BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AO/AS/03/2019]

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

Roselabs Finance Ltd.	**PAN-AAACR9134M**

In the matter Gujarat Arth Ltd.

ORDER OF THE HON'BLE SAT

1. The Hon'ble Securities Appellate Tribunal (SAT), in Appeal Nos. 186/2015, vide order dated March 21, 2016, set aside the adjudication order dated December 19, 2014 against Roselabs Finance Ltd. (hereinafter referred to as Noticee) and remanded the case to the Adjudicating Officer for passing fresh order on merits and in accordance with law against the Noticee. The Hon'ble Tribunal also observed that *"It would be open to the appellant to produce evidence in support of its contention that the transfers effected by the appellant were erroneous transfers and hence the erroneously transferred shares were received back."*

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 Limited (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

thereunder for the period from October 06, 2003 to January 28, 2004 (hereinafter referred to as "investigation period").

3. The Investigation revealed that the promoters and persons acting in concert (hereinafter referred to as PAC) of GAL including Roselabs Finance Ltd. offloaded shares in the market through off market transfer in and around the time of misleading announcement made by the company which created artificial volume and impacted the price of the scrip thus defrauded the investors. They transferred shares in off-market and received back shares which triggered more than 15% of the paid up capital of the company before transferring again their entire holding in off market transaction. However, no public announcement was made and also they did not file disclosures as per the requirement of SEBI Regulations.

4. SEBI therefore, initiated adjudication proceedings under the provisions of the SEBI Act against the Noticee to inquire and adjudge the alleged violations of provisions of Regulation 3(a),(b),(c),(d), 4(1) and 4(2)(a),(d),(e) of SEBI (Prohibition of Fraudulent and Unfair trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the “PFUTP Regulations”), Regulation 10 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the “SAST Regulations”).

Appointment of Adjudicating Officer

5. 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 “Adjudicating Rules”) to enquire into and adjudge under Section 15H and 15HA of the SEBI Act.

Show Cause Notice, Reply and Personal Hearing

6. The Show Cause Notice (hereinafter referred to as "SCN") dated December 15, 2009 was issued against the Noticee under Rule 4 of Adjudicating Rules to show cause as to why an inquiry should not be held against them and penalty be not imposed under Section 15H and 15HA of the SEBI Act for the alleged violation of the provisions of Regulation 3 (a),(b),(c),(d), 4 (1) and 4 (2) (a),(d),(e) of PFUTP Regulations and Regulation 10 of SAST Regulations.

7. The SCN alleged that the Noticee and other promoters and PACs of GAL had issued misleading corporate announcements on November 1, 2003, December 22, 2003 and January 16, 2004 regarding financial results, acquisition of business of Poonam Industries, preferential/ right issue, which did not materialize and which lured investors, leading to creation of artificial volumes. It is also alleged that the Noticee and other promoters and PACs of GAL transferred shares before the misleading announcements to various entities who thereafter sold shares through market and off-market transfers. The Noticee and other promoters and PACs of GAL also did not make the public announcements when the threshold limit under SAST Regulations was crossed during the course of their acquisition of shares in the month of October, 2003.

8. The Noticee, vide letter dated January 18, 2010, submitted reply to the SCN, inter-alia, submitting the following:
   a) Since they sold all the holdings in GAL on October 10, 2003, they are unaware and have no knowledge regarding any corporate announcements made after it
   b) On October 10, 2003, shares of GAL were sold to Cavalier Securities Ltd., who was a registered sub-broker with SEBI and on the instruction of Cavalier, the shares were credited to their accounts
   c) They were informed that the shares were erroneously credited to wrong accounts and same needed to be rectified. Therefore, the wrongly credited

shares were credited back into their account on October 20, 2003 and the same were given credit to the rightful accounts on October 23, 2003 as per the instructions of Cavalier

d) There was no agreement or intent to acquire the shares and therefore they are not in violation of Regulation 10 of SAST Regulations

e) Since they were not connected with the operations of the company, had no control over the day to day operations of the company and they had no control, they were not aware about the advertisement regarding acquisition of business of Poonam Industries

9. The undersigned granted an opportunity of personal hearing to the Noticee on April 08, 2010. The hearing was attended by the representative of the Noticee, where the submissions made in the written reply were reiterated and it was also submitted that they are proposing to apply under consent proceedings.

