BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No.: ORDER/AP/SK/2020-21/9608]

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:

Ms. Pragnaben Suryakant Shah
(PA No. BGXPS9598D)
2, Aranoday Appt.,
Narayan Nagar Road,
Opp. Mena Gujari Soc, Paldi,
Ahmedabad – 380007.

In the matter of Gala Global Products Limited

1. Pursuant to the investigation conducted in the matter of Gala Global Products Limited (hereinafter referred to as "GGPL") during the period from December 28, 2017 to April 20, 2018, Securities and Exchange Board of India ("SEBI") observed the following:

   a) Ms. Pragnaben Suryakant Shah (hereinafter referred to as 'the Noticee'), Director of GGPL had purchased and sold shares of GGPL during the investigation period constituting net sale of 9450 shares accounting for 0.12% to market volume.

   b) Since the traded value of her transactions were in excess of ten lakh rupees, she was obligated to make requisite disclosure to GGPL under Regulation 7(2) (a) of the of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter also referred to as "PIT Regulations"). The details of her transactions during the investigation period obligating the compliance of such requirements under Regulation 7(2) (a) of the PIT Regulations are as under

Date	**No of shares held – before transaction (number of shares and %)**	**No of shares Acquired/ (disposed off)**	**Holding Post Transition (number of shares and %)(*)**	**Value of transaction (Rs.)**	**Disclosure required under SEBI (PIT), 2015**	**Mode**	**Required Date of disclosure to company and Exchnage**	**Required Date of disclosure by company**	**Disclosure to Company and to stock exchange**	**Violation of Regulation(s) under PIT 2015**
20/02/2018	9450 (0.037%)	Buy 9450 Sell 9450	9450 (0.037%)	65,91,582.90	Transaction value exceeded Rs. 10 Lakh	on market	22/02/2018	NA	Not disclosed	7(2)(a)

Date	No of shares held – before transaction (number of shares and %)	No of shares Acquired/ (disposed off)	Holding Post Transition (number of shares and %)(*)	Value of transaction (Rs.)	Disclosure required under SEBI (PIT), 2015	Mode	Required Date of disclosure to company and Exchnage	Required Date of disclosure by company	Disclosure to Company and to stock exchange	Violation of Regulation(s) under PIT 2015
21/02/2018	9450 (0.037%)	Sell 9450	0	32,34,319.20	Transaction value exceeded Rs. 10 Lakh	on market	23/02/2018	NA	Not disclosed	7(2)(a)
09/03/2018	0	Buy 5001	5001 (0.019%)	18,64,622.85	Transaction value exceeded Rs. 10 Lakh	on market	13/03/2018	NA	Not disclosed	7(2)(a)
13/03/2018	5001 (0.019%)	Sell 5001	0	18,93,378.60	Transaction value exceeded Rs. 10 Lakh	on market	15/03/2018	NA	Not disclosed	7(2)(a)

c) GGPL submitted its reply to SEBI vide email dated Sept 27, 2018, Oct 9, 2018 and October 10, 201. From GGPL's reply, it was observed that the Noticee had failed to make requisite disclosures to it under Regulation 7(2) (a) of the PIT Regulations in respect of her aforesaid transactions during the investigation period.

d) From the Noticee's letter dated November 01, 2018 submitted in response to the summons dated October 25, 2018, it was observed that she had failed to make requisite disclosures to GGPL under Regulation 7(2) (a) of the PIT Regulations for her aforesaid transactions.

e) Further, BSE Ltd. vide its email dated January 31, 2019 had informed that it had not received any disclosure from GGPL under PIT Regulations for the trading activity of the Noticee during the investigation period.

2. In view of her failure to make disclosures as aforesaid, it is alleged that the Noticee had violated the provisions of Regulation 7(2) (a) of the PIT Regulations which reads as under:

PIT Regulations

7. (1) …..

(2) Continual disclosures.

(a) Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;

3. Pursuant to submission of investigation report, the competent authority in SEBI *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the aforesaid alleged violations by the Noticee and appointed Shri Santosh Kumar Shukla, Chief General Manager as Adjudicating

Officer ('erstwhile AO') vide *communication order* dated May 28, 2019, to inquire and adjudge under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'the Adjudication Rules') the alleged violations by the Noticee under Section 15A (b) of the SEBI Act. Thereafter, vide a common *communication order* dated January 07, 2020, this case has been transferred to the undersigned with advise that except for the change of the Adjudicating Officer the other terms and conditions of the original orders *'shall remain unchanged and shall be in full force and effect'* and that the "*Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders*".

