

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD/SR/SM/AO/40/2017-18]

UNDER SECTIONS 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 AND 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of

Shri Naresh Shah

Address: 101, Manoj Palace
Chakradhar Nagar, Nalasopara West
Thane, Maharashtra - 401202
(PAN: ARYPS5993F)

In the matter of GFL Financials Limited

BACKGROUND

1. Investigating Authority (hereinafter referred to as **IA**), of Securities and Exchange Board of India (hereinafter referred to as **SEBI**) conducted an investigation in the matter of trading activities of certain entities in the scrip of GFL Financials Limited (hereinafter referred to as **GFL/Company**), which was listed on Bombay Stock Exchange (BSE). The period of investigation was from September 03, 2012 to May 15, 2013. As per findings of the IA, there were 17 off-market transactions between 12 suspected entities. Shri Naresh Shah (hereinafter also referred to as **Noticee/Naresh**) was one of the suspected entities. IA observed that during the period of investigation Noticee entered into off-market transactions of a total of 18,55,000 shares of GFL with Shri Kirti Kantilal Mehta, Shri Nilesh Palande, Ms. Jayshree Bhosle, M/s Inventure Growth and Securities Ltd. and Bijal Dolia and no consideration was paid/received for these transactions. Vide letter dated February 13, 2015, IA advised the Noticee to produce the documents regarding proof of receipt / payment of funds towards the off-market transactions in compliance of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as **SCRA, 1956**). IA observed, after perusing the bank statements of the Noticee that he did not have corresponding fund transfer/receipt on the date of the said off-market transactions or on the date immediately following the date of the said off-market transactions. In

view of the same, it is alleged that the Noticee had entered into spot delivery contracts without payment/receipt of consideration within the time frame as stipulated under the provisions of SCRA, 1956 and thus alleged to have violated section 2(i) read with (r/w) sections 13, 16 and 18 of the SCRA, 1956.

2. Further, IA observed that the Noticee was the Director of the Company during the period of investigation. Also the Noticee had received shares of GFL in off-market transfer which resulted into increase in his shareholding in the scrip of GFL. However, the Noticee failed to make relevant disclosures pursuant to the said purchases, to the Company and BSE regarding the changes in shareholding as prescribed under SEBI (Substantial Acquisitions of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **SAST Regulations, 2011**) and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **PIT Regulations, 1992**). It was observed by IA that the Noticee has violated the provisions of regulation 13(1) of PIT Regulations, 1992, regulations 13(3) & 13(4) r/w regulation 13(5) of PIT Regulations, 1992 and under regulations 29(1) & 29(2) r/w regulation 29(3) of SAST Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

3. In view of the said findings of IA, a department of SEBI initiated adjudication proceedings against the Noticee, to inquire into and adjudge under 23H of SCRA, 1956 and under section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the **SEBI Act, 1992**) for alleged violations of provisions under section 2(i) of SCRA, 1956, PIT Regulations, 1992 and SAST Regulations, 2011. The adjudication proceedings were approved by the Competent Authority. Shri Nagendraa Parakh was appointed as the Adjudicating Officer under section 23-I of the SCRA, 1956 r/w Rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as **Adjudication Rules, 2005**) to inquire into and adjudge under section 23H of the SCRA, 1956 for the alleged violation of the provisions of section 2(i) r/w sections 13, 16 and 18 of SCRA, 1956 and under section 15-I of the SEBI Act, 1992 r/w Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **Adjudication Rules, 1995**) to inquire into and adjudge under section 15A(b) of the SEBI Act, 1992 for the alleged violation of the provisions of regulation 13(1) of