10. However, I note that the Noticee did not apply for consent subsequently. Thereafter, adjudication order dated December 19, 2014 was passed against the Noticee.

11. Pursuant to the order dated March 21, 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 requested for another opportunity of personal hearing as they needed time to collate documents. Therefore, another opportunity of personal hearing was granted to the Noticee on February 26, 2018. However, vide letter dated February 23, 2018, the Noticee informed that they have requested for the relevant documents from the concerned parties and requested for adjournment of the hearing till the relevant documents are received by them.

12. Since no reply was received, the Noticee, vide letter dated June 05, 2018, was advised to provide reply, if any, latest by June 15, 2018. Vide letter dated June 15, 2018, the Noticee provided the reply to the SCN dated December 15, 2009.

13. Vide letter dated June 20, 2018, the Noticee informed that they have filed an application for settlement dated June 18, 2018. In view of the above, the proceedings pursuant to the SCN were kept in abeyance. It was subsequently informed by the concerned division of SEBI that the said settlement application was rejected and the same was communicated to the Noticee vide email dated August 26, 2019.

14. Therefore, vide letter dated August 29, 2019, the Noticee was granted an opportunity of personal hearing on September 20, 2019. The Noticee, vide letter dated September 13, 2019, submitted additional reply to the SCN dated December 15, 2009. Vide the said two replies i.e. June 15, 2018 and September 13, 2019, the Noticee, inter-alia, submitting the following:

- Since the year 2003, when the alleged violations occurred, the management of the company has changed twice pursuant to 2 different open offers made by 2 different entities.
- The present management of the Company only acquired control of the Company in June 2013 pursuant to an open offer in terms of the SEBI (SAST) Regulations, 2011 and was therefore not involved in the management of the Company at the time when the alleged violations were committed.
- On account of change in management of the Company coupled with the inordinate delay on part of SEBI in issuing the SCN and concluding the proceedings, they do not have access to documents pertaining to the violations alleged in the SCN as these are either unavailable with them or untraceable.
- It is not possible for the Company to obtain any documents from the erstwhile promoters of the intermediaries who were involved / aware of the alleged violations committed in the year 2003.

- It is a settled principle of law that a SCN alleging serious and grave violations of fraud and manipulation, must indicate the particulars of the fraud and the manipulation perpetrated, This is essential to inform the Noticee about the manner in which it has played fraud or committed the unfair trade practice so that the Noticee can effectively respond to the allegations levelled.
- Such serious charges cannot be allowed to stand without the particulars of fraud and unfair trade practices being provided in the SCN and the SCN fails on this ground.
- The SCN alleges that they sold their shareholding in GAL aggregating 4.94%, purportedly along with the promoters and the persons acting in concert, before the alleged misleading announcements, to various entities who thereafter sold these shares through market and off-market transactions. However, the SCN fails to mention how the shares of GAL sold by the Company to certain entities through off-market transactions ended in the market and, or, were used for allegedly manipulating the scrip of GAL.
- The SCN has failed to establish their role in issuing the alleged misleading announcements, when they were not involved in day to day management of GAL and did not even hold any shares of GAL when the alleged misleading announcements were made. The Company had sold its entire shareholding in GAL to Cavalier Securities Limited (Cavalier) on 23rd October 2003.
- With respect to the transfer of share made by the Company during the investigation period, they sold their shareholding in GAL to Cavalier Securities Limited on October 10, 2003 vide off-market transfer.
- As per the instructions received from Cavalier, the shares were transferred to the demat account of Khandwala integrated Financial Services Private Limited.
- They were later informed by Cavalier that the shares were credited to the wrong demat account and as per Cavaliers' instructions, the transfer was reversed on October 20, 2003 and thereafter on October 23, 2003 the shares were transferred to the demat account of Cavalier.

