

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: AO/SBM/EAD-3/71-73/2017)

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

In respect of:

Ms. Ameer Tushar Shah (PAN: BMIPS4597P)
Mr. Parag Patel (PAN: ACMPP9152C)
M/s Rajula Finance Ltd. (PAN not available)

In the matter of
Arrow Securities Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), while conducting an examination in the scrip of Arrow Securities Ltd. (now known as Safal Securities Ltd and hereinafter referred to as "**Company/ASL**") during the period October 01, 2010 to April 29, 2011 (hereinafter referred to as "**examination period**") observed that there were inter-se transfer of shares of the Company among the promoters of ASL viz. Ms. Ameer Tushar Shah (hereinafter referred to as '**Noticee no 1**'), Mr. Parag Patel (hereinafter referred to as '**Noticee no 2**') and M/s Rajula Finance Limited (hereinafter referred to as '**Noticee no 3**'). Noticee no 1 to 3 are also collectively referred to as '**Noticees**' in the context of the present proceedings.
2. It was observed from the quarterly filing made by the Company to the stock exchange (BSE) that its shareholding pattern had indicated that the number of persons/entities shown in the promoter group of ASL had reduced from 52 to 4

for the quarter ended September 2011. Upon further examination, it was observed that Noticee no 1 had purchased 1,82,000 shares from 48 other promoters/promoter group entities of ASL during the examination period. It was further observed that, out of the 48 promoter group persons/ entities, Noticee no 2 and Noticee no 3 had sold 1,00,000 and 67,800 shares of the company respectively and these shares were purchased by Noticee no 1 by way of inter-se off-market transactions. In view of the above transactions among the promoters/promoter group of ASL during the examination period, it was observed that the Noticees had allegedly failed to make the necessary disclosures that were required to be made by them under the provisions of Regulation 13 (4 A) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**'). Therefore, it was alleged that the Noticees have violated the provisions of Regulation 13 (4A) of the PIT Regulations.

3. The Company is listed on the Bombay Stock Exchange (BSE) and Ahmedabad Stock Exchange (ASE). The company is engaged in the business of fund and non-fund based business activities like Leasing, Hire Purchase etc. The Company changed its name to Safal Securities Ltd in December 2011. During the examination period, the total paid up share capital of ASL was Rs. 5,00,01,000 (represented by 50,00,100 equity shares of face value of Rs 10/- each).

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer, vide Order dated May 17, 2016 under Section 19 read with Section 15-I(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') read with Rule 3 of 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 the provisions of Section 15A(b) of the SEBI Act for the alleged failure on the part of the Noticees to comply with the provisions of Regulation 13(4A) of the PIT Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

5. A common Show Cause Notice Ref No. A&E/EAD-3/SBM-VB/18331/2016 dated June 29, 2016 (hereinafter referred to as “**SCN**”) was issued to the Noticees under the provisions of Rule 4 (1) of the Adjudication Rules, to show cause as to why an inquiry should not be held against the Noticees and why penalty, if any, should not be imposed on the Noticees under the provisions of section 15A(b) of the SEBI Act for their alleged violation of Regulation 13 (4A) of the PIT Regulations, as mentioned in the SCN. Briefly, the SCN dated June 29, 2016 contained the following observations/allegations:

- a) *On the basis of an internal alert, Bombay Stock Exchange (**BSE**) conducted an examination into the activities in the scrip of the Company (now known as Safal Securities Ltd). BSE submitted its report to SEBI. Thereafter, SEBI conducted an examination in the scrip of the Company during the period from October 01, 2010 to April 29, 2011 (hereinafter referred to as ‘Examination Period’). It was observed during the examination that appropriate disclosures were not made by the Noticees in terms of Regulation 13 (4A) of the PIT Regulations, 1992, as regards their activity in the scrip of the company during the above referred examination period. The shareholding pattern/details of the Company for the quarter ended June and September 2011 are mentioned as under:*

