

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

[ADJUDICATION ORDER NO. ASK/RGA/AO/ 176 -185 /2014-15]

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

S No.	ENTITY NAME	PAN NO.	Order No.
1	Bhupendra Kumar H Shah	ACQPS5388B	ASK/RGA/AO/176/2014-15
2	Bhupendra Kumar H Shah (HUF)	AAKHS2700K	ASK/RGA/AO/177/2014-15
3	Purvi S Shah	NOT AVAILABLE	ASK/RGA/AO/178/2014-15
4	Romil B Shah	ARAPS8707R	ASK/RGA/AO/179/2014-15
5	S.H.Shah(HUF)	NOT AVAILABLE	ASK/RGA/AO/180/2014-15
6	Roshan S Shah	NOT AVAILABLE	ASK/RGA/AO/181/2014-15
7	Rohil B Shah	ARAPS8708A	ASK/RGA/AO/182/2014-15
8	Ronak B Shah	APSPS6252B	ASK/RGA/AO/183/2014-15
9	Shrenik H Shah	ACQPS5387Q	ASK/RGA/AO/184/2014-15
10	Sunita S Shah	ACQPS5375Q	ASK/RGA/AO/185/2014-15

In the matter of

**Safal Herbs Ltd.(formerly known as Parikh Herbals Ltd.)**

## **BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination into the alleged irregularity in the trading in the dealings in the shares of Safal Herbs Ltd.(hereinafter referred to as '**SHL**') and into possible violation of the provisions of Securities and Exchange Board of India, 1992 (**SEBI Act, 1992**) and various rules and regulations made there under for the period from January 01, 2012 to January 31, 2013 (hereinafter referred to as '**examination period**'). The shares of SHL are listed on Bombay Stock Exchange Limited (BSE) and Ahmedabad Stock Exchange(ASE).
2. The examination revealed that Bhupendra Kumar H Shah (Noticee No.1),Bhupendra Kumar H Shah (HUF) (Noticee No.2), Purvi S Shah (Noticee No.3), Romil B Shah (Noticee No. 4), S.H.Shah(HUF) (Noticee No. 5),Roshan S Shah (Noticee No.6),Rohil B Shah (Noticee No. 7), Ronak B Shah (Noticee No. 8), Shrenik H Shah (Noticee No. 9) and Sunita S Shah (Noticee No. 10) (hereinafter collectively referred to as '**Noticees**') are promoters of SHL. The Noticees had offloaded their holdings in SHL during the period April 01, 2012 to December 31, 2012. The Noticees failed to make disclosure under the various provisions of SEBI (Substantial Acquisition 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**'). Consequently, Noticee No. 1 had violated provisions of regulations 13(3), 13(4A) read with 13(5) of PIT Regulations, 1992 and regulations 29(2) read with 29(3) and regulation 30(2) read with 30(3) of SAST Regulations, 2011. Noticee No. 2 to 10 had violated provisions of regulations 13(4A) read

with 13(5) of PIT Regulations, 1992 and regulations 30(2) read with 30(3) of SAST Regulations, 2011.

3. SEBI has, therefore, initiated adjudicating proceedings under the SEBI Act, 1992 to inquire into and adjudge under section 15A(b) of the SEBI Act, 1992 the aforesaid alleged violations committed by the Noticees.

### **APPOINTMENT OF ADJUDICATING OFFICER**

4. The undersigned was appointed as Adjudicating Officer vide order dated March 27, 2014 under section 15 I of the SEBI Act, 1992 read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Rules**') to inquire into and adjudge under section 15A (b) of the SEBI Act, 1992 for the aforesaid violations.

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

5. Show Cause Notice(s) dated September 08, 2014 (hereinafter referred to as '**SCN's**') was issued to the Noticees under rule 4(1) of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A (b) of the SEBI Act, 1992 for the alleged violation specified in the SCN(s).
6. Vide letter dated October 04, 2014, the Noticee Nos.1-8 filed a common reply to the SCN(s). In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticees were granted an opportunity of personal hearing on December 23, 2014 vide notice dated December 02, 2014. Noticees while e-mail dated December 16, 2014, requested for re-scheduling the hearing to December 19, 2014. Accordingly the hearing was re-

