

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AS/VC/2022-23/22828]**

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) RULES, 1995.

**In respect of
Roselabs Finance Ltd.
(PAN-AAACR9134M)**

In the matter Gujarat Arth Ltd.

Order of the Hon'ble SAT

1. Vide Adjudication order dated December 23, 2019 (hereinafter referred to as '**AO order**'), a penalty of ₹2,53,72,500/- (Rupees Two Crores Fifty Three Lacs Seventy Two Thousand and Five Hundred Only) was imposed on Roselabs Finance Limited (hereinafter referred to as '**Noticee**') under Section 15H and 15HA of the SEBI Act for 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 '**PFUTP Regulations**'), and Regulation 10 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as '**SAST Regulations**').
2. Aggrieved by the aforesaid AO order, the Noticee filed an appeal in the Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**'), *vide* Appeal No. 101 of 2020. The Hon'ble SAT *vide* order dated November 16, 2022, while upholding the violations remanded the matter back to Adjudicating Officer for deciding the quantum of penalty in the light of observations made in its order.

The Hon'ble SAT further directed the Noticee to appear before the Adjudicating Officer on December 22, 2022.

Appointment of Adjudicating Officer

3. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') *vide* order dated November 30, 2022, appointed the undersigned as Adjudicating Officer, under Section 15-I (1) of the 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) Rules, 1995 (hereinafter referred to as "**Adjudicating Rules**") read with Section 19 of the SEBI Act, to enquire into and adjudge under Section 15H and 15HA of the SEBI Act.

Personal Hearing and Reply

4. In accordance with the aforesaid directions of the Hon'ble SAT, an opportunity of personal hearing was granted to the Noticee on December 22, 2022. The Authorised Representatives (hereinafter referred to as '**ARs**') of Noticee appeared for the scheduled hearing through video conference on cisco webex platform and made the following key submissions:
 - The alleged transactions pertain to 2003 - 2004, whereas, now it is almost 19 years when the penalty amount would be decided.
 - The violations were committed by old management after which the management of the Company has changed twice.
 - Transactions were off market transaction, therefore, it has not resulted in increase in volumes in the scrip.
 - ARs also quoted and relied upon the Hon'ble Supreme Court of India judgments in the matter of Bhavesh Pabari vs SEBI and Bharati Goyal Vs SEBI.

5. The ARs were advised to submit written submissions in the matter by December 30, 2022. Subsequently, the ARs made the written submissions on behalf of the Noticee vide email / letter dated December 30, 2022. The key submissions made by the Noticee are summarised as under:

5.1. *“There is no specific charge in the show cause notice against Roselabs Finance:*

- a) *The SEBI’s Order dated December 23, 2019 (“**Impugned Order**”) was passed pursuant to a Show Cause Notice (“SCN”) dated December 15, 2009 issued by SEBI to Roselabs Finance. The SCN, however, does not spell out any precise charge against Roselabs Finance.*
- b) *In this regard, Noticee relied upon the judgments listed below:*
 - *Gorkha Security Services v. Govt. (NCT of Delhi), (2014) 9 SCC 105*
 - *Prashant J. Patel v. Securities and Exchange Board of India, (2010) SCC Online SAT 260*
 - *Chirag Tanna v. The Adjudicating Officer, SAT, Appeal No. 26 of 2011*
 - *Sanjay Kumar Gupta v. Securities and Exchange Board of India, SAT, Appeal No. 107 of 2007*
- c) *In view of the aforesaid, Roselabs Finance states and submits that the SCN is vague, ambiguous and lacks material particulars and on that ground alone ought to be rejected.*

5.2. *Roselabs finance is not a ‘person acting in concert’:*

- a) *Roselabs Finance states that it is admittedly a promoter group entity under the 1997 Takeover Regulations. However, Roselabs Finance does not admit that it is a ‘person acting in concert’.*
- b) *Under Regulation 2(1)(h) of the 1997 Takeover Regulations, the definition of ‘promoter’ includes any individual or company forming part of the promoter group.*

