BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/AS/2021-22/15779-15780)

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) RULES, 1995.

In respect of:

Rajendra Chandulal Shah (PAN: AFQPS1941D)
Vishnubhai Sunderlal Parekh (PAN: ACCPP5173B)

In the matter of

Gujarat Arth Ltd.

ORDER OF THE HON'BLE SAT

1. The Hon'ble Securities Appellate Tribunal (SAT), in Appeal No. 258/2017, vide order dated October 30, 2017, set aside the adjudication order dated February 09, 2015 against Right Finstock Pvt. Ltd. (hereinafter referred to as Right Finstock) and remanded the case to the Adjudicating Officer for passing fresh order on merits after giving an opportunity of hearing to the appellant.

FACTS OF THE CASE

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 Ltd. (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 Right Finstock aided and abetted the promoters and person 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'). Right Finstock did not make public announcement after having acquired more than 15% of the equity capital of GAL, which was in violation of provisions of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as "Takeover Regulations"). Right Finstock did not also file the required disclosures under Takeover Regulations and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "Insider Trading Regulations").

APPOINTMENT OF ADJUDICATING OFFICER

4. 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 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 10 of Takeover Regulations; Regulation 7(1) read with 7(2) of Takeover Regulations and Regulation 13(1) & (3) read with 13(5) of Insider Trading Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

5. A Show Cause Notice (SCN) dated March 18, 2010 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 Right Finstock to show cause as to why an inquiry should not be held against him and penalty be not imposed under Sections 15A(b), 15H & 15 HA of the Act for the alleged violation of the provisions of Regulations 4(1), 4(2) (a), (b) (e) & (g) of

the PFUTP Regulations; Regulation 10 of Takeover Regulations; Regulation 7(1) read with 7(2) of Takeover Regulations and Regulation 13(1) & (3) read with 13(5) of Insider Trading Regulations.

6. Right Finstock submitted its reply vide its letter dated April 15, 2010. An opportunity of personal hearing was granted to Right Finstock on May 11, 2010 vide SEBI letter dated April 20, 2010. The hearing was attended by the authorized representative of Right Finstock on the said date.

7. Taking into consideration all the facts available on record, vide order dated February 09, 2015, total penalty of ₹85,00,000 was imposed on Right Finstock for violation of PFUTP Regulations, Takeover Regulations and Insider Trading regulations.

8. Pursuant to the order dated October 30, 2017 of the Hon'ble SAT for passing fresh order on merits and matter being received by the undersigned, in accordance with law, Right Finstock, vide letter dated December 27, 2017, was provided with an opportunity for submitting additional replies and an opportunity of personal hearing on January 25, 2018.

9. Vide letter dated January 11, 2018, Right Finstock requested for extension of time for the personal hearing. Accordingly, vide letter dated January 16, 2018, Right Finstock was granted another opportunity of personal hearing on March 01, 2018. Vide email dated February 22, 2018, Right Finstock again sought extension of time for the personal hearing. Accordingly, vide letter dated March 01, 2018, Right Finstock was granted another opportunity of personal hearing on April 02, 2018. Vide letter dated March 29, 2018, the Advocate of Shri Vishnubhai Sunderlal Parekh, Director of Right Finstock Private Ltd. informed that Right Finstock Pvt. Ltd., has been removed by Registrar of Companies (ROC), Gujarat and Dadra Nagar Haveli and name of the company Right Finstock Pvt. Ltd has been struck off from ROC Gujarat. Therefore, it was

requested that the proceeding against Right Finstock should be abated against Right Finstock, which is not existing as on date.

10. In this regard, vide email dated May 29, 2018, certain details were sought regarding strike off. Vide letter dated June 07, 2018, reply was provided by the advocate of Right Finstock.

11. Subsequently, the Competent Authority approved the initiation of the Adjudication proceedings under Section 15A(b), 15H, 15HA of the SEBI Act against Right Finstock Private Ltd. and its two directors, in the same matter. Accordingly, another show cause notice dated July 02, 2021 was issued to Right Finstock Private Ltd. and its two directors, Shri Rajendra Chandulal Shah and Shri Vishnubhai Sunderlal Parekh. The Adjudication Proceedings qua Right Finstock Pvt. Ltd. was disposed vide order dated November 30, 2021 since name of Right Finstock has been struck-off from the RoC list and also ‘dissolved’ as on October 25, 2017 as per the RoC notification.

12. I now proceed with the SCN dated July 02, 2021 issued to directors of Right Finstock Pvt. Ltd., Shri Rajendra Chandulal Shah and Shri Vishnubhai Sunderlal Parekh (hereinafter together referred to as Noticees).