4. After receipt of records of these proceedings, it was noted that the erstwhile AO had issued the notice to show cause no. EAD-2/SS-SKS/OW/18550/1/2019 dated July 22, 2019 ('the SCN') to the Noticee in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act calling upon her to show cause as to why an inquiry should not be held against her in terms of rule 4 of the Adjudication Rules and penalty be not imposed under Section 15A (b) of the SEBI Act for the aforesaid alleged violations. The SCN was sent at the last known address of the Noticee through Speed Post with Acknowledgment Due and the same was duly served. In response to the SCN, after seeking further time, the Noticee filed her written submissions vide letter dated August 21, 2019. Vide the said letter, the Noticee had *inter-alia* provided her e-mail ID *viz.* shah75901@gmail.com for all further correspondences and also sought an opportunity of personal hearing.

5. Thereafter, in order to conclude the inquiry in terms of Rule 4 (3) of the Adjudication Rules, an opportunity of personal hearing was granted to the Noticee on September 16, 2020. The same was communicated to the aforesaid e-mail id of the Noticee vide e-mail dated September 09, 2020. The said notice was digitally signed in term of the requirement prescribed under rule 7 (b) of the Adjudication Rules. The second proviso to rule 7 (b) specifies that *"…a notice sent through electronic mail shall be digitally signed by the competent authority and bouncing of the electronic mail shall not constitute valid service;"*. The Notice sent vide e-mail dated September 09, 2020, was duly served in compliance with the said requirements under rule 7 (b) and proof of delivery report is on record. However, no reply / communication has been received from the Noticee despite service of notice upon her. In the interest of principles of natural justice, the Noticee was given another opportunity of personal hearing on October 09, 2020 and the same was communicated to the aforesaid e-mail id of the Noticee vide e-mail dated September 17, 2020. However, no reply / communication has been received from the Noticee despite service of notice upon her. Vide the said notice of hearing, it was clearly indicated that if she fails to avail the opportunity of hearing, it shall be presumed that she had waived the opportunity of hearing granted to her and the matter shall be proceeded *ex-parte*

on the basis of the material available on record in terms of Rule 4 (7) of the SEBI Adjudication Rules. In the facts and circumstances of this case, I am of the view that the Noticee has no additional submissions to submit and decide the matter based on the reply filed by her vide letter August 21, 2019. The replies/submissions of the Noticee are *inter-alia* as follows:

a) The only allegation against her i.e. Regulation 7(2)(a) of the PIT Regulations has been drawn from a mere inference that she is a connected entity. She was appointed as a Non-Executive Independent Director of GGPL with effect from 12.06.2017 by the Board of Directors which was subsequently approved by Shareholders at Annual General Meeting on 13.07.2017 and that she had resigned from GGPL with effect from 22.06.2018.

b) On account of her old age and health issues, she had engaged a share broker to deal with all her investments and the share broker had standing instructions to trade in her account and due to various health issues, she was not in a position to keep track of transactions in her account.

c) Her holding in the scrip of GGPL was only 0.02% of the total shareholding of the company and more importantly, contrary to the observation in the SCN, she was not a connected person with GGPL. GGPL vide email of GGPL dated 10.10.2018 has already informed that the Independent Directors do not participate in the day-to-day management nor do they have access to the working of the company and hence they are not covered as a "designated person".

d) She was not in possession of any Unpublished Price Sensitive Information ('UPSI') during the tenure of trades executed in her account by the share broker which can be ascertained from the email of GGPL dated 10.10.2018 whereby GGPL has clearly declared that there was no UPSI which could have affected the trade decision of any one person and that such information is available only to "designated person". Therefore, as she was appointed as an Independent Director, she could not have been privy to UPSI as she does not fall under the purview of a "designated person".

