

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD/SR/SM/AO/38/2017-18]

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

Inventure Growth and Securities Ltd.

(PAN: AAACI2044K)

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 is listed at 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. Inventure Growth and Securities Limited (hereinafter also referred to as **Noticee**) was one of the suspected entities. It was revealed that during the period of investigation the Noticee received 8,00,000 shares of GFL from Shri Naresh Shah (**Naresh**) in an off-market transaction and no payment towards this transaction was made by the Noticee. Vide letter dated February 13, 2015 the Noticee was advised to produce the documents regarding proof of receipt / payment of funds towards the off-market transactions executed by them w.r.t. compliance of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as **SCRA, 1956**). IA observed that, the Noticee replied that it paid the consideration for 8,00,000 shares of GFL to Naresh on April 02 ,2012 and April 03, 2012, thus payment was made a few months before the

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actual delivery of shares in off-market transaction on March 23, 2013. 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 sections 2 (i) read with (r/w) sections 13, 16 and 18 of SCRA, 1956.

2. Further, IA observed that the Noticee had received/sold shares of GFL which resulted into increase/decrease in its shareholding in the scrip of GFL. However, the Noticee failed to make relevant disclosures pursuant to the said transactions, to the Company and BSE regarding shareholding in GFL as prescribed under SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **PIT Regulations, 1992**) and SEBI (Substantial Acquisitions of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **SAST Regulations, 2011**). It was observed by IA that the Noticee has violated the provisions of regulation 13(1) of PIT Regulations, 1992, regulations 13(3) 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 section 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 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, regulation 13(3) 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/15612/2/2016 dated May 31, 2016 (hereinafter referred to as **SCN**) was issued to the Noticee in terms of Rule 4 of the Adjudication Rules, 2005 and Adjudication Rules, 1995 requiring the Noticee to show cause as to why an inquiry should not be held against it 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, regulation 13(3) r/w regulation 13(5) of PIT Regulations, 1992 and regulations 29(1) & 29(2) r/w regulation 29(3) of SAST Regulations, 2011. Further, the Noticee was given personal hearing vide hearing notice dated January 16, 2017 through speed post with acknowledgement due (SPAD) to appear on February 10, 2017 for personal hearing and the said hearing notice was delivered to the Noticee. Proof of delivery is on record. Vide letter dated January 30, 2017 Noticee submitted its reply to the SCN. Noticee attended the hearing as scheduled on February 10, 2017 and Noticee was advised to submit additional information regarding Noticee's submissions in the hearing. Vide letter dated March 18, 2017 the Noticee submitted its additional information.
5. After my appointment, I granted an opportunity of personal hearing to the Noticee by issuing hearing notice dated September 25, 2017 through SPAD to appear before me on October 11, 2017. The said hearing notice was delivered to the Noticee and the proof of the delivery is on record. With regard to personal hearing, Mrs. Bhavi Gandhi and Mr. Vishal Parekh, the Authorised Representatives (hereafter referred to as ARs) on behalf of the Noticee attended the hearing on October 11, 2017 as scheduled and requested time for additional submissions till October 26, 2017. Vide letter dated November 14, 2017 the Noticee submitted the additional information.

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

- a) During Investigation Period, IA observed that the Noticee had received 8,00,000 shares of GFL from Naresh in off-market transactions on March 25, 2013. For the said transactions, IA observed that no consideration was paid, as required to be done as per spot delivery contract prescribed under section 2(i) of SCRA, 1956. In view of the same, it was alleged that the Noticee did not 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. Further, on the same day i.e. March 25, 2013, the Noticee sold 8,00,000 shares of GFL in the market. The details of alleged transactions made by the Noticee are tabulated below:

S. No	Date	Opening Balance (% of shareholding)	Buy Volume (% of shareholding)	Sell Volume (% of shareholding)	Closing Balance (% of shareholding)
1	25/03/2013	0 (0%)	800000 (5.33%) (off-market)	800000 (5.33%) (on market)	0(0%)

It was observed by IA that the shareholding of the Noticee, increased to more than 5% on March 25, 2013 by receiving 8,00,000 shares of GFL. Hence, the Noticee was required to make disclosure under regulation 13(1) 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 sold more than 5% of share capital of GFL, which required the Noticee to make disclosures under regulation 13(3) r/w regulation 13(5) of PIT Regulations, 1992 and under regulation 29(2) r/w regulation 29(3) of SAST Regulations, 2011 to the company and BSE. 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 therefore violated the said provisions of PIT Regulations, 1992 and SAST Regulations, 2011.

