

WTM/ AB / EFD-I / DRA-II / 48 / 2019-20

SECURITIES AND EXCHANGE BOARD OF INDIA
MISCELLANEOUS ORDER

With Respect to Representation of Mr. Harsh Shah and Ms. Urvi Shah - In the matter of Platinum Corporation Ltd.

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) vide an order dated August 12, 2016 (hereinafter referred to as “**Final Order**”) passed in the matter of Platinum Corporation Ltd. issued certain direction against various entities as mentioned in the order. These entities also included three entities i.e. Vashi Constructions Pvt. Ltd. and its two director, Mrs. Bhavana Rajesh Shah and Mr. Rajesh Chandrakant Shah against whom along with other entities, *inter alia* following direction was issued:

“iv. The company, viz. Platinum Corporation Ltd. (Noticee no. 1); seven allottees, viz. Pratik Rameshchandra Shah (Noticee no.2), Dhrumal Kishor Vaidya (Noticee no. 3), Anindo Achinto Banerjee (Noticee no. 4), Nikita Baldevbhai Dave (Noticee no. 7), Vashi Constructions Pvt. Ltd. (Noticee no. 8), Rudra Securities and Capital Ltd. (Noticee no. 13) and Dhanlaxmi Lease Finance Ltd. (Noticee no. 17); three connected entities, viz .Hirak Biotech Ltd. (Noticee no. 24),Sarang Chemicals Ltd. (Noticee no. 21) and Dinkar Bhanuprasad Shreemali (Noticee no. 23) and the directors, viz. Bhavana Rajesh Shah (Noticee no. 10) and Rajesh Chandrakant Shah (Noticee no. 11) (being director of Vashi Constructions Pvt. Ltd.);Ketan Dineshchandra Sorathiya (Noticee no. 14), Nileshkumar Tribhovandas Kava (Noticee no. 15) and Vipul Shantilal Trivedi (Noticee no. 16) (being directors of Rudra Securities and Capital Ltd.); Bharat Shah (Noticee no. 18), Bipin Shah (Noticee no. 19), GirishDoshi (Noticee no. 20) (being directors of Dhanlaxmi Lease Finance Ltd.);

Lalitkumar Kantilal Rathod (Noticee no. 22) (being director of Sarang Chemicals Ltd.); are prohibited from accessing the securities market directly or indirectly, and are prohibited from buying, selling or otherwise dealing in securities, directly or indirectly for a period of 5 years from the date of this Order”

2. The said directions were issued against Mrs. Bhavana Rajesh Shah and Mr. Rajesh Chandrakant Shah, as directors of the entity Vashi Constructions Pvt. Ltd. for their involvement in the fraudulent preferential allotment of 290 lakh shares of Platinum Corporation Ltd. on January 13, 2009 without payment of subscription money. The Final Order also included other directions against Vashi Constructions Pvt. Ltd. which along with other entities, was prohibited from accessing the securities market directly or indirectly, and prohibited from buying, selling or otherwise dealing in securities, directly or indirectly for a period of 3 years from the date of the order, for conniving and conspiring with Platinum Corporation and its directors/promoters and offloading shares in the wake of false and misleading Corporate Announcements thereby making illegal profit/gain. Vashi Constructions Ltd. was also directed to disgorge the entire profit, i.e Rs. 23,89,873/- (with simple interest @12% per annum from February 2007 till the date of payment), unlawfully made by it, by offloading the shares in the wake of false and misleading Corporate Announcements by the Company and its directors.
3. Vashi Constructions Pvt. Ltd. along with Mrs. Bhavana Rajesh Shah and Rajesh Chandrakant Shah, filed an appeal (Appeal No. 298 of 2016) before the Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as "**Hon'ble SAT**") challenging the Final Order. In the meantime, these entities filed a representation dated October 07, 2016 before SEBI wherein it was *inter alia* prayed that they be permitted to sell and dispose off shares from certain demat accounts and redeem mutual funds units and after retaining Rs.23,89,873.00/- the balance sale proceeds be released to these entities for their uses and purposes.