- Though they have sold their shares in GAL, as per the SCN, they were shown to be holding shares as per the shareholding pattern of GAL for the quarter ended December 31, 2003.
- The misleading announcements made by the Company did not have any significant impact on the scrip of GAL, which is evident from analysis of the price movement in the scrip of GAL
- the alleged misleading announcement by GAL on November 1, 2003 did not have any immediate impact on the scrip of GAL and the allegation of price manipulation of the scrip of GAL pursuant to the alleged misleading announcement does not stand.
- it is SEBI's own cause that he said alleged misleading announcement on December 22, 2003 did not have any impact on the price of the scrip of GAL
- With respect to the alleged misleading announcement by GAL on January 16, 2004, contrary to the allegation in the SCN that the price of shares of GAL fell after the alleged misleading announcement on January 16, 2014 in fact on January 19, 2004 i.e. the next trading day, the price of the scrip of GAL gradually increased from ₹14.35/- to ₹15.06/- The alleged misleading announcement on January 16, 2004 did not have any impact on the price of scrip of GAL.
- The SCN has ignored the fact that they had sold their entire shareholding in GAL in the month of October 2003, i.e. prior to the alleged misleading announcements and that the Company has not made any gains from the increased trading volume in the scrip of GAL or due to the alleged misleading announcements. Further, they had no role to play in the increased volume in the scrip of GAL or the alleged price manipulation in the scrip of GAL.
- It is a settled principle of law that the allegations of fraudulent, manipulative and unfair trade practices cannot be sustained on the basis of mere surmises, conjectures or suspicion and to establish these charges a higher preponderance of probability is required.
- With respect to the allegation of violation of Regulation 10 of the Takeover Regulations by the Company, the transfer of 2,56,695 shares of GAL into the

Company's demat account on October 20, 2003 was not an acquisition but was merely a reversal of transfer of share of GAL which was inadvertently made to an incorrect demat account on October 10, 2003, as had been stated earlier, and as is also evident from the Transaction Statement. It is submitted that they merely received the shares which it had erroneously transferred and there was no fresh acquisition of share or voting rights of GAL by them.

Consideration of Issues, Evidence and Findings

15. I have carefully examined the charges made against the Noticee as mentioned in the SCN, oral and written submissions and the documents as available on record. In the instant matter the following issues arise for consideration and determination:

Issue 1

a) Whether the Noticee violated Regulations 3 (a), (b), (c), (d), 4(1) and 4(2) (a), (d), (e) of SEBI (PFUTP) Regulations and Regulation 10 of SAST Regulations;

Before proceeding, I would like to refer to the relevant provisions of the PFUTP and SAST Regulations, which reads as under:

PFUTP Regulations

Regulation 3 - Prohibition of certain dealings in securities

No person shall directly or indirectly—
(a) buy, sell or otherwise deal in securities in a fraudulent manner
(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or

deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;
(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

Reg. 4 - Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

4(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—
(a) Indulging in an act which creates false or misleading appearance of trading in the securities market;
(d) paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money's worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;
(e) any act or omission amounting to manipulation of the price of a security;

SAST Regulations

Reg.10 - Acquisition of fifteen per cent or more of the shares or voting rights of any company

No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise [fifteen] per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.

Alleged Violations of FUTP Regulations

16. I observe from the investigation report that as per the BSE website, for the quarter ended September 30, 2003, the Noticee along with others were stated to be promoters and Persons Acting in Concert (PACs). The shareholding details indicated that as on quarter ending September 2003 and December 2003, the promoters were holding 11,14,700 shares (21.44%) and PACs were holding 14,11,295 shares (27.14%) thus together holding 25,25,995 shares (48.58%) as on September 2003 and December 2003.

17. Further, prior to the investigation period, the scrip of GAL was traded irregularly and from August 01, 2003 to October 06, 2003, the scrip was traded on only 3 days with one trade on each day @₹8.05. It started trading actively from October 2003 and major volume was observed on January 16, 2004 which was for 8,04,675 shares. Thereafter, the price and volume started declining and the scrip closed at ₹4.63 in February 2004, ₹1.62 in March 2004 and was last traded on BSE on December 20, 2004 at ₹1.25.

18. I find from the SCN that the price of the scrip increased from opening price of ₹9.50 on October 6, 2003 to closing high price of ₹26.45 on November 11, 2003 accompanied by high volumes. The results for quarter ended September 2003 were declared on November 7, 2003. Thereafter from opening price of ₹27.75 on November 12, 2003 the price of the scrip fell to ₹10.12 on December 18, 2003 amidst comparatively low volumes. The results for quarter ended December 2003 were declared on January 14, 2004. During this period the scrip recorded very

large volumes especially on 15th, 16th and 19th January 2004. The price hit the lower circuit of 5% thereafter and closed at ₹11.10 on January 28, 2004. The volumes in the scrip were as low as 143 shares on October 6, 2003 and was as high as 8,04,675 shares on January 16, 2004.

