BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. AO/AS/01/2021]

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

Basant Malpani	**PAN-ALIPB3873H**

In the matter Gujarat Arth Ltd.

ORDER OF THE HON'BLE SAT

1. The Hon'ble Securities Appellate Tribunal (SAT), in Appeal No. 204/2015, vide order dated July 19, 2016, set aside the adjudication order dated February 09, 2015 against Shri Basant Malpani (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 observed 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 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 Noticee aided and abetted the promoters and persons acting in concert (hereinafter referred to as PAC) in the manipulation in the scrip of GAL which was in violation of provisions of SEBI (Prohibition of Fraudulent and Manipulative Trade Practices) Regulations, 2003 (hereinafter referred to as “PFUTP Regulations”). The Noticee did not submit any information sought through SEBI summons and reminders during the process of investigation. The Noticee did not also file the 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”).

4. 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 Regulations 4(1), 4(2) (a),(b)(e) & (g) of the PFUTP Regulations; Regulation 7(1) read with 7(2) of Takeover Regulations; Regulation 13(1) of Insider Trading Regulations and Section 11C(2) read with 11C (3) & (5) of the Act.

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 15A(a), 15A(b) and 15HA of the SEBI Act.

Show Cause Notice, Reply and Personal Hearing

6. The Show Cause Notice (hereinafter referred to as "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(a), 15A(b) and 15HA of the Act for the alleged violation of the provisions of:
   a) Section 11C(2) read with 11C(3) & (5) of the Act
   b) Regulation 7(1) read with 7(2) of Takeover Regulations & Regulation 13(1) of Insider Trading Regulations
   c) Regulations 4 (1), 4(2)(a),(b),(e) and (g) of the PFUTP Regulations

7. The SCN alleged that the Noticee received 2,97,200 shares (5.71%) from Singhal Overseas Ltd. (a promoter entity of GAL) on October 11, 2003. He started buying and selling shares of GAL from October 14, 2003 and continued selling after misleading announcement and contributed to the volumes in the scrip. The total quantity bought and sold by the Noticee was 9,01,738 shares (11.10%) and 7,69,471 shares (9.48%) respectively. Promoters/ PAC transferred shares before the misleading announcements to several entities including the Noticee who thereafter sold the shares through market and off-market transfers. The Noticee, thus aided and abetted the promoters and PACs in the manipulation in the scrip of GAL. The Noticee was alleged to have violated the provisions of Regulations 4 (1), 4(2) (a), (b), (e) and (g) of the PFUTP Regulations.

8. The SCN also alleged that the Noticee did not submit any information sought for through SEBI summons and reminders during the process of investigation. The Noticee was alleged to have violated the provisions of Section 11C(2) read with 11C (3) and 11C(5) of the Act.

9. Further, it was also alleged that the Noticee was holding "nil" shares as on September 30, 2003 and on October 11, 2003, received 2,97,200 shares

(5.71%) through off market transfers. Thus, 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 is alleged to have not been done.

10. The Noticee, vide letter dated April 15, 2010, submitted reply to the SCN without providing any supporting documents. Vide SEBI letter dated July 01, 2010, the undersigned granted an opportunity of personal hearing to the Noticee on July 28, 2010. 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 reiterated the reply submitted by the Noticee, however, no supporting documents were submitted during the hearing also. The authorised representative of the Noticee sought time to produce documentary evidence to support the submissions. The Noticee submitted his reply on August 06, 2010, which was similar to the reply dated April 15, 2010, inter-alia, submitting the following:

    a) He was approached by Cavalier Securities on friendly terms to assist them with the shares of GAL as they were not having the facility to trade at BSE.
    b) He was having demat account with Ruchiraj Shares and Stock Brokers Pvt. Ltd. Accordingly Cavalier Securities transferred 2,97,200 shares of GAL in off market transaction to his account in trust on October 11, 2003.
    c) He was never aware as to whom these shares belonged to.
    d) Cavalier told him to hold the shares on their behalf and transact as per their directions.
    e) He had requested Cavalier to open a demat account with Ruchiraj so that trading can be facilitated and Cavalier informed him that they are in the process of doing the same and to meet the immediate urgency he should hold the shares.
    f) He maintained good relationship with Cavalier and during the same period, since he was in need of money, he had taken loan from Cavalier Securities amounting to ₹3,00,000/- vide cheque no. 121169 of HDFC Bank dated September 22, 2004.

