**BEFORE THE ADJUDICATING OFFICER**
**SECURITIES AND EXCHANGE BOARD OF INDIA**
**[ADJUDICATION ORDER NO. AO/AS/05/2018]**

---

**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**

**Shivram Motial Meena**

**(PAN: AHLPM2195A)**

**In the matter Gujarat Arth Ltd.**

## ORDER OF THE HON'BLE SAT

1. The Hon'ble Securities Appellate Tribunal (SAT), in Appeal No. 402 of 2015, vide order dated July 19, 2016, while setting aside the adjudication order dated February 09, 2015, remanded the case to the Adjudicating Officer for passing fresh order on merits and in accordance with law against the Appellant viz. Shri Shivram Motilal Meena, (hereinafter referred to as the Noticee). The Hon'ble SAT observed that:

   *"Counsel for the parties state that in view of the order passed in Appeal No. 316 of 2015 (Shiv Kumar Agarwal vs. Securities and Exchange Board of India) on March 16, 2016, the orders impugned in these appeals may also be set aside and restored to the file of Adjudicating Officer of SEBI for passing fresh orders on merit and in accordance with law."*

## FACTS OF THE CASE IN BRIEF

2. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an investigation into the alleged irregularity in the trading in the shares of Gujarat Arth Ltd. (hereinafter referred to as "GAL") and into the possible violations of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "Act") and various Rules and Regulations made there under for the period from October 06, 2003 to January 28, 2004 (hereinafter referred to as "Investigation Period"). The Investigation revealed that Shri Shivram Motilal Meena (hereinafter referred to as 'Noticee') did not file required disclosures under SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as "Takeover Regulations") and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "Insider Trading Regulations").

3. SEBI, therefore, initiated adjudication proceedings under the provisions of the SEBI Act against the Noticee to inquire into and adjudge the alleged violations of the provisions of Regulation 7(1) read with 7(2) of Takeover Regulations and Regulation 13(1) of Insider Trading Regulations.

**Appointment of Adjudicating Officer**

4. The undersigned was appointed as Adjudicating Officer, vide order dated April 02, 2009 under section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Rules") to enquire into and adjudge under section 15A(b) of the SEBI Act 1992 for the alleged violations.

**Show Cause Notice, Reply and Personal Hearing**

5. Show Cause Notice (SCN) dated March 18, 2010 was issued under Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the "Adjudicating Rules") to the Noticee to show cause as to why an inquiry should not be held against him and penalty be not imposed under Sections 15A(b) of the Act for the alleged violation of the provisions of Regulation 7(1) read with 7(2) of Takeover Regulations and Regulation 13(1) of Insider Trading Regulations.

6. The allegation against the Noticee is that the shareholding of the Noticee in GAL as on September 30, 2003 was nil which became 1,94,040 shares (3.73%) as on October 31, 2003, 15,730 shares (0.30%) as on November 30, 2003 and December 31, 2003 and 5,15,730 shares (9.91%) as on January 31, 2004. On January 23, 2004, the Noticee acquired 5,00,000 shares (9.61%) from Cavalier Securities in off-market transaction after which his shareholding became 5,15,730 shares (9.91%). In terms of Regulation 7(1) read with Regulation 7(2) of the Takeover Regulations and Regulation 13 (1) of the Insider Trading Regulations, the Noticee was required to make certain disclosures which it is alleged have not been done.

7. No reply was received for the SCN dated March 18, 2010. Hence vide letter dated May 19, 2010, another opportunity to submit the reply to the SCN was given and an opportunity of personal hearing was also granted to the Noticee on June 21, 2010.

8. The Noticee authorized his representative to attend the personal hearing and the same was attended by the representative of the Noticee on the said date. The representative of the notice submitted that the Noticee was not aware of the Insider Trading and Takeover Regulations and further submitted that he had inadvertently committed the violations. It was also submitted during the personal hearing that the Noticee would file the written reply to the SCN within 10 days.

9. Vide letter dated June 22, 2010, the Noticee submitted that he was not aware of the said SEBI Regulations which make certain disclosures mandatory on the part of persons operating in the capital market and therefore was ignorant about the same. He further submitted that there was no malafide motive behind dealing in the said scrip.

