

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO- 85-89 /2015]

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

In respect of

Shri Arun Goyal (PAN: ACKPG1931G), **Shri Vishal Kumar Shah** (PAN: AYBPS0534J), **M/s. GFL Financials India Limited** (PAN: AABCG0597Q), **Shri Vimalkumar Sureshchandra Raval** (PAN: ANIPR5608Q), **Shri Naresh N. Shah** (PAN: ARYPS5993F)

In the matter of

M/s. GFL Financials India Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed that Shri Arun Goyal, promoter of M/s. GFL Financials India Ltd. (hereinafter referred to as '**GFL**'/ '**the company**') had sold/ transferred shares of the company during the quarter ended September 30, 2011. It was observed that Shri Arun Goyal had transferred in off market 5,000 shares and 10,000 shares on August 31, 2011 to Shri Sandarsh Goyal and Ms. Radha Goyal respectively (non-promoter entities). Based on closing price of Rs. 108/- of GFL on Bombay Stock Exchange Ltd. (hereinafter referred to as '**BSE**') on August 30, 2011, it was observed that the change in shareholding of Shri Arun Goyal from the last disclosure had exceeded Rs. 5 lakhs in value twice on August 31, 2011 (once on sale of 5,000 shares and again on sale of 10,000 shares). Thus, Shri Arun Goyal was under an obligation to make disclosure to the Company and the Stock Exchanges, where the shares were listed, regarding the above change in his promoter shareholding within two working days as per Regulation 13(4A) read with 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**').

2. In order to confirm whether Shri Arun Goyal had made the relevant disclosure to the Company and the Stock Exchanges under Regulation 13(4A) read with 13(5) of the PIT Regulations, summons dated February 07, 2014 were issued to him. Since no reply was received, another summons dated February 13, 2014 was issued to him. Though the aforesaid two summons were delivered to Shri Arun Goyal, he did not respond to the same. Further, in order to inquire *inter alia* about the disclosures, the company was summoned to submit the required information vide summons dated November 20, 2013 which was delivered on November 22, 2013. Another summons dated January 01, 2014 was delivered on January 06, 2014. However, no reply was received from the company as well.
3. Thus, it was alleged that Shri Arun Goyal has violated Regulation 13(4A) read with 13(5) of SEBI (PIT) Regulation, 1992 on two occasions. Further, Shri Arun Goyal failed to submit the requisite information as sought from him vide summons dated February 07, 2014 and reminder dated February 13, 2014, and thus, was also alleged to have violated Section 11C(2) & (3) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'). Further, for its failure to submit requisite information sought vide summons dated November 20, 2013 and January 01, 2014, GFL and its directors Shri Naresh N. Shah, Shri Vishal Kumar Shah and Shri Vimalkumar S. Raval were alleged to have violated section 11C(2) & (3) of SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer vide Order dated March 26, 2014 to inquire into and adjudge under Section 15A(a) and/ or Section 15A(b) of the SEBI Act 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 the alleged violation of SEBI Act and/ or PIT Regulations committed by Shri Arun Goyal, GFL, and its directors Shri Naresh N. Shah, Shri Vishal Kumar Shah and Shri Vimalkumar S. Raval (hereinafter collectively referred to as the '**Noticees**')