g) The amount of ₹6,81,198/- paid to Cavalier vide cheque dated October 05, 2005 drawn on HDFC Bank Ltd., out which ₹3,81,198/- was the consideration of sale of 2,97,200 shares of GAL and ₹3,00,000/- was towards the loan amount.

h) He sold 2,97,200 shares of Gujarat Arth on 3 trading days on May 10, 2014 and 18, 2004 for a total value of ₹3,81,198.

i) He was not aware of specific demands of various legislations and was not aware that he acquired more than 5% of shares of any company that he was obligated to inform anybody.

j) He had no nexus of any kind with the promoters or anybody in whatsoever manner related with GAL. He had just done transactions on a friendly basis and he was not aware whether any kind of offence had been committed.

k) Being a bit cautious and upon advice from some of his friends he had intimated the GAL and BSE about the off market transaction vide his letter dated October 18, 2003. However, he regretted not to have provided the courier receipts of the same.

l) To suffice the same he had written to BSE vide letter dated August 05, 2010 to the BSE to confirm with their records about the receipt of his said letter intimating them about the said off market transaction.

m) He had made payments through a legalized channel for the shares that were acquired and sold by him in his trust.

n) He could not present himself before SEBI since he was suffering from back pain which has been intimated to SEBI in time.

11. Taking into consideration all the facts available on record, a total penalty of Rs. 1.30 crores was imposed on the Noticee vide order dated February 09, 2015 for violation of SBEI Act, PFUTP Regulations, Takeover Regulations and Insider Trading Regulations

12. Pursuant to the order dated July 19, 2016 of the Hon'ble SAT for passing fresh order on merits and matter being received by the undersigned, in accordance with law, the Noticee, vide letter dated December 27, 2017, was

provided with an opportunity for submitting additional replies and an opportunity of personal hearing on January 23, 2018. However, the letter which was sent through Speed Post was returned back with remarks “unclaimed”. The aforesaid hearing letter was sent to the email id of the Noticee vide email dated January 17, 2018. The Noticee, vide letter dated January 18, 2018, requested for postponement of the hearing since he was out of station. Accordingly, vide letter dated January 23, 2018, he was granted another opportunity of personal hearing was granted on February 27, 2018.

13. However, the Noticee, vide letter dated February 06, 2018 informed that he has filed an application for settlement and requested to keep the proceedings in abeyance. Accordingly, the proceedings pursuant to the SCN were kept in abeyance.

14. It was subsequently informed by the concerned division of SEBI that the said settlement application was rejected. Accordingly, vide letter dated April 30, 2019, another opportunity of personal hearing was granted to the Noticee on May 24, 2019.

15. However, vide letter dated May 07, 2019, the Noticee requested for inspection of all documents relied upon and referred to in the present proceedings. Accordingly, vide letter dated May 10, 2019, the Noticee was advised to avail inspection documents from the Enforcement Department of SEBI.

16. Upon receipt of intimation from the concerned department of SEBI that inspection of documents were provided (which was delayed on account of COVID), the Noticee was granted an opportunity of personal hearing on November 26, 2020 vide email dated November 11, 2020. The authorised representative of the Noticee, vide email dated November 11, 2020, informed that the Noticee is undergoing COVID treatment and is unable to give any further instruction in the matter and requested not to take any adverse action against the Noticee till he gives a reply. Vide email dated November 19, 2020, the authorised representative of the Noticee requested for postponement of the hearing.