10. Pursuant to the order dated July 19, 2016 of the Hon'ble SAT for passing fresh order on merits and in accordance with law, the Noticee was provided with an opportunity for submitting additional replies and an opportunity of personal hearing on January 24, 2018. However, the Noticee did not attend the said hearing and requested for another opportunity of personal hearing in the month of March 2018. Therefore, another opportunity for submitting additional replies and personal hearing was granted to the Noticee on March 13, 2018. The Noticee, vide letter dated March 06, 2018, authorized his representative to attend the personal hearing. The authorized representative, vide email dated March 13, 2018, requested for extension of one month's time which was granted on April 16, 2018. The Noticee, vide letter dated April 13, 2018, requested for extension of time of 4 to 5 weeks. Accordingly, another opportunity of personal hearing was granted on May 30, 2018.

11. The Noticee, vide letter dated May 07, 2018, requested for another extension of time of 2 to 3 weeks. Further, vide letter dated May 10, 2018, the Noticee requested for additional documents. Vide letter dated May 14, 2018, the Noticee was informed that since he has already admitted to the allegations levelled against him, his request for documents does not appear to be tenable. However, it was also informed to the Noticee that in case he still needs any document, he can approach the concerned division of Enforcement Department of SEBI. The Enforcement Department of SEBI, vide letter dated June 12, 2018, informed the Noticee that all the documents which are relevant and relied upon, have been provided to him.

12. The Noticee, vide letter dated June 11, 2018, inter-alia submitted the following:

    a. While trading in the scrip of GAL he was not aware that he acquired 9.91% stake in the said scrip
    b. He was not aware of the provisions of Regulation 7(1) read with Regulation 7(2) of the Takeover Regulations and Regulation 13 (1) of the Insider Trading Regulations requiring him to make disclosures
    c. the failure to comply with the said provisions was neither willful nor deliberate
    d. he did not accrue any illegal profits by non disclosure

13. The Noticee also requested for personal hearing and accordingly vide letter dated June 15, 2018, the Noticee was granted another opportunity of personal hearing on July 04, 2018. The Noticee, vide letter dated July 03, 2018, authorised his representatives to appear for the personal hearing. In the said hearing, the authorized representatives of the Noticee, reiterated the submissions made vide letter dated June 11, 2018 and referred to the judgements mentioned in the said reply. On the query regarding the relationship of the Noticee with Cavalier

Securities, from whom it received 5,00,000 shares, it was submitted that they would provide the clarification.

14. Vide letter dated July 31, 2018, the Noticee submitted that he does not know anything about Cavalier Securities Ltd. as the said shares were received by him through broker/ intermediary.

**Consideration of Issues, Evidence and Findings**

**Issue a) Whether the Noticee has violated Regulation 7(1) read with 7(2) of Takeover Regulations and Regulation 13(1) of Insider Trading Regulations**

15. The relevant provisions of the Takeover Regulations and Insider Trading Regulations are as under:

**Takeover Regulations**

**Regulation 7(1)**- **Acquisition of 5 per cent and more shares or voting rights of a company** *"Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed."*

**Regulation 7(2)-** *The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,- (a) the receipt of intimation of allotment of shares; or (b) the acquisition of shares or voting rights, as the case may be.*

**Insider Trading Regulations**

**Regulation 13(1)**- *Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of:— (a) the receipt of intimation of allotment of shares; or (b) the acquisition of shares or voting rights, as the case may be.*

16. I find that the shareholding of the Noticee in GAL as on September 30, 2003 was nil which became 1,94,040 shares (3.73%) as on October 31, 2003, 15,730 shares (0.30%) as on November 30, 2003 and December 31, 2003 and 5,15,730 shares (9.91%) as on January 31, 2004. On January 23, 2004, the Noticee acquired 5,00,000 shares (9.61%) from Cavalier Securities in off-market transaction after which his shareholding became 5,15,730 shares (9.91%). In terms of Regulation 7(1) read with Regulation 7(2) of the Takeover Regulations and Regulation 13 (1) of the Insider Trading Regulations, the Noticee was required to make certain disclosures which he has failed to do.

17. The Noticee has submitted that he was not aware that he acquired 9.91% stake in the scrip of GAL and also not aware of the provisions of Regulation 7(1) read with

Regulation 7(2) of the Takeover Regulations and Regulation 13 (1) of the Insider Trading Regulations requiring him to make disclosures. The Noticee further submitted that his failure to comply with the said provisions was neither wilful nor deliberate and he did not accrue any illegal profits by non disclosure.

18. I find that the Noticee has admitted to have not filed the disclosures as required under Regulation 7(1) read with Regulation 7(2) of the Takeover Regulations and Regulation 13 (1) of the Insider Trading Regulations. Thus, on the basis of available records, I hold that the charges levelled against the Noticee are proved and that the allegation of violation of provisions of Regulation 7(1) read with Regulation 7(2) of the Takeover Regulations and Regulation 13 (1) of the Insider Trading Regulations stands established against the Noticee.