Particulars	Quarter ended June 2011			Quarter ended September 2011		
	No. of shareholders	No. Of shares	%	No. of shareholders	No. Of shares	%
Promoter Holding	52	1700000	34.00	4	1700000	34.00
Non Promoter Holding	699	3300100	66.00	702	3300100	66.00
Total share capital	751	5000100	100.00	706	5000100	100.00

- b) *From the above table, it can be observed that promoters’ shareholding remained 34% (17,00,000 shares) and the same had not undergone any change for the quarter ending (QE) June 2010 to quarter ending September 2011. However, it has been observed during the course of the examination*

that the number of persons/ entities in the promoter group had reduced from 52 (as observed in in QE June 2011) to 4 (in QE Sept 2011).

- c) *During the examination period, it was observed that there were inter-se transfer of shares of the company among the Noticees. It is alleged that Ameer Tushar Shah who was holding 200 shares of the company, as on the quarter ended June 2011 had acquired 1,82,000 shares of the company from 48 other persons/entities belonging to the promoter group of the Company on September 28, 2011. It was alleged that Ameer Tushar Shah, being one of the persons coming under the promoters/promoter group of the company had acquired shares of the company, which resulted in the change in the shareholding as mentioned under Regulation 13 (4A) of the PIT Regulations, 1992. The change in shareholding also required appropriate disclosures to be made by Ameer Tushar Shah in the prescribed reporting format (Form D) to both Company and BSE in terms of the provisions of Regulation 13 (4A) of the PIT Regulations, 1992. It is alleged that Ameer Tushar Shah had failed to make the necessary disclosures to the Company and BSE. It is therefore alleged that Ameer Tushar Shah has violated the provisions of Regulation 13 (4A) of the PIT Regulations, 1992.*
- d) *It was further observed that, out of the 48 promoter group entities' who had sold the shares to Ameer Tushar Shah, two persons / entities namely, Parag Patel and Rajula Finance Limited had sold 1,00,000 and 67,800 shares respectively on September 28, 2011 to Ameer Tushar Shah. It is alleged that the sale of shares of the company by the aforementioned person/ entity (who were coming under the promoter/promoter group of the company) had resulted in change in their shareholding, which required appropriate disclosures to be made by them to both the Company and BSE in the prescribed format (i.e Form D) in terms of the provisions of Regulation 13 (4A) of the PIT Regulations, 1992. It is alleged that both Parag Patel and Rajula Finance Limited had failed to make the necessary disclosures to the Company and BSE, which was required to be made under the provisions of*

Regulation 13 (4A) of the PIT Regulations, 1992 and therefore, both Parag Patel and Rajula Finance Limited had allegedly violated the above mentioned regulation.

e) It is alleged that the Noticees who belonged to the promoter/ promoter group of the Company had failed to make the necessary disclosures under the provisions of Regulation 13 (4A) of the PIT Regulations, 1992 in the prescribed format (Form D) to both BSE and the Company in respect of their acquisition / sale of the shares of the company, during the examination period, details of which have been mentioned above. Therefore, it is alleged that the Noticees have violated the provisions of Regulation 13 (4A) of the PIT Regulations, 1992 and consequently, they were liable for penalty under the provisions of section 15 A(b) of the SEBI Act.

6. In response to the SCN, Noticee 1 submitted her reply, vide letter dated July 19, 2016. Noticee 1 stated that-

(i) I have already submitted the disclosure as per Regulation 13(4A) of PIT Regulations on September 28, 2011 itself.

(ii) I am surprised that you have received the disclosure under Regulation 3(3) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 but had not received the disclosure as per the PIT Regulations.

(iii) I am attaching copies of all the disclosures and also the copy of acknowledgement of company and Ahmedabad Stock Exchange.

7. Vide his letter dated July 25, 2016, Noticee 2 has mentioned that the necessary disclosures were made by him to the stock exchange and he also produced copies of the disclosure formats claimed to have been made by him to the stock exchange. I observe that the SCN issued to Noticee no 3 had returned undelivered with remarks 'entity not known'. Thereafter, the SCN along with the letters granting an opportunity of personal hearing to Noticee no 3 on August 28, 2017 were served on Noticee 3 by way of affixture on its last known/available address. A copy of the affixture report in terms of Rule 7 (c) of the Adjudication

Rules is on record. There was nothing on record to show that Noticee 3 had made the relevant disclosures to BSE under the provisions of Regulation 13(4A) of the PIT Regulations.