The aforesaid representation dated October 07, 2016 came to be disposed of vide SEBI order dated December 08, 2016 *inter alia* with following directions:

“.....6.6 It is therefore, clarified that if the applicants undertake to disgorge the aforesaid amount along with the interest @12% per annum from February 2007 till the date of payment, then they would be allowed to sell the shares lying in its demat accounts to the extent of making payments towards the disgorgement amount along with the interest imposed by SEBI. Further, the sale has to be done through a SEBI registered broker, who intun shall ensure that the entire illegal gain of ₹23,89,873/- along with simple interest @12% per annum from February 2007 till the date of payment, is recovered and sent to SEBI. It is further clarified that it is only for the purpose of making payment of the amount to be disgorged that the applicants are allowed to sell the shares available in its demat account. Further, barring this limited purpose of effecting sale of shares for making payment of the amount to be disgorged along with the interest, the applicants are prohibited from accessing the securities market directly or indirectly, and are prohibited from buying, selling or otherwise dealing in securities, directly or indirectly for a period as mentioned in the Order dated August 12, 2016....”

The Appeal No. 298 of 2016 which was later withdrawn and thus came to be dismissed as withdrawn by order dated November 16, 2016, passed by Hon'ble SAT.

4. Thereafter, the three entities, Vashi Constructions Pvt. Ltd., Mrs. Bhavana Rajesh Shah and Mr. Rajesh Chandrakant Shah filed an appeal (Appeal No. 375 of 2017) challenging the Final Order before the Hon'ble SAT which was dismissed by Hon'ble SAT vide its order dated June 28, 2018.
5. Mr. Harsh Shah and Ms. Urvi Shah (hereinafter referred to as **“the Applicants”**), who are the son and daughter of Mrs. Bhavana Rajesh Shah and Mr. Rajesh Chandrakant Shah, had, by a separate appeal bearing no. 465 of 2018,

approached the Hon'ble SAT with respect to the defreezing of the joint accounts held by them along with their mother Mrs. Bhavana Rajesh Shah. Vide order date December 13, 2018, the Hon'ble SAT disposed of the said appeal directing as under:

"1. After the matter was argued for some time appellants seek to withdraw the appeal with permission to make representation to SEBI on the limited issue of how to deal with defreezing of the joint accounts held by the appellants alongwith appellant no. 2 in appeal no. 375 of 2017 (Vashi Construction Pvt. Ltd. & Ors. vs. SEBI).

2. If such an application is received, SEBI shall deal with it in accordance with rules and procedures as expeditiously as possible."

6. Thereafter, the Applicants have filed a representation dated January 02, 2019 (hereinafter referred to as "**the Representation**") received by SEBI on January 02, 2019, praying for de-freezing of their de-mat accounts including mutual funds accounts, on the following grounds:

- a. SEBI had passed a common order dated 12.08.2016 against Vashi Constructions Pvt. Ltd. and 2 other entities (Bhavana Rajesh Shah and Rajesh Chandrakant Shah). The said Order had passed directions *qua* Vashi Constructions Pvt. Ltd. debarring it and its Directors (Bhavana Rajesh Shah and Rajesh Chandrakant Shah) from accessing securities market for a period of 3 and 5 years.
- b. Vashi Constructions Pvt. Ltd. along with other appellants, viz. Bhavana Rajesh Shah and Rajesh Chandrakant Shah, filed an appeal (Appeal No. 375 of 2017) wherein it was *inter alia* prayed by the appellants that 'pending the hearing and final disposal of Appeal, this Hon'ble SAT be

pleased to defreeze all de-mat accounts including mutual funds of the appellants and son and daughter of Appellant no. 2. (Bhavana Rajesh Shah) and Appellant No. 3 (Rajesh Chandrakant Shah').