13. Shri Rajendra Chandulal Shah (herein after referred to as Noticee-1), vide letter dated July 10, 2021, inter-alia, informed the following:

- That he was associated with Right Finstock Pvt. Ltd. when the membership card was held by Shri Bhawarlal M. Sanghvi & family.
- The membership card was transferred to new directors, Mr. Purvesh Parikh, Mr. Samir Shah and Mr. Hemant Shah on July 25, 2000.
- Once the membership card was transferred, he was automatically disassociated from the company and he has not been director of the company since then.

- that he had received letter from SEBI through Ahmedabad Stock Exchange (ASE) in the past and had informed SEBI and ASE on March 20, 2006 regarding the appointment of new directors on July 25, 2000 and his resignation as director of Right Finstock from June 11, 2003.
- He submitted that he is completely unaware of any proceeding related to Right Finstock since his disassociation.
- He requested to communicate all the proceedings of Right Finstock with the new directors.

14. He also provided a copy of the agreement of transfer of ASE membership dated May 11, 2000 from Shri Bhawarlal M. Sanghvi and family to Purvesh V. Parikh and his associates and a copy of filing under Section 302(2) of Companies Act 1956 indicating appointment of new directors on July 25, 2000.

15. Subsequently, vide email dated February 14, 2022, Noticee-1 was advised to provide copies of the communications dated March 20, 2006 referred above. In response to the same, Noticee-1 provided the copies of the following documents:
    a) Copy of letter dated June 11, 2003 written to Right Finstock informing regarding resignation as whole time director from Right Finstock. The said letter is acknowledgement by Vishnubhai S Parikh as director of Right Finstock.
    b) Copy of the acknowledged letter dated March 20, 2006 written to ASE indicating that he has resigned from Right Finstock on June 11, 2003.
    c) Copy of the letter dated March 20, 2006 written to SEBI indicating that he has resigned from Right Finstock on June 11, 2003.

16. The SCN issued to Shri Vishnubhai Sunderlal Parekh (Noticee-2) was delivered by speed post AD. However, no reply was received from the Noticee-2. Therefore, reminder letter dated August 18, 2021 was issued to the Noticee-2 advising to submit reply to the SCN dated July 02, 2021 within 15 days of

receipt of the said letter. However, the said reminder was returned undelivered. Subsequently, the said reminder was affixed through the Western Regional office of SEBI on September 13, 2021 at the following address of the Noticee-2:

A-2, Hira Anand Tower, Gordhanwadi Tekra,
Kankaria, Mani Nagar, Ahemedabad, 380028

17. No reply was received from Noticee-2. Vide letter dated October 22, 2021, an opportunity of personal hearing was granted to the Noticee-2 on November 16, 2021 through video conferencing. The said letter, sent through Speed post AD was returned undelivered with comments “Left”.

18. The SCN was forwarded to the advocate who had earlier submitted responses on behalf of Shri Vishnabhai Sunderlal Parekh, director of Right Finstock Pvt. Ltd. vide email dated February 14, 2022, requesting him to arrange for a response from Shri Vishnabhai Sunderlal Parekh to the SCN dated July 02, 2021. Vide email dated February 22, 2022, the advocate informed that he was appointed advocate only for the earlier matter and the parties never contacted him subsequently.

CONSIDERATION OF ISSUES AND FINDINGS

19. The issues arising for consideration in the instant proceedings before me are:-
    I. Whether the provisions of provisions of Regulations 4 (1), 4(2) (a), (b) (e) & (g) of the PFUTP Regulations; Regulation 10 of Takeover Regulations; Regulation 7(1) read with 7(2) of Takeover Regulations and Regulation 13(1) & (3) read with 13(5) of Insider Trading Regulations have been violated by the Noticees?
    II. If yes, whether the Noticees are liable for imposition of monetary penalty under Sections 15A(b), 15H & 15 HA of SEBI Act?

III. If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in stipulated in Section 15 J of the SEBI Act?

a. **Whether the provisions of provisions of Regulations 4 (1), 4(2) (a), (b) (e) & (g) of the PFUTP Regulations; Regulation 10 of Takeover Regulations; Regulation 7(1) read with 7(2) of Takeover Regulations and Regulation 13(1) & (3) read with 13(5) of Insider Trading Regulations have been violated by the Noticees?**

20. In the present proceeding, the following is alleged against Noticee 1 and 2 as directors of Right Finstock Pvt. Ltd.:
    i. They aided and abetted the promoters and PAC in the manipulation in the scrip of GAL which was in violation of provisions of PFUTP Regulations.
    ii. They did not make public announcement after having acquired more than 15% of the equity capital of GAL, which was in violation of provisions of Takeover Regulations.
    iii. They did not also file the required disclosures under Takeover Regulations and Insider Trading Regulations.