19. I find that following corporate announcements were made by GAL:

Date	**Corporate announcement**	**Impact on price/volume**
November 1, 2003	Informed BSE that it has acquired the business and undertaking of Poonam Industries Ltd. along with their registered Trademarks on going concern basis and have entered into an agreement on October 25, 2003.	Next 7 day's price went up from ₹21.55 to ₹26.45.
December 22, 2003	Informed BSE that the EGM of the members would be held on January 12, 2004 to seek approval- to increase the Authorized Share capital of the company from ₹55 million to ₹260 million and to issue and allot in one or more lots on preferential or Rights Issue basis not exceeding 20.80 million equity shares of ₹10/- for value not exceeding ₹208 million at a price in accordance with the SEBI Guidelines	Marginal rise in price.
January 16, 2004	Informed BSE that at the EGM held on January 12, 2004 the shareholders approved the increase in authorized share capital from ₹55 million to ₹260 million and the issue and allotment on preferential or as rights issue basis up to 2,08,00,000 equity shares of ₹10/- at a price determined as per SEBI guidelines, but not less than ₹10/-	Price fell, accompanied by huge volumes.

20. GAL declared the results for quarter ended September 2003 on November 7, 2003 and following observations were made:-

a) The sales of GAL were ₹2351.68 lakhs and net profit of ₹237.19 lakhs as against total sales of ₹15 lakhs and net loss of ₹0.44 lakhs for the quarter ended September 30, 2002.

b) In the notes below the results of September 2003, the company announced that by an agreement dated October 25, 2003 it acquired w.e.f. 1st July, 2003 the business and undertaking of Poonam Industries Ltd. along with trademark 'Poonam Sarees" having annual turnover of about ₹100 crores.

21. GAL declared the results for quarter ended December 2003 on January 14, 2004 and it is observed from the same that:-

a) The sales of GAL were ₹2615.33 lakhs and net profit of ₹259.29 lakhs as against sales of ₹0.15 lakh and net profit of ₹0.43 lakh for the quarter ended December 2002.

b) The Board of Directors recommended a dividend of 40% along with the results.

22. I further find from the investigation report that GAL terminated its arrangement with Poonam Industries for using the brand name Poonam Sarees and GAL withheld the payment of royalty amount. GAL also submitted that there was no preferential allotment, buy back or any development regarding equity capital for the year 2002-03 and 2003-04. Further, in replies to the various summons/ letters issued to Shri Shiv Kumar Agarwal, the then MD of GAL and promoter of GAL, had stated that till the time he was in charge of the company, no negotiations were held with Poonam Industries.

23. Thus, the Noticee and PACs, transferred shares before the misleading announcements, to various entities, who thereafter sold shares through market and off-market transfers. In reply to the above allegations, Noticee has submitted that shares were transferred erroneously from their accounts. However, it is observed that the shares were transferred from and received back in the accounts of the Noticee and others in a similar manner. It is highly unlikely that the shares were transferred from and received back in the account of the Noticee and others erroneously. Further, the Noticee has not produced any evidence in

support of their contention regarding erroneous transfer of securities, despite specific observation by the Hon'ble Tribunal.

24. As mentioned earlier, the Noticee was part of the promoter group of GAL. Shri Shiv Kumar Agarwal, claimed that he resigned from the company on October 9, 2003 and therefore, he should not be held responsible for the alleged corporate announcements and results for the quarter ended September 2003 and December 2003. However, I find that as per the MCA filing, Shri Shiv Kumar Agarwal resigned from the directorship of the company w.e.f. June 11, 2004. Further, as per the Annual Report 2003 of GAL dated January 14, 2004, Shri Shiv Kumar Agarwal was shown as the MD. Further, in the said Annual Report, under the head Composition of Board, Shri Shiv Kumar Agarwal is shown as an Independent and Executive Director, who attended "8" out of "10" Board meetings during the year. Therefore, one of the members of the promoter group of GAL was still into the day to day affairs of GAL even after selling of stake in GAL. Therefore, the contention of the Noticee that they were not involved in day to day management of GAL and did not even hold any shares of GAL when the alleged misleading announcements were made is without merit.