SHOW CAUSE NOTICE, HEARING AND REPLY

5. Vide Show Cause Notice no EAD6/AK/VG/20431/2014/1-5 dated July 14, 2014 (hereinafter referred to as '**SCN**') issued under Rule 4 of the Rules, the Noticees were advised to show cause as to why an inquiry should not be held against them and penalty not be imposed under Section 15A(a) and/ or Section 15A(b) of the SEBI Act, as applicable, for the alleged violations specified in the SCN. It was alleged in the SCN that the Noticees failed to submit the requisite information in spite of repeated summons. Further, Shri Arun Goyal was alleged to have failed to file necessary disclosures under Regulation 13(4A) read with 13(5) of PIT Regulations on two occasions.
6. Shri Arun Goyal replied to the SCN vide letter dated August 05, 2014 stating that he had already submitted his reply on February 25, 2014 to the Investigation Department of SEBI. The reply further stated that if court gives direction, he will re-submit all the documents before the Adjudicating Officer. Shri Arun Goyal further *inter alia* also submitted that to the best of his knowledge, he had never violated any rule of SEBI/ BSE. Thereafter, vide hearing notice dated December 11, 2014, Shri Arun Goyal was granted an opportunity of personal hearing on January 12, 2015 and the hearing notice was delivered to Shri Arun Goyal by Registered Post Acknowledgment Due (hereinafter referred to as '**RPAD**'). With respect to Shri Vishal Kumar Shah, GFL and Shri Vimalkumar S Raval, no acknowledgment (AD card) was received in respect of the delivery of SCN. Further, with respect to Shri Naresh N Shah, the SCN was returned undelivered from both his last known addresses viz. IV-18, The Rajasthan Society and Haji Bapu Road, Malad (East), Mumbai – 400 097 and 101, Manoj Palace, Chakradhar Nagar, Nalasopara (West), Mumbai – 401203. Hence, along with the hearing notice dated December 11, 2014 granting an opportunity of personal hearing on January 12, 2015, the SCNs were resent to the aforementioned Noticees. The SCN and hearing notice of Shri Vishal Kumar Shah, Shri Naresh Shah and GFL were affixed at their last known address and the SCN and Hearing Notice of Shri Vimalkumar S Raval was delivered to him by hand. However, none of the Noticees appeared for the hearing on the scheduled date. Thereafter, since SCN and hearing notices could be delivered at the addresses of Shri Vimalkumar S. Raval and Shri Arun Goyal, another opportunity for personal hearing was granted to them on March 4, 2015 vide hearing notice dated February 10, 2015. The hearing

Notices were delivered to both Shri Vimalkumar S Raval and Shri Arun Goyal by RPAD as well as by Speed Post Acknowledgment Due (hereinafter referred to as '**SPAD**'). However, once again neither of the two Noticees appeared for the hearing. In view of the same, I am compelled to proceed in the matter against GFL and its directors viz. Shri Naresh N Shah, Shri Vishal Kumar Shah and Shri Vimalkumar S Raval *ex parte*.

7. Further, since vide letter dated August 5, 2014 Noticee Shri Arun Goyal had stated that he had submitted a reply dated February 25, 2014 to the Investigation department of SEBI, letter dated March 13, 2015 was issued to him, advising him to send a copy of the above stated reply dated February 25, 2015 at the earliest. The Noticee Shri Arun Goyal was also granted another opportunity for personal hearing on April 23, 2015 vide the said notice. However, despite delivery of the notice to Shri Arun Goyal by RPAD, he neither appeared for the hearing, nor submitted a copy of his purported reply dated February 25, 2014.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully examined the SCN, the reply/ submissions of the Noticee Shri Arun Goyal and the documents available on record. The issues that arise for consideration in the present case are :
 - a. Whether Shri Arun Goyal violated Regulation 13(4A) read with 13(5) of PIT Regulations on two occasions?
 - b. Whether Shri Arun Goyal failed to submit the requisite information as sought from him vide summons dated February 07, 2014 and reminder dated February 13, 2014, and thus violated Section 11C(2) & (3) of SEBI Act?
 - c. Whether GFL and its directors Shri Naresh N. Shah, Shri Vishal Kumar Shah, Shri Vimalkumar S. Raval failed to submit requisite information sought vide summons dated November 20, 2013 and January 01, 2014 and thus violated section 11C(2) & (3) of SEBI Act?
 - d. Does the violation, if any, on the part of the Noticees attract monetary penalty under Sections 15 A (a) and/ or 15A(b) of the SEBI Act, as applicable?
 - e. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

9. Before moving forward, it will be appropriate to refer to the relevant Sections of the SEBI Act, which read as under:

SEBI Act, 1992

Investigation.

11C. (2) *Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.*

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

SEBI (Prohibition of Insider Trading) Regulations, 1992

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

13...

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

(5) The disclosure mentioned in sub-regulations 5(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.