8. In the interest of natural justice and in terms of Rule 4(3) of the Adjudication Rules, both Noticee 1 and 2 were granted opportunity of personal hearing in the matter on August 28, 2017. The Authorised Representatives (ARs) viz Mr. Tushar Shah and Mr. Ajit Solanki, CS appeared on behalf of Noticee 1 on the stipulated date of the hearing. Mr Parag Patel (Noticee no 2) appeared for the hearing on August 28, 2017. Both Noticee no 1 and 2 reiterated their submissions made in their respective replies to the SCN. They also reiterated the fact that they had made the relevant disclosures to BSE and ASE under the provisions of PIT Regulations. In this regard, they produced copies of the courier receipts in support of their claim that they had dispatched the disclosure formats to BSE within the stipulated time period. Pursuant to the hearing, Noticee 1 and 2 also made additional submissions in the matter.

CONSIDERATION OF ISSUES AND FINDINGS:

9. I have taken into consideration the facts and circumstances of the case, the material available on record and also the submissions made by Noticee 1 and Noticee 2 in response to the SCN. I have also taken note of the fact that ample opportunity to present its case was provided to Noticee no 3 and despite the fact that SCN and the Notices were served on Noticee no 3 by way of affixture, Noticee no 3 has failed to submit its response to the SCN and appear for the hearing fixed on the stipulated dates. Therefore, I am proceeding further in the matter on the basis of facts/material available on record. I find that the allegation against the Noticees is that they have failed to make the relevant disclosures in respect of their transactions in the shares of ASL, as required under the provisions of Regulation 13(4A) of the PIT Regulations.
10. Before moving forward, the relevant extracts of the PIT Regulations allegedly violated by the Noticees are mentioned as under:

PIT Regulations, 1992

13 (4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(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.

11. From the material available on record, I observe that Noticee 1, who was holding 200 shares of the company as on the quarter ended June 2011, had acquired 1,82,000 shares of the company from 48 other promoters/promoter group entities on September 28, 2011. I further observe that, out of the 48 promoter group entities' who had sold the shares to Noticee 1, two entities viz. Noticee 2 and Noticee 3 had sold 1,00,000 and 67,800 shares respectively to Noticee 1 by way of inter-se off-market transfer of shares.

12. I find that the disclosure requirement under the provisions of Regulation 13(4A) of the PIT Regulations is triggered when there is a change in the promoters shareholding of the company and when the change in the shareholding exceeds the limit of Rs 5 lakhs in value or 25,000 shares or 1% of the total shareholding or voting rights in the company, whichever is lower. In the instant case, I observe that Noticee no 1 had acquired 1,82,000 shares of ASL from 48 other promoters of the company by way of off-market transactions. I further observe that, out of those 48 promoters/promoter group entities of ASL, Noticee no 2 and 3 had sold 1,00,000 shares and 67,500 shares of ASL, respectively, to Noticee 1 on September 28, 2011 and these shares were bought by Noticee no 1 through off-

market transactions. Therefore, the aforementioned transactions by the Noticees resulted in change in their individual shareholding in the Company, which crossed the threshold limit of 25,000 shares, as stipulated under the provisions of Regulation 13(4A) of PIT Regulations during the relevant period. In view of the above changes in their shareholding, the Noticees were required to make the disclosures in the prescribed reporting format (Form D) to the Company and to the Stock exchanges where the shares of ASL were listed, i.e. BSE and ASE within two working days of the transaction in terms of Regulation 13(5) of the PIT Regulations.

