

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. EAD/SR/SM/AO/31/2017-18]**

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**UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995**

In respect of

**Mr. Chirag Dinesh Kumar Shah**

(PAN: CFPPS4835H)

In the matter of GFL Financials Limited

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**BACKGROUND**

1. Investigating Authority (hereinafter referred to as “**IA**”), of Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an investigation in the matter of trading activities of certain entities in the scrip of GFL Financials Limited (hereinafter referred to as “**GFL**”/“**Company**”), which is listed at Bombay Stock Exchange (BSE). The period of investigation was from September 03, 2012 to May 15, 2013. As per findings of the IA, there were 17 off-market transactions between 12 suspected entities. Mr. Chirag Dinesh Kumar Shah (hereinafter also referred to as “**Noticee**”) was one of the suspected entities. IA observed that during the period of investigation, Noticee had purchased shares of GFL which resulted into increase in his shareholding in the scrip of GFL. However, the Noticee failed to make relevant disclosures pursuant to the said purchases, to the Company and BSE regarding the changes in shareholding as prescribed under SEBI (Substantial Acquisitions of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as “**SAST Regulations, 2011**”) and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT Regulations, 1992**”). It was observed by IA that the Noticee has violated the provisions of regulation 13(1) of PIT Regulations, 1992, regulation 13(3)

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read with (r/w) regulation 13(5) of PIT Regulations, 1992 and regulations 29(1) & 29(2) r/w regulation 29(3) of SAST Regulations, 2011.

### **APPOINTMENT OF ADJUDICATING OFFICER**

2. In view of the said findings of IA, a department of SEBI initiated adjudication proceedings against the Noticee, to inquire into and adjudge under section 15A(b) of the SEBI Act, 1992 for alleged violations of provisions of provisions of regulation 13(1) of PIT Regulations, 1992, regulation 13(3) r/w regulation 13(5) of PIT Regulations, 1992, regulations 29(1) & 29(2) r/w regulation 29(3) of SAST Regulations, 2011. The adjudication proceedings were approved by the Competent Authority. Shri Nagendraa Parakh was appointed as the Adjudicating Officer under Section 15-I of the SEBI ACT, 1992 read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **Adjudication Rules**) to inquire into and adjudge under section 15A(b) of the SEBI Act, 1992 for the alleged violation of the provisions of regulations 13(1) of PIT Regulations, 1992, regulation 13(3) r/w regulation 13(5) of PIT Regulations, 1992 and regulations 29(1) & 29(2) r/w regulation 29(3) of SAST Regulations, 2011 by the Noticee. Subsequent to the promotion of Shri Nagendraa Parakh, I was appointed as Adjudicating Officer vide order dated July 10, 2017.

### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

3. A Show Cause Notice no. EAD/NP/JS/GFL/15612/1/2016 dated May 31, 2016 (hereinafter referred to as SCN) was issued to the Noticee in terms of Rule 4 of the Adjudication Rules requiring the Noticee to show cause as to why an inquiry should not be held against it for the alleged violations of provisions of regulation 13(1) of PIT Regulations, 1992, regulation 13(3) r/w regulation 13(5) of PIT Regulations, 1992 and regulations 29(1) & 29(2) r/w regulation 29(3) of SAST Regulations, 2011. As seen from records, the said SCN returned undelivered. Further, vide hearing notice dated January 16, 2017 an opportunity was given to the Noticee for a personal hearing on February 10, 2017. The said hearing notice was sent by speed post acknowledgement due which returned undelivered. Delivery report is on record. Another opportunity of personal hearing was given to the Noticee vide hearing notice dated March 29, 2017

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to appear on April 11, 2017 for personal hearing. The said hearing notice was served to the Noticee by way of affixture at the last known address as available on record. The affixture report is available on record.

4. After my appointment, I granted an opportunity of personal hearing to the Noticee by issuing hearing notice dated September 25, 2017 requesting the Noticee to provide reply to the SCN on or before October 03, 2017 and to appear before me for personal hearing on October 11, 2017. The said hearing notice was served to the Noticee by way of affixture and the affixture report is available on record. The copies of the said SCN and hearing notices were uploaded on the website of SEBI under Unserved Summons/Notices ([www.sebi.gov.in](http://www.sebi.gov.in)). However, the Noticee did not submit its reply to the SCN and also did not attend the hearing as scheduled on October 11, 2017.
5. The allegations levelled against the Noticee in the SCN inter alia states as under:-
- a. The Noticee has been alleged to have purchased shares of GFL during Investigation Period and the details of transactions are given as under:

S.N	Date of Purchase	Shareholding (% of Shareholding) before purchase	No. of shares purchased	Shareholding (% of Shareholding) after purchase
1	February 28, 2013	2,96,999 (4.55%)	3,500	3,00,499 (5.01%)
2	March 25, 2013	10,13,495 (6.76%)	1,26,000	11,39,495 (7.60%)