PIT regulations, 1992, regulations 13(3) & 13(4) r/w regulation 13(5) of PIT Regulations, 1992 and regulations 29(1) & 29(2) r/w regulation 29(3) of SAST Regulations, 2011 by the Noticee. Subsequent to the promotion of Shri Nagendraa Parakh, I was appointed as Adjudicating Officer vide order dated July 10, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice no. EAD/NP/JS/GFL/15612/3/2016 dated May 31, 2016 (hereinafter referred to as SCN) was issued to the Noticee at the address *101, Manoj Palace, Chakradhar Nagar, Nalasopara West, Thane, Maharashtra - 101202* in terms of rule 4 of the Adjudication Rules, 2005 and rule 4 of the Adjudication Rules, 1995 requiring the Noticee to show cause as to why an inquiry should not be held against the Noticee for the alleged violations of provisions of section 2(i) r/w sections 13, 16 and 18 of SCRA, 1956 and regulation 13(1) of PIT Regulations, 1992, regulations 13(3) & 13(4) r/w regulation 13(5) of PIT Regulations, 1992 and regulations 29(1) & 29(2) r/w Regulation 29(3) of SAST Regulations, 2011. The said SCN was sent through speed post acknowledgement due (SPAD), which returned undelivered. Later, the SCN was served to the Noticee by way of affixture and the affixture report is on record. Further, an opportunity of hearing was given to the Noticee vide hearing notice dated January 16, 2017 to appear on February 09, 2017 for personal hearing by SPAD, which returned undelivered and the delivery report is on record. Another opportunity of hearing was provided to the Noticee vide hearing notice dated March 29, 2017 to appear for personal hearing on April 11, 2017 by SPAD, which returned undelivered. The said hearing notice was served to the Noticee at his last known address by way of affixture and affixture report is available on record.
5. After my appointment, I granted an opportunity of personal hearing to the Noticee by issuing hearing notice dated September 25, 2017 requesting the Noticee to provide reply to the SCN on or before October 03, 2017 and to appear before me on October 11, 2017 for personal hearing. The said hearing notice was served to the Noticee by way of affixture and the affixture report is on record. The copies of the said SCN and Hearing Notices are also uploaded on the website of SEBI under Unserved Summons/Notices (www.sebi.gov.in). However, the Noticee did not submit its reply to the SCN and also did not attend the hearing as scheduled on October 11, 2017.

6. The allegations levelled against the Noticee in the SCN inter alia states as under:

- a) During Investigation Period the Noticee had received 8,20,000 shares of GFL from Shri Kirti Kantilal Mehta, Shri Nilesh Palande, Ms. Jayshree Bhosle, and transferred 10,35,000 shares of GFL to Inventure Growth and Securities Ltd. and Shri Bijal Dolia in off-market transactions. The details of transactions are tabulated below:

S.N	Date of transaction	Transferred out/Received	No. of shares	Shares transferred to/from
1	March 25, 2013	Received	6,00,000	Shri Kirti Kantilal Mehta
2	March 25, 2013	Received	1,50,000	Shri Nilesh Palande
3	March 25, 2013	Received	50,000	Ms. Jayshree Bhosle
4	March 25, 2013	Transferred out	8,00,000	Inventure Growth and Securities Ltd.
4	April 16, 2013	Received	20,000	Ms. Jayshree Bhosle
5	April 26, 2013	Transferred out	2,35,000	Shri Bijal Dolia

- b) For the above transactions, IA vide its letter dated Feb 13, 2015, advised the Noticee to give proof of receipt/payment of funds towards the off-market transactions executed by the Noticee in compliance of SCRA, 1956. No reply was received by IA in this regard and it was alleged that the Noticee did not receive/pay the consideration towards the off-market transactions within the period specified for spot delivery contracts and hence violated the provisions of section 2(i) of SCRA, 1956 r/w sections 13, 16 and 18 of SCRA, 1956.
- c) Further, IA observed that on March 25, 2013, Noticee received and transferred out 8,00,000 shares of GFL in off-market. Details given below:

S. No	Date	Opening Balance (% of shareholding)	Buy Volume (% of shareholding)	Sell Volume (% of shareholding)	Closing Balance (% of shareholding)
1	March 25, 2013	0 (0%)	800000 (5.33%) (off-market)	800000 (5.33%) (off-market)	0(0%)