- c) *Under the 1997 Takeover Regulations, promoters were not deemed to be persons acting in concert.*
- d) *Promoters came to be deemed to be treated as 'persons acting in concert' in the subsequent SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("2011 Takeover Regulations").*
- e) *In view of the above, with respect to promoters under the 1997 Takeover Regulations, it is clear that to establish that a promoter was a 'person acting in concert', a specific case will have to be made out in this regard.*
- f) *Roselabs Finance states and submits that no such case has been made out in the SCN or the Impugned Order.*

5.3. Delay:

- a) *There is an inordinate and unexplained delay of more than 16 years in this case.*
- b) *The purported transactions took place in 2003-2004. However, the SCN was issued on December 15, 2009, after a lapse of 5 years. There is no explanation whatsoever for the delay in issuing the SCN.*
- c) *Thereafter, another 5 years elapsed from the issuance of the SCN dated December 15, 2009 to SEBI's Order dated December 19, 2014.*
- d) *Thereafter, after another 2 years, the SAT by its Order dated March 21, 2016 set aside the 2014 Order and the matter was remanded back to SEBI.*
- e) *Thereafter, the Impugned Order was passed by the SAT after a period of 3 years from the passing of SAT's Order dated March 21, 2016.*
- f) *In view of the above, Roselabs Finance has suffered, on account of a total delay of more than 16 years.*
- g) *Consequently, it is clear that SEBI has failed in its duty to expeditiously dispose of the proceedings and protect the investors' interest effectively.*

The conduct of SEBI is antithetic to the rule of law, fairness, justice and violates the principles of natural justice.

- h) In this context, Noticee placed reliance upon the judgments of Shriram Insight Share Brokers Ltd., v SEBI, SAT, Appeal. No. 559 of 2020 and H.B. Stockholdings Limited vs SEBI, SAT, Appeal No. 114 of 2012.*

5.4. Charge under the 1997 takeover regulations is incoherent and inconsistent:

- a) Without prejudice to the any of the aforesaid, Roselabs Finance states that the acquirer in this case is Cavalier Securities Limited, who has already been penalised for failing to make a public offer / disclosures in terms of the 1997 Takeover Regulations.*
- b) Roselabs Finance's explanation that the transaction for sale, re-transfer and onward transfer was a result of a mistake, has not in any manner been refuted by SEBI.*
- c) The Impugned Order dated December 23, 2019, merely says that it was "highly unlikely that the shares were transferred from and received back in the accounts of all the Noticees erroneously" and no proper case has been made out by SEBI to specify how the 1997 Takeover Regulations have been violated.*

5.5. Charge under the PFUTP Regulations:

- a) As far as the PFUTP Regulations is concerned, there is no specific charge under the PFUTP Regulations against Roselabs Finance with respect to the sale or transfer of shares. It is merely generally mentioned in the SCN and Impugned Order.*
- b) The SCN fails to provide particulars of the fraud and unfair trade practice and/ or the manner in which the alleged fraud was committed. Accordingly,*

the ingredients of Regulations 3 and 4 of the PFUTP Regulations are not met.

- c) The alleged misleading corporate announcements were made by Gujarat Arth Limited (hereinafter referred to as '**GAL**') after Roselabs Finance had transferred its shareholding and for which Roselabs Finance cannot be held responsible.*
- d) In any event, Roselabs Finance completed its sale of shares in GAL to Cavalier Securities Limited on October 23, 2003, before the alleged misleading announcements were made on November 1, 2003, December 22, 2003 and January 16, 2004. Therefore, Roselabs Finance did not hold any shares of Gujarat Arth Ltd. (GAL) at the time when the alleged misleading corporate announcements were made nor was Roselabs Finance involved in the decision to issue the alleged misleading corporate announcements.*

5.6. Failure to furnish relevant documents:

- a) The findings in the SCN are based on an Investigation Report extensively referred to and relied upon in the SCN. However, a copy of the same has not been furnished to Roselabs Finance till date.*
- b) It is well settled that a Noticee must always be given all relevant information / material which forms the basis of the charge against it.*
- c) In this context, Noticee relied upon the judgments of the Hon'ble Supreme Court in matters listed below:*
 - Natwar Singh v. Director of Enforcement, (2010) 13 SCC 255*
 - Bilaspur Raipur Kshetriya Gramin Bank and another v. Madanlal Tandon, AIR 2015 SC 2876*
 - T. Takano v. SEBI and Anr., 2022, SCC Online SC 210*

