BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AO/AS/01/2019]

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

In respect of

1. **Shiv Kumar Agarwal (PAN No. AAVPA0129R)**
2. **Rosydevi Agarwal (PAN No. AARPA2988E)**
3. **Madhudevi Agarwal (PAN No. AAVPA0127B)**
4. **Singhal Overseas Ltd. (Now Roselabs Ltd.) (PAN No. AACCS7304Q)**
5. **Pawankumar Agarwal (PAN No. AAUPA5769N)**

In the matter Gujarat Arth Ltd.

ORDER OF THE HON'BLE SAT

1. The Hon'ble Securities Appellate Tribunal (SAT), in Appeal Nos. 316/2015, 317/2015, 318/2015, 319/2015, 320/2015, vide order dated March 16, 2016, while setting aside the adjudication order dated December 19, 2014 against Shiv Kumar Agarwal, Rosydevi Agarwal, Madhudevi Agarwal, Singhal Overseas Ltd. (Now Roselabs Ltd.) and Pawankumar Agarwal ((hereinafter referred to as Noticees), remanded the case to the Adjudicating Officer for passing fresh order on merits and in accordance with law against the Noticees. The Hon'ble SAT observed that:

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

FACTS OF THE CASE IN BRIEF

2. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into the alleged irregularity in the trading in the shares of Gujarat Arth Limited (hereinafter referred to as 'GAL') and into the possible violations of the provisions of the Securities and Exchange Board of

India Act, 1992 (hereinafter referred to as “Act”) and various Rules and Regulations made thereunder for the period from October 06, 2003 to January 28, 2004 (hereinafter referred to as "investigation period"). Trading) Regulations, 1992 (hereinafter referred to as “Insider Trading Regulations”).

3. The Investigation revealed that the promoters and persons acting in concert (hereinafter referred to as PAC) namely Shiv Kumar Agarwal (hereinafter referred to as Shiv Kumar Agarwal or Noticee no.1), Rosydevi Agarwal (hereinafter referred to as Rosydevi Agarwal or noticee no.2), Madhudevi Agarwal (hereinafter referred to as Madhudevi Agarwal or noticee no.3), Singhal Overseas Ltd. (hereinafter referred to as Singhal Overseas Ltd. or noticee no.4), Pawan Kumar Agarwal (hereinafter referred to as Pawan Kumar Agarwal or noticee no.5) (all the noticees collectively hereinafter referred to as "Noticees") and others offloaded shares in the market through off market transfer in and around the time of misleading announcement made by the company which created artificial volume and impacted the price of the scrip thus defrauded the investors. They transferred shares in off-market and received back shares which triggered more than 15% of the paid up capital of the company before transferring again their entire holding in off market transaction, no public announcement was made and also they did not file disclosures as per the requirement of SEBI Regulations.

4. SEBI has therefore, initiated adjudication proceedings under the provisions of the SEBI Act against the Noticees to inquire and adjudge the alleged violations of provisions of Regulation 3 (a),(b),(c),(d), 4 (1) and 4 (2) (a),(d),(e),(f),(k) & (r) of SEBI(Prohibition of Fraudulent and Unfair trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the “PFUTP Regulations”), Regulation 10 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the “SAST Regulations”), Regulation 7(1), (1A) read with 7(2) of SAST Regulations and Regulation 13(1),(3),(4) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1997 (hereinafter referred to as the “Insider Trading Regulations”).

Appointment of Adjudicating Officer

5. The undersigned was appointed as Adjudicating Officer, vide order dated April 02, 2009 under section 15-I of Securities and Exchange Board of India Act, 1992 hereinafter referred to as “SEBI Act”) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “Adjudicating Rules”) to enquire into and adjudge under:-
   - Section 15H and 15HA of the SEBI Act for the entities mentioned at Sr. No. 1 to 5 above
   - Section 15 A(b) of the SEBI Act for entities mentioned at Sr. No. 1, 4 and 5 above

Show Cause Notice, Reply and Personal Hearing

6. The following Show Cause Notices (hereinafter referred to as "SCN") were issued against the Noticees:

   a) SCN dated September 03, 2009 issued to Noticee no. 1 above under Rule 4 of Adjudicating Rules to show cause as to why an inquiry should not be held against him and penalty be not imposed under Sections 15A(b), 15H and 15HA of the SEBI Act for the alleged violation of the provisions of Regulation 3(a),(b),(c),(d), 4(1) and 4(2)(a),(d),(e),(f),(k) & (r) of SEBI PFUTP Regulations; Regulation 10 of SEBI SAST Regulations, Regulation 7(1A) and 7(2) of SEBI SAST Regulations and Regulation 13(4) read with 13(5) of SEBI Insider Trading Regulations.