- c. When the aforesaid prayer was pleaded during the course of final hearings in Appeal No. 375 of 2017, it was advised by the Hon'ble SAT to file separate appeal *inter alia* praying for the defreezing of accounts which were held jointly by the son and daughter of Mrs. Bhavana Rajesh Shah with their mother, Mrs. Bhavan Rajesh Shah.
- d. Appeal No. 375 of 2017 was disposed of by the Hon'ble SAT vide Order dated 28.06.2018 and the aforesaid prayer was not considered. It is also pertinent to note that SEBI has already freezed demat account of Vashi Constructions Ltd. which had securities worth Rs. 6,06,46,100/- (Rupees Six Crore Six Lakhs Forth Six Thousand and One Hundred Only) as on September 19, 2016 and also Company's Mutual Fund Account having NAV of Rs. 1,44,95,882/- as on August 18, 2016 which is also under SEBI's control pursuant to debarment order against Vashi Constructions Ltd.
- e. Mr. Harsh Shah used to operate demat account no. 1201060002361987 and 1201130000591602 as first holder with his mother Mrs. Bhavan Rajesh Shah as joint holder of the said demat account. Ms. Urvi Shah used to operate demat account no. 1201130000627450 as first holder with her mother Mrs. Bhavan Rajesh Shah as joint holder of the said demat account. These demat accounts were frozen, in light of SEBI's order dated 12.08.2016. The only reason behind freezing these demat accounts was the debarment (restraintment from accessing securities market) direction against their mother.
- f. Mr. Harsh Shah, is a small retail investor and is currently employed as Research Analyst in a firm from December 2018. Prior to that he was employed as Equity Research Analyst at other firms. He dealt in the securities market as per his own conviction, risk-appetite and completely independent from

his parents (Bhavana Rajesh Shah and Rajesh Chandrakant Shah). It is pertinent to note that Harsh Shah has knowledge of securities market and therefore was operating independently and separately from his parents while dealing in shares of listed entities.

- g. Ms. Urvi Shah is also a small retail investor and is currently employed as Senior Fund Accountant in a firm. Prior to that she was employed as Associate in Hedge Fund Department at another firm. She dealt in the securities market as per her own conviction, risk-appetite and completely independent from her parents (Bhavana Rajesh Shah and Rajesh Chandrakant Shah). She has knowledge of securities market and therefore was operating independently and separately from her parents while dealing in shares.
- h. The Applicants have been duly filing their Income Tax Returns which reflect the transaction undertaken by them and the same are separate and independent from their parents.
- i. The Applicants were never the director of Vashi Constructions Ltd. , no order has been passed against them and therefore freezing of their demat and other accounts is erroneous and utterly irrational.
- j. Shares were lying in these demat accounts prior to, during and after passing of the SEBI Order dated 12.08.2016.
- k. Sales in the said beneficiary accounts were done from their own resources and on their own behalf.
- l. The Applicants are not directly or indirectly concerned with the dealings in any of the transactions which are the subject matter of the SEBI's Order dated 12.08.2016. No cause or concern of any nature whatsoever has been raised against them in the SEBI's Order dated 12.08.2016.

m. The Applicants are the actual owner of the securities lying in the joint beneficiary account (as more particularly stated above) with Ms. Bhavana Rajesh Shah. Further, it is also pertinent to note that dividend on shares were directly credited their Bank Accounts, being first holder of the respective demat Accounts, which evidences that we are the real owners of the securities lying in their respective demat Accounts.

7. Based on the above submissions, the Applicants have prayed for the following:

- a. Their demat accounts mentioned in para 6 e. above and mutual fund accounts to be de-freezed. In the alternative, they be allowed to liquidate/ sell the securities and realise the amount.
- b. In the alternative, the Applicants be allowed to open a fresh account in a single/joint name (not with their parents) and subsequently, transfer the shares lying in the joint account to newly opened account.
- c. They be allowed to trade in the stock market through brokers.

The Applicants have relied upon the decision of the Hon'ble SAT in Rajesh Pavithran Vs. SEBI (Appeal No. 272 of 2017 decided on October 30, 2017) in support of their prayer for allowing the shares in the joint demat accounts to be liquidated.

8. The Applicants were granted an opportunity of personal hearing on January 20, 2020. Mr. Harsh Shah appeared and made submissions on behalf of both the Applicants. The Applicants stated that they will be submitting a certificate of a chartered accountant certifying that the shares/ mutual fund units lying in the demat account of these entities have been purchased from the funds of the respective Applicants.

