BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. ISD/GSL/AO/DRK-BM/EAD-3-370/36-2013

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5(1) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

Against

Shri Shah Nishit Babulal (PAN AKQPS8934D)

Shah Nishit Babulal, HUF (PAN AAEHN2524E)

Ms. Sonal Nishit Shah (PAN AGSPS6048N)

Shri Shah Tejas Babulal (PAN AGSPS6047D)

Shri Babulal Chhotalal Shah (PAN BEOPS2788Q)

Ms. Shah Sushilaben Babulal (PAN BEOPS3103M)

9-Someshwar Bunglows, Part-1
Near Shyamlal Row Houses, Satellite
Ahmedabad- 380015

Facts in Brief

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), observed that certain entities had failed to make disclosure as stipulated under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the Takeover Regulations) in respect of their acquisition of shares of Global Securities Limited (hereinafter referred to as GSL). The shares of GSL were listed in Bombay Stock Exchange Limited, Ahmedabad Stock Exchange Limited, Calcutta Stock Exchange Limited and Vadodara Stock Exchange Limited

Appointment of Adjudicating Officer

2. I was appointed as the Adjudicating Officer under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 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 the Adjudication Rules), to inquire into and adjudge under Section 15A (b) of SEBI Act, the non compliance of Regulation 29 (1) read with 29 (3) of the Takeover Regulations, alleged to have been committed by Shri Shah Nishit Babulal, Shah Nishit Babulal, HUF, Ms. Sonal Nishit Shah, Shri Shah Tejas Babulal, Shri Babulal Chhotalal Shah and Ms. Shah Sushilaben Babulal (hereinafter referred to as the noticees).

Show Cause Notice, Reply and Hearing

3. A common Show Cause Notice bearing number A&E/DRK/BM/1504/2013 dated January 14, 2013 (hereinafter referred to as SCN) was served on the noticees under Rule 4 (1) of the Adjudication Rules, requiring the noticees to show cause as to why an inquiry should not be held against them and penalty should not be imposed on them under Section 15A (b) of the SEBI Act for the alleged failure on the part of the noticees to make disclosure under Regulation 29 (1) read with 29 (3) of the Takeover Regulations. In the SCN, it was alleged that the consolidated holding of the noticees in GSL has gone up to 5.05% of the share capital of GSL on April 25, 2012 which had subsequently increased to 6.32% on April 30, 2012. It was alleged that the noticees, being immediate relatives and having a common address were persons acting in concert (hereinafter referred to as PACs) as defined in Regulation 2 (1) (q), (2) (v) of the Takeover Regulations. However, no disclosure was made by the noticees as stipulated under Regulation 29 (1) read with 29 (3) of the Takeover Regulations.

4. The noticees vide their common letter dated January 30, 2013, sought an extension of 30 days time for filing reply to the SCN. The request of the noticees was acceded to and the same was communicated vide letter dated February 18, 2013. The reply of the noticees was forwarded by Mukesh M Choksi & Co. (hereinafter referred to as Choksi) vide letter dated April 9, 2013. In the reply, the noticees denied the allegations made against them in the SCN, and submitted the following:

    a) The consolidated holding of the noticees increased by a meager 0.05% and 1.32% against the threshold limit of 5%.

    b) The address, 9-Someshwar Bunglows belongs to Shri Nishit Babulal Shah. Shri Tejas Shah, the younger brother of Nishit Babulal Shah is living in a separate rented house along with his parents Shri Babulal Chhotalal Shah and Ms. Shah Sushilaben Babulal.

c) The noticees had different businesses and different sources of revenue. Therefore, the funds utilized for purchase of the shares and corresponding object were different for each of the noticees.

d) Each of the noticees invested on the basis of their own perception and judgment of risk involved and placed the orders independently and in ignorance of knowledge of each other.

e) The profit/ loss and the consequent tax liability arising out of the trades has also been independent.

f) The investment in GSL was made by the noticees not for the purpose or object of gaining control over management of GSL.