scheduled. Mr. Arvind R Shah and Mr. Amol Shah appeared as Authorized Representatives (AR's) on behalf of the Noticees. The Noticees reiterated the submissions made vide letter dated October 04, 2014. Also the Noticees filed additional written submissions during the course of hearing. Noticees sought time for filing additional written submissions till December 26, 2014. Vide e-mail dated December 26, 2014 Noticees submitted that *"in the personal hearing granted to us on December 19, 2014, through oversight two of our family members names, i.e. Shrenik H Shah and Sunita S Shah were not included. Also, in today's mail of additional submission, these names were also not included. Kindly include these names in our combined reply. The said correction has been incorporated in the hard copy sent to through registered post."* Subsequently, vide letter dated December 25, 2014, common reply was filed by Noticee Nos. 1-10. The salient points of submissions of the Noticees are as follows:

- The Noticees were the promoters of SFL. They had sold their entire holding for ₹ 18,79,050 in 2010 and 2011 in physical form to KB Enterprises, Ahmadabad. At that time the shares were delisted from the stock exchanges. Last trade took place on November 10, 2000 @ ₹ 2.80 on BSE. Though the transaction took place in 2010 and 2011, the buyer party had not paid the sale proceeds till June 01, 2012. Lot of follow up was made for the payment. Since the party was not responding and not giving the promised sum, complaints were made to Registrar of Companies, Company, Registrar and Transfer Agent. Copies of the complaints were submitted at the time of personal hearing. After the complaints were made finally they received the sale proceeds on June 01, 2012.
- After selling the shares in physical form, they were not aware what KB Enterprises had done with those shares. They cannot

force KB enterprises to get the shares transferred in KB Enterprises' name. They have never sold the shares directly as off market trades to the persons mentioned in the Annexure to the SCN.

- Since they had sold their entire holding in physical form prior to relisting, question of various disclosures under rules of SEBI does not arise after relisting of shares.
- Since the shares were not traded for a long period of over 10 years, no response was received from Registered Office and the company's name being in the list of wilful defaulter, they had not informed to BSE and company about sale of entire shareholding. They were not in a position to know whom they should submit the disclosure. They were under the presumption that the scrip is delisted based on the notice of BSE to company in 2006 and the scrip not being traded for more than 10 years.
- They are not aware of any off market transaction and the names of the buyer parties. Also, they have not received any payment from any of the parties mentioned in the list. None of their family members have done any off market transaction and none of them have received a single rupee in relation to the transaction.
- The shares were sold by delivering only signed forms to KB Enterprises, they do not know to whom KB enterprises have sold subsequently and at what price. KB Enterprises was a holder in due course of blank delivery and now its KB Enterprises' responsibility to share the details with SEBI. They are not responsible for disclosure since entire holding was sold when the shares stopped trading for more than 10 years.
- They have not filed disclosures for 2012, 2013 and 2014 under regulation 30(1) and 30(2) of SAST Regulations, 2011. They have failed to understand how their names have been included for annual SAST disclosures of 2013 and 2014.

- Noticee No. 8 expired on July 26, 2012. A copy of death certificate was submitted.
7. It is observed that separate SCN(s) were issued to the Noticees. However, I find that the Noticees have filed a common reply and the Noticees were also represented by common representatives who made common submissions at the hearing . Therefore, I proceed to pass a common order against the Noticees.

### **CONSIDERATION OF ISSUES AND FINDINGS**

8. I have carefully perused the written submissions of the Noticees and the documents available on record. The issues that arise for consideration in the present case are :
- a. Whether the Noticees had violated the provisions of regulations 13(3),13(4A) read with 13(5) of PIT Regulations, 1992 and regulation 29(2) read with 29(3), regulation 30(2) read with 30(3) of SAST Regulations, 2011?
  - b. Does the violation, if any, attract monetary penalty under section 15A (b) of SEBI Act, 1992?
  - c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act, 1992?
9. Before moving forward, it is pertinent to refer to the relevant provisions of PIT Regulations, 1992 which reads as under:-

#### **SEBI (Prohibition of Insider Trading) Regulations, 1992**

*Disclosure of interest or holding by directors and officers and substantial shareholders in listed companies - Initial Disclosure.*

13. (1) .....

(2) .....

(3)) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company 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.

(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.

### **SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011**

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

29.(1) .....

(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.

(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.

#### **Continual disclosures**

30(1).....