- d) *Roselabs Finance in its reply to SEBI dated June 15, 2018 had raised the objection that SEBI had failed to provide a copy of the Investigation Report. However, the Impugned Order does not contain a whisper on this objection.*

5.7. *Other grounds:*

- a) *The SAT by its order dated March 21, 2016 had set aside the 2014 Order and remanded the investigation in the matter back to SEBI to pass a fresh order on merits and in accordance with law. However, SEBI passed the Impugned Order wherein the findings are completely similar to the findings of the 2014 Order. Therefore, the Impugned Order suffers from lacunae as far as concerns providing any additional reasoning for finding Roselabs Finance guilty of violation of the PFUTP Regulations and the 1997 Takeover Regulations.*
- b) *Change in Management - SEBI has failed to appreciate that since the year 2003 (when the alleged violations occurred) the management of Roselabs Finance has changed twice pursuant to 2 different open offers made by 2 different entities, i.e., the 1st Open Offer and the 2nd Open Offer dated May 6, 2013. The present management of Roselabs Finance only acquired control of Roselabs Finance in June 2013 pursuant to the 2nd Open Offer and was therefore not involved in the management of Roselabs Finance at the time when the alleged violations were committed. In fact, the present management of Roselabs Finance wrote letters to certain entities as early as February 2015 requesting for the necessary and relevant documents. Roselabs Finance addressed further letters to the entities between January 2018 to June 2018 requesting for these documents, however, no reply was forthcoming. In fact, SEBI was marked in copy in few of these correspondences. Roselabs Finance based on the limited information available addressed a reply to SEBI on September 13, 2018 and annexed a transaction statement which clearly evidenced that Roselabs Finance did*

not acquire any shares of GAL but merely rectified the erroneous transfer of shares.

- c) Incorrect Shareholding Pattern - The SCN is premised on incorrect facts. SCN relies on an incorrect shareholding pattern annexed at Annexure II of the SCN. Roselabs Finance was not a shareholder of GAL as on 31 December 2003 having sold its shareholding to Cavalier Securities Limited on 23 October 2003.*
- d) Alleged Manipulation of Scrip - The SCN fails to mention how the shares of GAL sold by Roselabs Finance to certain entities through off market transactions ended in the market and / or were used for allegedly manipulating the scrip of GAL. The SCN does not even specifically name “Cavalier Securities Limited”. SCN fails to consider that the transfers were in any event off-market transfers and did not take place on the exchange and therefore, could not have affected the market and thus, Regulations 3 and 4 of the PFUTP Regulations are not attracted.*
- e) Alleged Impact on Price - Without prejudice to the above, there was no significant impact on the price after the alleged misleading corporate announcements were made as is seen from the price movement during the relevant period. As admitted in the SCN, the 2nd announcement dated December 22, 2003 had “marginal impact on the price of shares”. After the 3rd announcement dated January 16, 2004, the price of shares in fact fell and hence had no impact at all.*

5.8. Excessive and unjustifiable penalty:

- a) The Impugned Order dated December 23, 2019 gives no explanation for imposing a penalty for a sum of Rs. 2,53,72,500/- or on what basis / how the figure was arrived at.*
- b) SEBI in its order against Cavalier Securities Limited dated August 31, 2012 imposed a penalty of Rs. 37,00,000/-. On the other hand, a penalty of Rs.*

2,53,72,500/- has been imposed on Roselabs Finance despite the fact that the order in Cavalier Securities Limited arises from the same set of transactions. Therefore, the quantum of penalty imposed on Roselabs Finance lacks any rationale.