5. As requested by the noticees, vide common hearing notice dated April 16, 2013, the noticees were provided an opportunity of being heard and was advised to attend the hearing on May 3, 2013. A copy of the hearing notice was also served on Choksi and proof of service of the hearing notice on the noticees and Choksi are available on record. In response to the hearing notice, Choksi, on behalf of the noticees requested for an adjournment of hearing scheduled on May 3, 2013. Choksi also informed the new address of Shri Tejas Shah, Shri Babulal Shah and Ms. Sushilaben Shah. Thereafter, two final personal hearing notices dated May 9, 2013 were issued to the noticees by RPAD to their respective addresses, granting them a personal hearing on May 28, 2013. In the final hearing notice, it was intimated that if the noticees fail to appear for the personal hearing, the matter would be decided on the basis of documents available on record. The hearing notices were served on all the noticees and the proof of service is available on record. The said personal hearing was rescheduled to May 29, 2013.

6. In response to the aforesaid final hearing notices, Shri A. K. Shah and Shri Mukesh Choksi, Chartered Accountants and the Authorised Representatives (ARs) appeared for the personal hearing on behalf of Shri Nishit Shah, Nishit Shah, HUF and Ms. Sonal Shah (hereinafter referred to as the Nishit group). In spite of the service of the final personal hearing notice, Shri Tejas Shah,

Shri Babulal Shah and Ms. Sushilaben Shah (hereinafter referred to as the Tejas group) did not appear for the personal hearing without providing any reasons. Therefore, the matter is proceeded with based on the available records.

7. The ARs of the Nishit group reiterated the submissions made in the reply and denied the allegations made in the SCN. The ARs submitted that Shri Nishit Shah and Shri Tejas Shah are staying separately and have different sources of income and were not aware of each other's trading in the scrip. In support of the submissions, the ARs submitted copy of the rental agreement and the bank statements of Shri Tejas Shah as a proof of separate residence. It was further submitted that the violation is technical in nature.

Consideration of Evidence and Findings

8. I have considered the facts and circumstances of the case and the material made available on record. The allegation against the noticees is that they had failed to make the disclosure under Regulation 29 (1) read with 29 (3) of the Takeover Regulations in respect of their acquisition of shares of GSL resulting in aggregate holding of 7,55,000 shares constituting 5.05% of the share capital of GSL as on April 25, 2012 and 9,45,000 shares constituting 6.32% as on April 30, 2012. The noticees have submitted that the funds used for purchase of the shares, the profit/ loss arising out of the trades and the tax implications are independent. It was also submitted that the acquisitions made by the noticees were not with the objective of gaining control over the management of GSL.

9. In this regard, I would like to quote Regulations 29 (1) and 29 (3) of the Takeover Regulations which impose an obligation to make disclosures on any acquirer who acquires shares aggregating to five percent or more of the share capital of a target company. The said provision is reproduced as under:

> *29 (1) Any acquirer, who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company aggregating to five percent or more of the shares of such target company, shall disclose their*

aggregate shareholding and voting rights in such target company in such form as may be specified.

(2) ……….

(3) The disclosures required under sub-regulations (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares or the acquisition of shares or voting rights in the target company to, -

(a) every stock exchange where the shares of the target company are listed ; and

(b) the target company at its registered office.

10. From the records, it is observed that from April 18, 2012 to April 25, 2012, the aggregate holding of all the noticees in GSL had increased to 5.05% and subsequently to 6.32% on April 30, 2012. The details of acquisitions made by the noticees are as under:

Date	Shah Nishit Babulal	Shah Nishit Babulal (HUF)	Sonal Nishit Shah	Shah Tejas Babulal	Babulal Chothalal Shah	Shah Sushilaben Babulal	Cumulative Total	As %
18/04/2012	0	0	100000	0			100000	0.67
19/04/2012	0	0	0	0	100000	100000	300000	2.01
20/04/2012	0	0	0	155000	0	0	455000	3.04
25/04/2012	300000	0	0	0	0	0	755000	5.05
30/04/2012	115000	75000	0	0	0	0	945000	6.32

11. It is also observed from records that the noticees are immediate relatives to each other as specified under Regulation 2 (1) (l) of the Takeover Regulations. The relationship among the noticees is as provided below:

Name	**Relationship**
Shri Shah Nishit Babulal	Son of Babulal Chothalal Shah
Shah Nishit Babulal (HUF)	HUF of Shri Shah Nishit Babulal
Smt. Sonal Nishit Shah	Wife of Shri Shah Nishit Babulal
Shri Shah Tejas Babulal	Brother of Shri Shah Nishit Babulal
Shri Babulal Chothalal Shah	Father of Shri Shah Nishit Babulal
Smt. Shah Sushilaben Babulal	Mother of Shri Shah Nishit Babulal