13. Noticee 1 has contended that she had made the disclosures to BSE , ASE and also to the Company on September 28, 2011. I observe from the documents submitted by Noticee 1 that the disclosure format sent to ASE by Noticee 1 also contained the acknowledgement/official seal of ASE. Noticee 1 has contended that she had sent the disclosure format to BSE through M/s Sangeeta Enterprise Courier & Cargo on September 28, 2011 and in this regard, she also enclosed copy of the courier receipt issued by the Courier agency. I observe from the courier receipt produced by Noticee 1 that it bears the details of the consignor/ sender (i.e. Noticee 1), the name of the consignee (i.e. BSE) and the date of shipment i.e. September 28, 2011. However, I find that there is nothing on record to show that BSE had acknowledged the receipt of the said courier claimed to have been sent by Noticee 1. Further, BSE in its communication to SEBI vide e-mail dated September 08, 2017 has categorically stated that it had not received the disclosure formats from Noticee no 1 under the provisions of Regulation 13(4A) of the PIT Regulations.
14. Similarly, Noticee 2 also contended that he made the relevant disclosures u/r 13(4A) of the PIT Regulations to the stock exchanges viz. ASE and BSE on September 28, 2011 and September 29, 2011 respectively. He also produced a copy of the disclosure format containing the acknowledgement/official seal of ASE in this regard confirming that ASE had received the formats on September 29, 2011. Further, Noticee 2 also submitted a copy of the courier receipt dated

September 29, 2011 issued by M/s Orange International in support of his claim that he had dispatched the disclosure formats to BSE within the stipulated time. However, I observe that apart from the name of the consignor, consignee and the date of shipment that was mentioned in the courier receipt, there was nothing on record to confirm that BSE had acknowledged the receipt of the consignment /disclosure formats purportedly sent to the stock exchange by Noticee 2. Further, BSE vide its email dated June 23, 2017 has categorically confirmed the fact that it had not received any disclosures from Noticee 2 under Regulation 13(4A) of the PIT Regulations. I have also noted from the material made available that the Company had sent a letter dated September 28, 2011 to ASE informing the Stock Exchange that it had received the disclosure u/r 13 (4A) of PIT Regulations from Noticee no 2. Similarly, Noticee 1 had also informed the Company on September 28, 2011 about the inter-se purchase transactions executed by her w.r.t 1,82,000 shares of ASL.

15. In the context of the claim made by Noticee 1 and 2 that they had dispatched the disclosure formats to BSE by courier within the stipulated time period and the BSE denying having received the courier/consignments, it is relevant to quote the observations of the Hon'ble Calcutta High Court in the matter of Arun Kumar Bajoria (appellant) vs SEBI in Writ Petition No 331 of 2001 decided on March 27, 2001. The Hon'ble Calcutta High Court had made the observations in the context of claims and counter claims made by the parties w.r.t compliance reports claimed to have been sent by the appellant to BSE, which was not received by the Exchange. The Hon'ble Calcutta High Court had observed that *"..... The agency through which the document is sent acts as the agent of the sender and if a dispute were to arise whether the said document has been received by the addressee or not, the onus would be on the sender to establish the fact by clear and cogent evidence in this regard. Admittedly, the appellant has not placed on record any acknowledgement received from the BSE in this regard to the mails that were allegedly sent containing the compliance reports. On the other hand, we have on record a letter from the BSE specifically stating that it had not received the compliance reports for the aforesaid quarters from the appellant."*

16. I would also like to place reliance on the observations made by Hon'ble SAT in the matter of Kalindee Rail Nirman (Engineers) Limited vs SEBI (Appeal No. 97 of 2010 decided on July 19, 2010) wherein Hon'ble SAT (drawing reference from the above mentioned order of Hon'ble Calcutta High Court) had observed that -

“As observed by the Calcutta High Court, the agency through which the document is sent acts as the agent of the sender and if a dispute were to arise whether the said document has been received by the addressee or not, the onus would be on the sender to establish the fact by clear and cogent evidence in this regard. Admittedly, the appellant has not placed on record any acknowledgment received from BSE in regard to the mails that were allegedly sent containing the compliance reports. On the other hand, we have on record a letter from BSE specifically stating that it had not received the compliance reports for the aforesaid quarters from the appellant. Not only this, BSE has also pointed out that it had by its letters called upon the appellant to comply with clause 49 of the listing agreement and file the compliance reports. In this view of the matter, no fault can be found with the impugned order.”

