

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AO/AS/02/2019]**

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
Shri Sanjay Thakkar (PAN–ACFPT3869D) In the matter of M/s. Gujarat Arth Ltd.

Background

1. The Hon'ble Securities Appellate Tribunal (SAT), in Appeal No. 417/2015, vide order dated July 19, 2016, while setting aside the adjudication order dated February 09, 2015 against Shri Sanjay Thakkar (hereinafter referred to as Noticee), remanded the case to the Adjudicating Officer for passing fresh order on merits and in accordance with law against the Noticee. The Hon'ble SAT observed that:

"Counsel for the parties state that in view of the order passed in Appeal No. 316 of 2015 (Shiv Kumar Agarwal vs. Securities and Exchange Board of India) on March 16, 2016, the orders impugned in these appeals may also be set aside and restored to the file of Adjudicating Officer of SEBI for passing fresh orders on merit and in accordance with law.

Accordingly, the orders impugned in these appeals are quashed and set aside and restored to the file of Adjudicating Officer of SEBI for passing fresh orders on merits and in accordance with law."

FACTS OF THE CASE IN BRIEF

2. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into the alleged irregularity in the trading in the shares of Gujarat Arth Ltd. (hereinafter referred to as 'GAL') and into the possible violations of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "Act") and various Rules and Regulations made thereunder for the period from October 06, 2003 to January 28, 2004 (hereinafter referred to as "investigation period")
3. Investigation revealed that the Noticee received 3,50,000 shares from one Right Finstock Pvt. Ltd. on January 16, 2004 and out the same, sold 1,50,000 shares on the same day, i.e. January 16, 2004 and 55,000 shares on the next day i.e. January 17, 2004. Just around this time corporate announcements were made by GAL to BSE, as a result of which the scrip of GAL recorded very large volumes during January 15-19, 2004. The promoters/ PACs of GAL transferred shares before the misleading announcements to several entities and one of such entity transferred some shares to the Noticee who thereafter sold the shares through market and off-market transfers. The promoters and PACs of GAL were instrumental in issuing misleading corporate announcements on November 01, 2003, December 22, 2003 and January 16, 2004 and financial results regarding acquisition of business of Poonam Industries, preferential/ right issue, which did not materialize and which lured investors, lead to creation of artificial volumes. Therefore, it was alleged that the Noticee aided and abetted the promoters and PACs in manipulating the scrip of GAL.
4. The Noticee did not file disclosures as per the requirement of SEBI Regulations. Further, did not submit any information sought for through SEBI summons and reminders during the process of investigation.

5. SEBI has therefore, initiated adjudication proceedings under the provisions of the SEBI Act against the Noticee to inquire and adjudge the alleged violations of provisions of Regulation 4 (1), 4(2)(a), (b), (e) and (g) of the PFUTP Regulations of SEBI(Prohibition of Fraudulent and Unfair trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the “PFUTP Regulations”), Regulation 7(1) read with 7(2) of SAST Regulations and Regulation 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1997 (hereinafter referred to as the “Insider Trading Regulations”) and Section 11C(2) read with 11C (3) & (5) of the SEBI Act.

Appointment of Adjudicating Officer

6. The undersigned was appointed as Adjudicating Officer, vide order dated April 02, 2009 under Section 15-I of Securities and Exchange Board of India Act, 1992 hereinafter referred to as “SEBI Act”) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “Adjudicating Rules”) to enquire into and adjudge under Sections 15A(a),15A(b) and 15HA of the Act.

Show Cause Notice, Reply and Personal Hearing

7. Show Cause Notice (SCN) dated March 18, 2010 under Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the Adjudicating Rules) to the Noticee to show cause as to why an inquiry should not be held against him and penalty be not imposed under Sections 15A(a), 15A(b) & 15 HA of the Act for the alleged violation of the provisions of:
- Section 11C(2) read with 11C (3) & (5) of the Act
 - Regulation 7(1) read with 7(2) of Takeover Regulations & Regulation 13(1) & (3) read with 13(5) of Insider Trading Regulations

