of Noticee 1 have been taken account by Noticee 2 while analyzing the trading pattern:*
 - i. *Noticee 1 carries out trades in large number of securities and does not have a concentrated volume in EAL.*
 - ii. *The trading is carried out on selected days and not on all days covered under the investigation period.*
 - iii. *On most days Noticee 1 has not executed large amount of transactions and the quantity of trades has been frequently changing.*
 - iv. *The volume of Noticee 1 in EAL compared to the market-wide volume is not material and such small volume cannot be said to have created false and misleading appearance of trading.*
- e. *The volume of self-trades comprises of extremely negligible quantity as compared to the market volume of EAL and Noticee 1's own volume which strengthens its belief that there was no reason for Noticee 1 to intentionally indulge into any practice as alleged.*

- f. *The self-trades are extremely random and there is absolutely no consistency with regards to quantity, rate, timing or any other applicable parameter, which made Noticee 2 believe that these are coincidental and unintentional.*
- g. *Noticee 1 has carried out a substantial amount of delivery trades, which have been settled by Noticee 2 on the exchange, clearly substantiating that these were executed with an intention of transfer of beneficial interest in the shares to them and for no other purpose.*
- h. *All the transactions are carried out on behalf of the Noticee 1 as per its instructions. The obligation arising out of the trades have been fulfilled and have also maintained a strict vigil over the transactions of Noticee 1.*
- i. *With regards to the self-trades, based on the facts and circumstances and taking into account the size and nature of business, it is noted that the same are co-incident and unintentional.*
- j. *The quantity of self-trades is extremely miniscule to have created any false or misleading appearance of trading. Noticee 2 has acted in full integrity with clients and other market participants at large.*
- k. *Noticee 2 has exercised required skill, care and diligence by ensuring that Noticee 1 has adequate balance with us and the trades carried out are within the framework of law.*

Noticee's replies dated May 14, 2014

- a. *Notices' s placed reliance on judgment of Hon'ble SAT dated January 24, 2014 in the case of Smt. Krupa Sanjay Soni vs SEBI where it was held that "a few*

instances of self-trades in themselves would not, ipso facto, amount to an objectionable trades".

- b. *In similar matter of Gayatri Projects Limited, the adjudicating officer, vide its order dated April 30, 2014 concluded that the charges levelled against entities in the SCN in the matter do not stand established and the matter was disposed off on the grounds that when the percentage of self-trades is negligible , the self-trades are not capable of creating artificial volume. The percentage of self traded quantity to market volume in the present matter is much lower than the percentage of self-trades in the matter of Gayatri Projects and Smt. Krupa Sanjay Soni.*

11. Thereafter, in the interest of natural justice and as per the provisions of Adjudication Rules, Noticees were granted an opportunity of personal hearing in the matter before the undersigned on February 22, 2022, vide hearing notices dated February 04, 2022 sent vide digitally signed emails dated February 08, 2022 as well as through SPAD. The hearing notices were duly served on Noticees.

12. On the scheduled date of hearing, Noticees attended the hearing through their authorized representatives (hereinafter referred to as "ARs") Mr. Ravi Ramaiya and Mr. Sandeep Jain. During the hearing, the ARs of Noticees reiterated the earlier submissions made by Noticees vide letters dated September 23, 2021, April 05, 2014, May 14, 2014 and April 07, 2014.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

13. I have carefully perused the charges levelled against Noticees in the SCNs, replies of Noticees and the material available on record. The issues that arise for consideration in the present case are:

- I. Whether Noticee 1 has violated the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of PFUTP Regulations and Noticee 2 has violated Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of the Stock Brokers Regulations?
 - II. If yes, then do the violations, if any, on the part of Noticee 1 and Noticee 2 attract any monetary penalty under Section 15HA and 15HB of the SEBI Act respectively?
 - III. If yes, then what would be the quantum of monetary penalty that can be imposed upon Noticees, taking into consideration the factors mentioned in Section 15J of the SEBI Act?
14. Before proceeding to examine the case on its merits, it would be proper to refer to the relevant provisions of PFUTP Regulations and Stock Broker Regulations which have been purportedly violated by Noticees as alleged in the SCN. The said provisions of the law are reproduced herein below:

Relevant provisions of PFUTP Regulations:

3. *Prohibition of certain dealings in securities* No person shall directly or indirectly—

(a) *buy, sell or otherwise deal in securities in a fraudulent manner;*

(b) *use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*

(c) *employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*

(d) *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized*

stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

...

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

Relevant provisions of Stock Broker Regulations:

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.

SCHEDULE II

CODE OF CONDUCT FOR STOCK BROKERS

[Regulation 7] A. General.

(1)

(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 rumors with a view to distorting market equilibrium or making personal gains.

(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

Issue No. I: Noticee 1 has violated the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of PFUTP Regulations and Noticee 2 has violated Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of the Stock Brokers Regulations?