25. Further, it was submitted that they were in need of funds and since they got a buyer, i.e. Cavalier Securities, they sold their shares. I find that there was no agreement for the sale of shares, which was claimed to be at a price of ₹10 per share. The Noticee submitted that he received the payment in the year 2006 and 2007 after a lot of follow up. Though the reasons mentioned for sale of shares of GAL was the need of funds, the funds were admittedly received after a period of 3-4 years. Subsequent to the transfer of shares by the Noticee to Cavalier Securities and others, there were several positive corporate announcements by the company, which did not materialize and lured the investors as alleged in the SCN.

26. The Noticee has submitted that the alleged misleading announcement on January 16, 2004 did not have any impact on the price of scrip of GAL. I find that the SCN does not allege price rise due to the said announcement instead it resulted in huge volume i.e. 8,04,675 shares. Therefore, I find no substance in the said submission of the Noticee.

27. With regard to the submissions of the Noticee that since the year 2003, when the alleged violations occurred, the management of the company has changed twice pursuant to 2 different open offers made by 2 different entities and they acquired control of the GAL only in June 2013 and therefore were not involved in the management of the Company at the time when the alleged violations, I note that the company is a juristic entity which is owned by shareholders/ promoters and run by individuals called directors. Any change in either of two would not affect the liability which has occurred due to acts of the company. The instant proceedings are against the Noticee as a company and not against it's promoters and any change in promoter is not going to affect the liability of the company. Further, I note that the Noticee, under the present management had filed the appeal in the Hon'ble SAT against the SEBI order dated December 19, 2014 and the matter was remanded back to SEBI. It was the responsibility of the present management to carry out appropriate due diligence to ascertain the liabilities of the Noticee before deciding on acquiring controlling stake in the company. In case of non-submission/ wrong submission of information by the then management of the company, the present promoters were entitled to avail appropriate legal remedy. In view of the above, the change in management of the Noticee is in no way affects the liability of the Noticee in terms of the present proceedings.

28. The said acts of the Noticee and others, i.e. transfer of their holding to Cavalier Securities without any agreement, subsequent misleading positive corporate announcements such as acquisition of business of Poonam Industries and preferential/right issue by the company, luring the investors and off-loading of

shares of GAL by Cavalier and other entities, and receipt of funds from Cavalier Securities after a period of 3-4 years from the transfer of shares goes on to indicate that it was part of the scheme meant to lure the innocent investors and enable to the Noticee and others to offload the shares.

29. Thus, the Noticee and other promoters of GAL were instrumental in issuing misleading corporate announcements on November 1, 2003, December 22, 2003 and January 16, 2004 and disclosures regarding acquisition of business of Poonam Industries, preferential/ right issue, which did not materialize and which lured investors, leading to creation of artificial volumes.

30. In view of foregoing, I find that the submissions of the Noticee are not tenable and consequently, hold that the charges levelled against the Noticee are proved and the Noticee at 1 above has violated Regulations 3(a),(b),(c),(d), 4(1) and 4(2)(a),(d),(e) of SEBI(Prohibition of Fraudulent and Unfair trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the "PFUTP Regulations").

Alleged violation of SAST Regulations

31. The Noticee along with other Promoters and PACs of GAL transferred 22,76,975 shares (43.79%) on October 11, 2003 in off market deals to other entities, shareholding of Promoters and PACs in GAL reduced to 2,49,000 shares (4.79%). On October 20 and 21, 2003, Promoters and PACs, including the Noticee, acquired 15,69,695 shares and shareholding became 18,18,695 shares (35%) and crossed the threshold limit of 15% mentioned in the SAST Regulations. As per Regulation 10 of the SAST Regulations, a public announcement has to be made by the acquirer on the acquisition of shares beyond 15% of the equity capital of the company. It is alleged that the Noticee and other promoters/ PACs did not make any public announcement and alleged to have violated provisions of Regulation 10 of SAST Regulations. The Noticee,

in reply to this allegation, submitted that the shares were transferred erroneously and each of the acquisitions by the Noticee, if at all can be called as acquisition was on standalone basis and nothing to do with other promoters/ PACs. Their earlier status as PACs came to an end once they decided to sell shares of GAL.