10. The first issue for consideration is whether Shri Arun Goyal was required to make disclosure under Regulation 13(4A) read with 13(5) of PIT Regulations and whether he failed to make such disclosure. I note from BSE website that as at quarter ended June 2011, Shri Arun Goyal was the promoter of GFL holding 1,25,800 shares (4.19%). It was observed that Shri Arun Goyal sold/ transferred shares during the quarter ended September 30, 2011. Details of the sale/ transfers are as follows:

Date	Seller Folio	Name	Buyer Folio	Name	No. of Shares	Type
31.08.11	000001	Arun Goyal	S00018	Sandarsh Goyal	5,000	Off-Mkt Transfer
31.08.11	000001	Arun Goyal	000004	Radha Goyal	10,000	Off-Mkt Transfer

11. Thus, as observed from the table above, Shri Arun Goyal transferred in off market 5,000 shares and 10,000 shares on August 31, 2011 to Shri Sandarsh Goyal and Ms. Radha Goyal respectively (non-promoter entities). Based on closing price of Rs. 108/- of GFL on BSE on August 30, 2011, it was observed that the change in shareholding of Shri Arun Goyal from the last disclosure had exceeded Rs. 5 lakhs in value. Regulation 13(4A) of PIT Regulations mandates that any person who is a promoter or part of promoter group of a listed company, must disclose to the company and the stock exchange where the securities of the company are listed, the change in shareholding or voting rights held by him, if the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower. From the table above, I note that the transfers made by Noticee Shri Arun Goyal were of value exceeding Rs. 5 lakh each, hence he was required to make the necessary disclosures for both the transactions to the company and the stock exchange where the shares of the company were listed, within two working days under Regulations 13(4A) read with 13(5) of the PIT Regulations. However, no such disclosures were made by Noticee Shri Arun Goyal. The same was also confirmed by BSE vide their email dated November 20, 2013. **Thus, it is established without doubt that the promoter Shri Arun Goyal had violated the provisions of Regulations 13(4A) read with 13(5) of the PIT Regulations.**

12. The next issue for consideration is the alleged non compliance of summons by the Noticees, Shri Arun Goyal, GFL and its directors viz. Shri Naresh N. Shah, Shri Vishal Kumar Shah & Shri Vimalkumar S. Raval. I note from records that during investigation, the Investigating Authority (hereinafter referred to as '**IA**') had issued summons to the Noticee Shri Arun Goyal and the company GFL to provide certain information.
13. The Noticee Shri Arun Goyal vide summons dated February 07, 2014 and February 13, 2014 was *inter alia* advised to inform/ produce copies of disclosures made to the company and the stock Exchange under PIT Regulations/ SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as '**Takeover Regulations, 1997**') due to reduction of his shareholding.
14. The company GFL vide summons dated November 20, 2013 and January 01, 2014 was also *inter alia* advised to provide certain information/ documents.
 - a. Vide *summons dated November 20, 2013*, the company was advised to provide the following details:
 - i. Shareholding pattern for the quarters ending March 2011, June 2011 and September 2011 giving details of the shares held by the promoter and non promoter entities holding more than 1% of the share capital;
 - ii. Copies of audited Financial results for the financial years 2009-10, 2010-11 and 2011-12;
 - iii. Copies of disclosure made to the company as well as to the Stock Exchanges during March 01, 2011 to September 30, 2011 under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**Takeover Regulations, 2011**') or PIT Regulations;
 - iv. Transactions done by promoters, directors, persons acting in concert (PAC) and relatives of promoters, directors, PAC during March 2011 to September 2011.

b. Vide summons dated January 01, 2014, the company was advised to provide the following details:

- i. A copy of the Code of Conduct for Insider Trading in terms of the PIT Regulations adopted by the company along with the date when such code was implemented. A copy of the board notes/ minutes of the meeting where the internal code for Insider Trading was adopted;
- ii. Details of Officers/ directors/ designated employees (including their dependants) in terms of the PIT Regulations during the period April 28, 2011 to August 23, 2011;
- iii. Details of pre clearance, if any, sought by directors/ officers/ designated employees and permission granted for the same for the period April 28, 2011 to August 23, 2011.