- Regulations 4 (1), 4(2)(a), (b), (e) and (g) of the PFUTP Regulations
8. The allegations against the Noticee was that he received 3,50,000 shares from one Right Finstock Pvt. Ltd. on January 16, 2004 and out the same, sold 1,50,000 shares on the same day, i.e. January 16, 2004 and 55,000 shares on the next day i.e. January 17, 2004. Just around this time corporate announcements were made by GAL to BSE, as a result of which the scrip of GAL recorded very large volumes during January 15-19, 2004. The promoters/ PACs of GAL transferred shares before the misleading announcements to several entities and one of such entity transferred some shares to the Noticee who thereafter sold the shares through market and off-market transfers. The promoters and PACs of GAL were instrumental in issuing misleading corporate announcements on November 01, 2003, December 22, 2003 and January 16, 2004 regarding acquisition of business of Poonam Industries, preferential/ right issue, which did not materialize and which lured investors, lead to creation of artificial volumes. Therefore, it was alleged that the Noticee aided and abetted the promoters and PACs in manipulating the scrip of GAL.
9. Further, the Noticee did not file disclosures as per the requirement of SEBI Regulations. Further, did not submit any information sought for through SEBI summons and reminders during the process of investigation.
10. The Noticee, vide his letter dated April 05, 2010, submitted the following:
- that he denies all the allegations in the SCN
 - the matter being five years old, he is unable to recollect any transactions and further submitted that he is neither related to company nor its promoters.
 - that he had done the transactions in his individual capacity as an investor like normal layman do the transactions.
 - That there were no stringent restrictions on off market transactions

11. An opportunity of personal hearing was granted to the Noticee on July 28, 2010 and the authorized representative of the Noticee attended the personal hearing on the said date. Since the Noticee vide his reply dated April 05, 2010 had denied all allegations in the aforesaid SCN, it was informed to the representative of the Noticee to submit the detailed reply along with the documentary evidence. The representative sought fifteen days' time to submit the reply. However, no reply was received from the Noticee.
12. Vide order dated February 09, 2015, total penalty of ₹1,40,00,000 was imposed on the Noticee. The Noticee preferred an appeal before the Hon'ble SAT and the Hon'ble Tribunal, vide order dated July 19, 2016, set aside the said adjudication order and remanded the case to the undersigned.
13. Pursuant to the order dated July 19, 2016, of the Hon'ble SAT for passing fresh order on merits and in accordance with law, the Noticee was provided with an opportunity for submitting additional replies and an opportunity of personal hearing on January 23, 2018. However, the Noticee requested for adjournment of the personal hearing for 3 weeks citing personal reasons. Therefore, another opportunity was granted to the Noticee on February 21, 2018. Though, vide letter dated February 8, 2018, the Noticee submitted that his authorized representative would attend the hearing, however, no one attended the said hearing. Therefore, another opportunity of personal hearing was granted to the Noticee on March 13, 2018. Vide letter dated February 19, 2018, the Noticee requested for inspection of documents. Accordingly, an opportunity of inspection of documents was granted by the concerned department and authorized representative of the Noticee appeared for the inspection of documents. Vide letter dated March 26, 2018, the Noticee sought additional documents which was provided by the concerned department vide letter dated April 12, 2018. Since no further reply was received from the Noticee, vide letter dated June 05, 2018, the Noticee was advised to provide additional reply, if any, latest by June 12, 2018. Vide letter dated June 12, 2018, the Noticee requested for

additional 3 weeks' time to reply. Vide letter dated June 15, 2018, another opportunity of personal hearing was granted to the Noticee on July 11, 2018.

14. The authorized representative of the Noticee attended the said hearing. During the hearing, the authorized representative provided the Noticee's reply dated July 10, 2018, in which it was, inter-alia, submitted as under:

- That he is an ordinary lay investor cum trader in stock market and has knowledge and experience in securities market
- That he cannot bear any financial burden of monetary penalty considering his poor financials
- That the lapses, if any, on the part of the Noticee are purely due to his innocence and totally unintentional
- That he was not connected in any manner with GAL or its promoters or any PACs
- That Right Finstock was a member of Ahmedabad Stock Exchange and a registered sub broker of ASE Capital Markets Ltd. and his dealings with Right Finstock was in the capacity of client. He is not aware as to in what manner Right Finstock was connected to the promoter/ PAC of GAL
- That his name is not appearing in the off-market transfers executed by the promoters with various entities
- That the alleged corporate announcements relate to November 1, 2003 and December 22, 2003 for alleged manipulation of price in the shares of GAL when the promoters purportedly offloaded shares. The trading of the Noticee was on January 16 and 17, 2004 when the price was falling
- That during the period November 11, 2003 to May 4, 2005, he received 5,77,603 shares and transferred/ sold the same no of shares.
- That he did not acquire 5% of the paid up capital of GAL hence no disclosure was required to be made
- Regarding non submission of information, in response to the first summons, his authorized representative appeared before the Investigating Authority.