32. However, it is observed that the shares GAL were transferred from and received back in the accounts of the Noticee and others. It is highly unlikely that the shares were transferred from and received back in the accounts of all the notices erroneously. The plea of the Noticee that they ceased to be PACs after the decision to sell shares of GAL is without merit and instead the acts of the Noticee showed common intent. The Noticee has not produced any evidence in support of their contention regarding erroneous transfer of securities despite specific observation by the Hon'ble Tribunal.

33. In this regard, I rely The Hon'ble Supreme Court of India in the matter of Nirma Industries Limited and another vs. SEBI (Civil Appeal no. 6082 of 2008) vide Order dated May 09, 2013, *inter alia* made the following observations :

"42. A conspectus of the aforesaid Regulations would show that the scheme of the Takeover Code is (a) to ensure that the target company is aware of the substantial acquisition ; (b) to ensure that in the process of the substantial acquisition or takeover, the security market is not distorted or manipulated and (c) to ensure that the small investors are given an option to exit, that is, they are offered a choice to either offload their shares at a price as determined in accordance with the takeover code or to continue as shareholders under the new dispensation. In other words, the takeover code is meant to ensure fair and equal treatment of all shareholders in relation to substantial acquisition of shares and takeovers and that the process does not take place in a clandestine manner without protecting the interest of the shareholders.....

57. We are not inclined to accept the aforesaid submission. In the aforesaid judgment in Sahara India Real Estate Corporation Limited (supra) this Court observed as under:

From a collective perusal of Sections 11, 11A, 11B and 11C of the SEBI Act, the conclusions drawn by the SAT, that on the subject of regulating the securities market and protecting interest of investors in securities, the SEBI Act is a stand alone enactment, and the SEBIs powers thereunder are not fettered by any other law including the Companies Act, is fully justified.

58. These observations have been made by this Court to emphasise that SEBI has all the powers to protect the interests of investors in securities and also to ensure orderly, regulated, and transparent functioning of the stock markets. The aforesaid observations would be of no assistance to the appellants herein who is seeking to walk away from public offer merely to avoid economic loses. Rather we agree with the submission of Mr. Venugopal that permitting such a withdrawal would lead to encouragement of unscrupulous elements to speculate in the stock market. Encouraging such a practice of an offer being withdrawn which has become uneconomical would have a destabilizing effect in the securities market. This would be destructive of the purpose for which the Takeover Code was enacted.

.....

71. We are inclined to agree with the submission made by Mr. Venugopal that the appellants cannot be permitted to wriggle out of the obligation of a public offer under the Takeover Regulation. Permitting them to do so would deprive the ordinary shareholders of their valuable right to have an exit option under the aforesaid regulations. The SEBI Regulations are designed to ensure that public announcement is not made by way of speculation and to protect the interest of the other shareholders."

34. Further, the Hon'ble Securities Appellate Tribunal made the following observations in its Order dated September 08, 2011 in the matter of Nirvana

Holdings Private Limited vs. SEBI (Appeal no. 31 of 2011). These observations would elucidate the importance of public offer to the shareholders of a target company:

"It must be remembered that whenever an acquirer violates Regulation 10, 11 or 12 of the takeover code by not making a public announcement, he should be directed to comply with the provision by making a public offer. The words "unless such acquirer makes a public announcement" appearing in Regulations 10 and 11(1) make these provisions mandatory and a public announcement has to be made. Similar words appear in Regulation 12 as well. These provisions make the acquisition conditional upon a public announcement being made. The primary object of the takeover code is to provide an exit route to the public shareholders when there is substantial acquisition of shares or a takeover. This right to exit is an invaluable right and the shareholders cannot be deprived of this right lightly. It is only when larger interest of investor protection or that of the securities market demands that this right could be taken away. Therefore, as a normal rule, a direction to make a public announcement to acquire shares of the target company should issue to an acquirer who fails to do that. The Board need not give reasons as to why such a direction is being issued because that is the mandate of Regulations 10, 11 and 12. However, if the issuance of such a direction is not in the interest of the securities market or for the protection of interest of investors, the Board may deviate from the normal rule and issue any other direction as envisaged in Regulation 44 of the takeover code. In that event, the Board should record reasons for deviation."