17. Accordingly, vide email dated November 20, 2020, another opportunity of personal hearing was granted to the Noticee on December 15, 2020. On the said date, the authorised representatives of the Noticee attended the hearing and the counsel of the Noticee made submissions. The counsel was advised to submit written submissions within 15 days.

18. Vide email dated January 04, 2021, written submissions were filed by the Noticee. Summary of the written submissions are as follows:
    - The proceedings are affected by substantial delay. The impugned transactions took place in October 2003; the show cause notice itself was issued after 7 years on March 18, 2010 and the adjudicating order was passed on February 9, 2015, after 12 years from the date of transactions.
    - On appeal the Hon. SAT passed an order on July 19, 2016 reverting the matter to the Adjudicating Officer (AO). Thereafter the personal hearing was given by the AO vide email dated November 11, 2020 i.e. after 4 years from the SAT order. The undue delay in conducting the proceedings have resulted in the Noticee not being able to defend the case effectively.
    - In the meantime, SEBI has passed orders against the promoters and other entities.
    - Since the crux of the charge in the show cause notice is that the Noticee aided and abetted the promoters in the manipulation of the share prices of Gujarat Arth Ltd. the case against Noticee has become prejudged in the view of the said orders against the Promoters and other entities which leaves the matter indefensible on merits from the point of view of the Noticee.
    - The lapse of time has caused prejudice to the Noticee and therefore the proceedings should be dropped on account of delay and latches in conducting the proceedings.
    - Some of the crucial document such as the investigation reports and the statements of the promoters have not been made available. The principles of natural justice were violated by not providing the relevant documents to

enable the Noticee to defend his case, when the charge is that of aiding and abetting the promoters and is not an independent charge as in other cases.

- Whether the contribution of 11.10% and 9.48% on the buy and sell side by the Noticee has resulted in concentration of volumes and if so for how many days such concentration was there and how it impacted the market.
- There is no allegation that the false or misleading appearance of trading was created by the Noticee. There is no allegation of circular trading in the impugned SCN. The motive is not a consideration for establishing a fraud. In fact, the essential ingredient for establishing fraud is, inducing other to trade. A fraud can be established only when inducement is established. The impugned SCN contains no allegation or evidence of inducement and there is no charge on the Noticee being involved in device or scheme.
- It is alleged in the impugned SCN that the Noticee has not submitted any information sought for through SEBI summons and reminders during the process of investigation by SEBI and in view of the same it is alleged that the Noticee violated the provisions of section 11C(2) read with 11C(3) and 11C(5) of SEBI Act. The Noticee could not appear before the Investigating authority due to his medical condition. Details and information sought from the Noticee are that which are already available with SEBI as is evident from the impugned SCN.
- None of the other entities allegedly involved in the case such as the promoters/PAC, cavalier securities have sought to rely on any statement of the Noticee or any documents relating to the Noticee.
- It is not the case that the Noticee failed to respond to SEBI at all and that the investigation proceedings were prejudiced. The impugned SCN has also not stated that any prejudice was caused to the conduct of the proceedings, by the alleged non response by the Noticee to the summons.
- Noticee responded to the summons but was unable to be present personally due to his medical condition, for which medical certificate was produced to SEBI. No prejudice was caused to the conduct of the investigation proceedings.