   b) SCN dated December 15, 2009 were issued to Noticees no. 2 and 3 above, under Rule 4 of Adjudicating Rules to show cause as to why an inquiry should not be held against them and penalty be not imposed under Sections 15H and 15HA of the SEBI Act for the alleged violation of the provisions of Regulation 3 (a),(b),(c),(d), 4 (1) and 4 (2) (a),(d),(e) of SEBI PFUTP Regulations and Regulation 10 of SEBI SAST Regulations

   c) SCN dated December 15, 2009 issued to Noticee no. 4 above, under Rule 4 of Adjudicating Rules to show cause as to why an inquiry should not be held against them and penalty be not imposed under Sections Sections 15A(b),15H and 15HA of the SEBI Act for the alleged violation of the provisions of Regulation 3(a),(b),(c),(d), 4 (1) and 4(2)(a),(d),(e) of SEBI PFUTP Regulations, Regulation 10 of SEBI SAST Regulations, Regulations 13(3) read with 13(5) of SEBI Insider Trading Regulations

   d) SCN dated December 15, 2009 issued to Noticee no. 5 above, under Rule 4 of Adjudicating Rules to show cause as to why an inquiry should not be held against him and penalty be not imposed under Sections Sections 15A(b),15H and 15HA of the SEBI Act for the alleged violation of the provisions of Regulation 3(a),(b),(c),(d), 4 (1) and 4(2)(a),(d),(e) of SEBI PFUTP Regulations, Regulation 10 of SEBI SAST Regulations, Regulations 13(1), (3) read with 13(5) of SEBI Insider Trading Regulations and Regulation 7(1) and 7(2) of SEBI SAST Regulations

7. The allegations against the Noticees were that they had issued misleading corporate announcements on November 1, 2003, December 22, 2003 and January 16, 2004 and disclosures regarding acquisition of business of Poonam Industries, preferential/ right issue, which did not materialize and which lured investors, leading to creation of artificial volumes. Further, Noticees transferred shares before the misleading announcement to various entities who thereafter sold shares through market and off-market transfers. Noticees also did not make the public announcements when the threshold limit under SAST

Regulations was crossed during the course of their acquisition of shares in the month of October, 2003. Further, Noticees mentioned at 1, 4 and 5 also did not file disclosures as required under Insider Trading Regulations and Noticee no.1 and 5 did not file disclosures as required under SAST Regulations.

8. The Noticee no. 1, vide his letter dated October 21, 2009 and the other Noticees, vide their letters dated January 18, 2010, submitted replies to the SCN. I find that the replies submitted by the Noticees are similar. It has been submitted, inter-alia, that:
   a) Noticee no. 1 had ceased to be a member of the Board of Directors as on October 09, 2003.
   b) All the Noticees had sold their holdings in Gujarat Arth Ltd. in October 2003. Hence, they were unaware and had no knowledge regarding any corporate announcements made after it.
   c) All required disclosures had been furnished.
   d) In relation to allegations against Noticees 4 and 5 regarding disclosures under Regulation 13(1), 13(3) and 13(5) of Insider Trading Regulations, it was submitted that the disclosure under Regulation 13(3) of Insider Trading Regulations had been made to the company on October 11, 2003 and the disclosure under Regulation 13(1) of Insider Trading Regulations. Disclosure under Regulation 7(1) of SAST Regulations was not applicable for Noticee no. 5 as the shares were not acquired.
   e) In relation to the allegations against Noticee no. 1 regarding disclosures under Regulation 13(4) and Regulation 13(5) of Insider Trading Regulations, it was submitted that the Regulation 13(4) of Insider Trading Regulation did not apply to him as he ceased to be the Director of the Company from October 09, 2003. However as a precautionary measure, he had made a disclosure to the company on October 11, 2003 for the same under Regulation 13(3). He had once again made a disclosure on June 13, 2008 regarding Regulation 7(1A) of SAST Regulations since he was unable to trace the original disclosure previously made. Even the non compliance or late compliance of Regulation 7(1A) was not intentional.
   f) They had sold the shares of GAL to Cavalier Securities Ltd. However, they were informed later that some of the shares were erroneously credited to wrong accounts and the same needed to be rectified. Therefore, the wrongly credited shares were credited back into their account on October 21, 2003 which were given credit into the rightful accounts as per the instructions of Cavalier Securities Ltd. on October 23, 2003. There was neither an agreement to acquire the shares nor was it their intent to acquire the shares, it was only a rectification to entries and no consideration was either received or paid for the said transactions. Therefore, procedure under Regulation 10 of SAST Regulations did not need to be followed, as it was merely a correction of wrongly credited shares and no shares of GAL were acquired by them.
   g) The shareholding of the promoters and PACs for the quarters ending September 2003 and December 2003 was the same. (25,25,995 shares i.e.