9. Vide email dated March 04, 2020 the applicants have submitted the following documents:

With respect to Mr. Harsh Shah:

- a. Bank statement of Mr. Harsh Shah for the period 1.09.2013 to 01.04.2018;
- b. Certificate from K.G. Patel and Associates, Chartered Accountants dated March 04, 2020;
- c. Income Tax Returns of Mr. Harsh Shah from FY 2014-15 till 2018-19;
- d. His holding statement; and
- e. Client ledger of Mr. Harsh Shah with Prabhudas Liladher.

With respect to Ms. Urvi Shah:

- a. Bank statement of Ms. Urvi Shah for the period 1.09.2013 to 01.04.2018;
- b. Certificate from K.G. Patel and Associates, Chartered Accountants dated March 04, 2020;
- c. Income Tax Returns of Ms. Urvi Shah from FY2011-12 to 2018-19;
- d. Her demat holding statement; and
- e. Client ledger of Ms. Urvi Shah with stock broker Ramanlal D. Shah.

10. I have considered the representation made by the Applicants. The Applicants want to access the securities lying in the demat accounts which are jointly held by them

with a debarred entity who happens to be their mother. Applicants have also submitted that all these securities have been purchased by them from their own funds and in support of said submission Applicants have produced certificates from K.G. Patel and Associates, Chartered Accountants, dated March 04, 2020. I note that the Applicants have not been restrained by the aforesaid order dated August 12, 2016. They are not holding any shares of Platinum Corporation Ltd. in their aforementioned demat accounts nor were they allottees in the preferential allotment. I find that no adverse inference has been drawn with respect to the Applicants in the order dated August 12, 2016.

11. I note that in addition to the certificate from the chartered accountant, the Applicants have provided copies of their Income tax returns for the assessment year 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 to show their annual income. Ms. Urvi Shah has also filed Income Tax returns for the years 2011-12 to 2013-14. I further note that a Chartered Accountant, vide separate certificates, both dated March 04, 2020 has certified that all the shares in demat account no. 12011300-00591602 held with Prabhudas Liladhar Pvt. Ltd. and demat account no. 12010600-02361987 held with Anand Rathi Share and Stock Brokers Ltd. have been acquired by the own source of income of Mr. Harsh Shah and all the shares in demat account no. 12011300-00627450 held with Prabhudas Liladhar Private Ltd. have been acquired by the own source of income of Ms. Urvi Shah and that the Applicants have never invested in shares of Platinum Corporation Ltd.
12. I note that the ownership of securities lying in a joint demat account lies jointly with both the holders of the said account. Unlike bank accounts, demat accounts are not operated on 'either or survivor' basis. For carrying out a transaction in respect of shares lying in joint demat accounts, Delivery Instruction Slip (DIS) is to be signed for by both the holders. In this regard, the bye laws of CDSL states as under:

“5.3.13. A participant shall, before opening any account or while acting upon the instruction of any Beneficial Owner:

....

5.3.13.3. in case of joint owners of securities, obtain authority in writing from all such joint owners.”

13. Thus, I find that Shares/units of mutual funds lying in these joint demat accounts /mutual fund folios might have been purchased with the funds of the Applicants, however, once such shares/units of mutual fund are held in joint name, they are owned by the joint holders. The demat account nos. 12011300-00591602 and 12010600-02361987 are held jointly by Mr. Harsh Shah and Mrs. Bhavana R. Shah and demat account no. 12011300-00627450 is held jointly by Ms. Urvi Shah and Mrs. Bhavana R. Shah, therefore, all the securities lying in each of these accounts belong to joint holders of these demat accounts.

14. I also note that the Applicants have also made a request for allowing them to sell the mutual fund units held by them. However, the folio number and other details are not mentioned in their representation. Certain folio numbers are mentioned in the certificate of Chartered Accountant and from the previous SEBI orders in this regard, the following folios are understood to be jointly held by the Applicants with the debarred entity:

- Mutual fund folio no. 3102224/90 held with Monetonic Financial Services Pvt. Ltd. wherein Mr. Harsh Shah and Mrs. Bhavana Rajesh Shah are joint holders.
- Mutual fund folio no. 627624/11 and 3102226/84 held with Monetonic Financial Services Pvt. Ltd. where Ms. Urvi Shah and Bhavana Rajesh Shah are joint holders.