- Section 11C(2) relates to preservation and production of records and documents. The Noticee as an individual is not subject to any statutory requirement to preserve and maintain records, nevertheless, the information and documents are already available with SEBI, and forms part of the impugned SCN. The Noticee has not taken any stand that some documents and records are not available with him. It is therefore submitted that the provisions of Section 11C(2) are not applicable to the Noticee.
- The shares were transferred to him for being held on behalf of Cavalier Securities Ltd. which is confirmed by Cavalier Securities.
- since the Noticee did not have any beneficial interest in these 2,97,200 shares, no disclosures were required to be made by the Noticee as stipulated under the above said Regulations.
- It is also a fact that there was no change in control vested in the Noticee and hence the information was not material as far as the public investors is concerned.
- As per the order dated Aug 31, 2012 passed by the Adjudicating officer of SEBI in the case of Cavalier Securities, though Cavalier Securities had crossed the 15% limit twice, the violations have been treated leniently.
- The notice was not required to make the disclosures as he was not the beneficial owner of the 5.71% shares of GAL and hence there is no violation of the aforesaid Regulations as stated in the impugned SCN.
- From a reading of Section 15A, it is obvious that the Section relates to providing information and documents to the Board and to maintain the stipulated books and records and does not relate to disclosures to be made to the stock exchange and to the Target company. The Noticee was not required to furnish any return, information, books or other documents (which is applicable to Intermediaries registered with SEBI). Further the sub clause (b) has to be read in consonance with the sub clauses (a) and (c) which is related to furnishing of information and documents to the Board and maintenance of records stipulated by the Board. Hence it is submitted that no penalty is leviable under Section 15A (b) in respect of the allegations against the Noticee in the impugned SCN.

Consideration of Issues, Evidence and Findings

19. 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. Before dealing the case on merit basis, I would first deal with some preliminary contentions raised by the Noticee as under:

Delay in conducting the proceedings

a) The Noticee has contended that the impugned transactions took place in October 2003, the show cause notice itself was issued after 7 years on March 18, 2010 and the adjudicating order was passed on February 9, 2015, after 12 years from the date of transactions. Further the Noticee has mentioned that on appeal, the Hon. SAT passed an order on July 19, 2016 reverting the matter to the Adjudicating Officer (AO). Thereafter the personal hearing was given by the AO vide email dated November 11, 2020 i.e. after 4 years from the SAT order. The Noticee has contended that the undue delay in conducting the proceedings have resulted in the Noticee not being able to defend the case effectively.

b) I note that there is no provision in the SEBI Act which lays down any limitation period for initiating any proceedings / action under the SEBI Act.

c) In the matter of SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294, the Hon'ble Supreme Court has, inter alia, observed as under:

"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."

d) I note that in the present case first summons were issued in May 2008 to the Notice and despite sending four summons between May to September 2008, the Noticee did not provide any information nor appeared before the Investigating authority. Therefore, the Noticee did not co-operate with the investigation. After initiation of the adjudication proceedings, as mentioned in para 5 above, a penalty was imposed on the Noticee. After the case was remanded by the Hon'ble Tribunal , vide letter dated December 27, 2017, the Noticee was provided with an opportunity for submitting additional replies and an opportunity of personal hearing on January 23, 2018. However, the Noticee, vide letter dated February 06, 2018, informed that he has filed an application for settlement and requested to keep the proceedings in abeyance. Accordingly, the proceedings pursuant to the SCN were kept in abeyance. Since the concerned division of SEBI informed the said settlement application was rejected, the Noticee was granted another opportunity of personal hearing on May 24, 2019 vide letter dated April 30, 2019. However, the Noticee sought inspection of all documents. An opportunity of inspection of documents was granted to the Noticee which was delayed and postponed on request of Noticee due to COVID-19 scenario. After procedure of inspection of documents was completed, opportunities of personal hearing was granted to the Noticee.

e) In view of the foregoing, I do not find any merit in the contentions of the Noticee.

Inspection of Documents

a) The Noticee has contended that some of the crucial documents such as investigation reports and the statements of the promoters have not been made available. The Noticee contention is that principles of natural justice were violated by not providing the relevant documents to enable the Noticee to defend his case, when the charge is that of aiding and abetting the promoters and is not an independent charge as in other cases.

b) In this regard, I find that the Noticee had provided a detailed reply to SCN in April 2010 itself without seeking any inspection of documents. However, after the matter was remanded by the Hon'ble Tribunal, the Noticee sought inspection of documents and I find that certain documents were provided the Noticee. The SCN explains the role played by the Noticee and on the basis of the same the Noticee has provided his replies on facts. Therefore, I do not find any merit in the submissions of the Noticee that he was not able to defend his case due to lack of documents.