(2) The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

## **Finding**

The issues for examination in this case and the findings thereon are as follows:

**(a) Whether the Noticees had violated the provisions of regulations 13(3) 13(4A) read with 13(5) of PIT Regulations, 1992, regulation 29(2) read with 29(3) and regulation 30(2) read with 30(3) of SAST Regulations, 2011?**

10. Upon perusal of submissions of the Noticees and documents available on record, I find that Noticee No. 8 expired on July 26, 2012. Copy of death certificate issued by Pune Municipal Corporation was taken on record.

11. In this context, I would like to quote the observations of Hon'ble Supreme Court, in *Girijanandini Vs Bijendra Narain* (AIR 1967 SC 2110), wherein the court observed that in case of personal actions, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives and in such cases the maxim *actio personalis moritur cum persona* (personal action dies with the death of the person) would apply.

12. The SCN was issued to Noticee No. 8 on September 08, 2014. Thus, the proceedings were initiated against the personal acts of omission and commission of a person who is no more to face the charges. I am of the view that the proceedings against Noticee No. 8 are liable to be abated without going into the merits of the case. Therefore, the proceedings against Noticee Nos. 8 stands abated.



13. The Noticees were promoters of SHL and were collectively holding 18.82% as on March 31, 2012. The examination revealed that the Noticees had offloaded their holdings in SHL on various dates during the period April 01, 2012 to December 31, 2012 in excess of the benchmark limits specified in the PIT Regulations, 1992 and SAST Regulations, 2011 requiring them to make the disclosures in that regard to the company and stock exchanges. The Noticees were also required to make annual disclosures of their shareholding in the company. It was observed that the Noticees failed to make the disclosures regarding changes in their shareholding as well as annual disclosures regarding shares held by them. The following is noted as regards the details of shares sold by the individual Noticees and also the non-compliances by the Noticees:

**Bhupendra Kumar H Shah (Noticee No.1)**

<b>Date of transaction</b>	<b>Opening balance</b>	<b>No. of shares sold</b>	<b>Closing balance</b>	<b>Total paid-up capital</b>	<b>% holding (change in holding)</b>	<b>Value of the shares sold**</b>
13/06/2012	1665000 (16.65%)	395900	1269100	10000000	12.69 (3.96)	196,069,475.00
15/06/2012	1269100	31300	1237800	10000000	12.37 (0.31)	16,999,030.00
14/07/2012	1237800	587000	650800	10000000	6.51 (5.87)	208,766,550.00
<b>Post Split</b>						
25/09/2012	6508000	1683000	4825000	100000000	4.83 (1.68)	65,047,950.00

27/10/2012	4825000	805000	4020000	100000000	4.02 (0.81)	34,293,000.00
26/12/2012	4020000	525000	3495000	100000000	3.50 (0.52)	8,400,000.00

14. In this regard, I note that as per the provisions of regulation 13(3) read with 13(5) of PIT Regulations, 1992 any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company within two working days, 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.
15. As per the provisions of regulation 13(4A) read with 13(5) of PIT Regulations, 1992 any person who is a promoter or part of the promoter group of a listed company has to disclose to the company and to the stock exchange where the securities are listed, within two working days, if change in holding of such person from the last disclosure exceeds ₹ 5 Lakh in value, or 25,000 shares or 1% of the total shareholding or voting rights whichever is lower.
16. In the instant case, as on June 13, 2012 Noticee No.1 was holding 16,65,000 shares representing 16.65% of share capital of SHL. On June 13, 2012, Noticee No.1 sold 395900 shares resulting in a change of 3.96% in shareholding. Again, as on July 14, 2012, Noticee No.1 was holding 12,37,800 shares representing 12.37% when he sold 5,87,000 shares resulting in a change of 5.87% in shareholding. Since the change in shareholding exceeded 2% of total shareholding or voting rights in the company, Noticee No.1 was under an obligation to

make disclosure to the company under regulation 13(3) of PIT Regulations, 1992 within two working days from the date of sale. However, Noticee No.1 failed to make the disclosure on both the occasions.

