BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/GR/KG/2020-21/7563-7564)

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

In respect of:

1 Shri Bhargav Panchal (PAN: AADHP0704R)

2 Smt Hina Bhargav Panchal (PAN: AFUPP7738M)

In the matter of IPO Irregularities

FACTS OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had noticed certain irregularities in the transactions in shares that were issued through initial public offerings ("IPOs") during the period 2003-2005, before their listing on the stock exchanges. Pending investigations, SEBI, vide *ad interim ex-parte* Orders dated December 15, 2005, January 12, 2006 and April 27, 2006, which were also the show cause notices, directed certain persons, including Ms. Roopalben N. Panchal alias Ms. Rupalben N. Panchal (Roopal), Ms. Devangi Dipak Panchal (Devangi), Mr. Dipak Jashvantlal Panchal (Dipak), Mr. Bhargav Ranchhodlal Panchal ("Noticee 1"), Ms. Hina Bhargav Panchal ("Noticee 2"), Mr. Arjav Nareshbhai Panchal (Arjav) not to buy, sell or deal in the securities market, including in IPOs, directly or indirectly, till further directions.

2. On completion of investigations, SEBI issued a common show cause notice (SCN) dated December 01, 2009 to the aforementioned individuals including the Noticees in the present proceedings, under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 ("SEBI Act"). The SCN alleged that the said entities had opened thousands of demat accounts in fictitious names (afferent accounts) and engineered applications in the retail category of several IPOs through these afferent accounts. On receipt of shares on allotment in these afferent accounts, they got the shares transferred to their own demat accounts before listing. They retained a portion of the shares themselves and transferred the balance in off-market to financiers and others. They as well as the financiers and others made unlawful gains by sale of those shares. The said entities together made an unlawful gain of Rs. 15.90 crore and facilitated financiers and others to make an unlawful gain of Rs. 28.48 Crore. The SCN further alleged that the said entities, in concert with a depository participant (DP) and financiers, employed fraudulent, deceptive and manipulative practices and cornered the shares meant for retail individual investors (RIIs) in various IPOs. These acts of the noticees were in violation of Section 12A (a), (b) and (c) of the SEBI Act, 1992, regulations 3 (a), (b), (c) and (d) and 4 (1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (PFUTP Regulations) and Guideline 1.2.1 (xxiva) read with Guideline 7.6.1.2.1 of the SEBI (Disclosure and Investor Protection) Guidelines, 2000 (DIP Guidelines). Accordingly, it called upon the said entities to show cause as to why suitable directions under Section 11(4) read with Sections 11 and 11B of the SEBI Act, 1992, including directions to restrain them from buying, selling or dealing in securities in any manner, disgorge ill-gotten gains made by them along with interest, disgorge ill-gotten gains made by the financiers and others in connivance with them, and realize the shares in their frozen demat accounts. The SCN had also offered opportunity of personal hearing.

3. Thereafter, after considering the replies of the entities, including the Noticees in the present proceedings, vide final order dated February 25, 2011, it was held that the said entities had acted in concert with Depository Participants to open thousands of afferent accounts. It was further held that the said entities had acted in concert with financiers to make applications under the retail category of 18 IPOs. They had opened the afferent accounts, arranged finance for making thousands of applications in the retail category of IPOs, engineered thousands of applications from afferent accounts, transferred the shares received in afferent accounts on allotment to their own demat accounts and thereby cornered shares meant for RIIs. They transferred a large portion of the shares received on allotment to financiers as per the prior understanding with them and refunded the balance money. In the process, they deprived the RIIs of their legitimate share in the allotment in the IPOs, made an unlawful gain of Rs.16.54 crore and facilitated financiers and other to make an unlawful gain of Rs.28.57 crore, to the detriment of the RIIs. The said entities were, therefore, held to have manipulated the demand for shares in the RII category of IPOs and distorted the market integrity. The Noticees were further held to have made unlawful gains by selling the shares so cornered. Hence, it was held that the said entities had violated Section 12A (a), (b) and (c) of the SEBI Act and Regulations 3(a),(b),(c)and (d) and 4 (1) of the PFUTP Regulations and Guideline 1.2.1 (xxiva) read with Guideline 7.6.1.2.1 of the SEBI (Disclosure and Investor Protection) Guidelines, 2000.