20. I now proceed to deal with the merits of the case. The following issues arise for consideration and determination:

Issue 1

a) Whether the Noticee has violated provisions of Regulations 4 (1), 4(2) (a), (b), (e) and (g) of the PFUTP Regulations; Regulation 7(1) read with 7(2) of Takeover Regulations; Regulation 13(1) of Insider Trading Regulations and Section 11C(2) read with 11C (3) & (5) of the Act;

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

PFUTP Regulations

Regulation 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.

(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;

(b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;

(c) any act or omission amounting to manipulation of the price of a security;

(d) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

Alleged Violation of FUTP Regulations

21. I find from the documents available on record that prior to the investigation period, the scrip was traded irregularly and from August 01, 2003 to October 06, 2003, the scrip was traded on only three days with one trade on each day at ₹8.05. The scrip was traded actively from October 2003 and a major volume was observed on January 16, 2004 which was for 8,04,675 shares. Thereafter, the price and the 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.

22. 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.

23. I find that following corporate announcements were made by GAL during the investigation period:

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.

24. 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.

25. 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.

26. 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, he stated that till the time he was in charge of the company, no negotiations were held with Poonam Industries.

27. Thus, I find from the investigation report that the promoters were instrumental in issuing misleading corporate announcements on November 01, 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 and promoters and PACs have also transferred their holdings in GAL in October 2003

28. I also find that the Noticee received 2,97,200 shares (5.71%) from Singhal Overseas Ltd. (a Promoter of GAL) on October 11, 2003. The Noticee started buying and selling the shares from October 14, 2003 and continued selling after the misleading announcement and contributed to the volumes in the scrip. The total quantity bought and sold by the Noticee was 9,01,738 shares (11.10%) and 7,69,471 shares (9.48%) respectively. Thus, the promoters/ PAC transferred shares before misleading announcements to several entities including the Noticee who thereafter sold the shares through market and off market transfers.

29. It has been submitted by the Noticee in his reply that he was approached by Cavalier Securities on friendly terms to assist them with the shares of GAL as they were not having the facility to trade at BSE. Since he was having demat account with Ruchiraj Shares and Stock Brokers Pvt. Ltd., Cavalier Securities transferred 2,97,200 shares of GAL to his account in trust on October 11, 2003. They told him to hold the shares on their behalf and accordingly, transact as per their directions to meet the immediate urgency.

30. I find that it is unlikely that any investor would receive such a substantial quantity of shares of illiquid scrip on friendly terms, hold the shares on somebody's behalf and transact as per his directions.

31. I also find that the Noticee has submitted that during the same period he was in need of money so he had taken loan from Cavalier Securities amounting to ₹3,00,000 vide cheque no. 121169 of HDFC Bank dated September 22, 2004, which he would pay soon along with the consideration of sale of the said shares. It is also submitted by the Noticee that vide cheque no. 180831 dated October 05, 2005 drawn on HDFC bank, the amount of ₹6,81,198 was paid to Cavalier out which ₹3,81,198 was the consideration of sale of 2,97,200 shares of GAL and ₹3,00,000 was towards the loan amount.

32. Thus, the reply of the Noticee that the shares were received on friendly terms is untenable and there appears to be some understanding between the Noticee and the Cavalier Securities for the transactions done by the Noticee. This is affirmed by the fact that after receipt of the shares of GAL, the Noticee started actively trading in the scrip. Admittedly, the Noticee contributed to 11.10% of the volume on the buy side and 9.48% of the volume on the sell side. Despite the fact that the Noticee had never traded in the scrip of GAL before, such large trading is not only unusual but indicates prior understanding.