- b. For the above transactions, IA observed that on February 28, 2013 the Noticee had allegedly purchased 3,500 shares of GFL and his shareholding increased to 3,00,499 shares representing 5.01% of the total no. of shares of GFL. The Noticee was allegedly required to make disclosures to the Company under regulation 13(1) of PIT Regulations, 1992 and also under regulations 29(1) read with regulation 29(3) of SAST Regulations, 2011 to the Company and BSE. It was alleged that the Noticee failed to make the required disclosures under the aforesaid provisions and thereby violated the said provisions of PIT Regulations, 1992 and SAST Regulations, 2011.
- c. Further, on March 25, 2013 the Noticee had allegedly purchased 1,26,000 shares of GFL and his shareholding increased to 11,39,495 representing 7.6% of the total

no. of share of the Company. As the shareholding of the Noticee in GFL allegedly increased from 5.01% to 7.6% i.e. cumulative shareholding increased by 2%, the Noticee was required to make disclosures to the company under regulation 13(3) r/w regulation 13(5) of PIT Regulations, 1992 and also under regulations 29(2) r/w regulation 29(3) of SAST Regulations, 2011 to the Company and BSE. However, as per letter dated December 20, 2014 received from Company and e-mail dated November 12, 2014 from BSE, IA observed that the Noticee failed to make the required disclosures under the aforesaid provisions and therefore violated the said provisions of PIT Regulations, 1992 and SAST regulations, 2011.

d. In view of the above, it is alleged that the Noticee has violated of provisions of regulation 13(1) of PIT Regulations, 1992, regulation 13(3) r/w regulation 13(5) of PIT Regulations, 1992 and regulations 29(1) and 29(2) r/w regulation 29(3) of SAST Regulations, 2011.

6. The Noticee failed to reply to the SCN issued and also failed to avail the opportunity of personal hearing. I have carefully perused the charges made against the Noticee as mentioned in the SCN and the documents available on record. After taking into account, the allegations levelled in the SCN and other evidences / materials available on record, I hereby, proceed to decide the case on merit.

### **CONSIDERATION OF ISSUES**

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

**(a) Whether the Noticee has violated the provisions of regulation 13(1) of PIT Regulations, 1992 and provisions of regulations 29(1) r/w regulation 29(3) of SAST Regulations, 2011?**

**(b) Whether the Noticee has violated the provisions of regulation 13(3) r/w regulation 13(5) of PIT Regulations, 1992 and regulations 29(2) r/w regulation 29(3) of SAST Regulations, 2011?**

(c) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act, 1992? and,

(d) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

8. Before proceeding further, it will be appropriate to refer to the relevant provisions of the PIT Regulations, 1992 and SAST regulations, 2011 which read as under:-

***PIT Regulations, 1992***

***Disclosure of interest or holding in listed companies by certain persons – Initial Disclosure***

**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.

***Continual disclosure.***

**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.

**13. (5)** The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two 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.

***SAST Regulations, 2011***

***Disclosure of acquisition and disposal.***

**29. (1)** Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

**29. (2)** Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.

**29. (3)** The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

- (a) every stock exchange where the shares of the target company are listed; and
- (b) the target company at its registered office.

## **FINDINGS**

9. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder:

10. **Issue (a): Whether the Noticee has violated the provisions of regulation 13(1) of PIT Regulations, 1992 and provisions of regulations 29(1) r/w regulation 29(3) of SAST Regulations, 2011?**

**Issue (b): Whether the Noticee has violated the provisions of regulation 13(3) r/w regulation 13(5) of PIT Regulations, 1992 and regulations 29(2) r/w regulation 29(3) of SAST Regulations, 2011?**

- a) I have noted from the trade log that on February 28, 2013 the Noticee had purchased 3,500 shares of GFL. Pursuant to this transaction, shareholding of the Noticee increased to 3,00,499 shares representing 5.01% of the total no. of shares of the Company. In this regard, I note from regulation 13(1) of PIT Regulations, 1992 stated above that as the holding of the Noticee crossed 5% of the total no. of shares of GFL, the Noticee was required to make relevant disclosures to the Company and in terms of regulation 29(1) r/w regulation 29(3) of SAST Regulations, 2011 to the Company and to BSE. I have noted from the records available that the Noticee failed to make disclosures under the aforesaid provisions of PIT Regulations, 1992 and SAST Regulations, 2011 and thereby violated said provisions of the said Regulations.

- b) I have also noted from the trade log that on March 25, 2013 the Noticee had purchased 1,26,000 shares of GFL. Pursuant to this transaction, shareholding of the Noticee increased to 11,39,495 shares, thereby the change in shareholding of Noticee exceeded over two percent of the total no. of shares of GFL. In this regard, I note from regulation 13(3) r/w regulation 13(5) of PIT Regulations, 1992 stated above that the Noticee was required to make relevant disclosures to company and in terms of regulation 29(2) r/w regulation 29(3) of SAST Regulations, 2011 to the Company and to BSE. I have noted from the records available that the Noticee failed to make disclosures under the aforesaid provisions of PIT Regulations, 1992 and SAST Regulations, 2011 and thereby violated said provisions of the said Regulations.
- c) In this context, it is relevant to quote the observations made by the Hon'ble SAT in its Order dated September 30, 2014, in the matter of Akriti Global Traders Ltd. Vs SEBI:-