15. The delivery status and status of compliance by the Noticee Shri Arun Goyal and company GFL vis-à-vis the summons issued as aforesaid is as follows:

Date of Summons	To	Mode of Delivery	Proof of delivery	Date by which information was to be submitted	Status of Compliance
February 07, 2014	Shri Arun Goyal	By Speed Post AD and Courier	"Item Delivered" as per SPAD tracking. Received and acknowledged by the Noticee	February 11, 2014	Failed to submit the information/ details sought
February 13, 2014	Shri Arun Goyal	By Speed Post AD and Courier	"Item Delivered" as per SPAD tracking. Received and acknowledged by the Noticee	February 19, 2014	Failed to submit the information/ details sought
November 20, 2013	GFL	By Speed Post AD	Received and acknowledged by the Noticee	November 25, 2013	Failed to submit the information/ details sought
January 01, 2014	GFL	By Speed Post AD	Received and acknowledged by the Noticee.	January 07, 2014	Failed to submit the information/ details sought

16. I note that Shri Arun Goyal and GFL had each duly acknowledged the receipt of both the summons respectively issued to each one of them as per details stated above. I find further that Shri Arun Goyal and GFL were also informed of consequential proceedings of Adjudication/ Prosecution under the SEBI Act which may follow as a result of non-compliance of the said summons. Thus, Shri Arun Goyal and GFL were under an obligation to provide the information as sought by IA.
17. I note that during investigation letter dated March 4, 2014 was received from GFL. The said letter referred to a separate summons issued by the IA to the director Shri Naresh Shah requiring the said director to submit certain details in respect of promoter Shri Arun Goyal. However, I find that GFL's letter dated March 04, 2014 was silent with respect to details sought by IA on two occasions from GFL itself, despite the fact that GFL had received both the summons dated November 20, 2013 and January 01, 2014 issued to it. Further vide the said letter dated March 04, 2014, GFL provided the shareholding of Shri Arun Goyal as of quarter ended December 2010 and March 2011 and disclosure made by Shri Arun Goyal under PIT regulations for a subsequent and different transaction dated November 30, 2011.
18. I note here that summons dated November 20, 2013 required that a particular set of information be submitted by November 25, 2013 as brought out above and summons dated January 01, 2014 required another set of information to be submitted by January 7, 2014 as listed above. I find here that firstly GFL's response had been received nearly two months after the date for submission as set out by IA in the second summons and more than three months after the date for submission as set out by IA in the first summons. Secondly, I find that the response neither provided the details/ information specifically sought vide two separate summons, nor, the specific documents sought, apart from total promoter holding and Noticee Shri Arun Goyal's holding as at quarter ended March 2011 as per BSE website, which was already available in public domain. This, I find, is as good as non-submission of information resulting in violation of section 15A(a) of the SEBI Act for which monetary penalty can be imposed.
19. I find here that ***Hon'ble Securities Appellate Tribunal (SAT) in various cases, including that of Kemeys Specialities Pvt. Ltd. v. SEBI (Appeal No. 54/2011)*** has held that if the information

furnished is incorrect or misleading, the aforesaid provisions would come into play and it could be said that the delinquent had failed to furnish the required information. In the extant case, I find that GFL provided documents which were not sought from it and failed to provide the specific details/ documents sought from it, even two and three months later. At the adjudication stage too, I find that though the SCN and the hearing notice were affixed at the last known address of GFL, no reply has been received.

20. Further, I note that Shri Arun Goyal vide letter dated August 05, 2014 has stated that he had submitted a reply dated February 25, 2014 to the Investigation Department of SEBI. Shri Arun Goyal also enclosed with the letter a copy of the facets of what appears to be a post card, showing the name of the sender i.e. Shri Arun Goyal and also of the recipient, i.e. General Manager, Investigations Department, SEBI. The copy also bears a purported SEBI stamp dated February 25, 2014. However the copy of the other side i.e. the content side of the postcard was not forwarded. Thus, the said copy enclosed with the letter dated August 05, 2015 does not throw any light on the contents of the letter. In view of the same, apart from granting several opportunities for personal hearing, vide notice dated March 13, 2015 the Noticee Shri Arun Goyal was also specifically advised to submit a copy of the letter dated February 25, 2014, as claimed to have been sent to the Investigation Department of SEBI. However despite delivery and due acknowledgment of receipt of the hearing notices, including the notice dated March 13, 2015 referred to above, the Noticee Shri Arun Goyal neither appeared for the hearing, nor, submitted a copy of the reply dated February 25, 2015.
21. Since no response could be elicited from Shri Arun Goyal, a reference was made to SEBI, requesting the concerned department to provide a copy of the letter dated February 25, 2015 which Shri Arun Goyal claimed to have sent. However upon examination and perusal of material, it was confirmed by SEBI that no response was received from Shri Arun Goyal in response to the summons issued by the IA. Accordingly, it was deemed necessary to inquire with the department of SEBI that receives and coordinates inward mail, regarding the said letter dated February 25, 2014. The concerned department was requested to clarify whether any such communication was received from Shri Arun Goyal. A copy of the letter as provided by Shri Arun Goyal was also forwarded to the said department. On searching of the