- b) In view of the same, it is alleged that the Noticee has violated the provisions of regulation 13(1) of PIT Regulations, 1992, regulation 13(3) 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. The Noticee, vide its letters dated January 30, 2017, March 18, 2017 and November 14, 2017 submitted its reply to the SCN. The Noticee in its reply inter-alia submitted the following:

- a. *Vide letter dated June 28, 2016 the Noticee made following submissions: We deny the charges as alleged in the SCN. Pragati Shares and Stock Services (Pro. Naresh Shah) was having trading as well as demat account with Noticee. In April 2012 Naresh offered shares of GFL to the Noticee against his debit balance with the Noticee. He offered 3,20,000 shares at the prevailing market rate. Noticee agreed to purchase shares in two tranches ie 1,60,000 shares @ Rs. 16.75/- and 1,60,000 shares @ Rs 16.80/-. Naresh promised to deliver shares when Noticee would demand. Noticee asked Naresh to deliver the shares on March 25, 2013. Noticee received shares from Naresh on March 25, 2013 and Noticee sold on the same day on the market. As regards, disclosures Noticee accepted that the disclosures were not made by oversight and Noticee regrets for its mistake, and disclosures were inadvertently missed out.*
- b. *Vide letter dated March 18, 2017 the Noticee made following submissions: Pragati Share and Stock Services (Prop Naresh Nagindas Shah) was having portfolio of stocks and the stock value was running into Crores of Rs during the period FY 2012-13. Noticee is allowing exposure to the said client against its stock value and funds lying with Noticee. With reference to the alleged transaction, the only intention was to recover debit balance from the said client. Noticee has provided the contract note for the said off-market transaction*
- c. *Vide letter dated November 14, 2017, Noticee made the following submissions: Naresh was client of Noticee since 2011 and he had a debit balance in his ledger amounting to Rs. 69,41,173.18/- as on April 1, 2012. After severe perseverance to clear his debit balance, the client agreed to sell some of his holding and clear the balance debit by selling shares of GFL. Naresh sold some of his shares worth Rs. 21,77,400.16/- in open market and sold 3,20,000 shares of GFL for an amount of Rs. 53,78,520.36/- during the period April 02, 2012 to April 03, 2012, thus clearing his entire pre-existing debt. As the shares were purchased to clear the pre-existing debit balance. The ledger reflecting these entries and contract/bills for purchase of 3,20,000 shares of GFL is already furnished. As the face value of shares changes from Rs. 5/- to Rs. 2/-, thus Noticee had the right to receive 8,00,000 shares from Naresh. The Noticee, then regularly followed up with the client for delivery of shares of GFL and the same was delivered on March 25, 2013. Noticee did not require to make payment for this transaction as this transaction was for recovery of debit balance and not a spot transaction at all.*

As regards, disclosure violation, the Noticee vide its letter dated June 28, 2016 accepted that it had by oversight not made disclosure under regulation 13(1) r/w 13(5) of PIT Regulations, 1992 and under regulation 29(1) r/w 29(3) of SAST Regulations,

2011 to the Company and to the stock exchange. Also the Noticee regretted for its mistake and informed that it was inadvertently missed out during that period. Noticee also submitted that the transfer of shares from the client and delivery thereof took place on the same day, thus giving it color and character of intraday transaction and hence the requirements of disclosure may not apply to this transaction. Noticee had not traded in the stock any time before or after that date. Had Noticee kept on selling shares after the period of expiry of 2 days' time limit as stipulated under regulation 13 of PIT Regulations, 1992 and regulation 29 of SAST Regulations, 2011, Noticee could have been said to have kept the investors in dark by not filing disclosures and derived disproportionate gain or unfair advantage out of it. However since Noticee did not sell any further shares after having sold all the shares on March 25, 2013, Noticee had not derived any benefit out non-disclosure of purchase and sale transactions. These requirements are to make the public at large aware that some person has acquired shares above a threshold limit, which have some impact on the decisions and resolutions that the Company proposes to pass in future and in effect will also have an impact on the strategic operations of the Company.

8. After taking into account, the allegations levelled in the SCN, reply of the Noticee 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 provisions of regulation 29(1) r/w regulation 29(3) of SAST Regulations, 2011?
 - (c) Whether the Noticee has violated the provisions of regulation 13(3) r/w regulation 13(5) of PIT Regulations, 1992 and 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 and section 15J of the SEBI Act, 1992?
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:-

SCRA, 1956

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 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.*

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

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

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

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

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 received 8,00,000 shares of GFL from Naresh in off-market transactions and did not make payment towards this transaction on the day of the transaction or next day, thereby violating section 2(i) r/w 13, 16 & 18 of SCRA, 1956, which prescribes that a spot delivery contract in securities market is said to be completed only if delivery/transfer of securities and

payment therefor has been made on the day of transaction or the next day. With regard to the alleged violations, the Noticee replied that it received the said shares of GFL to clear the debt, owed by Naresh who was its client since 2011 and he had a debit balance in his ledger amounting to Rs. 69,41,173.18/- as on April 1, 2012. I note from the reply and supporting evidence submitted by the Noticee that, Naresh, the proprietor of Pragati Shares & Stock Services is a client of the Noticee. Also from the ledger statement submitted by Noticee I have noted that Naresh had a debit balance of Rs. 69,41,173.18 as on April 01, 2012 and Rs. 37,39,842. 87/- of debit balance as on March 25, 2013.