33. The Noticee further submitted that he had never aware as to whom these shares belonged and he was not aware of specific demands of various legislations. He further submitted that he had no nexus of any kind with the

promoters or anybody in whatsoever manner related with GAL. He had just done transactions on a friendly basis and he was not aware whether any kind of offence had been committed. However, I find that the Noticee received shares from shares of GAL on October 11, 2003 from Singhal Overseas Ltd., which was a promoter of GAL.

34. Further, with regard to the submission of the Noticee that he received the shares of GAL since Cavalier was not having a demat account with Ruchiraj and the Noticee requested Cavalier to open a demat account with Ruchiraj so that trading can be facilitated. I find that Cavalier, during January 2004, sold shares of GAL through Ruchiraj. In that case, going by the submissions of the Noticee, he should have transferred the shares of GAL to Cavalier. However, instead of transferring the shares of GAL to Cavalier, the Noticee actively traded in them. Therefore, it appears that the Noticee was actively involved in the said scheme of manipulation involving the promoters of GAL.

35. Shri Shiv Kumar Agarwal, a promoter of GAL, had 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.

36. The said acts of the Noticee and others, i.e. receipt of shares from Singhal Overseas, one of the promoter entity of GAL; substantial trading in the scrip of GAL thereafter; subsequent misleading positive corporate announcements such as acquisition of business of Poonam Industries and preferential/right issue by

the company which lured the investors; off-loading of shares of GAL by the Noticee and other entities; and receipt of funds by the Noticee from Cavalier and repayment of funds after a substantial period of time goes on to indicate that the Noticee was part of the scheme meant to lure the innocent investors and enable to the Noticee and others to offload the shares.

37. In view of foregoing, I find that the submissions of the Noticee are not tenable and consequently, consequently, hold that the charges levelled against the Noticee are proved and allegation of violation of provisions of Regulations 4 (1), 4(2) (a), (b), (e) and (g) of the PFUTP Regulations stands established against the Noticee.

Alleged Violation of Regulation 7 of Takeover Regulations and Regulation 13 of Insider Trading Regulations

38. It is observed from the investigation report that the Noticee was holding nil shares as on September 30, 2003. On October 11, 2003, 2,97,200 shares (5.71%) were transferred to the Noticee by off market transfers. Thus, 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.

39. It is submitted by the Noticee that he was not aware of specific demands of various legislations. He was not aware that he acquired more than 5% of shares of any company that he was obligated to inform anybody. He had just done transactions on a friendly basis and he was not aware whether any kind of offence had been committed. It is also submitted that being a bit cautious and upon advice from some of his friends he had intimated the GAL and BSE about the off market transaction vide his letter dated October 18, 2003. However, he regretted not to have provided the courier receipts of the same. To suffice the same he had written to the BSE vide letter dated August 05, 2010 to the BSE to confirm with their records about the receipt of his said letter intimating them about the said off market transaction. It is further submitted that he had made

payments through a legalized channel for the shares that were acquired and sold by him in his trust. The notice has also submitted that he was not required to make the disclosures as he was not the beneficial owner of the 5.71% shares of GAL and hence there is no violation of the aforesaid Regulations as stated in the impugned SCN.

40. I find from the investigation report that 2,97,200 shares (5.71%) were transferred to the Noticee by off market transfers on October 11, 2003. I find from the reply of the Noticee that the Noticee has not furnished documentary evidence to prove that he 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. Though in his earlier submission the Noticee had submitted that he was not aware of specific demands of various legislations and was not aware that acquisitions of more than 5% of shares of any company obligated him to inform anybody, in the written submissions he has submitted that he was not required to make the disclosures as he was not the beneficial owner of the 5.71% shares of GAL and hence there is no violation of the aforesaid Regulations as stated in the impugned SCN.

41. In this regard, I wish to rely on the following judgement of the Hon'ble Tribunal. In the matter of Akriti Global Trades Ltd. Vs SEBI (Appeal No. 78 of 2014) decided on September 30, 2014, Hon'ble Tribunal has , inter alia, observed that "… Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, <u>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</u>."