48.58%) as per BSE website. They were not connected with the operations of the company and they had no control over the day to day affairs of the company. However, they were not holding any shares in GAL after October 2003.

h) They were not aware of advertisement on November 07, 2003 stating that the company had acquired the business and undertaking of Poonam Industries Ltd. w.e.f. July 01, 2003. The said advertisement appeared after divestment of their entire promoter holding. They were not aware of the deal. They were not involved in the deal with Poonam Industries Ltd.

9. The undersigned granted an opportunity of personal hearing to the Noticees on various dates, which was changed to April 09, 2010 as per their request. The hearing was attended by the representative of the Noticees where the submissions made in the written reply were reiterated and no documentary proof to substantiate the replies of the Noticees were given. Noticees vide letter of their representative dated April 21, 2010 submitted further documents as under:
   a. Copies of intimation to GAL about resignation from directorship
   b. Copies of disclosure made by Noticee no. 1 under Reg. 7(1A)
   c. Copy of certificate on change of name of Singhal overseas Ltd. to Roselabs Ltd.
   d. Copy of DP statements
   e. Copies of bank statements
   f. Confirmation that the Noticees are proposing to apply under consent proceedings.

10. I note that the Noticees did not apply for consent subsequently. Thereafter, adjudication order dated December 19, 2014 was passed against the Noticees.

11. Pursuant to the order dated March 16, 2016 of the Hon'ble SAT for passing fresh order on merits and in accordance with law, the Noticees were provided with an opportunity for submitting additional replies and an opportunity of personal hearing on January 22, 2018. However, the Noticees did not attend the said hearing and requested for another opportunity of personal hearing. Therefore, another opportunity was granted to the Noticees on January 29, 2018 and January 30, 2018. The authorised representative of the Noticees, vide letter dated January 24, 2018, requested for certain documents. Accordingly, an opportunity of inspection of documents was granted on March 1, 2018 by the concerned department and authorized representative of the Noticees appeared for the inspection of documents. The Noticees, vide letter dated March 3, 2018, requested for additional documents, which was provided by the concerned department vide letters dated April 12, 2018. The Noticees, vide letters dated April 23, 2018 and May 04, 2018 sought extension of time to submit reply and requested for an opportunity of personal hearing. Accordingly, an opportunity of personal hearing was granted to the Noticees on June 05, 2018. Vide letters, separate letters dated June 02, 2018, replies were received

from the Noticees. Since the replies were received just one day prior to the personal hearing, another opportunity of personal hearing was granted on June 21, 2018. Vide email dated June 14, 2018, the authorised representative of the Noticees requested for postponement of the personal hearing granted on June 27, 2018 to first week of July 2018. Accordingly, another opportunity of personal hearing was granted on July 03, 2018. The authorised representative of the Noticees attended the said hearing. While Noticee no. 1 made further submissions, vide letter dated July 16, 2018 (received in SEBI on July 19, 2018), other Noticees replied vide letters, all dated July 30, 2018 (received in SEBI on August 30, 2018). Their submissions are considered appropriately in the subsequent paras. It is noted that the contents of their replies are similar.

Consideration of Issues, Evidence and Findings

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

Issue 1

a) Whether the Noticee at 1 above violated Regulations 3 (a), (b), (c), (d), 4(1) and 4(2) (a), (d), (e), (f), (k), (r) of SEBI (PFUTP) Regulations; Regulation 10 of SAST Regulations; Regulation 7(1A) and 7(2) of SAST Regulations and Regulation 13(4) read with 13(5) of Insider Trading Regulations
b) Whether the Noticees at 2 and 3 above violated Regulations 3 (a),(b),(c), (d), 4(1) and 4(2)(a),(d) and (e) of SEBI (PFUTP) Regulations and Regulation 10 of SEBI SAST Regulations.
c) Whether the Noticee at 4 above has violated Regulations 3 (a),(b),(c),(d), 4(1) and 4(2) (a),(d) and (e) of SEBI (PFUTP) Regulations, Regulation 10 of SEBI SAST Regulations and Regulation 13(3) read with 13(5) of SEBI Insider Trading Regulations.
d) Whether the Noticee at 5 above violated Regulations 3 (a),(b),(c),(d), 4(1) and 4(2)(a),(d) and (e) of SEBI (PFUTP) Regulations, Regulation 10 of SEBI SAST Regulations, Regulation 13(1), (3) read with 13(5) of SEBI Insider Trading Regulations and Regulation 7(1) read with 7(2) of SEBI SAST Regulations.