data base, no such correspondence from Shri Arun Goyal could be traced. The fact that the reply dated February 25, 2014 purported to have been sent by the Noticee Shri Arun Goyal could not be traced by SEBI, raises a serious doubt on the authenticity of the photocopy of the facets of what appears to be a post card submitted by Shri Arun Goyal. Furthermore, his conduct of not appearing for the personal hearings, failure to furnish a complete copy or atleast the content part of his purported reply dated February 25, 2014 despite receiving letters specifically advising him to submit the same, as well as his stoic silence subsequent to sending reply dated August 05, 2014, diminishes his credence. Though in his reply dated August 5, 2014 pursuant to the issuance of the SCN Shri Arun Goyal specifically undertook to submit all the documents again if directed to do so, he has not furnished even a single copy, nor appeared for hearing despite repeated opportunities having been granted to him. In such a scenario, based on records before me, there can only be one finding, i.e. Noticee Shri Arun Goyal had failed to comply with the summons issued to him.

22. I note that though the respective summons had been duly served on both GFL and the promoter Noticee Shri Arun Goyal, they failed to respond to the same. I find that the reply given by the company was not only several months late, it did not provide the specific details/ information/ documents sought. Information regarding shareholding pattern for the quarters ending March 2011, June 2011 and September 2011 giving details of the shares held by the promoters and entities holding more than 1% of the share capital was not provided/ not submitted in the required format. Copies of audited financial results for the years 2009-10, 2010-11 and 2011-12 were not provided. Copies of disclosure made to the company as well as to the Stock Exchanges during March to September 2011 under Takeover Regulations, 2011 or PIT Regulations were also not submitted, nor were the details in respect of transactions done by promoters, directors, PAC and relatives of promoters, directors, PAC during March to September 2011 provided. The company also failed to provide a copy of the code of conduct adopted by the company for Insider Trading in terms of the PIT Regulations, along with the date when such code was implemented, copy of the board notes/ minutes of the meeting where the internal code for insider trading was adopted, details of Officers/ directors/ designated employees (including their dependants) in terms of the PIT Regulations for the period April 28, 2011- August 23, 2011 as well as the details of pre clearance, if any, sought by directors/ officers/ designated employees and

permission granted for the same for the period April 28, 2011 to August 23, 2011. Hence I am of the considered view that the reply dated March 4, 2011 given by GFL cannot be seen as compliance of the summons issued to it. Furthermore, the reply itself does not refer to the summons issued to company, but rather summons issued to its director Shri Naresh Shah. It appears from the same that the company GFL avoided replying to the summonses issued to it by conveniently referring to summons issued to one of its directors. Hence, I conclude that the summonses issued to GFL were not replied to by the company. Besides based on available records, I conclude that Shri Arun Goyal too failed to reply to the summons issued to it.

23. Information sought during investigation is significant and relevant as it enables the IA to draw precise conclusions in a matter. The failure to provide details/ information/ documents sought through issue of summons can indeed hamper the investigation. I find that Shri Arun Goyal and GFL did not cooperate with the investigation by failing to provide the information sought through issue of summons. I am of the view that it is the duty, responsibility and obligation of every person from whom information is sought to fully co-operate with the IA and promptly produce all documents, records, information, etc. to the IA. If persons/entities disregard the summons issued to them during the course of the investigation, as in the extant case, SEBI will not be able to discharge its statutory obligations in protecting the interests of the investors and safeguarding the integrity of the securities market. Thus, as the Noticee Shri Arun Goyal and Noticee GFL did not provide the information, the same affected the attempts of SEBI to effectively gather vital evidence for the timely conclusion of the investigation proceedings.