42. I find that the Noticee has not refuted the acquisition of shares of GAL in his any reply or during the personal hearing. The contention of the Noticee is that he is not the beneficial owner of the said shares. It appears that the Noticee is

trying to change his submissions to make it more reasonable, however the fact remains that the Noticee became the beneficial owner of the shares when the shares were transferred to him.

43. Since the shares of GAL were acquired by the Noticee in excess of 5% shareholding in GAL in off market transactions and the required disclosures were not made by the Noticee, consequently, I hold that the charges levelled against the Noticee are proved and 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.

Alleged violation of Section 11C(2) read with 11C (3) & (5) of the Act

44. It is observed from the investigation report that the Noticee has not submitted any information sought for through SEBI summons and reminders during the process of investigation.

45. I find that the Noticee has submitted in his reply dated April 15, 2010 that he was unable to provide the information and documents due to his health problem. In the written submissions, the Noticee has submitted that the information and documents relevant to the allegations against the Noticee as contained in the impugned SCN were readily available to SEBI from the stock exchange records and Demat records.

46. In this regard, I would like to reply on the following orders of the Hon'ble Securities Appellate Tribunal:

    a. In the matter of Asian Films Production, vide order dated January 19, 2011, the Hon'ble Tribunal has , inter alia, observed the following:

    "Non-compliance with the summons is, indeed, a serious matter and cannot be viewed lightly. The respondent Board is the market regulator and has to

regulate the securities market and the law provides that every person associated with the market in any manner should cooperate in the matter of carrying out investigations. In the year 2002, the provisions of the Act were amended and penalty for non-compliance with summons was enhanced considerably to make it more deterrent. Market players who do not cooperate with the regulator in the matter of investigations commit a serious wrong which can have serious repercussions in the market. We do not know what would have come to light if the company had furnished the information sought from it. In this background, we do not think that the amount of penalty levied by the adjudicating officer is excessive."

b. In the matter of Rich Capital & Financial Services Ltd., vide order dated October 22, 2013, the Hon'ble Tribunal has, inter alia, observed the following,

"T*he whole scheme of SEBI Act, 1992 enjoins upon the Regulator to investigate a matter if it is brought to its notice by any of the stock exchanges that the affairs of a company are being conducted in a dubious manner. Such a power can also be exercised by the SEBI suo moto. We note that requisite information and relevant records are prerequites for a meaningful investigation. In the absence of cooperation by the concerned company, the SEBI cannot move an inch. Therefore, every company is obliged to reasonably respond to any letters or summons to be issued by the regulator by furnishing the required information and/or documents for a smooth investigation, unless such a request/demand by the regulator is shown to be the outcome of ill-will, or is tainted with malice and/ or is otherwise arbitrary in the fact situation of a given case. If companies are allowed to take the statutory summons, letters or other statutory commands of the Regulator lightly, every investigation will be thwarted even before it begins."*

c. In the matter of Indivar Traders Pvt. Ltd., vide order dated September 09, 2015, the Hon'ble Tribunal has, inter alia, observed the following, *"Admittedly, appellant had failed to furnish all particulars sought for in the summons dated 22.2.2013 issued under Section 11C(3) of SEBI Act. Obligation to furnish documents called for by issuing summons under section 11C(3) is mandatory and failure to furnish documents called for thereunder, renders the person liable for penalty under section 15A(a) of SEBI Act. Penalty imposable under section 15A(a) for non-compliance of summons issued under section 11C(3) is not less than one lac rupees but may extend to one lac rupees for each day during which such failure continues subject to a maximum of Rs. One crore. <u>At the rate of rupees one lac per day from the date of non-compliance till the date of furnishing documents pursuant to the show cause notice issued after completing the investigation would be more than a crore of rupees.</u>*