- In response to the second summons, he informed that due to Diwali Vacation, he could not get the tickets for travel and requested for another date for appearance. As per best of his knowledge he has not received any summons for providing information and documents.

15. During the hearing, the authorized representative of the Noticee sought time to submit reply for the following which was sought during the hearing:

- Details regarding receipt of 2 lakh shares of GAL by the Noticee, which were dematerialized on November 7, 2003, such as person/ entity from whom the shares were received and the purpose for the same
- Copy of contract note for sale of 1 lakh shares

16. Vide letter dated July 31, 2018, the Noticee submitted that he has requested the H Nyalchand Financial Services Pvt. Ltd. and Ramaben Samani Finance Pvt. Ltd. to provide the details. Despite sending 2 reminders dated September 03, 2018 and January 28, 2019, the requested information was not provided by the Noticee. Further, from the letter dated March 25, 2019 of the Noticee addressed to Ramaben Samani, a copy of which was sent to the undersigned it is observed that the Noticee has once again requested for the information as sought during the hearing. Thus, the required details are yet to be provided by the Noticee. Since no response has been received in the matter, the matter has been proceeded on the basis of information available on record.

Consideration of Issues, Evidence and Findings

17. I have carefully examined the charges made against the Noticee as mentioned in the SCN, oral and written submissions and the documents as available on record. In the instant matter the following issues arise for consideration and determination:

Issue 1

Whether the Noticee has violated provisions of Regulations 4 (1), 4(2) (a), (b), (e) and (g) of the PFUTP Regulations; Regulation 7(1) read with 7(2) of Takeover Regulations; Regulation 13(1) & (3) read with 13(5) of Insider Trading Regulations and Section 11C(2) read with 11C (3) & (5) of the SEBI Act;

18. Before proceeding, I would like to refer to the relevant provisions of the PFUTP Regulations, Takeover Regulations, Insider Trading Regulations and SEBI Act, which read as under:

PFUTP Regulations

Regulation 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;

(b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;

(e) any act or omission amounting to manipulation of the price of a security;

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

Takeover Regulations

Regulation 7(1)- Acquisition of 5 per cent and more shares or voting rights of a company

"Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed."

Regulation 7(2)- *The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,- (a) the receipt of intimation of allotment of shares; or (b) the acquisition of shares or voting rights, as the case may be.*

Insider Trading Regulations

Regulation 13(1)- *Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of:—*

- (a) the receipt of intimation of allotment of shares; or*
- (b) the acquisition of shares or voting rights, as the case may be.*

Regulation 13(3)- *Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company*

Regulation 13(5)- *The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 working days of:*

- (a) the receipts of intimation of allotment of shares, or*
- (b) the acquisition or sale of shares or voting rights, as the case may be.*

SEBI ACT

Section 11C(2)- *Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorized by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.*

Section 11C(3)- *The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorized by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.*

Section 11C(5)- *Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.*

Alleged Violations of PFUTP Regulations

19. I find that prior to the investigation period, the scrip of GAL was traded irregularly and from August 01, 2003 to October 06, 2003, the scrip was traded on only 3 days with one trade on each day @ ₹8.05. It started trading actively from October 2003 and major volume was observed on January 16, 2004 which was for 8,04,675 shares. Thereafter, the price and volume started declining and the scrip closed at ₹4.63 in

February 2004, ₹1.62 in March 2004 and was last traded on BSE on December 20, 2004 at ₹1.25.

20. I find from the SCN that the price of the scrip increased from opening price of ₹9.50 on October 6, 2003 to closing high price of ₹26.45 on November 11, 2003 accompanied by high volumes. The results for quarter ended September 2003 were declared on November 7, 2003. Thereafter from opening price of ₹27.75 on November 12, 2003 the price of the scrip fell to ₹10.12 on December 18, 2003 amidst comparatively low volumes. The results for quarter ended December 2003 were declared on January 14, 2004. During this period the scrip recorded very large volumes especially on 15th, 16th and 19th January 2004. The price hit the lower circuit of 5% thereafter and closed at ₹11.10 on January 28, 2004. The volumes in the scrip were as low as 143 shares on October 6, 2003 and was as high as 8,04,675 shares on January 16, 2004.