Before proceeding, I would like to refer to the relevant provisions of the PFUTP, SAST Regulations and Insider Trading Regulations which reads as under:

PFUTP Regulations

Regulation 3 - Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner
(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;
(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

Reg. 4 - Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

4(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—
(a) Indulging in an act which creates false or misleading appearance of trading in the securities market;
(d) paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money's worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;
(e) any act or omission amounting to manipulation of the price of a security;
(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;
(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;
(r) planting false or misleading news which may induce sale or purchase of securities.

SAST Regulations

Reg.10 - Acquisition of fifteen per cent or more of the shares or voting rights of any company
No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise [fifteen] per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.

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

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

Regulation 7(1A)- *Any acquirer who has acquired shares or voting rights of a company under sub-regulation(1) of regulation 11, shall disclose purchase or sale aggregating two percent. or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.*

Regulation 7(2)

The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

Insider Trading Regulations

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

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

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

Regulation 13(4)*- Any person who is a director or officer 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 and his dependents (as defined by the company) from the last disclosure made under sub regulation (2) or under this sub-regulation, and the change exceeds ₹5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

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

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

Alleged Violations of FUTP Regulations

13. I observe from the investigation report that as per the BSE website, for the quarter ended September 30, 2003, the Noticees along with Roselabs Finance Ltd., Sadiram Industries Ltd. (merged into Roselabs Industries Ltd.) and Roselabs Ltd. were stated to be promoters and Persons Acting in Concert (PACs). The shareholding details indicated that as on quarter ending September 2003 and December 2003, the promoters were holding 11,14,700 shares (21.44%) and PACs were holding 14,11,295 shares (27.14%) thus together holding 25,25,995 shares (48.58%) as on September 2003 and December 2003.

14. Further, prior to the investigation period, the scrip of GAL was traded irregularly and from August 01, 2003 to October 06, 2003, the scrip was traded on only 3 days with one trade on each day @₹8.05. It started trading actively from October 2003 and major volume was observed on January 16, 2004 which was for 8,04,675 shares. Thereafter, the price and volume started declining and the scrip closed at ₹4.63 in February 2004, ₹1.62 in March 2004 and was last traded on BSE on December 20, 2004 at ₹1.25.

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

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

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

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

17. GAL declared the results for quarter ended September 2003 on November 7, 2003 and following observations were made:-
    a) The sales of GAL were ₹2351.68 lakhs and net profit of ₹237.19 lakhs as against total sales of ₹15 lakhs and net loss of ₹0.44 lakhs for the quarter ended September 30, 2002.
    b) In the notes below the results of September 2003, the company announced that by an agreement dated October 25, 2003 it acquired w.e.f. 1st July, 2003 the business and undertaking of Poonam Industries Ltd. alongwith trademark 'Poonam Sarees" having annual turnover of about ₹100 crores.

18. GAL declared the results for quarter ended December 2003 on January 14, 2004 and it is observed from the same that:-
    a) The sales of GAL were ₹2615.33 lakhs and net profit of ₹259.29 lakhs as against sales of ₹0.15 lakh and net profit of ₹0.43 lakh for the quarter ended December 2002.
    b) The Board of Directors recommended a dividend of 40% along with the results.

19. I further find from the investigation report that GAL terminated its arrangement with Poonam Industries for using the brand name Poonam Sarees and GAL withheld the payment of royalty amount. GAL also submitted that there was no preferential allotment, buy back or any development regarding equity capital for the year 2002-03 and 2003-04. Further, in replies to the various summons/ letters issued to Noticee no. 1, he had stated that till the time he was in charge of the company, no negotiations were held with Poonam Industries.

20. I further find from the documents submitted to the office of the Registrar of Company Affairs, which was submitted by the Noticees vide their representative letter dated April 21, 2010 that although the Noticee no. 2 had resigned as Director of the company w.e.f. October 1, 2003 but Noticee no. 1 and continued as Director of the company till June 11, 2004. Further the other Noticees were Promoters and Persons Acting in Concert as per the disclosure made to the stock exchange.

21. I find that the Noticees transferred 11,82,880 shares of GAL on October 11, 2003 to various entities including Cavalier Securities and Basant Malpani. Thereafter, on October 21, 2003, the Noticees received back 5,75,600 shares from the entities other than Cavalier Securities and Basant Malpani. Again the Noticees transferred the said 5,75,600 shares on October 23, 2003 to Cavalier

Securities. Out of the total 11,82,880 shares of GAL transferred by the Noticees, 8,85,680 shares were transferred to Cavalier Securities and 2,97,200 shares to Basant Malpani.