Argument of the appellant that the failure to furnish documents were on account of change in the management is unsustainable because admittedly the change in the management took place in July, 2013 whereas the summons in question calling for documents were issued in February/March, 2013. In such a case appellant is not justified in contending that the documents could not be furnished on account of change in management. <u>Argument of the appellant that the documents called for were not relevant for the purpose of investigation and failure to furnish those documents have neither affected the securities market nor the investors is wholly unsustainable. It is the prerogative of the investigating authority to call for such documents as is deemed fit and it is not open to the appellant to question the relevancy of the documents called for. Similarly, the appellant who has violated the mandate of Section 11C(3) of SEBI Act cannot escape the penal liability on ground that neither the securities market nor the investors have suffered on account of non compliance of the obligation under section 11C(3). In the present case, investigation has been closed on account of failure to furnish documents called for from the appellant. In such a case, it cannot be presumed that failure to furnish documents has neither affected the securities market nor affected the investors. Very fact that the appellant has failed to comply with the requisition contained in the summons</u>

issued under section 11C(3) is sufficient to impose penalty under Section 11C(3) of SEBI Act.
Appellant who is guilty of not furnishing documents called for, cannot plead on one hand that the delay in furnishing documents was on account of technical and operational reasons and on the other hand plead that the delay in taking action has caused prejudice to the appellant.

Similarly failure to appear before the investigating authority pursuant to the summons issued under section 11C(5) is in gross violation of the SEBI Act and amounts to scuttling the investigation to the detriment of the investors. In such a case, irrespective of any finding as to whether the securities market or the investors have suffered or not, the person guilty of failing to comply with the summons issued under section 11C(5) of SEBI Act is liable to pay penalty under section 15A(a) of SEBI Act."

47. I find that the said orders of the Hon'ble Tribunal adequately deals with the contentions of the Noticee. Despite providing several opportunities, the Noticee not only failed to appear before the Investigating Authority but also did not provide the information sought from him. The said violation is in gross violation of the SEBI Act and amounts to scuttling the investigation to the detriment of the investors.

ISSUE 2

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

48. 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".

49. Thus, the aforesaid violations by the Noticee make them liable for penalty under Sections 15A(a), 15A(b) and 15HA of the SEBI Act which read as follows:

<u>Penalty for fraudulent and unfair trade practices</u>

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.*

<u>Penalty for failure to furnish information, return, etc.</u>

15A(a) If any person, who is required under this Act or any rules or regulations made

thereunder to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

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

15A(b) If any person, who is required under this Act or any rules or regulations made thereunder 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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

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?

50. 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.

51. 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.

52. 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.

53. I find that the Hon'ble SAT while remanding the instant matter to the undersigned has noted the following:

"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. Accordingly, the orders impugned in these appeals are quashed and set aside and restored to the file of Adjudicating Officer of SEBI for passing fresh orders on merits and in accordance with law."

54. I 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."*

55. 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...."*

56. The promoters and PACs of GAL 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. The Noticee, received shares of GAL in off-market and actively traded in the shares of GAL, contributing to over 11% of the market volume of GAL on the buy side and 9.48% of the volume on the sell side. The Noticee failed to make the required disclosures under Takeover and Insider Trading Regulations. Despite issue of several summons, the Noticee not only failed to appear before the Investigating Authority but also did not provide the information sought from him. The said violation is in gross violation of the SEBI Act and amounted to scuttling the investigation to the detriment of the investors.

57. 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 February 09, 2015 for violation of SEBI Act, SEBI (PFUTP) regulations and SAST Regulations.

ORDER

58. 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 the following monetary penalties on the Noticee:
    - i. ₹ 20,00,000/(Twenty Lakhs only) under section 15HA of the Act
    - ii. ₹ 10,00,000/- (Ten Lakhs only) under section 15A(b) of the Act and
    - iii. ₹ 1,00,00,000/- (One Crore only) under Section 15A(a) of the Act.

59. 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

60. 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)

61. 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: March 24 , 2021 **ASHA SHETTY**

Place: Mumbai **ADJUDICATING OFFICER**