21. I find that following corporate announcements were made by GAL:

Date	Corporate announcement	Impact on price/volume
November 1, 2003	Informed BSE that it has acquired the business and undertaking of Poonam Industries Ltd. along with their registered Trademarks on going concern basis and have entered into an agreement on October 25, 2003.	Next 7 day's price went up from ₹21.55 to ₹26.45.
December 22, 2003	Informed BSE that the EGM of the members would be held on January 12, 2004 to seek approval- to increase the Authorized Share capital of the company from ₹55 million to ₹260 million and to issue and allot in one or more lots on preferential or Rights Issue basis not exceeding 20.80 million equity shares of ₹10/- for value not exceeding ₹208 million at a price in accordance with the SEBI Guidelines	Marginal rise in price.

Date	Corporate announcement	Impact on price/volume
January 16, 2004	Informed BSE that at the EGM held on January 12, 2004 the shareholders approved the increase in authorized share capital from ₹55 million to ₹260 million and the issue and allotment on preferential or as rights issue basis up to 2,08,00,000 equity shares of ₹10/- at a price determined as per SEBI guidelines, but not less than ₹10/-	Price fell, accompanied by huge volumes.

22. I also find from the investigation report that the Noticee received 3,50,000 shares from Right Finstock Pvt. Ltd. on January 16, 2004 and sold 1,50,000 shares on Jan 16, 2004 and 55,000 shares on Jan 17, 2004. This is just around the time the announcements were made by GAL to the BSE. The scrip recorded very large volumes on 15th, 16th and 19th January 2004. It is observed from the investigation report that the promoters/ PAC transferred shares before the misleading announcements to several entities including the Noticee who thereafter sold the shares through market and off-market transfers.

23. I find that contrary to the submission of the Noticee, vide its letter dated July 10, 2018 that he is a lay investor with poor financials, the Noticee received 3,50,000 shares of GAL (a company having poor financials). In this regard I find that as per the copy of the IT return for assessment year 2004-05, (relevant year), the Noticee has disclosed total income of 84,757 (including salary income of ₹28,660) and for assessment year 2003-04 had disclosed an income of ₹94,746 (including salary income of ₹63,360). As per the submissions of the Noticee, the shares were bought through Right Finstock in the capacity of a client, and the cost of the said purchase of 3,50,000 shares @ ₹14.3 (price of the share of GAL on January 16, 2004) works out in excess of ₹50 lacs. Further, the perusal of the bank statement of the Noticee provide in his reply dated July 10, 2018, does not indicate any transaction towards purchase/ sale of shares of GAL during the relevant period. Considering the

financials of the Noticee as per the Income Tax Returns as well as on the basis of own submission regarding his poor financials, it is unlikely that the shares were indeed purchased by the Noticee through Right Finstock in the capacity of a client. This is further strengthened by the fact the majority of such shares were sold in the market within a day and the balance shares were transferred back to Right Finstock. The role played by the Noticee in the entire scheme of things is evident from the fact of receiving substantial quantity of shares of GAL, offloading major portion of the shares so received immediately after such receipt and transferring back the balance shares to Right Finstock from whom the shares were received around the time when the announcements were made by GAL to the BSE. The Noticee failed to provide any convincing reasons for such dealings in the scrip of GAL (a company with poor financials), much beyond his financial means. Therefore, I find that the reply of the Noticee is untenable and the Noticee has aided and abetted the promoters and PACs in the manipulation in the scrip of GAL.

24. In view of foregoing, I hold that the charges levelled against the Noticee are proved and that Regulations 4 (1), 4(2) (a), (b), (e) and (g) of the PFUTP Regulations.

Alleged Violation of Regulation 7 of Takeover Regulations and Regulation 13 of Insider Trading Regulations

25. It is observed from the investigation report that the Noticee was holding 1,73,617 shares (3.34%) as on December 31, 2003. On January 16, 2004, 3,50,000 shares (6.73%) were transferred to the Noticee by off market transfers. Thus, in terms of Regulation 7(1) read with Regulation 7(2) of the Takeover Regulations and Regulation 13(1) of the Insider Trading Regulations, the Noticee was required to make certain disclosures which it is alleged have not been done. The said acquired shares were subsequently sold off, which was admitted by the Noticee. The said transactions required disclosure under Regulation 13(3) read with 13(5) of Insider Trading Regulations, which it is alleged has not been done.