15. Assuming the mutual fund units in these folios are held by the Applicants jointly with the debarred entity (Mrs. Bhavana Rajesh Shah), I note that units of mutual fund are held by both the joint owners.
16. Regarding Rajesh Pavithran decision (*supra*) relied upon by the Applicants, I note that in that case, issue involved was with respect to sale of existing securities by the debarred entities wherein Hon'ble SAT allowed the debarred entities to sell the existing securities as there was no pending financial liability of those entities towards SEBI. However, the said decision will have no application in the present case, as the request of the debarred entities to sell their existing securities has already been rejected by SEBI vide its order dated December 08, 2016 and the appeal filed by the debarred entities wherein a request for selling the existing securities was made, has also been dismissed by the Hon'ble SAT vide order dated June 28, 2018. The said order passed by the Hon'ble SAT has not been appealed before Hon'ble Supreme Court by the debarred entities and has thus attained finality. Accordingly, the correctness of said order dated June 28, 2018 passed by Hon'ble SAT cannot be indirectly reopened by the Applicants in the present proceedings.
17. I also note that if the Applicants' prayer to remove the freeze on the joint demat accounts/ folios is granted, it will make the SEBI order August 12, 2016 dated *qua* Bhavan rajesh Shah infructuous. Moreover, in the present case there is a direction for disgorgement of amount of Rs. ₹23,89,873/- alongwith an interest at the rate of 12% p.a. to Vashi Constructions Pvt. Ltd. of whom Ms. Bhavana Rajesh Shah and Mr. Rajesh Chadrakant Shah are directors. Vide order dated December 08, 2016, SEBI had allowed these three entities to sell their existing holdings (including the securities lying in the joint demat and mutual fund folios which are the subject matter of present proceedings) to enable these entities to deposit the disgorgement amount with SEBI. However, I find that till date these entities have not taken any action in this regard. I note that the Applicants have submitted that the account of Vashi Constructions Ltd. had securities worth Rs. 6,06,46,100/- (Rupees Six Crore

Six Lakhs Forth Six Thousand and One Hundred Only) as on September 19, 2016 and its Mutual Fund Account had NAV of Rs. 1,44,95,882/- as on August 18, 2016.

18. In view of the above, considering the submissions and evidences brought on record, I dispose of the representation made by the applicants, -

(i) allowing the transfer of half of each type of securities held in each of the following demat accounts, to a new demat account to be opened in the name of respective Applicants:

(a) Account Number 12011300-00591602 held with Prabhudas Liladhar Pvt. Ltd. (wherein Mr. Harsh Shah is the primary holder and Mrs. Bhavana Rajesh Shah is the second holder);

(b) Account no. 12010600-02361987 held with Anand Rathi Share and Stock Brokers Ltd. (wherein Mr. Harsh Shah is the primary holder and Mrs. Bhavana Rajesh Shah is the second holder); and

(c) Account number 12011300-00627450 held with Pradhudas Liladher Private Ltd. (wherein Ms. Urvi Shah is the primary holder and Mrs. Bhavana Rajesh Shah is the second holder).

(ii) allowing the release of half of mutual fund units in favour of respective Applicants, lying in the following folios:

(a) Mutual fund folio no. 3102224/90 held with Monetonic Financial Services Pvt. Ltd. wherein Mr. Hash Shah and Mrs. Bhavana Rajesh Shah are joint holders; and

(b) Mutual fund folio no. 627624/11 and 3102226/84 held with Monetonic Financial Services Pvt. Ltd. where Ms. Urvi Shah and Bhavana Rajesh Shah are joint holders.

19. This order shall come into force with immediate effect.

20. A copy of this Order shall be forwarded to the Applicants, recognized stock exchanges and depositories and registrar and share transfer agents handling the aforesaid folios, for necessary action.

Place: Mumbai

Date: April 07, 2020

**ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**