12. The SCN alleged that being immediate relatives of each other as described above, the noticees are deemed to be persons acting in concert as specified under Regulation 2 (1) (q), (2) (v) of the Takeover Regulations. The provisions of Regulations 2 (1) (l) and 2 (1) (q), (2) (v) of the Takeover Regulations are reproduced as under:

Regulations 2 (1) (l) *“immediate relative” means any spouse of a person, and includes parent, brother, sister or child of such person or of the spouse;*

Regulation 2 (1) (q), (2) (v)

2 (1) (q) *“persons acting in concert” means,—*

(1) *persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.*

(2) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established,—

(i) …………..

(ii) …………

(iii) …………

(iv) …………

(v) immediate relatives;

13. Perusal of the above provisions make it clear that all the noticees, being immediate relatives are deemed to be persons acting in concert, unless the contrary is established. The grounds stated by the noticees such as non-existence of common address, having different sources of income, independent tax liability etc. are not sufficient to establish the contrary that the noticees are not deemed PACs as per the aforesaid Regulation. From the

records it is observed that the noticees had acquired 9,45,000 shares constituting 6.32% of the share capital of GSL in just less than two weeks in major quantities ranging from 75,000 shares to 3,00,000 shares in a day. The Nishit group had acquired 5,90,000 shares and the Tejas group had acquired 3,55,000 shares of GSL during the said two weeks period. In this background, it is difficult to accept that the acquisition of shares by each of the noticees were in ignorance of trading by the others as claimed by the noticees. Therefore, it may be concluded that the noticees had acquired the shares of GSL as PACs and they were required to make disclosure in terms of Regulations 29 (1) read with 29 (3) of the Takeover Regulations.

14. In view of the above discussions, I observe that the noticees had acquired shares of GSL which resulted in a consolidated shareholding of 5.05% on April 25, 2012 and 6.32% on April 30, 2012 without making disclosure under Regulations 29 (1) read with 29 (3) of the Takeover Regulations.

15. The aforesaid non compliance with Regulations 29 (1) read with 29 (3) of the Takeover Regulations , makes the noticees liable for a penalty under Section 15A (b) of the SEBI Act which is reproduced below.

15A. Penalty for failure to furnish information, return, etc. -

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 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.

16. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that while adjudging the quantum of penalty, 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.*

17. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that the disproportionate gain or unfair advantage made by the noticee or loss caused to the investors as a result of the delay on the part of the noticee to make the disclosures are not available on record. Further, it may also be added that it is difficult to quantify the unfair advantage made by the noticee or the loss caused to the investors in a default of this nature.

18. Having considered the facts and circumstances of the case and the submissions made by the noticees, I find that a penalty of ` 6,00,000/- (Rupees Six Lakhs Only) on the noticees would commensurate with the non compliance with Regulation 29 (1) read with 29 (3) of the Takeover Regulations.

Order

19. In exercise of the powers conferred upon me under section 15-I of the SEBI 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, I hereby impose a consolidated monetary penalty of ` 6,00,000/- (Rupees Six Lakhs Only) on all the noticees, namely Shri Shah Nishit Babulal, Shah Nishit Babulal, HUF, Ms. Sonal Nishit Shah, Shri Shah Tejas Babulal, Shri Babulal Chhotalal Shah and Ms. Shah Sushilaben Babulal in terms of Section 15A (b) of the SEBI Act, 1992. The noticees shall be jointly and severally liable to pay the said monetary penalty.

20. The noticees shall pay the said amount of penalty by way of Demand Draft in favour of "SEBI- Penalties Remittable to Government of India", payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to the Deputy General Manager, Integrated Surveillance Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No.

C4-A, “G” Block, Bandra Kurla Complex, Bandra (East), Mumbai–400051, India.

21. In terms of Rule 6 of the Adjudication Rules, copies of this order are being sent to the noticees namely Shri Shah Nishit Babulal, Shah Nishit Babulal, HUF, Ms. Sonal Nishit Shah, Shri Shah Tejas Babulal, Shri Babulal Chhotalal Shah and Ms. Shah Sushilaben Babulal and also to the Securities and Exchange Board of India.

Place: Mumbai **D. RAVI KUMAR**

Date: May 31, 2013 **CHIEF GENERAL MANAGER &**
ADJUDICATING OFFICER