21. Before proceeding, I would like to refer to the relevant provisions of the PFUTP Regulations, Takeover Regulations and Insider Trading Regulations, which read 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;
(e) any act or omission amounting to manipulation of the price of a security;
(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

Takeover Regulations

Regulation 10-Acquisition of fifteen per cent or more of the shares or voting rights of any company
No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations

Regulation 7(1)- Acquisition of 5 per cent and more shares or voting rights of a company
"Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges
where shares of the target company are listed."

Regulation 7(2)-The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,-

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

Insider Trading Regulations

Regulation 13(1)-Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of:—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

Regulation 13(3)- Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

Regulation 13(5)-The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 working days of:

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

Subsequent to strike off of Right Finstock, the proceedings have been initiated against the Noticees.

Alleged Violations of PFUTP Regulations

22. Prior to the investigation period, the scrip of GAL was traded irregularly and from August 01, 2003 to October 06, 2003, the scrip was traded on only 3 days with one trade on each day @₹8.05. It started trading actively from

October 2003 and major volume was observed on January 16, 2004 which was for 8,04,675 shares. Thereafter, the price and volume started declining and the scrip closed at ₹4.63 in February 2004, ₹1.62 in March 2004 and was last traded on BSE on December 20, 2004 at ₹1.25.

23. 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.

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

Date	**Corporate announcement**	**Impact on price/volume**
November 1, 2003	Informed BSE that it has acquired the business and undertaking of Poonam Industries Ltd. along with their registered Trademarks on going concern basis and have entered into an agreement on October 25, 2003.	Next 7 day's price went up from ₹21.55 to ₹26.45.
December 22, 2003	Informed BSE that the EGM of the members would be held on January 12, 2004 to seek approval- to increase the Authorized Share capital of the company from ₹55 million to ₹260 million and to issue and allot in one or more lots on preferential or Rights Issue basis not exceeding 20.80 million equity shares of ₹10/- for	Marginal rise in price.

Date	Corporate announcement	Impact on price/volume
	value not exceeding ₹208 million at a price in accordance with the SEBI Guidelines	
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.

25. 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. alongwith trademark 'Poonam Sarees" having annual turnover of about ₹100 crores.

26. 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.

27. 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.

28. I also find from the investigation report that Right Finstock received 9,86,400 shares (18.96% of the paid-up capital) on October 24, 2003 from the Promoters/ PAC (viz. Roselabs Ltd. and Sadiram Industries Pvt. Ltd.) in off market transactions. It received 8,85,427 shares from other entities in December 2003 & January 2004. Right Finstock transferred 11,03,617 shares to Nilesh Vinodchandra Sheth in December 2003/ January 2004 and 3,50,000 shares to Sanjay Thakkar in January 2004 which in turn were offloaded in the market. The promoters and PACs of GAL 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, lead to creation of artificial volumes. The promoters and PACs transferred their shares before the misleading announcements to the Right Finstock. By receiving shares in off-market from the promoters and PACs, which were thereafter sold in the market, the Right Finstock aided and abetted the promoters and PACs in manipulating the scrip of GAL.

29. Thus, I find on the basis of the available records that Right Finstock has aided and abetted the promoters and PACs in the manipulation in the scrip of GAL.

<u>Alleged Violations of Regulation 10 of SAST Regulations</u>

30. I find that Right Finstock received 9,86,400 shares on October 24, 2003 from the promoters/ PACs in off market transactions, the shareholding of

Noticee in GAL which was nil earlier became 9,86,400 shares i.e. 18.97% of the paid up capital of GAL. Right Finstock was required to make a public announcement after the acquisition of shares beyond 15% of the equity capital of the company. However, Right Finstock did not make any public announcement in this regard. I find that Right Finstock has submitted that it received the shares for and on behalf of its clients, Noticee being a broker of Ahmedabad Stock Exchange. I further find that the shares of the GAL were traded in the BSE and not in the Ahmedabad Stock Exchange. Thus, the reply of Right Finstock that it received the shares as one of the brokers of Ahmedabad Stock Exchange and for and on behalf of its client is untenable. In view of the foregoing, I find that the submissions of Right Finstock are not tenable and consequently, hold that the charges leveled against Right Finstock are proved and that the allegation of violation of provision of Regulation 10 of SEBI Takeover Regulations stands established.