17. From the above table, I also note that as a result of the transactions done by Noticee No.1 on June 13, 2012, July 14, 2012 and September 25, 2012, there has been a change in the value of holding exceeding Rs. 5 lakh, change exceeding 25000 shares and change in shareholding by more than 1%. Further, as a result of the transactions done by Noticee No.1 on June 15, 2012, October 27, 2012, December 26, 2012 there has been a change in the value of holding exceeding Rs. 5 lakh and change exceeding 25000 shares. Thus, Noticee No.1 was under an obligation to make disclosure to the company and to the stock exchange under regulation 13(4A) read with regulation 13(5) of the PIT Regulations, 1992 within two working days, from the date of sale. However, Noticee No.1 failed to make the disclosure on all the six occasions.
18. In terms of regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 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 to the company and to the stock exchange within two working days 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.
19. From the above table, I find that on June 13, 2012 Noticee No.1 sold 3,95,900 shares constituting 3.96% of the total shareholding of SFL. On July 14, 2012 Noticee No. 1 sold 5,87,000 shares constituting

5.87% of the total shareholding of SFL. Noticee No.1 was under an obligation to disclose under regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 the disposal of shares within two working days from the date of sale to the company and to the stock exchange. However, Noticee No.1 failed to make the disclosure on both the occasions.

**Bhupendra Kumar H Shah (HUF) (NoticeeNo.2)**

<b>Date of transaction</b>	<b>Opening balance</b>	<b>No. of shares sold</b>	<b>Closing balance</b>	<b>Total paid-up capital</b>	<b>% holding</b>	<b>Value of the shares sold**</b>
25-Sep-12	350000	160000	190,000	100000000	0.19	6,184,000.00
27-Oct-12	190,000	176000	14,000	100000000	0.01	7,497,600.00

20. From the above table, I find that as a result of the transactions done by Noticee No.2 on September 25, 2012 and October 27, 2012 there has been a change in the value of holding exceeding Rs. 5 lakh and change exceeding 25000 shares. Thus, Noticee No.2 was under an obligation to make disclosure to the company and to the stock exchange under regulation 13(4A) read with regulation 13(5) of the PIT Regulations, 1992 within two working days, from the date of sale, however, Noticee No.2 failed to make the disclosure on both the occasions.

**Purvi S Shah (Noticee No.3)**

<b>Date of transaction</b>	<b>Opening balance</b>	<b>No. of shares sold</b>	<b>Closing balance</b>	<b>Total paid-up capital</b>	<b>% holding</b>	<b>Value of the shares sold**</b>
25-Sep-12	185000	75,000.00	110,000	100000000	0.11	2,898,750.00

21. From the above table, I find that as a result of the transaction done by Noticee No.3 on September 25, 2012 there has been a change in the value of holding exceeding Rs. 5 lakh and change exceeding 25000 shares. Thus, Noticee No.3 was under an obligation to make disclosure to the company and to the stock exchange under regulation 13(4A) read with regulation 13(5) of the PIT Regulations, 1992 within two working days, from the date of sale, however, Noticee No.3 failed to make the disclosure on the aforesaid occasion.

**Romil B Shah (Noticee No.4)**

<b>Date of transaction</b>	<b>Opening balance</b>	<b>No. of shares sold</b>	<b>Closing balance</b>	<b>Total paid-up capital</b>	<b>% holding</b>	<b>Value of the shares sold**</b>
27-Oct-12	185,000	150000	35,000	100000000	0.04	6,390,000.00

22. From the above table, I find that as a result of the transaction done by Noticee No.4 on October 27, 2012 there has been a change in the value of holding exceeding Rs. 5 lakh and change exceeding 25000 shares. Thus, Noticee No.4 was under an obligation to make disclosure to the company and to the stock exchange under regulation 13(4A) read with regulation 13(5) of the PIT Regulations, 1992 within two working days, from the date of sale, however, Noticee No.4 failed to make the disclosure on the aforesaid occasion.

**S.H. Shah (HUF) (Noticee No. 5)**

Date of transaction	Opening balance	No. of shares sold	Closing balance	Total paid-up capital	% holding	Value of the shares sold**
26-Dec-12	350000	130000	220,000	1000000000	0.22	2,080,000.00

23. From the above table, I find that as a result of the transaction done by Noticee No.5 on December 26, 2012 there has been a change in the value of holding exceeding Rs. 5 lakh and change exceeding 25000 shares. Thus, Noticee No.5 was under an obligation to make disclosure to the company and to the stock exchange under regulation 13(4A) read with regulation 13(5) of the PIT Regulations, 1992 within two working days, from the date of sale, however, Noticee No.5 failed to make the disclosure on the aforesaid occasion.