IA observed that Noticee was a Director of GFL during investigation period and that shareholding of the Noticee increased to more than 5% of the share capital of GFL on March 25, 2013 owing to receipt of 8,00,000 shares of GFL. In this regard, the Noticee was required to make disclosures under regulation 13(1) of PIT Regulations, 1992 and regulation 13(4) r/w regulation 13(5) of PIT Regulations, 1992 to the Company and under regulation 29(1) r/w regulation 29(3) of SAST Regulations, 2011 to the company and BSE. Further, on the same day i.e. March 25, 2013, the Noticee transferred out 8,00,000 (5.33%)

shares of GFL, which is more than i.e. 5% of the share capital of GFL, hence the Noticee was required to make disclosure to the company and BSE under regulations 13(3) & 13(4) r/w regulation 13(5) of PIT Regulations, 1992 and under regulation 29(2) r/w regulation 29(3) of SAST Regulations, 2011. However, as per letter dated December 20, 2014 received from Company and e-mail dated November 12, 2014 from BSE, IA observed that the Noticee failed to make the required disclosures under the aforesaid provisions of Regulations and thereby violated the said provisions of PIT Regulations, 1992 and SAST regulations, 2011.

d) In view of the same, it is alleged that the Noticee has violated the provisions of regulation 13(1) of PIT Regulations, 1992, regulations 13(3) & 13(4) r/w regulation 13(5) of PIT Regulations, 1992 and regulations 29(1) & 29(2) r/w regulation 29(3) of SAST Regulations, 2011.

7. I am of the opinion that the SCN has been duly served upon the Noticee in terms of Adjudication Rules, 2005 and Adjudication Rules, 1995 but the Noticee failed to reply to the SCN and also failed to avail the opportunities of personal hearing. I have carefully perused the charges levelled against the Noticee as mentioned in the SCN and the documents available on record.
8. In the absence of any reply from the Noticee, I am proceeding with the matter based on materials available on record. After taking into account, the allegations levelled in the SCN, and other evidences / materials available on record, I hereby, proceed to decide the case on merit.

CONSIDERATION OF ISSUES

9. The issues that arise for consideration in the present case are:
 - (a) Whether the Noticee has violated the provisions of section 2(i) r/w sections 13, 16 & 18 of the SCRA, 1956?
 - (b) Whether the Noticee has violated the provisions of regulation 13(1) of PIT Regulations, 1992 and regulation 13(4) r/w regulation 13(5) of PIT Regulations, 1992 and provisions of regulation 29(1) r/w regulation 29(3) of SAST Regulations, 2011?
 - (c) Whether the Noticee has violated the provisions of regulations 13(3) & 13(4) r/w regulation 13(5) of PIT Regulations, 1992 and provisions of regulation 29(2) r/w regulation 29(3) of SAST Regulations, 2011?

- (d) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 23H of the SCRA, 1956 and section 15A(b) of the SEBI Act, 1992? and,
- (e) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 23J of the SCRA, 1956 r/w rule 5(2) of Adjudication Rules, 2005 and section 15J of the SEBI Act, 1992 r/w rule 5(2) of Adjudication Rules, 1995?

10. Before proceeding further, it will be appropriate to refer to the relevant provisions of the SCRA, 1956, PIT Regulations, 1992 and SAST Regulations, 2011 which read as under:-

Section 2(i) of the SCRA, 1956

"Spot delivery contract means a contract which provides for, -

- a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality".*

Section 13 of the SCRA, 1956

Contracts in notified areas illegal in certain circumstances.

- 13. *If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area that it is necessary so to do, it may, by notification in the Official Gazette, declare this section to apply to such State or States or area, and thereupon every contract in such State or States or area which is entered into after the date of the notification otherwise than between the members of a recognised stock exchange or recognised stock exchanges in such State or States or area or through or with such member shall be illegal:.....*

Section 16 of the SCRA, 1956

Power to prohibit contracts in certain cases.