<u>Alleged Violation of Regulation 7 of Takeover Regulations and Regulation 13 of Insider Trading Regulations.</u>

31. It is observed from the investigation report that Right Finstock was required to make certain disclosures under the Takeover Regulations and Insider Trading Regulations which have not been done by Right Finstock. Right Finstock was holding nil shares as on 30-September, 2003. On October 24, 2003, 9,86,400 shares i.e. 18.97% were transferred to Right Finstock by off market transfers. Thus, Right Finstock was required to make disclosures under the Regulation 7(1) read with Regulation 7(2) of the Takeover Regulations and Regulation 13(1) of the Insider Trading Regulations, which Right Finstock has not done.

32. The following transactions done by Right Finstock also required continual disclosures under Regulation 13(3) read with Regulation 13(5) of the Insider Trading Regulations, which have not been done by Right Finstock.
    a) On December 14, 2003, purchase of 1,78,310 shares i.e. 3.43%

b) On December 16, 2003, purchase of 2,00,000 shares i.e. 3.85%
c) On December 19, 2003, purchase of 2,00,000 shares i.e. 3.85%
d) On December 26, 2003, purchase of 1,20,000 shares i.e. 2.31%
e) On January 16,2004, sale of 5,23,617 shares i.e. 10.07%
f) On January 16, 2004, purchase of 1,73,217 shares i.e. 3.34%
g) On January 17, 2004, purchase of 1,17,805 shares i.e. 2.27%
h) On January 17, 2004, sale of 4,00,000 shares i.e. 7.69%
i) On January 20, 2004, sale of 3,00,000shares i.e. 5.77%

33. I find that Right Finstock had submitted that it was engaged in the broking business being one of the broker of Ahemdabad Stock Exchange and it had received the securities for and on behalf of its clients and therefore it was not required to make disclosures to the company and to the stock exchange. Right Finstock had further submitted that it had not any voting rights in the securities received by it during the normal course of its business as a share broking company and therefore the provisions of SEBI Takeover Regulations invoked against Right Finstock was unjustified and unwarranted. I find that the shares of the GAL were traded in the BSE and not in the Ahmedabad Stock Exchange. Thus, the reply of Right Finstock that it had received the securities for and on behalf of its clients, Noticee being a broker of Ahmedabad Stock Exchange and therefore it was not required to make disclosures to the company and to the stock exchange, is untenable. Thus, on the basis of available records, I hold that Right Finstock has not filed required disclosures under Regulation 7(1) read with Regulation 7(2) of the Takeover Regulations and Regulation 13 (1) and Regulation 13 (3) read with 13 (5)of the Insider Trading Regulations. The charges leveled against Right Finstock 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) and Regulation 13 (3) read with 13 (5) of the Insider Trading Regulations stands established against Right Finstock.

34. As mentioned at para-11 above, the Adjudication Proceedings qua Right Finstock Pvt. Ltd. was disposed vide order dated November 30, 2021 since name of Right Finstock has been struck-off from the RoC list and also 'dissolved' as on October 25, 2017 as per the RoC notification. Subsequent to strike off of Right Finstock, the proceedings have been initiated against the Noticees.

35. In this regard, I wish to refer to Section 248(7) of the Companies Act, 2013, which is reproduced below:

"(7) The **liability**, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved."

36. In light of the aforesaid provision, Adjudication proceedings have been initiated against the Noticees as directors of Right Finstock, against whom liability for commission of the alleged violations of Right Finstock have been made attributable resulting in issuance of SCN dated July 02, 2021.

37. Therefore, the fundamental issue before me for consideration whether the liability of the Noticees as directors of Right Finstock for the alleged violations of Right Finstock can be enforced.

38. In this regard, I note that Noticee-1 has contended that he disassociated from Right Finstock since July 2000. He has submitted documents regarding appointment of new directors and his resignation as director of Right Finstock on June 11, 2003. He provided copy of letter dated June 11, 2003 written to Right Finstock informing regarding resignation from Right Finstock (acknowledgement by Vishnubhai S Parikh, director of Right Finstock) and copy

of the acknowledged letter dated March 20, 2006 written to ASE dated March 20, 2006.

39. Considering the above submissions of the Noticee-1 and in absence of any material available on record to contradict the said submissions of Noticee-1, I am of the considered view sufficient evidence is not available to prove that Noticee-1 is liable for the alleged violations of Right Finstock. Therefore, I conclude that the present adjudication proceedings initiated against the Noticee-1 vide SCNs dated March 18, 2010 and July 02, 2021 cannot be proceeded with.