**Issue b) Whether the Noticee is liable for monetary penalty prescribed under Section 15 A(b) of the SEBI Act for the aforesaid violation?**

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

20. Thus, the aforesaid violations by the Noticee make it liable for penalty under Sections 15 A(b) of the Act, which read as follows:

**<u>Penalty for failure to furnish information, return, etc. Section 15A</u>**
*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, 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;*

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

21. While determining the quantum of penalty under Section 15A(b), it is important to consider the factors stipulated in Section 15J of the Act, which read as under:-
**Factors to be taken into account by the adjudicating officer** *15 J. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*
*(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*

*(b) the amount of loss caused to an investor or group of investors as a result of the default;*
*(c) the repetitive nature of the default.*

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

23. With regard to the submission of the Noticee regarding being not aware of the disclosure requirement under Takeover Regulations and Insider Regulations, I make reliance on order of the Hon'ble Supreme Court of India *in the matter of SEBI Vs. Shri Ram Mutual Fund*, where the Hon'ble Court has held that once the violation of statutory regulations is established, imposition of penalty becomes since qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.

24. Further, I find that in the SAT Appeal No. 300 of 2017 (Smt. Veena Rajesh Shah Vs. SEBI), vide order dated November 23, 2017, the Hon'ble SAT has observed that since violations of the regulations were admitted by the appellant, the AO was justified in imposing penalty against the appellant. Hon'ble SAT has also made the following observations in the said order:

    - Argument of the Appellant that the penalty imposed is excessive and disproportionate to the violations committed/ profits made by the Appellant is without any merit. Penalty imposable under Section 15A(b) of the SEBI Act for each violation is ₹ 1 crore. Consequently for nine violations the penalty imposable would be ₹ 9 crore. Thus, as against the penalty of ₹ 9 crore imposable on the Appellant for violating SAST Regulations and PIT Regulations, the AO has imposed penalty of ₹ 15 lakhs which cannot be said to be excessive or exorbitant.
    - the argument of the appellant that the profits made by the appellant from the transactions in question being negligible, the AO ought to have taken a lenient view is without any merit, because, penalty under Section 15A(b) of SEBI Act is not dependent on the quantum of profits made from the violations.

25. Therefore the issues raised by the Noticee regarding of imposition and the quantum of penalty in the instant matter have been addressed in the aforesaid order of the Hon'ble SAT.

26. I find that the Hon'ble SAT while remanding the instant matter to the undersigned has relied on it's order dated March 16, 2016 in Appeal No. 316 of 2015 (Shiv Kumar Agarwal vs. Securities and Exchange Board of India). In the said appeal, the Hon'ble SAT remanded the matter to the Adjudicating officer noting the following:

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

27. The Hon'ble Supreme Court of India, vide judgment dated November 26, 2015 in the case of SEBI vs. Roofit Industries Ltd., held that Adjudicating Officer has no discretion in deciding quantum of penalty under Chapter VI A (except in u/s 15F (a) and 15HB of the SEBI Act). I find that this issue has been resolved as per "The Finance Act 2017" (Notified for Part VIII of Chapters VI came into effect from April 26, 2017), inter-alia clarifying the following in respect of adjudication under SEBI Act:

*147. In section 15J of the principal Act, the following Explanation shall be inserted, namely:- "Explanation- For the removal of the doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under section 15A to 15E and clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."*

28. Due to the reasons mentioned above, I am of the view that there is no case for change in the penalty of ₹ 10,00,000 imposed on the Noticee under Section 15A(b) of the SEBI Act earlier vide order dated February 09, 2015 for violation of Regulation 7(1) read with Regulation 7(2) of the Takeover Regulations and Regulation 13 (1) of the Insider Trading Regulations.

## ORDER

29. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act, 1992, I hereby impose a monetary penalty of ₹ 10,00,000/- (Rupees Ten Lakhs only) on the Noticee under Section 15A(b) of the Act, which will commensurate with the violations committed by the Noticee.

30. 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 |

31. 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 made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under:
    - Case Name :
    - Name of Payee:
    - Date of payment:
    - Amount Paid:
    - Transaction No:
    - Bank Details in which payment is made:
    - Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)

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

**Date: September 12, 2018** **ASHA SHETTY**
**Place: Mumbai** **ADJUDICATING OFFICER**