35. I find that the Noticee, along with other promoters/ PACs, transferred shares in off market and received back shares which triggered more than 15% of the paid up capital of the company before transferring again their entire holding in off market transaction. But no public announcement was made as per the provision of SEBI SAST Regulations.

36. Further, the Hon'ble Supreme Court has observed that the takeover code is meant to ensure fair and equal treatment of all shareholders in relation to substantial acquisition of shares and takeovers and that the process does not take place in a clandestine manner without protecting the interest of the shareholders. From the forgoing I find that the exemption from giving an open offer can be in cases where the issuance of such a direction is not in the interest of the securities market or for the protection of interest of investors.

37. In view of the foregoing, I find that the submissions of the Noticee are not tenable and consequently, hold that the charges levelled against the Noticee are proved and that the allegation of violation of provision of Regulation 10 of SEBI SAST Regulations stands established.

ISSUE 2

Whether the Noticee is liable for monetary penalty prescribed under Section 15H and 15HA of the SEBI Act for the aforesaid violation?

38. The next issue for consideration is as to what would be the monetary penalty that 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 sine 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".

39. Thus, the aforesaid violations by the Noticee make them liable for penalty under Sections 15H, 15HA of SEBI Act, 1992 which read as follows

Penalty for non-disclosure of acquisition of shares and take-overs

15H*. If any person, who is required under this Act or any rules or regulations made thereunder, fails to—*

(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or

(ii) make a public announcement to acquire shares at a minimum price; or

(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or

(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

Penalty for fraudulent and unfair trade practices

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

Penalty for failure to furnish information, return, etc.

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?

40. 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.

41. 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.

42. With regard to the submission of the Noticee regarding being not aware of the disclosure requirement under SAST 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 sine 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.

43. I find that the Hon'ble SAT while remanding the instant matter to the undersigned has noted 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 matter 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."

44. I also note that in the matter of SEBI Vs. Rakhi Trading Private Limited (Civil Appeal Nos 3174-3177 of 2011), the Hon'ble Supreme Court observed that *"...Proof of manipulation might depend upon inferences drawn from factual details. Such inferences could be gathered from pattern of trading data and the nature of the transactions etc. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors.*

In the quasi-judicial proceeding before SEBI, the standard of proof is preponderance of probability. In the said matter, reliance was also placed on Kishore R. Ajmera case, wherein this Court held as under:

"*It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion there from. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."*

45. In another matter, Hon'ble Securities Appellate Tribunal (SAT) has observed in the matter of Ketan Parekh v. SEBI:"...*Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available...."*

46. The acts of the Noticee, i.e. transfer of their holding to Cavalier Securities without any agreement, subsequent misleading positive corporate announcements by the company and off-loading of shares of GAL by Cavalier and other entities, and receipt of funds from Cavalier Securities after a period of 3-4 years from the transfer of shares goes on to indicate that it was part of the scheme meant to lure the innocent investors and enable the Noticee to offload the shares.

47. Thus, the Noticee along with PACs were instrumental in issuing misleading corporate announcements on November 1, 2003, December 22, 2003 and January 16, 2004 and financial results regarding acquisition of business of Poonam Industries, preferential/ right issue, which did not materialize and which lured investors, leading to creation of artificial volumes. Further, the Noticee, along with PACs transferred shares in off-market and received back shares which triggered more than 15% of the paid up capital of the company before transferring again their entire holding in off market transaction. But no public announcement was made as per the provision of SEBI SAST Regulations. The Noticee failed to make the required disclosures and SEBI (PIT) Regulations.

48. Due to the reasons mentioned above, I am of the view that there is no case for change in the penalty imposed on the Noticee vide order dated December 19, 2014 for violation of SEBI (PFUTP) regulations and SAST Regulations.

ORDER

49. 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 monetary penalty of ₹2,53,72,500/- (Rupees Two Crores Fifty Three Lacs Seventy Two Thousand and Five Hundred Only) under section 15 H and 15HA on the Noticee, which will be commensurate with the violations committed by the Noticee.

50. 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

51. 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)

52. 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: December 23, 2019 **ASHA SHETTY**

Place: Mumbai **ADJUDICATING OFFICER**