- b) I have also noted from the contract note/bill given by Naresh (i.e. client) to the Noticee (i.e. broker) regarding what appears to be on-market transactions of a total of 1,60,000 shares on April 02, 2012 and a total of 1,60,000 shares on April 03, 2012. The said contract note/bill is for trades carried out by the Noticee on the market through Pragati Share and Stock Services on April 02, 2012 and April 03, 2012 and it shows trade time, trade date, trade no., STT etc. I am not relying on this evidence i.e. contract note for on market trades having the assumption that as per instant market mechanism, the payin/payout would have already happened in T+2 and hence not relevant to the trades during the investigation period which starts from September 03, 2012.
- c) I have noted from the ledger statement given by the Noticee (being a broker of Naresh) that Naresh had a debit balance of Rs. 37,39,842. 87/- on March 25, 2013. I also note that the Noticee received 8,00,000 shares of GFL from Naresh, in off-market transaction on March 25, 2013. Value of 8,00,000 shares of GFL on March 25, 2013 as per price available on the website of BSE is Rs. 2,35,60,000 (i.e. 8,00,000 share * Rs. 29.45 as per BSE website on March 25, 2013) which is more than debit balance of Naresh as on March 25, 2013 i.e. Rs. 37,39,842. 87/-, corresponding to only 1,27,000 shares (@Rs. 29.45/share) of GFL. I am inclined to give benefit of doubt to the Noticee that owing to outstanding debt, Naresh had transferred shares to the Noticee which explains transfer of approximately 1,27,000 shares (@Rs. 29.45/share) and not of 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 by the

Noticee stands established only for 6,73,000 shares of GFL, received by the Noticee in an off-market transaction.

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

Issue (c): Whether the Noticee has violated the provisions of regulation 13(3) r/w regulation 13(5) of PIT Regulations, 1992 and regulations 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 transfer which represents 5.33 % of the total no. of shares 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 total no. of shares 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 sold 8,00,000 shares of GFL in the market which represents 5.33 % of the total no. of shares of the Company. Pursuant to this transaction, the change in shareholding of Noticee exceeded over two percent of the total no. of shares 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) 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.”

- d) With regard to the disclosure to the Company and to BSE, it is noted 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 purchases by Noticee. As also it is an admitted position by the Noticee that relevant disclosures have not been made by the Noticee to the company and BSE.
- e) Submission of the Noticee *that their aforementioned transaction had colour and character of intraday transaction and hence the requirements of disclosure may not be applying to this transaction*, is not acceptable. In this regard, plain reading of the Regulations show that there is no exemption provided for intra-day transactions. Further, Noticee has submitted that *it has not traded in the stock any time before or after that date and had it kept on selling shares after the period of expiry of 2 days’ time limit as stipulated under regulation 13 of PIT Regulations, 1992 and regulation 29 of SAST Regulations, 2011, it could have been said to have kept the investors in dark by not filing disclosures and derived disproportionate gain or unfair advantage out of it*. Plain reading of the relevant provisions of PIT Regulations, 1992 and SAST Regulation, 2011, show that time limit of two days prescribed by the Regulations is triggered for the said transactions of 8,00,000 shares of GFL, is an upper limit of time allowed for making disclosures irrespective of any further sale/purchase of shares of GFL.
- f) In view of the evidence available on record and the admitted position of Noticee, I conclude that the Noticee had failed to make disclosures to the Company and to 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 regulation 13(3) 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) 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 and section 15J of the SEBI Act, 1992?

- a) While determining the quantum of penalty under section 23H 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 following penalty on the Noticee viz. Inventure Growth and Securities Ltd under section 23H of SCRA, 1956 and section 15A(b) of the SEBI Act, 1992 :

Violation provisions	Penalty amount (Rs.)
Section 2(i) of SCRA, 1956 r/w sections 13, 16 and 18 of SCRA, 1956	7,00,000 (Rs. Seven Lakh only)
Regulation 13(1) of PIT Regulations, 1992, regulation 13(3) r/w regulation 13(5) of PIT Regulations, 1992 and regulations 29(1) & 29(2) r/w regulation 29(3) of SAST Regulations, 2011	2,00,000 (Rs. Two Lakh only)
Total penalty – Rs. 9,00,000 (Rs. Nine 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 the 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

19. In terms of the Rule 6 of the Adjudication Rules, 1995 and Adjudication Rules, 2005 copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: February 26, 2018

SANGEETA RATHOD

Place: Mumbai

ADJUDICATING OFFICER