- 16 (1) *If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.*
- (2) *All contracts in contravention of the provisions of sub-section (1) entered into after the date of notification issued thereunder shall be illegal."*

Section 18 of the SCRA, 1956

Exclusion of spot delivery contracts from sections 13, 14, 15 and 17.

- 18. (1) *Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.*
- (2) *Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control the business of dealing in spot delivery contracts also in any State or area (whether section 13 has been declared to apply to that State or area or not), it may, by notification in the Official Gazette, declare that the provisions of section 17 shall also apply to such State or area in respect of spot delivery contracts generally or in respect of spot delivery contracts for the sale or purchase of such securities as may be specified in the notification, and may also specify the manner in which, and the extent to which, the provisions of that section shall so apply.*

PIT Regulations, 1992

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

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.

Continual disclosure.

13. (3) Any person who holds more than 5% shares or 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.

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 Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

13. (5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of:

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

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

SAST Regulations, 2011

Disclosure of acquisition and disposal.

29. (1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

(2) Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

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

(b) the target company at its registered office.

EVIDENCES AND FINDINGS

11. Before I begin to note my findings, I note that no reply for SCN issued has been received from the Noticee and also the Noticee did not attend the hearing as scheduled on February 10, 2017, April 11, 2017, October 11, 2017 and November 02, 2017. As stated above, sufficient opportunities were given to submit reply to the SCN and also to appear for personal hearing. As regards, no reply from Noticee to the SCN served upon him, I refer to the judgment of Hon'ble

Securities Appellate Tribunal dated December 08, 2006 in the matter of Classic Credit Ltd. v SEBI (Appeal No. 68 of 2003) wherein, it observed,

“... the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them”.

I also observe that the Hon'ble Securities Appellate Tribunal in the matter of Sanjay Kumar Tayal & Ors. v SEBI (Appeal 68 of 2013 dated February 11, 2014) had inter alia observed that,

“...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...”

In view of the above, I find that the allegations levelled in the SCN and the evidences enclosed therewith are not in dispute in absence of any reply from the Noticee and by not submitting any reply to SCN, the Noticee has admitted the charges levelled against it by the said SCN. I hereby proceed to record my findings, which are as under.

12. Issue (a): Whether the Noticee has violated the provisions of section 2(i) r/w sections 13, 16 & 18 of the SCRA, 1956?

- a) It is alleged in the SCN that the Noticee had entered into off-market transactions of 18,55,000 shares of GFL with various entities without making any payment towards or receipt of funds for these transactions thereby violating section 2(i) r/w 16, 17 and 18 of SCRA, 1956, which prescribes that a spot delivery contract in securities market is said to be complete only if delivery/transfer of securities and payment/receipt of funds therefor has been made on the day of transaction or the next day. It is noted from the record that the Noticee had received a total of 8,20,000 shares of GFL from Shri Kirti Kantilal Mehta, Shri Nilesh Palande, Ms. Jayshree Bhosle and transferred a total of 10,35,000 shares of GFL to Inventure Growth and Securities Ltd. and Shri Bijal Dolia in off-market transactions.
- b) With regard to the off-market transaction of 8,00,000 shares of GFL with Inventure Growth and Securities Ltd.(Inventure), it is noted from the adjudication order no. EAD/SR/SM/AO/38/2017-18 dated February 26, 2018(AO order 1) that the Noticee was a client of Inventure Growth and Securities Ltd and had a debit balance of Rs. 37,39,842.87/- as on March 25, 2013. As seen from the website of BSE, the market price of shares of GFL on March 25, 2013 was Rs. 29.45/share