24. In the matter, I would like to refer to the ***Order of Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT') in case of Asian Films Production and Distribution Ltd. (Appeal No. 203 of 2010 decided on 19th January, 2011)***, wherein SAT has held that:

"Non-compliance with summons is, indeed, a serious matter and cannot be viewed lightly. The respondent Board is the market regulator and has to regulate the securities market and the law provides that every person associated with the market in any manner should cooperate in the matter of carrying out investigations. In the year 2002, the provisions of the Act were amended and penalty for non-compliance with summons was enhanced

considerably to make it more deterrent. Market players who do not cooperate with the regulator in the matter of investigations commit a serious wrong which can have serious repercussions in the market."

25. Also in the matter of **Gennex Laboratories Ltd. Vs. SEBI (Appeal no 172/ 2011)**, the **Honorable SAT** has noted that *"non compliance to summons and consequent non furnishing of information hampers investigation by statutory authorities and it acts as a severe handicap in arriving at just and reasonable conclusion by the statutory authorities within a reasonable period of time. In the present case also the factum of non compliance to summons remains undisputed."*
26. In view of above, I am of the view that the **Noticee Shri Arun Goyal and Noticee GFL** has **not complied with the summonses issued to them and thus failed to comply with provisions of Section 11C(2) and (3) of the SEBI Act.**
27. I further note that the directors of the company who are in-charge of the affairs of the company are also responsible for the acts and omissions thereof. I find that in the extant case apart from the company GFL, its directors viz. Shri Naresh N. Shah, Shri Vishal Kumar Shah and Shri Vimalkumar S. Raval have also been alleged to have violated section 11C(2) & (3) of SEBI Act for failure of GFL to submit requisite information sought vide summons dated November 20, 2013 and January 01, 2014. In the matter, I note from MCA website that Shri Vishal Kumar Shah and Shri Vimalkumar S. Raval ceased to be director of GFL w.e.f. February 01, 2014 and the summons to GFL were issued dated February 07, 2014 and February 13, 2014. Thus, I note that Shri Vishal Kumar Shah and Shri Vimalkumar S. Raval were not the directors of GFL at the relevant point of time when the summons seeking certain information from GFL were issued to the company. Hence, proceedings in respect of Shri Vishal Kumar Shah and Shri Vimalkumar S. Raval stand abated.
28. Further, from the annual report of GFL for the financial year (FY) 2013-14, I find that Shri Naresh N. Shah was the Independent Director of GFL. Independent Directors are not engaged in and not expected to be engaged in the day to day management of the company.

29. In the matter, I note that the Hon'ble Supreme Court of India in the case of ***Everest Advertising Pvt. Ltd. Vs State of Delhi 2007 Indlaw SC 334*** has emphasized that merely being a director of a Company is not sufficient to make the person liable, because a director in a Company cannot be deemed to be in charge of and responsible to the Company for the conduct of its business. The requirement is that the person sought to be made liable, should be in charge and responsible to the Company for the conduct of its business at the relevant time and there is no deemed liability of a director.
30. Further, In case of ***Katta Sujatha (Smt) V Fertilizers and Chemicals Travancore Ltd, 2002 Indlaw SC 1772, the Hon'ble Supreme Court of India*** followed by its own decision in ***State of Karnataka V Pratap Chand, 1981 Indlaw SC 279*** and held:

"...wherein the question as who is a "person in charge" of business of firm in the context of Section 18A, Drugs and Cosmetics Act, 1940 was considered by this Court. This Court explained the meaning by observing that the term "person in charge" must mean that the person should be in over all control of the day to day business of the company or firm. The person should be a party to the policy being followed by a company and yet not be in-charge of the business of the company or may be incharge of but not in over-all-charge or may be in charge of only some part of business."