**Roshan S Shah (Noticee No. 6)**

Date of transaction	Opening balance	No. of shares sold	Closing balance	total paid-up capital	% holding	Value of the shares sold**
25-Sep-12	185000	22000	163,000	1000000000	0.16	850,300.00
27-Oct-12	163,000	150000	13,000	1000000000	0.01	6,390,000.00

24. From the above table, I find that as a result of the transaction done by Noticee No.6 on September 25, 2012 there has been a change in the value of holding exceeding Rs. 5 lakh and as a result of the transaction done by Noticee No. 6 on October 27, 2012 there has been a change in the value of holding exceeding Rs. 5 lakh and

change exceeding 25000 shares. Thus, Noticee No.6 was under an obligation to make disclosure to the company and to the stock exchange under regulation 13(4A) read with regulation 13(5) of the PIT Regulations, 1992 within two working days, from the date of sale, however, Noticee No.6 failed to make the disclosure on both the occasions.

**Rohil B Shah(Noticee No. 7)**

<b>Date of transaction</b>	<b>Opening balance</b>	<b>No. of shares sold</b>	<b>Closing balance</b>	<b>total paid-up capital</b>	<b>% holding</b>	<b>Value of the shares sold**</b>
25-Sep-12	185000	80,000	105,000	100000000	0.11	3,092,000.00
27-Oct-12	105,000	100,000	5,000	100000000	0.01	4,260,000.00

25. From the above table, I find that as a result of the transactions done by Noticee No.7 on September 25, 2012 and October 27, 2012 there has been a change in the value of holding exceeding Rs. 5 lakh and change exceeding 25000 shares. Thus, Noticee No.7 was under an obligation to make disclosure to the company and to the stock exchange under regulation 13(4A) read with regulation 13(5) of the PIT Regulations, 1992 within two working days, from the date of sale, however, Noticee No.7 failed to make the disclosure on both the occasions.

**Ronak B Shah (Noticee No. 8)**

<b>Date of transaction</b>	<b>Opening balance</b>	<b>No. of shares sold</b>	<b>Closing balance</b>	<b>Total paid-up capital</b>	<b>% holding</b>	<b>Value of the shares sold**</b>
14-Jul-12	18500	10000	8,500	10000000	0.09	3,556,500.00

26. As discussed at para no. 12, the proceedings against Noticee No.8 stands abated.

**SHRENIK H SHAH (Noticee No. 9)**

<b>Date of transaction</b>	<b>Opening balance</b>	<b>No. of shares sold</b>	<b>Closing balance</b>	<b>Total paid-up capital</b>	<b>% holding</b>	<b>Value of the shares sold**</b>
25-Sep-12	275500	95500	180,000	100000000	0.18	3,691,075.00

27. From the above table, I find that as a result of the transaction done by Noticee No.9 on September 25, 2012 there has been a change in the value of holding exceeding Rs. 5 lakh and change exceeding 25000 shares. Thus, Noticee No.9 was under an obligation to make disclosure to the company and to the stock exchange under regulation 13(4A) read with regulation 13(5) of the PIT Regulations, 1992 within two working days, from the date of sale, however, Noticee No.9 failed to make the disclosure on the aforesaid occasion.



**SUNITA S SHAH (Noticee No. 10)**

<b>Date of transaction</b>	<b>Opening balance</b>	<b>No. of shares sold</b>	<b>Closing balance</b>	<b>Total paid-up capital</b>	<b>% holding</b>	<b>Value of the shares sold**</b>
25-Sep-12	240000	212000	28,000	100000000	0.03	8,193,800.00

\*\* Closing price of the previous day taken for calculation of value. The closing price of the scrip Safal Herbs Ltd. on April 17, 2012 is Rs. 230, on June 12, 2012 is Rs. 495.25, on June 14, 2012 is Rs. 543.1, on July 13, 2012 is Rs. 355.65, on Sep 24, 2012 is Rs. 38.65, on Oct 26, 2012 is Rs. 42.6 and on Dec 24, 2012 is Rs. 16.