which corresponds to 1,27,000 shares GFL for a debit balance of Rs. 37,39,842.87/- as on March 25, 2013. As noted from the said AO Order 1, which is available on the website of SEBI, the Noticee is a counterparty to the said transfer for which Inventure is the recipient of transferred 8,00,000 shares of GFL in off-market. Inventure has stated in AO Order 1 that the Noticee has transferred the said 8,00,000 shares of GFL owing to the outstanding debit balance of Naresh (who was a client of Inventure). In the absence reply from the Noticee, the Noticee is allowed a benefit of doubt that owing to the said outstanding debt, the Noticee had transferred shares of GFL to Inventure, which explains transfer of approximately 1,27,000 shares (@Rs. 29.45/share) of GFL to Inventure, however it does not explain the transfer of remaining 6,73,000 (i.e. 8,00,000 - 1,27,000) shares of GFL. In this regard, I am of the view that the allegation of violation of section 2(i) of SCRA, 1956 r/w sections 13, 16 and 18 of SCRA, 1956 against the Noticee stands established for 6,73,000 shares of GFL, transferred by the Noticee to Inventure in an off-market transaction.

- c) Regarding to the off-market transaction on April 26, 2013 of transfer of 2,35,000 shares of GFL to Shri Bijal Dolia(Bijal) by the Noticee, I note from adjudication order no. EAD/AO-NP/AS/48/2017 dated June 20, 2017 (AO Order 2) that Noticee is a counterparty of the transaction for which Bijal has been issued a show cause notice. AO Order 2 is available on the website of SEBI. As per AO Order 2, SCN issued to Bijal for the very same off-market transaction was disposed of by the AO, without any monetary penalty since Bijal provided evidence regarding payment of consideration to the Noticee. I have checked the information given by the IA and noted that the Noticee is a counterparty to the said off-market transaction, although Noticee has not replied to the said SCN, I do not find the violation of section 2(i) read with sections 13, 16 & 18 of the SCRA, 1956 against the Noticee established regarding the said transaction with Bijal.
- d) In view of the above, out of the off-market transactions of a total of 18,55,000 shares of GFL, violation is not established for 3,62,000 (1,27,000+2,35,000) shares of GFL. In absence of any reply from Noticee, I conclude that, as regards, the remaining off-market transactions i.e. 14,93,000 (18,55,000–3,62,000) shares of GFL, violations of section 2(i) read with sections 13, 16 & 18 of the SCRA,

1956 is established for non-receipt/transfer of funds by the Noticee within the prescribed time as per section 2(i) of SCRA, 1956 by the Noticee. Hence, the Noticee has violated the provisions of section 2(i) of SCRA, 1956 r/w sections 13, 16 and 18 of SCRA, 1956.

13. Issue (b): Whether the Noticee has violated the provisions of regulation 13(1) of PIT Regulations, 1992 and regulation 13(4) r/w regulation 13(5) of PIT Regulations, 1992 and provisions of regulation 29(1) r/w regulation 29(3) of SAST Regulations, 2011?

Issue (c): Whether the Noticee has violated the provisions of regulations 13(3) & 13(4) r/w regulation 13(5) of PIT Regulations, 1992 and provisions of regulation 29(2) r/w regulation 29(3) of SAST Regulations, 2011?

- a) I have noted from the records available that on March 25, 2013 the Noticee had received 8,00,000 shares of GFL in off-market which represents 5.33 % of the share capital of the Company. In this regard, I note from regulation 13(1) of PIT Regulations, 1992 stated above that as the holding of the Noticee crossed 5% of the share capital of the Company, the Noticee was required to make relevant disclosures to the Company and in terms of regulation 29(1) r/w regulation 29(3) of SAST Regulations, 2011 to the Company and to BSE. I have noted from the records available that the Noticee failed to make disclosures under the aforesaid provisions of PIT Regulations, 1992 and SAST Regulations, 2011 and thereby violated the said provisions of the said Regulations.
- b) I have also noted from the records that on the same day i.e. March 25, 2013 the Noticee had transferred 8,00,000 shares of GFL in off-market which represents 5.33 % of the share capital of the Company. Pursuant to this transaction, the change in shareholding of Noticee exceeded over two percent of the share capital of the Company. In this regard, I note from regulation 13(3) r/w regulation 13(5) of PIT Regulations, 1992 that the Noticee was required to make relevant disclosures to GFL and in terms of regulation 29(2) r/w regulation 29(3) of SAST Regulations, 2011 to the Company and to BSE. I have noted from the records available that the Noticee failed to make disclosures under the aforesaid provisions of PIT Regulations, 1992 and SAST Regulations, 2011 and thereby violated the said provisions of the said Regulations.
- c) I have find that being a director of GFL, Noticee was required to disclose regarding receipt and transfer of 8,00,000 shares of GFL in off-market, under the