4. The following directions were ordered vide the aforesaid order dated February 25, 2011:.

   a. *Ms. Roopalben N. Panchal (PAN AFVPP3739H), Ms. Devangi Panchal (PAN ABOPP7151Q), Mr. Dipak Jashvantlal Panchal (PAN ABOPP7152D), Ms. Hina Bhargav Panchal (PAN AFUPP7738M), Mr. Bhargav Ranchhodlal Panchal (PAN AADHP0704R), and Mr. Arjav Nareshbhai Panchal (PAN AGZPP2986M) shall not buy, sell or deal in the* *securities market in any manner whatsoever or access the securities market, directly or indirectly, for three months from the date of this Order;*

b. *Ms. Roopalben N. Panchal, Ms. Devangi Panchal, Mr. Dipak Jashvantlal Panchal, Ms. Hina Bhargav Panchal, Mr. Bhargav Ranchhodlal Panchal, and Mr. Arjav Nareshbhai Panchal shall disgorge the unlawful gain and shall also pay simple interest at the rate of 10% per annum for 5years (2005-10) on the unlawful gains, as indicated against their names below, within 45 (forty five) days from the date of this Order by way of crossed demand draft drawn in favour of "Securities and Exchange Board of India", payable at Mumbai:*

Sl. No.	Noticee	Unlawful gain	Interest on unlawful gain	amount to be disgorged
1	Ms. Roopalben N. Panchal	7,72,94,442	3,86,47,221	11,59,41,663
2	Ms. Devangi Panchal	9,01,05,278	4,50,52,639	13,51,57,917
3	Mr. Dipak Jashvantlal Panchal	7,16,64,774	3,58,32,387	10,74,97,161
4	Ms. Hina Bhargav Panchal	6,61,030	3,30,515	9,91,545
5	Mr. Bhargav Ranchhodlal Panchal	8,97,024	4,48,512	13,45,536
6	Mr. Arjav Nareshbhai Panchal	2,480	1,240	3,720

Total		24,06,25,028	12,03,12,514	36,09,37,542

c. *In case the aforesaid amounts are not received by SEBI within the specified time, they shall be restrained from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market directly or indirectly for a further period of nine years, without prejudice to SEBI's right to enforce disgorgement. Until the said amounts are realized by SEBI, the securities in the demat accounts of the noticees shall remain frozen."*

5. In view of the above, it has been alleged that the Noticees *inter alia* have not paid the disgorgement amount, thus resulting in non- compliance of SEBI order dated February 25, 2011. As the Noticees (i.e, Bhargav Panchal and Hina Bhargav Panchal, in the context of the present proceedings) have failed to comply with the directions of SEBI, adjudication proceedings have been initiated against them under the provisions of section 15HB of the Securities and Exchange Board of India Act, 1992 ('SEBI Act').

APPOINTMENT OF ADJUDICATING OFFICER

6. Earlier, Shri Sahil Malik, General Manager, was appointed as the Adjudicating Officer ("AO"), vide an order dated April 20, 2018, under Section 15-I of the SEBI Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') to inquire into and adjudge under the provisions of section 15HB of the SEBI Act, the alleged non-compliance by the Noticees w.r.t the directions issued to

them vide Order dated February 25, 2011. Subsequent to his transfer, the undersigned was appointed AO vide order dated December 24, 2019, to continue the present proceedings.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