28. From the above table, I find that as a result of the transaction done by Noticee No.10 on September 25, 2012 there has been a change in the value of holding exceeding Rs. 5 lakh and change exceeding 25000 shares. Thus, Noticee No.10 was under an obligation to make disclosure to the company and to the stock exchange under regulation 13(4A) read with regulation 13(5) of the PIT Regulations, 1992 within two working days, from the date of sale, however, Noticee No.10 failed to make the disclosure on the aforesaid occasion.
29. In terms of regulation 30(2) read with regulation 30(3) of SAST Regulations, 2011, the promoter of every target company shall together with persons acting in concert with him, disclose within two working days to the company and to the stock exchange their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company.
30. In the instant case, Noticees being the promoters of SFL were under an obligation to make disclosures to the stock exchanges and to the company for the year 2012 of the aggregate shareholding and voting rights of promoters and persons having control over the company

within 7 working days from the end of financial year. However, from the BSE website it is noted that the Noticees did not make the said disclosure to the BSE.

31. I have gone through the submissions/ contentions of the noticees. It is an admitted fact they were the promoters of the company and were collectively holding 18,79,050 shares. Their main submission is that they had sold their entire holding for ₹ 18,79,050 @ ₹ 1 per share, in 2010 and 2011 in physical form to KB Enterprises, Ahmadabad. Though the transaction took place in 2010 and 2011, the buyer party had not paid for the sale proceeds till June 01, 2012. Since the party was not responding and not giving the promised sum, complaints were made to Registrar of Companies, Company, Registrar and Share Transfer Agent. After filing of complaints, they received sale proceeds on June 01, 2012. On careful perusal of the material available on record, I find that there is no evidence submitted by the Noticees in terms of share sale agreement with KB Enterprises, or any other document evidencing the sale of shares to KB Enterprises by the Noticees. The only evidence the Noticees have submitted is the bank statement in the name of Noticee No.1 from Janata Sahakari Bank Ltd. Pune dated 01/06/2012 which shows a credit of ₹ 18,79,050/- with the narration "RTGS KB Enterprise". I am of the view that credit by KB Enterprises in the bank account cannot be considered as a receipt of sale proceeds without any additional evidence available on record. Further, the Noticees have contended that a lot of follow up was made for the payment. However, the Noticees have not produced any proof of communication/correspondence with KB Enterprises.
32. The Noticees have also contended that they had made complaints to Registrar of Companies, Company, Registrar and Transfer Agent, copies of which were provided during the course of hearing. On

perusal of the complaints I find that the complaint dated April 24, 2012 was made by Noticee No.1 to the ROC wherein Noticee No.1 had informed that he was holding 16,65,000 shares in SFL. He ceased to be a director of SFL since January 01, 2001. However, his name was still shown under the head director or relative of directors since 2001. Noticee No.1 had stated that he was not a director or relative of director and his holding should have been included under the head other top 50 shareholders. I find that the above mentioned complaint makes no mention whatsoever about the alleged sale of shares by the Noticees to KB Enterprises, not to speak of non-receipt of alleged sale proceeds.

33. It is noted that on one hand the Noticees are contending that they have sold their shares to KB Enterprises in 2010 and 2011 and on the other hand the Noticees are themselves stating before the Registrar of Companies to include their name under the head top 50 shareholders. Moreover, the Noticees had not objected at any point of time that their name was shown under the category of promoters. The complaint only goes to establish that they continued to hold the shares even as on the date of complaint i.e. April 24, 2012.
34. Further, I find that complaint dated April 04, 2012 was made by Noticee No. 8 to the share transfer agent, Cameo Corporate Services stating that he was holding 18, 500 shares. The said shares were lost and misplaced and he had requested for issuance of duplicate shares. Further, complaint dated April 24, 2012 was also made by Noticee No.1 to the BSE that he has lost or misplaced the shares of SFL. SFL in its letter dated April 16, 2012 addressed to Noticee No. 8 categorically stated that *".....we have received similar request letters from various other persons who were in the management of the company. We are surprised to note the trend after ceasing to be in the management of the company you have started complaining of share certificates having been lost or misplaced."* The company had also

sought certain documents for issue of duplicate share certificates namely: copies of indemnity bond on non-judicial stamp paper of Rs. 100/-, copy of affidavit on Non-Judicial stamp paper of Rs. 20/-, copy of press release publish in leading newspapers regarding loss of share certificates and requesting company for issuance of duplicate shares certificates, copy of FIR lodged with the police station for the loss of share certificates. It is noted that the Noticees have not furnished any correspondence in that regard. Again both the aforesaid complaints made by the Noticees to Cameo Corporate Services and BSE in April 2012 reveal that the Noticees were still holding the shares of SFL at the time of making complaints i.e. April 2012. This runs contrary to their submissions that they had already sold the shares in 2010-2011 for which of course they did not produce documentary evidence.