40. With regard to Noticee-2, though the SCN was delivered to the Noticee-2, subsequent reminder and hearing notice returned undelivered. The reminder were affixed at the last known address of the Noticee, which was closed.

41. I find that the Noticee-2 had sent replies as director of Right Finstock pursuant to issue of SCN dated March 18, 2010. He continued to submit send communications subsequent to the remand of the matter pertaining to Right Finstock by Hon'ble SAT. All of these indicate that the Noticee-2 was a director during the period of violation and continued to be the director of Right Finstock even after period of alleged violation by Right Finstock.

42. I find that as per Section 248(7) of the Companies Act, 2013, the liability, if any, of any director of the company dissolved under sub-section (5) shall continue and may be enforced as if the company had not been dissolved. The available information/ documents indicate that Noticee-2 was the director of Right Finstock at the time of commission of the alleged violation and he continued as a director as per his own submissions. Despite the fact that SCN dated July 02, 2021 was served on Noticee-2, no reply was received from the Noticee-2. Since the Noticee-2 chose not to respond to the SCN dated July 02, 2021 and the evidence available before me indicate that Noticee-2 was the director of Right

Finstock at the time of alleged violation by Right Finstock, I find that Noticee-2 is liable for the alleged violation by Right Finstock in the present proceeding.

Issue 2

Whether the Noticee 2 is liable for imposition of monetary penalty under Sections 15A(b), 15H & 15 HA of SEBI Act?

43. The next issue for consideration is as to what would be the monetary penalty that can be imposed on Noticee-2 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".

44. Thus, the aforesaid violations by Noticee-2 make them liable for penalty under Sections15A(b), 15H & 15 HA of SEBI Act

Issue -3

What quantum of monetary penalty should be imposed upon Noticee-2 taking into consideration the factors stipulated in stipulated in Section 15 J of the SEBI Act?

45. The aforesaid violations by Noticee-2 make it liable for penalty under Sections 15 A(b), 15Hand 15HA of the Act, which read as follows:

Penalty for fraudulent and unfair trade practices

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

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

47. Section 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 failure to furnish information, return, etc.

48. Section 15A-If any person, who is required under this Act or any rules or regulations made thereunder,—

(b) to file any return or furnish any information, books or other documents within the times pecified therefor in the regulations, fails to file return or furnish the same 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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

49. While determining the quantum of penalty under sections 15A(b), 15Hand 15HA, 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.

50. 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.

51. I am of the view that due to the reasons mentioned above, I am of the view penalty imposed on Right Finstock Pvt. Ltd. vide order dated April 02, 2009 for violation of SEBI (PFUTP) regulations, SAST Regulations and Insider Trading regulations should be imposed on Noticee-2 as the director of Right Finstock Pvt. Ltd. since Right Finstock Pvt. Ltd. struck-off from the RoC list and also ‘dissolved’ as on October 25, 2017 as per the RoC notification and I find Noticee-2 is liable for the alleged violation by Right Finstock in the present proceeding.

ORDER

52. In view of the above observations/findings and in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby dispose of the Adjudication Proceedings initiated against the Noticee-1 viz. Shri Rajendra Chandulal Shah vide SCN dated July 02, 2021.

53. 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 Noticee-2:
    a. ₹20,00,000/-(Twenty Lakhs only) under Section 15HA of the Act
    b. ₹30,00,000/-(Thirty Lakhs only) under Section 15H of the Act and
    c. ₹35,00,000/-(Thirty Five Lakhs only) on the Noticee under Section 15A(b) of the Act.

Thus, total penalty of ₹85,00,000/-(Rupees Eighty Five Lakhs only) is imposed on Noticee-2 under Section 15HA, 15H& 15A(b) of the Act, which will commensurate with the violations committed.

54. The Noticee-2 shall remit / pay the said amount of penalty within 45 (forty five) days of the receipt of this order either by way of Demand Draft (DD) in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai and the said DD should be forwarded to the Division Chief, Enforcement Department–I (EFD), Division of Regulatory Action–I [EFD1-DRA-1] SEBI Bhavan, Plot No.C4-A, 'G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai –400 051 and also send an email to tad@sebi.gov.in with the following detail:

1	Case Name	
2	Name of Payee	
3	Date of payment:	
4	Amount Paid:	
5	Transaction No:	
6	Bank Details in which payment is made:	
7	Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details	

55. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT→Orders→Orders of AO→Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.

56. 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, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

57. In terms of the provisions of Rule 6 of the Adjudicating Rules the copies of this order is sent to the Noticees and also to Securities and Exchange Board of India.

Place: Mumbai **ASHA SHETTY**

Date: March 31 , 2022 **ADJUDICATING OFFICER**