22. Details of such transfer as follows:

Name	No. of shares held	Transfers (to)/ receipt (from)	Date	Quantity (no. of shares)
Shivkumar Agarwal	2,10,080	To Cavalier Securities	11/10/2003	2,10,080
Madhudevi Agarwal	2,49,000	To Rahul C Shah	11/10/2003	1,00,000
		To Rahul C Shah	11/10/2003	1,00,000
		To Rahul C Shah	11/10/2003	49,000
		From Rahul C Shah	21/10/2003	2,49,000
		To Cavalier Securities	23/10/2003	2,49,000
Singhal Overeas Ltd.	2,97,200	To Basant Malpani	11/10/2003	2,97,200
Pawankumar Agarwal	2,74,600	To MohanbhaiKantilal Shah	11/10/2003	1,00,000
		To Ramanbhailalbhai Chawdhary	11/10/2003	1,74,600
		From Mohanbhai Kantilal Shah	21/10/2003	1,00,000
		From Ramanbhailalbhai Chawdhary	21/10/2003	1,74,600
		To Cavalier Securities Ltd.	23/10/2003	2,74,600
Rosydevi Agarwal	1,52,000	To Cavalier Securities Ltd.	11/10/2003	1,00,000
		To Jeevansingh Ratansingh Rathore	11/10/2003	52,000
		From Jeevansingh Ratansingh Rathore	21/10/2003	52,000
		To Cavalier Securities Ltd.	23/10/2003	52,000

23. Thus, the Noticees transferred shares before the misleading announcement, to various entities, who thereafter sold shares through market and off-market transfers. In reply to the above allegations, Noticees have submitted that shares were transferred erroneously from their accounts. However, it is observed that the shares were transferred from and received back in the accounts of all the Noticees except Noticee no. 1. It is highly unlikely that the shares were transferred from and received back in the accounts of all the noticees erroneously. Further, the Noticees have not produced any evidence in support of their contention regarding erroneous transfer of securities.

24. Notice no. 1, Shri Shiv Kumar Agarwal, claimed that he resigned from the company on October 9, 2003 and therefore, he should not be held responsible for the alleged corporate announcements and results for the quarter ended September 2003 and December 2003. However, I find that as per the MCA filing, Shri Shiv Kumar Agarwal resigned from the directorship of the company w.e.f. June 11, 2004. Further, as per the Annual Report 2003 of GAL dated January 14, 2004, Shri Shiv Kumar Agarwal was shown as the MD. In the said Annual Report, the resignations of 2 directors i.e. Ms. Madhudevi Agarwal and

Shri Muralidhar Minda as well as appointments of 4 new directors have been mentioned. Further, in the said Annual Report, under the head Composition of Board, Shri Shiv Kumar Agarwal is shown as an Independent and Executive Director, who attended "8" out of "10" Board meetings during the year. Therefore, the submission of Noticee no. 1 that he resigned from the company on October 9, 2003 and that he should not be held responsible for the alleged corporate announcements and results for the quarter ended September 2003 and December 2003 is without any merit.

25. Further, the Noticees submitted that since they were in need of funds and since they got a buyer, Cavalier Securities, they sold their shares. I find that there was no agreement for the sale of shares, which was claimed to be at a price of ₹10 per share. Further the Noticees have submitted that they received the payment in the year 2006 and 2007 after a lot of follow up. Though the reasons mentioned for sale of shares of GAL was the need of funds, as per their own submission the funds were admittedly received after a period of 3-4 years. Further, there was no agreement regarding sale of the entire holding of the Noticees. Subsequent to the transfer of shares by the Noticees to Cavalier Securities and others, there were several positive corporate announcements by the company, which did not materialize and lured the investors as alleged in the SCN.

26. I find that Cavalier Securities Ltd. received 8,85,680 shares (23.89% of the paid up capital) from promoters/PACs on October 11, 2003 and 8,49,000 (16.32%) from other shareholders on October 23, 2003 through off market transactions and transferred 5,29,090 shares to Kaustubh Credit & Holdings Pvt. Ltd. on October 20, 2003, transferred 5,00,000 shares to Shivram Motilal Meena on October 23, 2003. Cavalier also started trading after the announcement of un-audited results by the company on January 14, 2004. It traded from January 15, 2004, bought 1,11,633 shares (1.37% of the trading volume) and sold 6,10,246 shares (7.51% of the trading volume). It sold 4,98,613 shares (6.14% of the trading volume) on net basis. It further sold 5,32,190 shares from January 15, 2004 to January 19, 2004, constituting 29.39% of the sale volume.

