

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. JJ/AM/AO-71/2014

**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 Ashlesh Gunvantbhai Shah

(PAN - AEOPS0718P)

In the matter of:

Parichay Investments Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") carried out an examination in the scrip of Parichay Investments Limited (hereinafter referred to as "**Company**"). The shares of the Company are listed on the Bombay Stock Exchange Limited (hereinafter referred to as "**BSE**"). The volume in the scrip of the Company on May 02, 2013 was 2,56,364 which was observed to be exceptionally large in comparison to the other days. It was observed that Ashlesh Gunvantbhai Shah (hereinafter referred to as "**Noticee**") disposed 74,547 shares of the Company (representing 6.2% of the shareholding of the Company) on May 02, 2013. However, it was alleged that that

the Noticee failed to make disclosures as required under Regulation 13(3) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT Regulations**”) and Regulation 29 (2) of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011 (hereinafter referred to as “**SAST Regulations**”).

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer vide order dated January 16, 2014 and the said appointment was conveyed vide proceedings of the Whole Time Member dated January 22, 2014 to inquire and adjudge under Section 15A(b) of the Securities and Exchange Board of India Act, 1992, (hereinafter referred to as “**SEBI Act, 1992**”), the alleged violations of provisions of Regulation 13(3) of PIT Regulations and Regulation 29 (2) of SAST Regulations committed by the Noticee.

SHOW CAUSE NOTICE, HEARING & REPLY

3. Show Cause Notice (hereinafter referred to as “**SCN**”) in terms of the provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “**Adjudication Rules**”) was issued to the Noticee on January 31, 2014, calling upon the Noticee to show cause why an inquiry should not be held against him under Rule 4(3) of the Adjudication Rules and penalty be not imposed under Section 15A(b) of SEBI Act, 1992 for the alleged violations.

4. The aforesaid SCN was duly delivered to the Noticee by affixture on February 10, 2014. Subsequently, vide one document received by SEBI on March 03, 2014 the Noticee purportedly submitted disclosures under Regulation 29 (2) of SAST Regulations and Regulation 13(3) of PIT Regulations to SEBI. Thereafter, vide Notice of Inquiry dated March 27, 2014; the Noticee was given an opportunity of personal hearing on April 11, 2014 and the Noticee was advised to submit his reply, if any, on or before April 11, 2014.
5. On the scheduled date of personal hearing, Smt. Rinku Valanju, Authorised Representative (hereinafter referred to as “AR”) of the Noticee appeared and made the following submissions:
“We have received the Show Cause Notice and the Hearing Notice. We are making submissions vide letter dated March 04, 2014. The same may please be considered. Further, we have made the disclosures to the Company and SEBI on February 26, 2014 and to BSE on April 09, 2014. The Noticee is into financing business and was holding the shares in his demat account since about last three years and the default is not repetitive in nature.”
6. The Noticee had, *inter alia*, made the following submissions vide letter dated March 04, 2014:
I submit that I sold 74,547 shares on 02.05.2013 and delivered them in demat mode from my demat account. The scrip was illiquid and as there was an opportunity for selling on BSE market, I sold my holding. On 02.05.2013 my sale has been reported on BSE’s website on the very same day in the bulk deal data.

I submit that I am a retail non-promoter shareholder and somehow came to hold the abovementioned quantity of shares. I being lay investor was not aware about disclosure to be made by retail investors Neither the company nor the trading member made us aware or not drew attention about it.

As BSE had already disclosed my sale details, we verily believed that those disclosures were sufficient. Moreover the company also made share holding pattern related disclosure under clause 49 of the Listing Agreement to BSE at the end of the quarter June 2013 and which is publicly available on BSE website.

However, I have informed / disclosed to the company about the sale of shares and reduction in my holding in the prescribed format on 28.02.2014.

In view of the above, I say that I have not violated the Provisions of Regulation 13(3) of SEBI (Prohibition of Insider Trading) Regulation, 1992 – PIT regulations and Regulation 29 (2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulation, 2011 – SAST Regulation as alleged or otherwise.

MITIGATING FACTORS:

- I have not violated any substantive provision of law.*
- I am not guilty of conduct which is contumacious or dishonest or acted in conscious disregard of law. I have not acted in defiance of law.*
- I have not viewed the regulatory proceedings in a non-chalant manner.*
- I have not made any unfair gain or advantage in any manner.*

ISSUES FOR CONSIDERATION

7. After perusal of the material available on record, I have the following issues for consideration, viz.,
 - A. Whether the Noticee has violated provisions of Regulation 13(3) of PIT Regulations and Regulation 29(2) of SAST Regulations?
 - B. Whether the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992?
 - C. What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

FINDINGS

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

ISSUE 1: Whether the Noticee has violated provisions of Regulation 13(3) of PIT Regulations and Regulation 29(2) of SAST Regulations?

9. The provisions of Regulation 13(3) of PIT Regulations and Regulation 29(2) of SAST Regulations read as under:

Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992

Disclosure of interest or holding in listed companies by certain persons
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.

Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

Disclosure of acquisition and disposal.

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.