35. The Noticees have contended that after selling the shares in physical form, they were not aware what KB Enterprises had done with those shares. They cannot force KB enterprises to get the shares transferred in KB Enterprises' name. They have never sold the shares directly as off market trades to the persons mentioned in the Annexure to the SCN. The Noticees have contended that the shares were sold by delivering only signed forms to KB Enterprises, they do not know to whom KB enterprises have sold subsequently and at what price. KB Enterprises was a holder in due course of blank delivery and now its KB Enterprises' responsibility to share the details with SEBI. As already observed in the preceding paragraph, the Noticees did not produce sufficient evidence to prove their submission that their stake has been transferred to KB Enterprises. Moreover, the evidence produced by the Noticees i.e. complaint to Registrar of Companies , Cameo Corporate Services and BSE would go to disprove the theory of sale of shares allegedly done during 2010-2011 as advanced by the Noticees. Infact, these complaints made by the Noticees would only

- go to establish that they continued to hold the shares even in April 2012. Also, disclosures available on BSE website would reveal that they continue to hold part of their holding even at the end of December 2012. Therefore, the contention of the Noticees cannot be accepted.
36. Even assuming for a moment that the theory of alleged sale made in 2010-2011 as advanced by the Noticees as correct, the Noticees ought to have made disclosures at that point of time. Whereas, admittedly, I find that no disclosure were made by the Noticees. The noticees submitted that they did not make disclosures then as they were under the presumption that the scrip of the company was delisted based on the notice of the BSE to the company and the scrip not being traded for more than 10 years. No evidence was produced by the noticees to show that the scrip of the company was delisted or relisted. The reasons cited by the Noticees for not filing disclosures then are baseless. This is yet another ground to show that their submission that they have sold the shares in 2010- 2011 is false.
37. The Noticees have contended that since they had sold their entire holding in physical form prior to relisting, question of various disclosures under rules of SEBI does not arise after relisting of shares. First of all the Noticees have not produced any evidence to show that the scrip of SFL was either delisted or relisted. Secondly, as observed in the preceding paragraphs, the alleged sale by the Noticees is not backed by sufficient evidence. Thus, the contention of the Noticees is devoid of merit.
38. The Noticees have contended that they are not aware of any off market transaction and the names of the buyer parties. Also, they have not received any payment from any of the parties mentioned in the list. None of their family members have done any off market transaction

and none of them have received a single rupee in relation to the transaction. In the absence of any documentary evidence produced by the Noticees as regards the sale of shares as contended by them, I am inclined to rely upon the details of transfers/sale done by the Noticees as submitted by M/s. Cameo Corporate Services, who is a SEBI registered Market Intermediary. It is hard to disbelieve the details provided by the Share Transfer Agent. Thus, the contention of the Noticees cannot be accepted.

39. Having rejected various submissions/contentions raised by the Noticees advancing the theory of sale, I proceed further based on the material available on record and find that the Noticees have breached the limits prescribed in both the PIT Regulations, 1992 and SAST Regulations, 2011 and also annual disclosure under SAST Regulations, 2011 as explained in the preceding para nos.13 to 30 and they ought to have made disclosures to the company and stock exchanges which they failed to do.
40. In view of the above, I hold that Noticee No. 1 has violated provisions of regulations 13(3), 13(4A) read with 13(5) of PIT Regulations, 1992 and regulations 29(2) read with 29(3) of SAST Regulations, 2011, regulations 30(2) read with 30(3) of SAST Regulations, 2011. Noticee No. 2 to 7, 9-10 have violated provisions of regulations 13(4A) read with 13(5) of PIT Regulations, 1992 and regulations 30(2) read with 30(3) of SAST Regulations, 2011.

**(b) Does the non-compliance, if any, attract monetary penalty under section 15A (b) of SEBI Act, 1992?**

41. In this context, I would like to quote the observations of The Hon'ble Supreme Court of India in the matter of *Chairman, SEBI v.. Shriram Mutual Fund* {[2006] 5 SCC 361} 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...”.*

42. As the violation of the statutory obligation under regulation 13(3), 13(4A) read with 13(5) of PIT Regulations, 1992, regulations 29(2) read with 29(3) of SAST Regulations, 2011, regulations 30(2) read with 30(3) of SAST Regulations, 2011 has been established, I am convinced that it is a fit case for imposing monetary penalty under section 15A(b) of SEBI Act, 1992, 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,-*