- c) The Impugned Order has failed to take into consideration the requirements under Section 15J of the SEBI Act, 1992 while imposing the penalty under Sections 15H and 15HA of the SEBI Act, 1992.*
- d) Roselabs Finance states that Sections 15H and Section 15HA of the SEBI Act, 1992, as amended in 2014, ought to have been applied to the facts of the present case.*
- e) It is well settled that the provision as it stands at the time of exercise of the power ought to be looked at and not the provision as it stood at the time when the alleged violation took place. In the present case, even assuming that a violation had taken place, the penalty should be levied as per the provisions of Section 15H and section 15HA of the SEBI Act, 1992, which are applicable on the date of levying the penalty and not as per the provisions which were applicable when the alleged violation was committed.*
- f) As regards the factors to be taken into account while adjudging the quantum of penalty under section 15 J of the SEBI act, the Noticee has relied on the Hon'ble Supreme Court in the matter of Adjudicating Officer, SEBI v. Bhavesh Pabari.*
- g) It is not the case that the alleged violations committed by Roselabs Finance caused disproportionate gains or unfair gains to Roselabs Finance and / or there was any loss caused to the investors and /or that Roselabs Finance is a repetitive defaulter.*
- h) Roselabs Finance states that the alleged violation being merely technical in nature and that the role that can be attributed to Roselabs Finance, if any, is marginal, the penalty may be reduced to nil and Roselabs Finance*

ought not to be penalized. Accordingly, the entire amount deposited by Roselabs Finance with SEBI (i.e., 50% of the penalty amount imposed by the Impugned Order) in an interest bearing account, pursuant to the order of the SAT dated 10 November 2020 in relation to the notice of demand dated 8 September 2020 and the notices of attachment dated 27 October 2020 issued by SEBI, be refunded to Roselabs Finance.

- i) Without prejudice to the aforesaid and in any event, if the learned Adjudicating Officer, SEBI is of the view that penalty ought to be imposed, Roselabs Finance states and submits that the penalty, if any, liable to be imposed on Roselabs Finance should be at the very minimum, keeping in to account the judgement passed by the Hon'ble Supreme Court in the case of Bhavesh Pabari (supra) and the factors set out in Section 15J of the SEBI Act, 1992.”*

Consideration of Issues and Findings

6. In the instant matter I find that the Hon'ble SAT, inter alia, observed as follows:

“36. Thus, finding that the present appellant has committed the violation of the relevant regulations of the SAST Regulations and PFUTP Regulations, so far as the quantum of penalty is concerned, is the same however the same cannot be sustained for the following reasons :-

The present appellant had change of the management upon change of control twice after the disputed transactions of the year 2008. One Poonam Fast Foods Pvt. Ltd. earlier acquired the appellant and thereafter the present appellant through Arihant Premises Pvt. Ltd. came in the control of the appellant. The violations of SAST Regulations as well as of PFUTP Regulations were committed by the person acting in concert i.e. appellant Shiv Kumar Agarwal and others who were also the then promoter of the present appellant. Though, the learned AO is legally correct in making a statement that the appellant is a juristic person and, therefore, it cannot be

escape the liability, still the fact would show that imposing a huge penalty of Rs. 2,53,72,500/- (though reasons not detailed, may be this exact figure was arrived at upon computation of the shares transferred by the appellant), is not justifiable. Therefore, taking into consideration, the above facts that the violation was not committed by the present promoter group, in our view, the penalty imposed is excessive one. In the circumstances, the case will have to be remanded back to the learned AO to appreciate the facts stated above and compute the penalty accordingly.

37. The appellant has submitted that due to the delay and due to the fact of change of control, they could not effectively reply to the show cause notice as they did not get the information as detailed (supra). In our view, the only fact that is relevant is the transfer and re-transfer of shares by this appellant in the month of October 2003. No more information was required and, therefore, no prejudice is caused to the appellant so far as that aspect is concerned.

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47. Appeal No. 101 of 2020 is hereby allowed. The direction of the learned AO to pay a composite penalty of Rs. 2,53,72,500/- is hereby set aside. Instead the case is remanded back. The learned AO is directed to recalculate the penalty in view of the findings recorded in paragraph no. 36 above, upon hearing the appellant afresh on the limited aspect of the quantum of the penalty. The appellant is directed to appear before the learned AO on 22nd December 2022 for the purposes of the hearing.”

7. From the aforesaid order of the Hon’ble SAT, I note that Hon’ble SAT has held that the Noticee has committed the violation of the relevant provisions of the SAST Regulations and PFUTP Regulations. The matter has been remanded back for the limited purpose of calculating the penalty in view of the findings recorded in para 36 of the order of the Hon’ble SAT after giving a hearing to the Noticee. In view of the same as the violations of the provisions of the SAST

Regulations and PFUTP Regulations is already established and upheld by SAT, I now proceed to decide the quantum of penalty in the light of the observations made in the SAT order and submissions made by the Noticee.

