

vBEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/KS/VC/2019-20/3484)

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

In respect of:

Shri Vipul Vasantlal Shah
(PAN: ADWPS9528E)
Y-1102, Sacred Heart Town,
Warawali, Pune-411040

In the matter of
Safal Herbs Ltd.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had initiated an adjudication proceedings under Section 15A(b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') against Shri Vipul Vasantlal Shah (hereinafter referred to as '**Noticee**') for the alleged violation of Regulations 13(3) & 13(4A) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') and Regulation 29(2) read with Regulation 29(3) and also Regulation 30(2) read with Regulation 30(3) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**'). In connection with the said adjudication proceedings, Show Cause Notice dated September 08, 2014 (hereinafter referred to as '**SCN**') was issued to the Noticee pursuant to which an Adjudication Order dated December 30, 2015 (hereinafter referred to as '**AO Order**') was passed by the earstwhile

Adjudicating Officer in the said matter. By the said AO order, the Noticee was held liable for the violation of Regulations 13(3) & 13(4A) read with Regulation 13(5) of PIT Regulations and Regulation 29(2) read with Regulation 29(3) of SAST Regulations and also Regulation 30(2) read with Regulation 30(3) of SAST Regulations. Further, in light of Supreme Court Judgment in the matter of SEBI vs Roofit Industries Ltd. [(2016) 12 SCC 125], the erstwhile AO imposed a penalty of Rs. 4,00,00,000/- (Rs. 4 crore only) on the Noticee.

2. Thereafter, aggrieved by the above mentioned adjudication order, the Noticee filed an appeal before the Hon'ble Securities Appellate Tribunal (**SAT**). Hon'ble SAT passed an order dated June 10, 2019 in the matter wherein it gave the following directions:

"For the reasons stated aforesaid, we affirm that part of the order of the AO holding that the appellant had violated the provisions of Regulations 13(3), 13(4A), and 13(5) of the PIT Regulations and Regulations 29(2), 29(3), 30(2) and 30(3) of the SAST Regulations and to that extent the order of the AO is affirmed. We, however, do not agree with the order of the AO imposing a penalty of Rs. 4 crores and to that extent the order of the AO cannot be sustained and is set aside. The appeal is consequently, partly allowed. The matter is remitted to the AO to re-decide only the quantum of penalty, in the light of the observations made above after giving an opportunity of hearing to the appellant. For this purpose, the appellant shall appear before the AO on June 25, 2019 at 11 A.M. on which date the AO will decide the matter after giving an opportunity of hearing. In the event, for some reason, the matter is not decided on that date, the AO will positively decide the same within four weeks thereafter."

Further, Hon'ble SAT also observed that, *"We find that the decision of the Hon'ble Supreme Court in Roofit Industries Ltd. (supra) has been held to be no longer a good law by a larger bench of the Hon'ble Supreme Court in **Civil Appeal No. 11311 of 2013 Adjudicating Officer, SEBI vs. Bhavesh Pabari decided on February 28, 2019** wherein the Hon'ble Supreme Court has held that Roofit Industries had erroneously and wrongly held that Section 15J would not be applicable."*

3. In light of this, vide order dated June 14, 2019, the undersigned was appointed as the Adjudicating Officer by SEBI in the matter for the first time only for the purpose of re-deciding the quantum of penalty. Accordingly, the Noticee was provided with an opportunity of personal hearing on June 25, 2019 at 11.00 AM. The said hearing was postponed to 04.30 PM on the same day upon receiving a request of postponement from the Noticee. Mr. Kunal Katariya, Advocate; Mr. Vipul Shah and Mr. Parth Dave appeared on behalf of the Noticee in the hearing and *inter-alia* made the following submissions:
- a. The Company carried no business since 1996 and I have not been associated with the Company since 1997;*
 - b. The trading in the company was suspended from 1997 to 2012 and the Company's shares had lost all its value;*
 - c. The Appellant / Noticee has submitted and still maintains that he never sold the shares. In fact, the SCN or the Order contains no finding that the Appellant has ever received any consideration for the alleged sale of shares;*
 - d. The investment in the Company has already been reduced to no value and the Appellant has already suffered regarding its investment in the shares of the Company.*
4. I note that Hon'ble SAT, in its order dated June 10, 2019, has already upheld the findings of the erstwhile AO *w.r.t.* the violation of Regulations 13(3) & 13(4A) read with Regulation 13(5) of PIT Regulations and Regulation 29(2) read with Regulation 29(3) and also Regulation 30(2) read with Regulation 30(3) of SAST Regulations. However, the matter was remanded back to SEBI only to decide the quantum of penalty.
5. In light of SAT order dated June 10, 2019, the merits of the matter was not gone into and only the quantum of penalty is being decided by way of present order. In this regard, while determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act, which reads as under :

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.*

Explanation: For removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under Sections 15A to 15E, 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.

6. I note from the paragraphs 21, 22, 23 and 33 of the AO order that the erstwhile AO has already established that the Noticee had violated the provisions of Regulations 13(3) & 13(4A) read with 13(5) of PIT Regulations and Regulation 29(2) read with 29(3) and Regulation 30(2) read with 30(3) of SAST Regulation by not making necessary disclosure on 3 different dates, i.e., September 25, 2012, October 27, 2012 and December 26, 2012 which was upheld by Hon'ble SAT vide order dated June 10, 2019.
7. From the material available on record, the amount of disproportionate gain or unfair advantage to the noticee or the loss caused to the investors as a result of the noticee's default is not quantifiable. Though it may not be possible to ascertain the monetary loss to the investors on account of the default committed by the noticee, the details of the change in the shareholding of the promoters/promoter- group and the timely disclosures thereof, are of significant importance from the point of view of the investors, as such information received by them in a time bound manner would facilitate them immensely in taking a balanced investment decision as regards their holdings in the Company.

ORDER

8. After taking into consideration the directions issued by Hon'ble SAT, the nature and gravity of the violation committed by the Noticee, the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and the mitigating factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, hereby impose a consolidated penalty of Rs. 9,00,000/- (Rs. Nine Lakh only) on the Noticee under the provisions of Section 15A(b) of the SEBI Act for his failure to make the necessary disclosures under Regulations 13(3) & 13(4A) read with Regulation 13(5) of PIT Regulations and Regulation 29(2) read with Regulation 29(3) as well as Regulation 30(2) read with Regulation 30(3) of SAST Regulations.

I am of the view that the said penalty is commensurate with the default committed by the Noticees.

9. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI- Penalties Remittable to Government of India", A/C No 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmation of e-payments made (in the format as given in the table below) should be forwarded to The Division Chief, Division of Regulatory Action-1, Enforcement Department-1 (EFD1-DRA1), Securities and Exchange Board of India, SEBI Bhavan, C-4A, 'G' Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051

1. Case Name:	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5. Transaction No:	

6. Bank Details in which payment is made:	
7. Payment is made for: (like penalties /disgorgement/recovery/Settlement amount and legal charges along with order details)	

10. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.
11. By way of this Adjudication Order, the SCN dated September 08, 2014 is disposed off in line with the directions issued by Hon'ble SAT in its order dated June 10, 2019. Further, in terms of the provisions of Rule 6 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Place: Mumbai
Date: 25.06.2019

K SARAVANAN
ADJUDICATING OFFICER