26. The Noticee, in his reply, submitted that he never acquired 5% stake in GAL. However, I find that on January 16, 2004, the Noticee received 3,50,000 shares (6.73%) and transferred his existing 1,73,617 shares (3.34%) stake on January 16, 2004, resulting in a holding of 6.73%. The Noticee informed that he has sold 1 lakh shares on January 16, 2004 resulting in his shareholding going below 5% on January 16, 2004 itself. However, as per the demat statement furnished by the Noticee it is observed that the 1 lakh shares were transferred to Ramaben Samani on the next day, i.e. January 17, 2004. Therefore, the Noticee was holding 6.73% stake on January 16, 2004. Thus, I hold that the Noticee has not filed required disclosures under Regulation 7(1) read with Regulation 7(2) of the Takeover Regulations and Regulation 13 (1) and Regulation 13 (3) read with 13 (5) of the Insider Trading Regulations. The charges leveled against the Noticee are proved and allegation of violation of provisions of Regulation 7(1) read with Regulation 7(2) of the Takeover Regulations and Regulation 13 (1) and Regulation 13 (3) read with 13 (5) of the Insider Trading Regulations stands established against the Noticee.

Non Submission of Information sought by SEBI

27. It is observed from the investigation report that the Noticee has not submitted any information sought for through SEBI summons and reminders during the process of investigation.

28. I note that during investigation the Noticee was advised to provide certain information vide letter dated May 06, 2008. However, the Noticee sought additional time to provide the information. Subsequently, vide summons dated August 12, 2008, the Noticee was advised to appear in person before the Investigating Authority and provide the information sought vide letter dated May 06, 2008 and certain additional information latest by September 10, 2008. The Noticee sent a letter indicating that he has authorized a representative to appear before the Investigating Authority on the said date. However, since the Representative did not carry any authority letter

and identity proof, another summons dated September 24, 2008 was issued to the Noticee advising him to appear in person and provide the information sought vide summons dated August 12, 2008 and certain additional information. In reply to the summons dated September 24, 2008, the Noticee requested to additional time.

29. I further find that the Noticee in his reply dated July 10, 2018 has acknowledged receipt of both these summons but has further stated that he does not remember if he received any summons for providing information and documents which appears contradictory.

30. I find the information sought during the investigation included the relationship, if any, of the Noticee with promoters and other entities, copies of income tax returns, copies of bank statements etc. which could have been provided by the Noticee without any delay. However, the Noticee did not submit the information sought by the Investigating Authority. Further, copies of the income tax returns for the years 2002-03, 2003-04, 2004-05 and 2005-06 and bank statement for the period April 1, 2003 to March 31, 2004 have now been furnished along with the reply of Noticee dated July 10, 2018. Therefore, I hold that the Noticee had received the summons issued during investigation and did not furnish the required information during the process of investigation. The charges leveled against the Noticee are proved and allegation of violation of provisions of Section 11C(2) read with 11C (3) & (5) of the Act stands established against the Noticee.

ISSUE 2

Whether the Noticee is liable for monetary penalty prescribed under Section 15A(a), A(b) and 15 HA of the SEBI Act for the aforesaid violation?

31. The next issue for consideration is as to what would be the monetary penalty that can be imposed on the Noticee for violation of aforesaid Regulations. The Hon'ble

Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund[2006] 68 SCL 216(SC) held that “once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow”.

32. Thus, the aforesaid violations by the Noticee make him liable for penalty under Sections 15H, 15HA and 15A(b) of SEBI Act, 1992 which read as follows

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 failure to furnish information, return, etc.

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

(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

(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 55[which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees

Issue 3) What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in section 15J of SEBI Act?

33. While determining the quantum of penalty under Section **15HA**, 15A(a) and 15A(b), it is important to consider the factors stipulated in Section 15J of the Act, which read as under:-

Factors to be taken into account by the adjudicating officer

15 J. 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.*

34. It is difficult, in cases of such nature, to quantify exactly the disproportionate gains of unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. I have noted that the investigation report also does not dwell on the extent of specific gains made by the clients or the brokers. Suffice to state that keeping in mind the practice indulged in by the Noticee, gains per se were made by the Noticee. People who indulge in manipulative, fraudulent and deceptive transaction, or abet the carrying out of such transaction which are fraudulent and deceptive should be suitably penalized for the said acts of omissions and commissions.