27. The said acts of the Noticees, i.e. transfer of their holding to Cavalier Securities without any agreement, subsequent misleading positive corporate announcements such as acquisition of business of Poonam Industries and preferential/right issue by the company, luring the investors and off-loading of shares of GAL by Cavalier and other entities, and receipt of funds from Cavalier Securities after a period of 3-4 years from the transfer of shares goes on to indicate that it was part of the scheme meant to lure the innocent investors and enable to the Noticees to offload the shares.

28. Thus, the Noticees of GAL were instrumental in issuing misleading corporate announcements on November 1, 2003, December 22, 2003 and January 16, 2004 and disclosures regarding acquisition of business of Poonam Industries,

preferential/ right issue, which did not materialize and which lured investors, leading to creation of artificial volumes.

29. In view of foregoing, I find that the submissions of the Noticees are not tenable and consequently, hold that the charges levelled against the Noticees are proved and that:
    a) the Noticee at 1 above has violated Regulations 3 (a), (b), (c), (d), 4(1) and 4(2) (a), (d), (e), (f), (k), (r) of SEBI (PFUTP) Regulations;
    b) the Noticees at 2 to 5 above has violated Regulations 3 (a), (b), (c), (d), 4(1) and 4(2) (a), (d) and (e) of SEBI (PFUTP) Regulations;

Alleged violation of SAST Regulations and Insider Trading Regulations

30. Promoters and PACs i.e. noticees transferred 22,76,975 shares (43.79%) on October 11, 2003 in off market deals to other entities, shareholding of Promoters and PACs in GAL reduced to 2,49,000 shares (4.79%). On October 20 and 21, 2003, Promoters and PACs, including the Noticees, acquired 15,69,695 shares and shareholding became 18,18,695 shares (35%) and crossed the threshold limit of 15% mentioned in the SAST Regulations. As per Regulation 10 of the SAST Regulations, a public announcement has to be made by the acquirer on the acquisition of shares beyond 15% of the equity capital of the company. It is alleged that the Noticees and other promoters/ PACs did not make any public announcement and alleged to have violated provisions of Regulation 10 of SAST Regulations. The Noticees, in reply to this allegation, submitted that the shares were transferred erroneously and each of the acquisitions by the Noticees, if at all can be called as acquisition was on standalone basis and nothing to do with other promoters/ PACs. Their earlier status as PACs came to an end once they decided to sell shares of GAL.

31. However, it is observed that the shares GAL were transferred from and received back in the accounts of all the Noticees except Noticee no. 1. It is highly unlikely that the shares were transferred from and received back in the accounts of all the notices erroneously. The plea of the Noticees that they ceased to be PACs after the decision to sell shares of GAL is without merit and instead the acts of the Noticees showed common intent. The Noticees have not produced any evidence in support of their contention regarding erroneous transfer of securities.

32. In this regard, I rely The Hon'ble Supreme Court of India in the matter of Nirma Industries Limited and another vs. SEBI (Civil Appeal no. 6082 of 2008) vide Order dated May 09, 2013, *inter alia* made the following observations :

"42. A conspectus of the aforesaid Regulations would show that the scheme of the Takeover Code is (a) to ensure that the target company is aware of the substantial acquisition ; (b) to ensure that in the process of the substantial acquisition or takeover, the security market is not distorted or manipulated and (c) to ensure that the small investors are given an option to exit, that is, they are offered a choice to either offload

their shares at a price as determined in accordance with the takeover code or to continue as shareholders under the new dispensation. In other words, the takeover code is meant to ensure fair and equal treatment of all shareholders in relation to substantial acquisition of shares and takeovers and that the process does not take place in a clandestine manner without protecting the interest of the shareholders.....

57. We are not inclined to accept the aforesaid submission. In the aforesaid judgment in Sahara India Real Estate Corporation Limited (supra) this Court observed as under: From a collective perusal of Sections 11, 11A, 11B and 11C of the SEBI Act, the conclusions drawn by the SAT, that on the subject of regulating the securities market and protecting interest of investors in securities, the SEBI Act is a stand alone enactment, and the SEBIs powers thereunder are not fettered by any other law including the Companies Act, is fully justified.

58. These observations have been made by this Court to emphasise that SEBI has all the powers to protect the interests of investors in securities and also to ensure orderly, regulated, and transparent functioning of the stock markets. The aforesaid observations would be of no assistance to the appellants herein who is seeking to walk away from public offer merely to avoid economic loses. Rather we agree with the submission of Mr. Venugopal that permitting such a withdrawal would lead to encouragement of unscrupulous elements to speculate in the stock market. Encouraging such a practice of an offer being withdrawn which has become uneconomical would have a destabilizing effect in the securities market. This would be destructive of the purpose for which the Takeover Code was enacted.