17. In view of the aforementioned observations, I hold that the Noticees have failed to make the disclosure required under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations and therefore, Noticees have violated the provisions of Regulation 13 (4A) of the PIT Regulations r/w Regulation 13(5) of the PIT Regulations, 1992 and also Regulation 12 (2) (b) of SEBI (Prohibition of Insider Trading) Regulations, 2015.

18. In view of the above, I am convinced that the Noticees are liable for monetary penalty under the provisions of section 15A(b) of the SEBI Act, which reads as under :

Penalty for failure to furnish information, return, etc

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

(b) To file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the

same within the time specified therefore 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.

19. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, 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.*

20. With regard to the above factors, it may be noted that the investigation report has not quantified the profit/loss for the violations committed by the Noticees. Further, there is nothing on record to show that the default committed by the Noticees was repetitive in nature. The contentions of the Noticees that they had made disclosures to the Company and ASE are not valid grounds to escape liability. I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance with the mandatory obligation. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of *Akriti Global Traders Ltd. Vs SEBI* had observed that

"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."

21. I observe that the Noticees have failed to comply with the mandatory statutory obligation. In this context, reliance is placed upon the order of The Hon'ble Supreme Court of India in the matter of *Chairman, SEBI Vs Shriram Mutual Fund* { [2006]5 SCC 361 } – where the Hon'ble Supreme Court of India 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.....*”

22. The details of the change in constitution of promoter group wherein 48 promoters/promoter group of the Company took exit by way of inter-se transfer of shares in favour of Noticee 1 and the timely disclosure of these transactions thereof, were of significant importance from the point of view of the investors, as such information received by them in a time bound manner would facilitate them immensely in taking a balanced investment decision as regards their holdings in the Company. Further, the purpose of these disclosures is to bring about transparency in the transactions and to assist the Regulator to effectively monitor the transactions in the securities market.

ORDER

23. After taking into consideration the facts and circumstances of the case, the reply submitted by Noticee 1 and 2, the material available on record, the submissions made by the Noticees and the observations made in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose the following penalty on the Noticees under the provisions of Section 15A(b) of the SEBI Act for their failure to make the necessary disclosures under the provisions of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992 read with Regulation 12 (2) (b) of SEBI (Prohibition of Insider Trading) Regulations, 2015 -

S. No.	Name of the Noticee	Violations	Penalty
1.	Amees Tushar Shah	Regulation 13(4A) read with 13(5) of PIT Regulations, 1992	Rs 1,00,000/-

		and Regulation 12 (2) (b) of SEBI (Prohibition of Insider Trading) Regulations, 2015	(Rupees One Lakh only)
2.	Parag Patel	Regulation 13(4A) read with 13(5) of PIT Regulations, 1992 and Regulation 12 (2) (b) of SEBI (Prohibition of Insider Trading) Regulations, 2015	Rs 1,00,000/- (Rupees One lakh only)
3.	Rajula Finance Ltd.	Regulation 13(4A) read with 13(5) of PIT Regulations, 1992 and Regulation 12 (2) (b) of SEBI (Prohibition of Insider Trading) Regulations, 2015	Rs 1,00,000/- (Rupees One Lakh only)

I am of the view that the said penalty is commensurate with the default committed by the Noticees.

24. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI- Penalties Remittable to Government of India", A/C No 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmation of e-payments made (in the format as given in the table below) should be forwarded to The Division Chief, Enforcement Department (EFD), Securities and Exchange Board of India, SEBI Bhavan, C-4A, 'G' Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051

1. Case Name:	
2. Name of Payee:	
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 /disgorgement/recovery/Settlement amount and legal charges along with order details)	
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25. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to Securities and Exchange Board of India.

Place: Mumbai
Date: 29.09.2017

SURESH B MENON
ADJUDICATING OFFICER