In view of the above, I find that Director Shri Naresh N. Shah too cannot be made liable for the failure of the company GFL to reply to the summonses issued to it and the matter against Director Shri Naresh N. Shah is also disposed of accordingly.

31. In the light of all of the above, the allegation of violation of the provisions of Sections 11C(2) and 11C(3) of SEBI Act by the promoter Noticee Shri Arun Goyal and the Noticee company GFL stands established. Further, I note that ***Hon'ble SAT in Appeal No.95/04 in Mayfair Paper & Board Pvt. Ltd. Vs. SEBI*** has held that *"failure to furnish information to the Investigating Authority of SEBI shall attract the penalty prescribed under section 15A of the SEBI Act"*.
32. Thus, the aforesaid non compliance of summons by the Noticees viz. Shri Arun Goyal and GFL make them liable for penalty under Section 15A (a) of SEBI Act which read as follows:

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

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

- (a) to furnish any document, return or report to the Board, fails to furnish the same, 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;

33. The next issue for consideration as to whether the failure on the part of Shri Arun Goyal to comply with the provisions of Regulation 13(4A) read with 13(5) of the PIT Regulations, attracts monetary penalty under section 15A(b) of SEBI Act, and, if so, what would be the monetary penalty that can be imposed on the said Noticee. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) has held that: *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."*.

34. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty on Shri Arun Goyal also under section 15A(b) of the SEBI Act, which reads as under:

15A(b). Penalty for failure to furnish information, return, etc.-

To file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

35. While determining the quantum of penalty under Section 15A(a) and/ or 15A(b) of SEBI Act, as applicable, it is important to consider the factors stipulated in Section 15J of SEBI Act, 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.”*

36. The disclosures under Regulation 13 of the PIT Regulations aims to make insider trading transparent by facilitating exposure of any illegal trade, and, thereby, serving as a deterrent. The disclosures also keep the general public/ investors informed about the significant trading change in shareholding of promoters/ directors/ large shareholders etc. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in the promoter shareholding. 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. Thus, the cornerstone of the PIT Regulations is investor protection. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the default. Therefore it is not possible to quantify the exact gains made by the promoter Noticee Shri Arun Goyal or the loss caused to the investors as a result of the failure on his part to make disclosure under Regulation 13(4A) read with 13(5) of PIT Regulations.

37. In addition to the aforesaid, I am also inclined to consider the following mitigating factors while adjudging the quantum of penalty with respect to failure on the part of the promoter Noticee Shri Arun Goyal to make disclosure under Regulation 13(4A) read with 13(5) of PIT Regulations: a) the paid-up capital/ market capitalization of the Company at the relevant point of time; b) the trading volumes of the Company's shares on the exchange where the shares were listed during the relevant period; and c) the number of transactions in the instant proceeding that the Noticee has violated the relevant provisions of PIT Regulations.

38. The paid up capital of the Company was 30,00,000 equity shares of Rs. 10/- each aggregating Rs. 3,00,00,000/-. As per the BSE website at the end of quarter ended June 2011, Shri Arun Goyal held 1,25,800 shares (4.19%) and at the end of quarter ended

September 2011 quarter, his holding had reduced to 1,10,800 shares (3.69%). The market capitalization of the company during August 2011 was around Rs. 30 crore. The average daily volume of the Company's shares on BSE during the relevant period was approx. 50,000 shares. It is further noted that the Noticee Shri Arun Goyal failed to make disclosures under Regulation 13(4A) read with 13(5) of PIT Regulations for 2 transactions, though they both occurred on the same day.

39. It is further noted that no quantifiable figures are also available to assess the disproportionate gain or unfair advantage made as a result of non-compliance of summonses by the Noticees viz. Shri Arun Goyal and GFL. Therefore it is not possible to quantify the exact gains made by the Noticees viz. Shri Arun Goyal and GFL or the loss caused to the investors as a result of the failure on their part to comply with the summonses as well.
40. In the matter, I note that the Hon'ble SAT had the occasion to consider a similar factual situation in **Appeal No: 114 of 2005 Nokia Finance International Pvt. Ltd. Vs SEBI**. In the said appeal, the Honorable SAT examined the failure on the part of the appellant to provide necessary information to the IA of SEBI. In the said matter, while upholding the penalty imposed by the Adjudicating Officer, the SAT observed that the appellant could have availed the opportunity to submit the required information, however, he failed to do so and the penalty has been imposed in terms of the provisions of law.
41. Further, I note that Hon'ble SAT in a similar matter of **M/s. Kajol Impex Vs. SEBI (Appeal No. 167 of 2009)** where the adjudicating officer had imposed a monetary penalty of Rs. 25 lakhs on the appellant in terms of provisions of section 15A(a) of SEBI Act for its failure to respond to the summons issued to it during the course of investigation has observed as follows:

"The market regulator under the provisions of the Act will not be able to perform its statutory functions and duties if persons connected with the securities market throttle the investigations by not responding to the summons issued to them. In the present case, the appellant did not even respond to the show cause notice issued by the adjudicating officer and at no stage of the proceedings did it cooperate with the authorities nor did it avail of

the opportunity of appearing in person before the adjudicating officer. ... In these circumstances, we find the monetary penalty imposed on the appellants is reasonable and calls for no interference by us in appeal.”

42. The aforesaid Orders passed by the Hon’ble SAT are relied upon in this case for guidance. In the extant case too, I find that Noticee GFL neither responded to the SCN issued to it, nor availed the opportunity of hearing despite receiving the SCN and hearing notices issued. Besides, though the Noticee Shri Arun Goyal initially responded to the SCN issued to it and specifically undertook to submit all the documents submitted to Investigation Department of SEBI again if directed to do so, he failed to furnish the same despite specifically being advised to do so. He also did not appear for hearing, despite repeated opportunities having been granted to him. Thus, considering the aforesaid observations of the Hon’ble SAT, the failure on the part of the Noticees viz. GFL and Shri Arun Goyal to comply with the respective summonses issued to them, has to be viewed seriously. With regard to the repetitive nature of the default, I find that the IA had issued two summonses each to the Noticees viz. GFL and Shri Arun Goyal, both of which were received and acknowledged by them, but, each of the Noticee viz. GFL and Shri Arun Goyal failed to comply with the same. This repeated failure to comply indicates that the default by the Noticees viz. GFL and Shri Arun Goyal with respect to non-compliance with the summons is repetitive in nature.
43. As promoter of a listed company, the Noticee promoter viz. Shri Arun Goyal further had a responsibility to comply with the disclosure requirements under the PIT Regulations in accordance with their spirit, intention and purpose so that the investors could take a decision whether to buy, sell, or hold the company's securities. Non-compliance with disclosure requirements by the promoter of a listed company undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals.

ORDER

44. After taking into consideration all the facts and circumstances of the case, I impose the following penalties which will be commensurate with the violation/s committed by the Noticees, as applicable:

Name of the Noticee	Violation	Penalty u/s. of SEBI Act	Amount (Rs.)
Shri Arun Goyal	Regulation 13(4A) read with 13(5) of PIT Regulations	15A(b)	Rs.3,00,000/- (Rupees Three Lakh only)
	Section 11C(2) and (3) of the SEBI Act	15A (a)	Rs.25,00,000/- (Rupees Twenty Five Lakh only)
	Total		Rs.28,00,000/- (Rupees Twenty Eight Lakh only)
M/s. GFL Financials India Ltd.	Section 11C(2) and (3) of the SEBI Act	15A (a)	Rs.25,00,000/- (Rupees Twenty Five Lakh only)

45. Shri Arun Goyal and M/s. GFL Financials Ltd. 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 Shri G. Vijayakrishnan, Deputy General Manager, Enforcement Department, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
46. Further, with respect to Shri Vishal Kumar Shah, Shri Vimalkumar Sureshchandra Raval and Shri Naresh N. Shah, the charge of violation of the provisions of Section 11C(2) and (3) of the SEBI Act do not stand established. I, therefore, absolve Shri Vishal Kumar Shah, Shri Vimalkumar Sureshchandra Raval and Shri Naresh N. Shah of the charges as alleged above.
47. In terms of Rule 6 of the Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: September 24, 2015

Place: Mumbai

Anita Kenkare
Adjudicating Officer