provisions of regulation 13(4) r/w 13(5) of PIT Regulations, 1992. However, from the records available, I have noted that the Noticee has failed to make disclosures to the Company and BSE as prescribed under 13(4) read with regulation 13(5) of PIT Regulations, 1992 and thereby violated the said provisions of the said Regulations.

- d) In this context, it is relevant to quote the observations made by the Hon'ble SAT in its Order dated September 30, 2014, in the matter of Akriti Global Traders Ltd. Vs SEBI:-

"Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations."

- e) With regard to the disclosures to the Company and to BSE, I note from the records that the company vide its letter dated December 20, 2014 and BSE vide its e-mail dated November 12, 2014 informed that the Noticee has not made any disclosures with regard to said transactions.
- f) I conclude that by failing to make disclosures to the Company and BSE as per the requirements prescribed under PIT Regulations, 1992 and SAST Regulations, 2011. Hence, the Noticee has violated the provisions of regulation 13(1) of PIT Regulations, 1992 and regulations 13(3) & 13(4) r/w regulation 13(5) of PIT Regulations, 1992 and regulations 29(1) & 29(2) r/w regulation 29(3) of SAST Regulations, 2011.

14. **Issue (d): Do the violations, if any, on the part of the Noticee attract monetary penalty under section 23H of the SCRA, 1956 and section 15A(b) of the SEBI Act, 1992? and,**

- a) In respect of imposition of monetary penalties, I cannot ignore the historical case of Hon'ble Supreme Court of India in the matter of The Chairman, SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein it was 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"*.

- b) It is relevant to mention here that said case of Shri Ram Mutual Fund (supra) was maintained by the three judge bench of the Hon'ble Supreme Court of India in the case of Union of India vs. Dharmendra Textile Processor 2008 (13) SCC 369 decided on September 29, 2008 on the issue related to Income Tax Act. It was held by the Hon'ble Supreme Court that penalty under the provision is for breach of civil obligation is mandatory and the mens rea is not an essential element for imposing the penalty. The adjudicatory authority has no discretion to levy duty less than what is legally and statutorily leviable. The Hon'ble Supreme Court also specifically observed that the case of Shri Ram Mutual Fund (supra) has been analysed in the legal position and in the correct perspectives.
- c) Therefore, after taking into account the aforesaid entire facts / circumstance of the case and analysing the aforesaid case laws, it is noted that the said violations of provisions of section 2(i) of SCRA, 1956 r/w sections 13, 16 and 18 of SCRA, 1956 by the Noticee attracts the imposition of monetary penalties upon the Noticee under section 23H of the SCRA, 1956 and for the violations of regulation 13(1) of PIT Regulations, 1992, regulations 13(3) & 13(4) r/w regulation 13(5) of PIT Regulations, 1992 and regulations 29(1) & 29(2) r/w regulation 29(3) of SAST Regulations, 2011 under section 15A(b) of the SEBI Act, 1992. The provisions of section 23H of SCRA, 1956 and 15A(b) of the SEBI Act, 1992 as existed at the time of commission of the alleged violations are reproduced below:

SCRA, 1956

Penalty for contravention where no separate penalty has been provided.