.....

71. We are inclined to agree with the submission made by Mr. Venugopal that the appellants cannot be permitted to wriggle out of the obligation of a public offer under the Takeover Regulation. Permitting them to do so would deprive the ordinary shareholders of their valuable right to have an exit option under the aforesaid regulations. The SEBI Regulations are designed to ensure that public announcement is not made by way of speculation and to protect the interest of the other shareholders."

33. Further, the Hon'ble Securities Appellate Tribunal made the following observations in its Order dated September 08, 2011 in the matter of Nirvana Holdings Private Limited vs. SEBI (Appeal no. 31 of 2011). These observations would elucidate the importance of public offer to the shareholders of a target company:

"It must be remembered that whenever an acquirer violates Regulation 10, 11 or 12 of the takeover code by not making a public announcement, he should be directed to comply with the provision by making a public offer. The words "unless such acquirer makes a public announcement" appearing in Regulations 10 and 11(1) make these provisions mandatory and a public announcement has to be made. Similar words appear in Regulation 12 as well. These provisions make the acquisition conditional upon a public announcement being made. The primary object of the takeover code is to provide an exit route to the public shareholders when there is substantial acquisition of shares or a takeover. This right to exit is an invaluable right and the shareholders cannot be deprived of this right lightly. It is only when larger interest of investor protection or that of the securities market demands that this right could be taken away. Therefore, as a normal rule, a direction to make a public announcement to acquire

shares of the target company should issue to an acquirer who fails to do that. The Board need not give reasons as to why such a direction is being issued because that is the mandate of Regulations 10, 11 and 12. However, if the issuance of such a direction is not in the interest of the securities market or for the protection of interest of investors, the Board may deviate from the normal rule and issue any other direction as envisaged in Regulation 44 of the takeover code. In that event, the Board should record reasons for deviation."

34. I find that the Noticees, along with other promoters/ PACs, transferred shares in off market and received back shares which triggered more than 15% of the paid up capital of the company before transferring again their entire holding in off market transaction. But no public announcement was made as per the provision of SEBI SAST Regulations.

35. Further, the Hon'ble Supreme Court has observed that the takeover code is meant to ensure fair and equal treatment of all shareholders in relation to substantial acquisition of shares and takeovers and that the process does not take place in a clandestine manner without protecting the interest of the shareholders. From the forgoing I find that the exemption from giving an open offer can be in cases where the issuance of such a direction is not in the interest of the securities market or for the protection of interest of investors.

36. In view of the foregoing, I find that the submissions of the Noticees are not tenable and consequently, hold that the charges levelled against the Noticees are proved and that the allegation of violation of provision of Regulation 10 of SEBI SAST Regulations stands established.

37. I further find that the Noticee at sl. no. 1 above did not file disclosures as per Regulation 13(4) read with Regulation 13(5) of SEBI Insider Trading Regulations and Regulation 7(1A) of SAST Regulations. Though the Noticee submitted that the Regulation 13(4) of Insider Trading Regulation did not apply to him as he ceased to be the Director of the Company from October 09, 2003, I find that the same is without any merit as mentioned at para 24 above. The Noticee has submitted that as a precautionary measure, he had made a disclosure to the company on October 11, 2003 for the same under Regulation 13(3). I find that no documentary evidence has been submitted in support of their submission that the disclosures were made in October 2003. He also submitted that he made a disclosure on June 13, 2008 regarding Regulation 7(1A) of SAST Regulations since he was unable to trace the original disclosure previously made. He further submitted that no penalty can be imposed against him for non-disclosure Regulation 7(1A) since the disclosure obligation under Regulation 7(1A) has to be discharged under Regulation 7(2) which does not contemplate any obligation to disclose sell of shares. However, I find that Regulation 7(1A) itself casts the obligation for disclosure of purchase or sale of shares aggregating two per cent or more within 2 days, which is reproduced as below:

"Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, 1 [or under second proviso to sub-regulation (2) of regulation 11] shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale."

Therefore, I find that the Noticee no. 1 failed to make disclosures under Regulation 7(1A) of SAST Regulations.

38. I further find that though Noticees at sl. no.4 & 5 claimed that the disclosures under Regulation 13(3) of the Insider Regulations have been made to the Company on October 11, 2003. However, no documentary evidence has been submitted in support of their submission. Thus, I find that they did not file disclosures as per Regulation 13(3) & (5) of SEBI Insider Trading Regulations. Noticee no.4. Further Noticee no. 5 did not file required disclosures under Regulation 7(1) and 7(2) of SAST Regulations. Though he submitted that disclosure under Regulation 7(1) of SAST Regulations was not applicable for him as the shares were not acquired, I find no merit in the argument as the shares were indeed acquired by him. Thus, I find that Noticee no. 5 did not file disclosures Regulation 7(1) and 7(2) of SAST Regulations.