e) She was not aware that she was supposed to file any disclosures with GGPL. She places reliance on the letter dated 09.10.2018 of GGPL, wherein they have admitted that they did not notice the transactions in her account as there was no flag raised by any of the usual and periodical MIS from RTI and therefore, GGPL also could not bring to her notice that she was required to file disclosures in regard to the transactions. She claimed that only when she received the SCN, it was brought to her notice that she was required to file disclosures with GGPL. In this regard, she placed reliance upon the judgment of Hon'ble Bombay High Court in the matter of *SEBI Vs. Cabot International Capital Corporation (2004)* wherein it was held as under:

"25 (G): "Though looking to the provisions of the statute, the delinquency of the defaulter may itself expose him to the penalty provision yet despite, that in the statute, minimum penalty is prescribed, the authority may refuse to impose penalty for justifiable reasons like the default occurred due to the bonafide belief that he was not liable to act in the manner prescribed by the statute or there was too technical or venial breach etc."

Para 26: Now, the question, of the penalty, by the Adjudicating Authority, in the facts and circumstances of the case, was warranted or not. We find that the allotment in question was undoubtedly covered under the exemption provided in regulation 3(1). There could not have been insistence by the Appellants-SEBI to comply with the requirements of regulation 3(4). It is also clear that when an acquisition is covered under regulation 3 the acquirer is required to report to the Board under the regulation 3(4) within the specified time, as referred above. In view of this undisputed position, merely because there was no Report filed, that itself cannot be read as serious defect or non-compliances of the said provisions. The Appellate Authority, after considering the material on record, including the events, referred in the pleadings, found that the respondents-company had no intention to suppress any material information from the appellants or the shareholders."

f) She has not taken any undue advantage by her act of omission to file the required disclosures. Furthermore, in the interim, there is no allegation of any disproportionate gain or unfair advantage attributed to her in the SCN. Since that factum is deemed settled, as a corollary, the question of loss caused to an investor or group of investors as a result of the lapse in filing disclosures does not arise. In the absence thereof, the lapse may be deemed a technical and a procedural lapse and penalty, if any, that may be imposed, be limited to the minimum that has been prescribed under the SEBI Act.

g) There was no intention to suppress any material information from the shareholders, investors or the public. The alleged lapse was totally inadvertent and non-repetitive in nature and had occurred in only one quarter. Under the said circumstances, the venial lapse on her part may be viewed leniently as the non-filing of disclosure was unintentional and there was no mala-fide intent on her part.

6. I have considered the allegations and charges levelled against the Noticee, submissions of the Noticee and the relevant material available on record. As per Regulation 7(2) (a) of the PIT Regulations, every promoter, employee and **"director"** of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified. In the instant case, cumulative value of the buy / sell transaction value

was in excess of Rs. 10 lakh on four occasions in one quarter i.e. January 2018 to March 2018 and that all the transactions were through on-market. As such, Regulation 7(2) (a) of the PIT Regulations is squarely applicable in the facts and circumstances of the case. As regards the charge on failure to make requisite disclosures under the PIT Regulations, in the first instance, the cumulative value of the buy and sell transaction was in excess of Rs. 10 lakh i.e. Rs. 65,91,582.90 when 9,450 shares of GGPL were bought and sold by the Noticee on February 20, 2018. In the second instance, the cumulative value of the sell transaction was in excess of Rs. 10 lakh i.e. Rs. 32,34,319.20 when 9,450 shares of GGPL were sold by the Noticee on February 21, 2018. In the third instance, the cumulative value of the buy transaction was in excess of Rs. 10 lakh i.e. Rs. 18,64,622.85 when 5,100 shares of GGPL were bought by the Noticee on March 09, 2018. In the fourth instance, the cumulative value of the sell transaction was in excess of Rs. 10 lakh i.e. Rs. 18,93,378.60 when 5,100 shares of GGPL were sold by the Noticee on March 13, 2018. In this regard, in all the four instances, the disclosures required to be made under Regulation 7(2) (a) of the PIT Regulations were not made by the Noticee, who is a director at the relevant times, to the Company. The Noticee has not disputed the failure in making disclosures to the Company. The Noticee in her defence claimed that she had engaged a share broker to deal with all her investments and the share broker had standing instructions to trade in her account and due to various health issues, she was not in a position to keep track of transactions in her account. The Noticee being an independent director is bound to be more vigilant and her lack of awareness about disclosure requirements cannot be considered as an excuse from compliance with the PIT Regulations. Further, Regulation 7(2) (a) of the PIT Regulations does not differentiate between independent directors and non-independent directors. All the directors, whether independent or non-independent, are covered under the ambit of Regulation 7(2) (a) of the PIT Regulations. Hence, the arguments of the Noticee regarding being an independent director, not in possession any UPSI and not being a designated person of GGPL are devoid of any merit. In my view, this is a case of failure on the part of the Noticee, a director of GGPL during the reference period, who is bound to execute trades subject to compliance with the PIT Regulations. Therefore, in view of the aforementioned facts, the charge that the Noticee has violated Regulation 7(2) (a) of the PIT Regulations stands established. Further, in my view, the repeated failures of the Noticee as found in this case deserves imposition of monetary penalty under section 15A (b) of the SEBI Act which reads as under:

SEBI Act

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,-*

(a) …..

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

7. The purpose of the disclosure requirements under the PIT Regulations is to place the information of the occurrence of the trade in the public domain in order that the transaction does not take place in a discreet manner to the detriment of the general investors. Therefore, disclosure is mandated at two levels; one is the immediate disclosure of any material information and the other is the disclosure of transactions undertaken. While the former is meant to prevent insider trading, the latter is for revealing insider trading, if any. Insiders and the company are obligated to disclose all the price sensitive/ material information to the public at the earliest. The objective is to create a level playing field by making information accessible to all market participants i.e. the shareholders and proposed investors. Resultantly, when the information is equally available to all, there is no distinct advantage that insiders can capitalize on. The violations by an independent director, as found in this case, would defeat the purpose of principles enshrined under the PIT Regulations keeping in mind the mandate of protecting the interest of investors. The reliance placed by the Noticee on the judgment of Hon'ble Bombay High Court in the matter of *SEBI Vs. Cabot International Capital Corporation (2004)* is out of place as that case involve acquisitions whereby the acquirer shall, within 21 days of the date of acquisition, submit a report along with supporting documents to the Board giving all details in respect of acquisitions which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him) would entitle such person to exercise 15 per cent or more of the voting rights in a company. The said facts are not the charge in this matter.

8. For the purpose of adjudication of penalty, it is relevant to mention that under section 15I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty"* are of considerable significance, especially in view of the guidelines provided by the legislature in section 15J. The factors stipulated in Section 15J of the SEBI Act are as follows:-

"15J - Factors to be taken into account by the adjudicating officer

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 investor/s as a result of the default;

(c) the repetitive nature of the default.

Explanation-

For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

9. Having regard to the factors listed in section 15J and the guidelines issued by Hon'ble Supreme Court of India in *SEBI Vs Bhavesh Pabari Civil Appeal No(S).11311 of 2013* vide judgement dated February 28, 2019, it is noted that from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default in this case cannot be computed. Further, the material brought on record shows that the failure of making requisite disclosures under PIT Regulations by the Noticee was on four occasions and hence, it is repetitive in nature. I also observe that the violation pertains to a period which is almost nearly three years old, which is a mitigating factor. In view of the reasons recorded in the preceding paragraphs, I am of the view that non-adherence to the laid down obligations under the PIT Regulations by the Noticee as observed in this case would compromise the regulatory framework and should be dealt with by imposing monetary penalty.

10. Taking into consideration all the facts and circumstances of the case including the aforesaid 15J factors and exercising the powers conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a consolidated monetary penalty of ₹ 2,00,000/- (Rupees Two Lakh Only) on the Noticee under section 15A (b) of the SEBI Act. In my view, the said penalty is commensurate with the violations committed by the Noticee in this case.

11. The Noticee shall remit / pay the said total amount of penalty within 45 days of receipt of this order in either of the way of demand draft in favour of "*SEBI - Penalties Remittable to Government of India*", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in

12. The Demand Draft or details and confirmation of e-payment made in the format as given in table below should be sent to "*The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051*" and also to e-mail id:- tad@sebi.gov.in.

1	Case Name	
2	Name of the 'Payer/Noticee'	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties along with order details)	

13. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

14. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: November 23, 2020
Place: Mumbai

Amit Pradhan
Adjudicating Officer