7. SCN dated May 21, 2018, was issued to the Noticees *inter alia* asking them to show cause as to why an inquiry should not be held against them in terms of Rule 4 of the Adjudication Rules read with section 15I of the SEBI Act and penalty be not imposed under section 15HB of the SEBI Act. The Noticees vide letter dated June 8, 2018, inter alia stated that they had not received a certified copy of the order of SEBI dated February 25, 2011 and therefore could not file an appeal against the same. They further requested for a certified copy of the said order. Subsequently, vide letter dated June 29, 2018, the Noticees were asked for an amount of Rs. 80/- as charges for the certified copy of the said order, to which the Noticees replied vide letter dated July 11, 2018, stating that they are entitled to a certified copy of the order, free of costs. Thereafter, vide letter dated September 14, 2018, the Noticees were provided an opportunity of personal hearing on October 8, 2018, to which the Noticees replied vide letter dated October 3, 2018, reiterating their demand for a certified copy of the said order. The then AO, vide letter dated November 12, 2018, provided an opportunity of personal hearing on November 28, 2018. The Noticees, vide letter dated November 26, 2018, reiterated their demand for a certified copy of the said order free of costs as, according to them, they had never once received any certified copy of the said order. The AO, vide letter dated December 7, 2018, stated that the Noticees could have filed their appeal within the seven years between the passing of the order dated February 25, 2011 and the date of issue of the SCN in the present proceedings, if they had seriously intended to. Further, the Noticees were provided another opportunity of personal hearing on January 3, 2019. In response thereto, the Noticees vide letter dated December 29, 2018, stated that they shall be shortly applying for a certified copy of the said order

along with the payment of appropriate charges and shall also file an appeal challenging the said order dated February 25, 2011. Vide letter dated March 12, 2019, the Noicees were provided the last and final opportunity of personal hearing on April 3, 2019, by the AO. Vide letter of SEBI dated April 23, 2019, the Noticees were provided with a certified copy of the said order. Subsequent to the appointment of the undersigned as the AO in the present case, an opportunity of personal hearing was provided to the Noticees on January 27, 2020, vide letter dated January 14, 2020, which was duly received by the Noticees on January 18, 2020. I find that the Noticees have not responded to the said Notice of personal hearing and had also not appeared for the hearing on the given date.

ISSUES FOR CONSIDERATION AND FINDINGS

8. I have carefully perused the SCN, the documents/material available on record and submissions of the Noticees. The issues that arise for consideration in the present case are:
    i. Whether the Noticees have failed to comply with the directions issued by SEBI vide its Order dated February 25, 2011?
    ii. Whether the Noticees is liable for imposition of monetary penalty under Section 15HB of the SEBI Act?
    iii. If yes, then what should be the quantum of monetary penalty?

9. I note that the allegations against the Noticees in the instant matter is mainly to the effect that the Noticees have failed to comply with the directions of disgorgement issued by SEBI vide its Order dated February 25, 2011, under the provisions of SEBI Act, 1992 for the violation of section 12A(a), (b), (c) of the SEBI Act and Regulations 3(a), (b), (c), (d) and 4(1) of the PFUTP Regulations ad Guideline 1.2.1 (xxiva) read with Guideline 7.6.1.2.1 of the SEBI (DIP) Guidelines.

10. I find that the charge of aiding and abetting fraudulent and manipulative scheme for cornering of shares meant for the retail investors have been established with respect to the Noticees in the order dated February 25, 2011, for which directions of debarment and disgorgement were *inter alia* issued against the Noticees as already detailed at paragraphs no. 3 and 4 in this order.

11. I note that neither the Noticees have responded to the SCN on merits, nor did they file any appeal before the Hon'ble SAT against the said order dated February 25, 2011, as was sought to be done by them. Further, from the available records, I find that a copy of the said order was duly served upon the Noticees vide letter dated March 8, 2010. Therefore, the protracted correspondence from the Noticees seeking a certified copy of the order was only meant to prolong the present proceedings. Be that as it may, a certified copy of the said order was also provided vide SEBI's letter dated April 23, 2019, but the Noticees have neither filed an appeal challenging the said order, nor responded to the hearing notice dated January 14, 2020, which was duly served upon them. Further, the Noticees have also not claimed that they have complied with the directions of disgorgement issued by SEBI. Therefore, there is no dispute that the Noticees have failed to comply with the aforesaid directions issued by SEBI vide its Order dated February 25, 2011.