35. I find that the Hon'ble SAT while remanding the instant matter to the undersigned has relied on its order in the matter (*Shiv Kumar Agarwal vs. Securities and Exchange Board of India*), where the following is noted:

*"In view of the grievance made in these appeals that the inordinate delay in passing the impugned order from the date of personal hearing has caused serious prejudice to the appellants, because, several arguments advanced on behalf of the appellants have not been considered in the impugned order and also in view of the judgment of Apex Court in the case of **SEBI vs. Roofit Industries Ltd., reported in (2016) 194 Comp. Cas.186 (S.C.)**, counsel for the parties state that the order impugned in all these appeals be quashed and set aside and the matter be restored to the file of the Adjudicating Officer of SEBI for passing fresh order on merits and in accordance with law by leaving all contentions open."*

36. The Hon'ble Supreme Court of India, vide judgment dated November 26, 2015 in the case of SEBI vs. Roofit Industries Ltd., held that Adjudicating Officer has no discretion in deciding quantum of penalty under Chapter VI A (except in u/s 15F (a) and 15HB of the SEBI Act). I find that this issue has been resolved as per "The Finance Act 2017" (Notified for Part VIII of Chapters VI came into effect from April 26, 2017), inter-alia clarifying the following in respect of adjudication under SEBI Act:

"147. In section 15J of the principal Act, the following Explanation shall be inserted, namely:- "Explanation- For the removal of the doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under section 15A to 15E and 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."

37. I also note that in the matter of SEBI Vs. Rakhi Trading Private Limited (Civil Appeal Nos 3174-3177 of 2011), the Hon'ble Supreme Court observed that *"...Proof of manipulation might depend upon inferences drawn from factual details. Such inferences could be gathered from pattern of trading data and the nature of the transactions etc. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors."*

In the quasi-judicial proceeding before SEBI, the standard of proof is preponderance of probability. In the said matter, reliance was also placed on Kishore R. Ajmera case, wherein this Court held as under:

"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion there from. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."

38. In another matter, Hon'ble Securities Appellate Tribunal (SAT) has observed in the matter of Ketan Parekh v. SEBI: "...Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available...."

39. The role played by the Noticee in the entire scheme of things is evident from the fact of receiving substantial quantity of shares of GAL, offloading major portion of the shares so received immediately after such receipt and transferring back the balance shares to Right Finstock from whom the shares were received around the time when corporate announcements were made by GAL to the BSE. Further, the Noticee failed to provide any convincing reasons for such dealings in the scrip of GAL (a company with poor financials), much beyond his financial means. Therefore, I held that the

Noticee has aided and abetted the promoters and PACs in the manipulation in the scrip of GAL.

40. The Noticee failed to make the required disclosures under SEBI (SAST) Regulations and SEBI (PIT) Regulations. Further, the Noticee did not submit any information sought through SEBI summons and reminders during the process of investigation.

41. Due to the reasons mentioned above, I am of the view that there is no case for change in the penalty imposed on the Noticee vide order dated February 09, 2015 for violation of SEBI (PFUTP) regulations, SAST Regulations and Insider Trading regulations and Section 11C(2) read with 11C (3) & (5) of the SEBI Act.

ORDER

42. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15-I (2) of the SEBI Act, 1992, I hereby impose the following monetary penalties:

- ₹ 20,00,000/- (Rupees Twenty Lakhs only) on the Noticee under Section 15HA of the Act;
- ₹ 20,00,000/- (Rupees Twenty Lakhs only) on the Noticee under Section 15A(b) of the Act
- ₹ 1,00,00,000/- (Rupees One Crore only) on the Noticee under Section 15A(a) of the Act.

which would be commensurate with the violations committed by the Noticee.

43. 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 e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

44. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The Format for forwarding details/ confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under:

- Case Name :
- Name of Payee:
- Date of payment:
- Amount Paid:
- Transaction No:
- Bank Details in which payment is made:
- Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)

45. In terms of the provisions of Rule 6 of the Adjudicating Rules the copies of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: April 26, 2019

Place: Mumbai

ASHA SHETTY

ADJUDICATING OFFICER