15. Upon perusal of available records, I find that it is alleged that 703 self-trades for total quantity of 23898 shares were executed at BSE and 1886 self-trades for total quantity of 21446 shares were executed at NSE by Noticee 1 in the scrip of EAL .
16. Noticee 1 in its submissions has stated that self-trades in the present matter were executed purely incidentally and without any intention to manipulate the market. Noticee 1 also submitted that there is nothing on record to show that the trades executed by Noticee 1 were under a scheme or artifice to defraud anybody. Noticee 1 has further submitted that percentage of self trades executed by it in the scrip of EAL was negligible compared to the total market traded volume in the scrip.
17. I note from available records that Noticee 1 had executed self-trades (i.e. trades in which both the buyer and the seller are the same entity) during the IP. The same has also been admitted by Noticee 1 in its submissions. The details of self-trades executed by Noticee 1 as noted from materials available on record are as given hereunder:

A	B	C	D	E	F	G	H	I
Name of the Entity	Exchange	Stock Broker on Both Buy and Sell Side	Total traded volume	Total Self Trade Volume	No. of self-trades	No. of days on which self trades done	% of Self Traded Quantity to market Volume (E/D*100)	Net LTP contribution by self

								- trades
Gajanan Enterprises Ltd.	BSE	BP Equities Pvt. Ltd.	14857890	23898	703	49	0.16	-2.2
Gajanan Enterprises Ltd.	NSE	BP Equities Pvt. Ltd.	36475551	21446	1886	47	0.06	36.65

18. I note from the table above that on BSE, during IP, Noticee 1 had executed self-trades in 23898 shares of EAL through 703 trades over 49 trading days. I also note that aforementioned self-trades executed by Noticee 1 constituted to only 0.16 % of the total traded market volume in scrip of EAL at BSE during the IP. Similarly, I also find that on NSE, Noticee 1 had executed self-trades in 21446 shares of EAL through 1886 trades over 47 days. I also note that the percentage of self trade volume executed by Noticee 1 to the total traded market volume of scrip of EAL on NSE was 0.06%. Therefore, I agree with contention of Noticee 1 that volume of self-trades executed by Noticee 1 was negligible compared to total traded market volume in scrip of EAL in the exchanges. I also note from submissions of Noticee 1 that total trading volume of Noticee 1 in scrip of EAL is merely 1.86% (BSE) and 0.94% (NSE) of total market volume in the scrip of EAL during IP. I am of view that though Noticee 1 had entered into self-trades on multiple occasions, yet the volume of self-trades vis -a-vis total volume in the shares of EAL is not significant enough to disturb the market mechanism or to mislead the investors of securities market in the scrip of EAL. In light of the foregoing, I find that the percentage contribution in the volume, as mentioned above, does not suggest the possibility of any manipulative intent on the part of Noticee 1 to the extent of contributing to market

volume through artificial volume creation in the scrip of EAL during the investigation period.

19. As per Regulation 4(2)(g) of PFUTP Regulations, entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security, is deemed to be fraudulent. In this regard, I note that nothing has been brought on record in the investigation to show that the aforesaid self-trades by Noticee 1 were executed in a fraudulent manner.
20. I also note that other factors relating to manipulative intent, namely, frequency, timing, number of self-trades and any other pattern have not been alleged against Noticee 1 in the SCN. Further, no connection is also brought out vis-a vis other traders in the scrip during IP. I find that self-trades by Noticee 1, as presented in the instant matter cannot be considered to be fraudulent in nature, unless supporting facts and circumstances leading to a manipulative intent behind these trades are also presented. I note that investigation is silent on these facts and circumstances, which would be necessary to establish that these self-trades executed by Noticee 1 were manipulative trades, intended to defraud the market. I am of view that a charge of market manipulation as a result of self-trades should be made on the basis of strong and cogent evidence, which is lacking in instant case. In this regard, it is pertinent to highlight that Hon'ble SAT in case of KSL & Industries Ltd v. SEBI (Appeal no. 9 of 2003) has held that "*A wild allegation of market manipulation, in particular the charge of fraudulent action unsupported with convincing evidence are not sustained. Fraud cannot survive on mere conjecture and surmises.*"
21. On account of aforesaid observations, I find that the allegation that by executing the aforesaid self-trades in the scrip of EAL, Noticee 1, had violated provisions of

Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a) and 4(2)(g) of PFUTP Regulations does not stand established. Since the allegations against Noticee 1 in the SCN dated March 13, 2014 are not established, there is no case to draw any adverse inference on Noticee 2 as the broker and counterparty broker of Noticee 1, as regards the allegation of violation of Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Stock Broker Regulations against it.

22. Since, the alleged violations are not established against Noticees, Issues No. II and III require no consideration.

ORDER

23. Accordingly, taking into account the aforesaid findings, the adjudication proceedings against Noticees i.e. Gajanan Enterprises and B. P. Equities Private Limited, initiated vide Show Cause Notices dated March 13, 2014 and March 18, 2014, respectively, stand disposed of without imposition of any penalty under Sections 15HA and 15HB of SEBI Act.

24. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to Noticees and also to the Securities and Exchange Board of India.

Date: March 11, 2022
Place: Mumbai

SOMA MAJUMDER
ADJUDICATING OFFICER