ISSUE 2

a) Whether Noticees at 1 to 5 are liable for monetary penalty prescribed under Section 15H and 15HA of the SEBI Act for the aforesaid violation?
b) Whether Noticees at 1, 4 and 5 are liable for monetary penalty prescribed under Section 15 A (b) of the SEBI Act for the aforesaid violation?

39. The next issue for consideration is as to what would be the monetary penalty that can be imposed on the Noticees for violation of aforesaid Regulations. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund[2006] 68 SCL 216(SC) held that "once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow".

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

Penalty for non-disclosure of acquisition of shares and take-overs

15H*. If any person, who is required under this Act or any rules or regulations made thereunder, fails to—*

(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or
(ii) make a public announcement to acquire shares at a minimum price; or
(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or
(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

Penalty for fraudulent and unfair trade practices

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

Penalty for failure to furnish information, return, etc.

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

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

    Factors to be taken into account by the adjudicating officer

    15 J. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

    (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

    (b) the amount of loss caused to an investor or group of investors as a result of the default;

    (c) the repetitive nature of the default.

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

43. With regard to the submission of the Noticees regarding being not aware of the disclosure requirement under SAST Regulations and Insider Regulations, I make reliance on order of the Hon'ble Supreme Court of India *in the matter of*

SEBI Vs. Shri Ram Mutual Fund, where the Hon'ble Court has held that once the violation of statutory regulations is established, imposition of penalty becomes since qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.

44. I find that the Hon'ble SAT while remanding the instant matter to the undersigned has noted the following:

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

45. I also note that in the matter of SEBI Vs. Rakhi TradingPrivate Limited (Civil Appeal Nos 3174-3177 of 2011), the Hon'ble Supreme Court observed that

"...Proof of manipulation might depend upon inferences drawn from factual details. Such inferences could be gathered from pattern of trading data and the nature of the transactions etc. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors.

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

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

test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."

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

47. The acts of the Noticees, i.e. transfer of their holding to Cavalier Securities without any agreement, subsequent misleading positive corporate announcements by the company and off-loading of shares of GAL by Cavalier and other entities, and receipt of funds from Cavalier Securities after a period of 3-4 years from the transfer of shares goes on to indicate that it was part of the scheme meant to lure the innocent investors and enable to the Noticees to offload the shares.

48. Thus, the Noticees of GAL were instrumental in issuing misleading corporate announcements on November 1, 2003, December 22, 2003 and January 16, 2004 and financial results regarding acquisition of business of Poonam Industries, preferential/ right issue, which did not materialize and which lured investors, leading to creation of artificial volumes. Further, the Noticees, along with other promoters/ PACs transferred shares in off-market and received back shares which triggered more than 15% of the paid up capital of the company before transferring again their entire holding in off market transaction. But no public announcement was made as per the provision of SEBI SAST Regulations. The Noticees No. 1, 4 and 5 failed to make the required disclosures and SEBI (PIT) Regulations and Noticee no.1 and 5 under SEBI (SAST) Regulations.

49. Due to the reasons mentioned above, I am of the view that there is no case for change in the penalty imposed on the Noticees vide order dated vide order dated December 19, 2014 for violation of SEBI (PFUTP) regulations, SAST Regulations and Insider Trading regulations.

ORDER

50. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15-I (2) of the SEBI Act, 1992, I hereby impose the following monetary penalties:
    i. ₹2,53,72,500/- (Rupees Two Crores Fifty Three Lacs Seventy Two Thousand and Five Hundred Only) each on Noticees at 1 to 5 under section 15H and 15HA
    ii. ₹7,73,500/- (Rupees Seven Lacs Seventy Three Thousand and Five Hundred Only) on Noticee 1, under section 15A(b) of the SEBI Act

iii. ₹12,38,875/- (Rupees Twelve Lacs Thirty Eight Thousand Eight Hundred and Seventy Five Only) on Noticee at 4 under section 15A(b) of the SEBI Act

iv. ₹15,01,313/- (Rupees Fifteen Lacs One Thousand Three Hundred and Thirteen Only) on Noticee at 5 under section 15A(b) of the SEBI Act.

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

51. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

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

52. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The Format for forwarding details/ confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under:
    - Case Name :
    - Name of Payee:
    - Date of payment:
    - Amount Paid:
    - Transaction No:
    - Bank Details in which payment is made:
    - Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)

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

Date: January 28, 2019 **ASHA SHETTY**
Place: Mumbai **ADJUDICATING OFFICER**