10. From the SCN, I note that the Noticee was holding 74,547 shares of the Company (representing 6.2% of the shareholding of the Company) and the Noticee sold/transferred the shares on May 02, 2003; details of which are as follows:

Client Name	Date of transaction	Gr. Buy Vol.	Gr. Sell Vol.	Net Trd. Vol.	Vol% - Net Trd Vol/ Mkt Net	% of total shareholding of the company
ASHLESH GUNVANTBHAI SHAH	02/05/2013	0	74547	-74547	30.03	6.21

11. Since the Noticee was holding more than 5% of the shares of the Company and subsequently sold shares representing 6.2% of the shareholding of the Company, the Noticee was under obligation to make required disclosures to the Company under Regulation 13(3) of PIT Regulations within the time limit prescribed under

PIT Regulations. Further, the Noticee was also under obligation to make required disclosures to BSE and also to the Company within the time limit prescribed under Regulation 29 of SAST Regulations.

12. I note that the Noticee, in his reply dated March 04, 2014 has submitted that the scrip was illiquid and as there was an opportunity for selling on market, he sold the shares and that on May 02, 2013 the sale was reported on BSE's website in the bulk deal data. The Noticee has also submitted that the Company had made shareholding pattern related disclosure under Listing Agreement to BSE which was publicly available on BSE website. The Noticee has further submitted that he being a lay investor, was not aware of the disclosures to be made. However, I am of the considered opinion that these does not absolve the Noticee from his duty of making necessary disclosures under Regulation 13(3) of PIT Regulations and Regulation 29(2) of SAST Regulations. The object underlying these regulations is to bring more transparency by dissemination of complete information to the public as well as shareholders at large. To translate these principles into reality measures have been taken to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. When law prescribes a manner in which a thing is to be done, it must be done only in that manner only. Both sets of regulations prescribe formats in which the disclosures are to be made and those are then put out for the information of the general public by the stock exchanges, which did not happen in this case.

13. From the reply of the Noticee and also from the submissions made during the course of personal hearing, I note that the disclosures were purportedly made to the Company and BSE by the Noticee only after the issuance of SCN. In view of the above, I hold that the Noticee was under an obligation to make the required disclosures under Regulation 13(3) of PIT Regulations and Regulation 29(2) of SAST Regulations, which the Noticee failed to do. Therefore, the Noticee has violated the provisions of Regulation 13(3) of PIT Regulations and Regulation 29(2) of SAST Regulations.

ISSUE 2: Whether the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992?

14. The provisions of Section 15A(b) of the SEBI Act, 1992 read as under:

Penalty for failure to furnish information, return, etc.:

15A (b): *If any person, who is required under this Act or any rules or regulations made thereunder 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.*

15. The Hon'ble Supreme Court of India in Civil Appeal No.9523-9524 of 2003 in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC), has 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 Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant”.

16. As already observed, the Noticee disposed substantial shares of the Company but failed to make disclosures as required under Regulation 13(3) of PIT Regulations and Regulation 29(2) of SAST Regulations. Hence, I find that the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992.

ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

17. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992, which reads as under:

“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 investors as a result of the default;

(c) the repetitive nature of the default.”

18. In the absence of material on record, the amount of disproportionate gain or unfair advantage made as a result of the default and the amount of loss caused to the investors due to the said default cannot be quantified. The Noticee was under

obligation to make the necessary disclosures to the Company and to BSE, in terms of provisions of PIT Regulations and SAST Regulations. Our entire securities market stands on disclosure based regime and accurate and timely disclosures by the entities transacting in the securities market are fundamental in maintaining the integrity of the securities market. However, as stated earlier, the Noticee had failed to make the necessary disclosures thereby violating the provisions of PIT Regulations and SAST Regulations. Further, there is nothing on record to indicate that the default of the Noticee was repetitive.

19. In the forgoing paragraphs it is now established that the Noticee had violated the provisions of Regulation 13(3) of PIT Regulations and Regulation 29(2) of SAST Regulations. Considering the facts and circumstances of the case, violation committed by the Noticee, and the mitigating factors submitted by the Noticee in his reply dated March 04, 2014, I find that imposing a penalty of ₹ 5,00,000/- (Rupees Five Lakhs only) for violation of Regulation 13(3) of PIT Regulations and Regulation 29(2) of SAST Regulations on the Noticee would be commensurate with the violation committed.

ORDER

20. In terms of the provisions of the SEBI Act, 1992 and Rule 5(1) of the Adjudication Rules, I hereby impose a penalty of ₹ 5,00,000/- (Rupees Five Lakhs only) under Section 15A(b) of SEBI Act, 1992 for violation of Regulation 13(3) of PIT

Regulations and Regulation 29(2) of SAST Regulations on Shri Ashlesh Gunvantbhai Shah.

21. The penalty shall be paid by way of demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this Order. The said demand draft shall be forwarded to the Division Chief, Integrated Surveillance Department, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.
22. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to the Noticee and also to Securities and Exchange Board of India.

Date: May 30, 2014
Place: Mumbai

Jayanta Jash
Adjudicating Officer