*(a) .....*

*(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.*

*(c) .....*

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

43. While determining the quantum of penalty under section 15A (b) of SEBI Act, 1992 , it is important to consider the factors stipulated in section 15J of 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.”*

44. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the Noticees' default. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticees as a result of default. However, it is pertinent to mention here that our entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decision. It is noted that there are 2 instances each of violation of both regulation 13(3) read with 13(5) of PIT Regulations, 1992 and regulation 29(2) read with 29(3) of SAST Regulations, 2011 and six instances of violation of regulation 13(4A) read with 13(5) of PIT Regulations, 1992 by Noticee No. 1. Further, there are two instances of violation of regulation 13(4A) read with 13(5) of PIT Regulations, 1992 by Noticee Nos. 2, 6 and 7. Hence, as far as these Noticees are concerned, the violation is repetitive in nature.

### **ORDER**

- 45. As discussed at para no.12, I conclude that the proceedings against Noticee No. 8 stands abated.
- 46. After taking into consideration all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I



of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose monetary penalties as shown in the table below on various Noticees in respect of violation mentioned against their name:

S.No.	Name of Noticee	Regulation Violated	Penal Provisions	Amount of Penalty (in Rupees)
1.	Bhupendra Kumar H Shah (Noticee No.1)	13(4A) r/w 13(5) of PIT Regulations, 1992	15(A(b)	₹ 10,00,000/-  (Rupees Ten Lakh Only)
		13(3) r/w 13(5) of PIT Regulations, 1992	15(A(b)	₹ 1,00,000/-  (Rupees One Lakh Only)
		29(2) r/w 29(3) of SAST Regulations, 1997	15(A(b)	₹ 1,00,000/-  (Rupees One Lakh Only)
4.	Bhupendra Kumar H Shah (HUF) (Noticee No.2)	13(4A) r/w 13(5) of PIT Regulations, 1992	15(A(b)	₹ 4,00,000/-  (Rupees Four Lakh Only)
5.	Purvi S Shah (Noticee No.3)	13(4A) r/w 13(5) of PIT Regulations, 1992	15(A(b)	₹ 2,00,000/-  (Rupees Two Lakh Only)

6.	Romil B Shah (Noticee No. 4)	13(4A) r/w 13(5) of PIT Regulations, 1992	15(A(b))	₹ 2,00,000/-  (Rupees Two Lakh Only)
7.	S.H. Shah (HUF) (Noticee No.5)	13(4A) r/w 13(5) of PIT Regulations, 1992	15(A(b))	₹ 2,00,000/-  (Rupees Two Lakh Only)
8.	Roshan S Shah (Noticee No. 6)	13(4A) r/w 13(5) of PIT Regulations, 1992	15(A(b))	₹4,00,000/-  (Rupees Four Lakh Only)
9.	Rohil B Shah (Noticee No. 7)	13(4A) r/w 13(5) of PIT Regulations, 1992	15(A(b))	₹4,00,000/-  (Rupees Four Lakh Only)
10.	Shrenik H Shah (Noticee No. 9)	13(4A) r/w 13(5) of PIT Regulations, 1992	15(A(b))	₹ 2,00,000/-  (Rupees Two Lakh Only)
11.	Sunita S Shah (Noticee No. 10)	13(4A) r/w 13(5) of PIT Regulations, 1992	15(A(b))	₹ 2,00,000/-  (Rupees Two Lakh Only)
12.	Bhupendra Kumar H Shah, Bhupendra Kumar H Shah (HUF), Purvi S Shah, Romil B	30(2) r/w 30(3) of SAST Regulations,	15(A(b))	₹ 9,00,000/-  (Rupees Nine Lakh only)

	Shah, S.H.Shah(HUF), Roshan S Shah ,Rohil B Shah, Shrenik H Shah and Sunita S Shah  (Noticee No. 1-7 and 9-10)	2011		(Shall be paid jointly and severally)
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47. The Noticees shall pay the said amount of penalty by way of demand draft 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 should be forwarded to Division Chief, Enforcement Department, (EFD-DRA-I) SEBI, SEBI Bhavan, Plot No. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
48. In terms of rule 6 of the Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

**DATE: MARCH 31, 2015**  
**PLACE: MUMBAI**

**A. SUNIL KUMAR**  
**ADJUDICATING OFFICER**