12. I also note that till date after lapse of almost 9 years from the said Order, and after one year from the receipt of another certified copy of the said order, as desired by the Noticees, they have not produced any document showing that they have filed appeal against the SEBI Order dated February 25, 2011 before the Hon'ble SAT. I note that the Noticees have not intimated status of appeal, if any, in this regard.

13. The Noticees have submitted vide their letter dated November 26, 2018, that they have been debarred from the securities market for the past 13 years. In this regard, I observe that the said order dated February 25, 2011, had clearly stated that the Noticees shall remain debarred from accessing the securities market in any manner whatsoever as long as the disgorgement of ill-gotten gains, as computed by SEBI, is not repaid by the Noticees along with the interests specified thereat. This further goes to show that the Noticees have not yet paid the amount of disgorgement.

14. I note that SEBI has been entrusted with the duty to protect the interests of the investors and to protect the integrity of the securities market. In view of the seriousness of the matter, SEBI had issued appropriate directions to the Noticees vide its Order dated February 25, 2011, in respect of undergoing debarment for the stipulated period and for disgorging the ill-gotten gains. The directions were issued by SEBI *inter alia* to prohibit unjust enrichment by the Noticees. The Noticees were under an obligation to comply with the directions issued by SEBI. However, the Noticees failed to comply with the directions issued to them by SEBI vide the said order. Thus, from the facts and circumstances of the case and the observations made above, I am convinced that Noticees have failed to comply with the directions of SEBI issued vide its Order dated February 25, 2011, passed under the provisions of the SEBI Act, 1992 and PFUTP Regulations.

15. In view of the violation of the provisions of law by the Noticees, as established above, the Noticees are liable for monetary penalty under the provisions of Section 15HB of the SEBI Act, which reads as follows:

"Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees."*

16. While determining the quantum of penalty under Section 15HBof the SEBI Act, it is important to consider the factors stipulated in Section 15J of the SEBI Act, which reads as under:-

17. **"15J - Factors to be taken into account by the adjudicating officer**

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"

18. At this juncture, reliance is placed upon the Order of the Hon'ble Supreme Court in the matter of ***Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361}*** – where the Hon'ble Supreme Court of India held that:-

"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant….."

19. In the instant matter, I note that the material made available on record has quantified the amount of disproportionate/ ill-gotten gains made by the Noticees and the loss suffered by investors as a result of the default committed by the Noticees. The purpose of

disgorgement is to prevent unjust enrichment and thereby, to protect the integrity of the securities market. It is the fact that till date the Noticees have not complied with the obligation to make the disgorgement of such amount as already specified in the said order

20. I am of the view that the entities violating the directions issued by SEBI seriously compromise the regulatory framework and are detrimental to the interest of the investors in the securities market. The interest of the investors and the orderly development of the securities market require that perpetrators of such activities should be suitably penalized. Such stark defiance displayed by the Noticees towards regulatory directions cannot be viewed lightly. The non-compliance of the Noticees with the SEBI directions has jeopardized the interests of the gullible investors. Therefore, I am of the view that this is a fit case to impose such penalty that commensurate with the gravity of the violations committed by the Noticees.

<u>ORDER</u>

21. After Taking into consideration the nature and gravity of the charges established in the preceding paragraphs, factors mentioned under Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, read with Rule 5 of the Adjudication Rules, I hereby impose penalty of **Rs. 45,00,000/-** (Rupees Forty Five Lakhs Only) on **Shri Bhargav Panchal** (Noticee No.1) and **Rs. 30,00,000**/- (Rupees Thirty Lakhs Only) on **Smt Hina Bhargav Panchal (**Noticee No.2) payable jointly or severally by the Noticees in terms of Section 15HB of the SEBI Act, for their failure to comply with the directions issued to them by SEBI vide its Order dated February 25, 2011.

22. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by online payment through following path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders

→ Orders of AO → Click on PAY NOW or at link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html

23. The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department-DRA-I), the Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 – A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

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)	

24. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to, 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.

25. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this Order is sent to the Noticees and also to the Securities and Exchange Board of India.

Date : April 27, 2020 **G Ramar**

Place : Mumbai **Adjudicating Officer**