8. With regard to the determination of penalty, Noticee has submitted that the penalty should be levied as per the provisions of Section 15H and 15HA of the SEBI Act, which are applicable on the date of levying the penalty and not as per the provisions which were applicable when the alleged violation was committed.
9. I note that the penalty imposed is decided based on the law in force at the time of the violation, and not based on the amended law as it stands at the time of exercise of the power as contended by the Noticee. Provisions of Section 15H and 15HA of the amended SEBI Act, post 2014 amendments, cannot be applied to the facts of the present case retrospectively. In this context, I place reliance on the judgement of the Hon'ble Supreme Court of India in the matter of **SEBI vs. Ajay Agarwal**, wherein, it was held that "The right of a person of not being convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence and not to be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence, is a Fundamental Right guaranteed under our Constitution only in a case where a person is charged of having committed an "offence" and is subjected to a "penalty". I also refer to the judgement of Hon'ble Supreme Court in "**L. R. Brothers Indo Flora Ltd v. Commissioner of Central Excise**", [2020 SCC Online SC 7051, decided on 01 .09.2020] wherein, it was held that for application of a subsequent legislation retrospectively it is necessary to show that the previous legislation had any omission or ambiguity or it was intended to explain an earlier act. In absence of the above ingredients, a legislation cannot be regarded as having retrospective effect. Therefore, I am of the view that the monetary penalty to be imposed on the Noticee be decided

based on the Section 15H and 15HA of the SEBI Act, as they stood in their earlier form, pre-amendment of 2014 i.e. at the time of violation.

10. Provisions of Section 15H and 15HA of the SEBI Act, pre-amendment of 2014, reads as under:

SEBI Act

Penalty for non-disclosure of acquisition of shares and takeovers.

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.*

11. While determining the quantum of penalty under Section 15H and 15HA of the SEBI Act, it is important to consider the factors stipulated in Section 15J of the SEBI Act, which read as under: -

SEBI Act

Factors to be taken into account while adjudging quantum of penalty.

15J While adjudging quantum of penalty under section 15 I, the adjudicating officer shall have due regard to the following factors, namely:

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

12. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the non-compliance to the SAST Regulations and PFUTP Regulations is not available. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of violations done by the Noticee. With respect to the repetitive nature of the default, I find that earlier a monetary penalty of ₹1,00,000/- (Rupees One Lakh only) was imposed on Noticee for the violation of SAST Regulations, for delay in submission of the disclosures to the stock exchange, on acquisition of 20% of share capital, vide order dated November 30, 2011.

13. I note that since year 2003 (when the alleged violations occurred) the management of Noticee has changed twice pursuant to 2 different open offers made by 2 different entities. The present management of Noticee acquired control of Noticee in June 2013 pursuant to the 2nd Open Offer and was therefore not involved in the management of Noticee when the said violations were committed. The fact that violations were not committed by the present promoter group is a relevant and mitigating factor for calculating the quantum of penalty to be imposed on the Noticee. I also note that penalty has been imposed on the other promoters and persons acting in concert in this matter who were also promoters of the Noticee at the time of the violation. I would also take into account that a considerable time gap has passed after the violations have occurred. Since

the violations committed by Noticee has been established, I find the imposing a penalty would be incumbent, however I am inclined to take a lenient approach while levying penalty in respect of the violations in view of above considerations.

Order

14. 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, I hereby impose monetary penalty of **₹15,00,000/- (Rupees Fifteen Lacs Only)** under section 15H and 15HA of the SEBI Act, on the Noticee (Roselabs Finance Ltd.), which will be commensurate with the violations committed by the Noticee.
15. 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 online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

16. The Noticee shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, SEBI, in the format given in table below:

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)	
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17. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

18. In terms of Rule 6 of the Adjudicating Rules, copy of this order is sent to the Noticees and also to the SEBI.

Place: Mumbai

Date: January 13, 2023

ASHA SHETTY

ADJUDICATING OFFICER