*“Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations.”*

- d) With regard to the disclosure to the Company and to BSE, it is noted from the records that the company vide its letter dated December 20, 2014 and BSE vide its e-mail dated November 12, 2014 informed that the Noticee has not made any disclosures with regard to said purchases by Noticee.
- e) Further, with regard to the SCN issued, no reply is received from the Noticee and also the Noticee did not attend the hearing as scheduled on February 10, 2017, April 11, 2017, and October 11, 2017.
- f) As stated above, sufficient opportunities were given to submit reply to the SCN and also to appear for personal hearing have been given to the Noticee. It is pertinent to refer to the judgment dated December 08, 2006 of Hon'ble Securities

Appellate Tribunal in the matter of Classic Credit Ltd. v SEBI (Appeal No. 68 of 2003) wherein, it observed,

*“... the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them”.*

I also observe that the Hon'ble Securities Appellate Tribunal in the matter of Sanjay Kumar Tayal & Ors. v SEBI (Appeal 68 of 2013 dated February 11, 2014) had inter alia observed that,

*“...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...”*

- g) In view of the above, I am of the view that the allegations levelled in the SCN and the evidences enclosed therewith are not in dispute in absence of any reply from the Noticee. By not submitting any reply to SCN, the Noticee has admitted the charges levelled against it by the SCN. Hence by failing to make disclosure to the Company and BSE as per the requirements prescribed under PIT Regulations, 1992 and SAST Regulations, 2011, the Noticee has violated the provision of regulation 13(1) of PIT Regulations, 1992 and regulation 13(3) r/w regulation 13(5) of PIT Regulations, 1992 and regulations 29(1) and 29(2) r/w regulation 29(3) of SAST Regulations, 2011.

**11. Issue (c): Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act, 1992?**

- a) In respect of imposition of monetary penalties, I cannot ignore the historical case of Hon'ble Supreme Court of India in the matter of The Chairman, SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein it was held that *“In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant”.*
- b) It is relevant to mention here that said case of Shri Ram Mutual Fund (supra) was maintained by the three judge bench of the Hon'ble Supreme Court of India in the



case of Union of India vs. Dharmendra Textile Processor 2008 (13) SCC 369 decided on September 29, 2008 on the issue related to Income Tax Act. It was held by the Hon'ble Supreme Court that penalty under the provision is for breach of civil obligation is mandatory and the mens rea is not an essential element for imposing the penalty. The adjudicatory authority has no discretion to levy duty less than what is legally and statutorily leviable. The Hon'ble Supreme Court also specifically observed that the case of Shri Ram Mutual Fund (supra) has been analysed in the legal position and in the correct perspectives.

- c) Therefore, after taking into account the aforesaid entire facts / circumstance of the case and the aforesaid case laws, it is noted that the said violations of provisions of regulation 13(1) of PIT Regulations, 1992 and regulation 13(3) r/w regulation 13(5) of PIT Regulations, 1992 and regulations 29(1) & 29(2) r/w regulation 29(3) of SAST Regulations, 2011 by the Noticee attracts the imposition of monetary penalties upon the Noticee under section 15A(b) of SEBI Act, 1992, as existed at the time of commission of the alleged violations are reproduced below:

***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,—***

***(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.***

12. **Issue (d) - If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?**

While determining the quantum of penalty under sections 15A(b) of the SEBI Act, 1992 it is important to consider the factors stipulated in section 15J Of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, which reads as under:-

***SEBI Act, 1992***

***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.”

13. I observe, that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any made by the Noticee and the loss, if any suffered by the investors due to the aforesaid violations. I find that the Noticee had failed to make required disclosures as prescribed under PIT Regulations, 1992 and SAST Regulations, 2011. In this regard, it is relevant to quote the observations made by Hon'ble SAT in its judgment on September 04, 2013 in the matter of Vitro Commodities Private Limited Vs SEBI wherein Hon'ble SAT had observed that

*"It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other"*

## **ORDER**

14. In exercise of the powers conferred under section 15-I of SEBI Act, 1992 and Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh only) on the Noticee viz. Shri Chirag Dinesh Kumar Shah under section 15A(b) of SEBI Act, 1992 for the violations of provisions of regulation 13(1) of PIT Regulations, 1992 and regulation 13(3) r/w 13(5) of PIT Regulations, 1992 and regulations 29(1) & 29(2) r/w 29(3) of SAST Regulations, 2011. I am of the view that the said penalty is commensurate with the defaults committed by the Noticee in terms of penalty structure provided in section 15A(b) of the SEBI Act, 1992.
15. 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;

<b>Account No. for remittance of penalties levied by Adjudication Officer</b>	
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

16. 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 shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID : [tad@sebi.gov.in](mailto:tad@sebi.gov.in)

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually)	Bank name and Account number from which payment is remitted	UTR No

17. In terms of the Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee at his last known address and also to Securities and Exchange Board of India.

**Date: February 08, 2018**

**Place: Mumbai**

**SANGEETA RATHOD  
ADJUDICATING OFFICER**

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