23H. *Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

The SEBI Act, 1992

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,—*

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

15. **Issue (e) - If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 23J of the SCRA, 1956 r/w rule 5(2) of Adjudication Rules, 2005 and section 15J of the SEBI Act, 1992 r/w rule 5(2) of Adjudication Rules, 1995?**

- a) While determining the quantum of penalty under section 23 H of the SCRA, 1956, it is important to consider the factors stipulated in section 23J of the SCRA, 1956 read with Rule 5 (2) of the Adjudication Rules, 2005 and for penalty under sections 15A(b) of the SEBI Act, 1992 it is important to consider the factors stipulated in section 15J Of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, 1995 which reads as under:-

SCRA, 1956

23J “Factors to be taken into account by the adjudicating officer-

While adjudging quantum of penalty under section 23 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.”*

The SEBI Act, 1992

Factors to be taken into account by the adjudicating officer.

15J. *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.*

- b) I observe, that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any made by the Noticee and the loss, if any suffered by the investors due to the aforesaid violations. In this regard, it would be appropriate to refer to the observations made by the Hon'ble SAT in the matter of Akriti Global Traders Ltd. Vs. SEBI (Appeal No. 78 of 2014) decided on September 30, 2014 “...*penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay.*” Therefore, taking into consideration the facts / circumstance of the case, I am of the view that the Noticee is liable for penalty by not making the payment either on the same day or next day of the said contract as per the requirements prescribed under section 2(i) of SCRA, 1956.
- c) Further, I find that the Noticee had failed to make required disclosures as prescribed under PIT Regulations, 1992 and SAST Regulations, 2011. Therefore, taking into consideration the facts / circumstance of the case, I am of the view

that the Noticee is liable for penalty by not making disclosure to the Company and to the stock exchange as per the requirements prescribed under the provisions of regulation 13(1) of PIT Regulations, 1992 and regulation 13(3) r/w 13(5) of PIT Regulations, 1992 and regulations 29(1) & 29(2) r/w 29(3) of SAST Regulations, 2011. In this regard, it is relevant to quote the observations made by Hon'ble SAT in its judgment on September 04, 2013 in the matter of Vitro Commodities Private Limited Vs SEBI wherein Hon'ble SAT had observed that

"It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other".

ORDER

16. In exercise of the powers conferred under section 23-I of the SCRA, 1956, rule 5 of the Adjudication Rules, 2005, section 15-I of SEBI Act, 1992 and rule 5 of the Adjudication Rules, 1995, I hereby impose the following penalty on the Noticee viz. Shri Naresh Shah under section 23H of SCRA, 1956 and section 15A(b) of SEBI Act, 1992 :

Violation Provision	Penalty (Rs.)
Section 2(i) of SCRA, 1956 r/w sections 13, 16 and 18 of SCRA, 1956	15,00,000 (Rs. Fifteen Lakh Only)
Regulation 13(1) of PIT Regulations, 1992, regulations 13(3) & 13(4) r/w regulation 13(5) of PIT Regulations, 1992 and regulations 29(1) & 29(2) r/w regulation 29(3) of SAST Regulations, 2011	3,00,000 (Rs. Three Lakh Only)
Total – 18,00,000 (Rs. Eighteen Lakh Only)	

I am of the view that the said penalty is commensurate with the defaults committed by the Noticee in terms of penalty structure provided in section 23H of SCRA, 1956 and section 15A(b) of SEBI Act, 1992.

17. The Noticee 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

18. The Noticee 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 shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID : tad@sebi.gov.in

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually)	Bank name and Account number from which payment is remitted	UTR No
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19. In terms of the Rule 6 of the Adjudication Rules, 2005 and Adjudication Rules, 1995, copy of this order is sent to the Noticee at his last known address and also to Securities and Exchange Board of India.

Date: February 28, 2018

SANGEETA RATHOD

Place: Mumbai

ADJUDICATING OFFICER