BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SR/2022-23/17/21907]

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

In respect of

Saurabh Kamleshbhai Shah
(Address: 13, Hans Residency Bunglows
Prahladnagar Garden Road, B/H Gwalia Sweets
Satelite, Ahmedabad - 380015)

(PAN: AFDPS5015B)
In the matter of Radhe Developers (India) Ltd.

BACKGROUND

1. A Department (**OD**) of Securities and Exchange Board of India (hereinafter referred to as the **SEBI**) conducted an investigation regarding trading activities in the scrip of Radhe Developers (India) Ltd. (hereinafter referred to as **RDIL**/**Company**) for the period from October 01, 2009 to July 30, 2010 (hereinafter referred to as **Investigation Period**) on the basis of a reference received from Financial Intelligence Unit (FIU-IND). The company was listed on Bombay Stock Exchange (BSE) during the investigation period. During the course of investigation it was observed by Investigating Authority (**IA**) of SEBI that Saurabh Kamleshbhai Shah (hereinafter referred to as **Noticee**) has violated the provisions of regulation 13(3) read with (r/w) 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **PIT Regulations, 1992**).

APPOINTMENT OF ADJUDICATING OFFICER

2. Based on the examination, SEBI initiated adjudication proceedings against the Noticee, to inquire into and adjudge under section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **the SEBI Act, 1992**) for alleged violations of provisions under regulation 13(3) r/w 13(5) of PIT Regulations, 1992. Shri Nagendraa Parakh was appointed as the Adjudicating Officer (AO) under section 15-I of the SEBI Act, 1992 r/w rule 3 of the SEBI (Procedure for Holding Inquiry

and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **Adjudication Rules, 1995**) to inquire into and adjudge under section 15A(b) of the SEBI Act, 1992 for the alleged violations of 13(3) r/w 13(5) of PIT Regulations, 1992 by the Noticee. Subsequently, the matter was transferred to me and I was appointed as AO vide order dated July 10, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice dated December 07, 2016 (hereinafter referred to as **SCN**) was issued to the Noticee in terms of rule 4 of the Adjudication Rules, 1995 requiring the Noticee to show cause as to why an inquiry should not be held against it for the alleged violations of provisions under regulations 13(3) r/w 13(5) of PIT Regulations, 1992 and why penalty be not imposed on the Noticee under section 15A(b) of the SEBI Act, 1992 for the alleged violations as specified in the SCN. The SCN was issued to the Noticee through speed post acknowledgement due (SPAD) and the same was delivered to the Noticee as seen from the material available on record.
4. It was alleged in the SCN that the shareholding of the Noticee for the quarter ended September 2009 was 8.34% (i.e. more than 1%) of the total shareholding of the Company. The details of change in shareholding provided to the Noticee are tabulated below:

Date	Market		Net	Share Capital	% change	Actual (%)	Violations
	Buy	Sell					
29/04/2010	0	3,59,500	3,59,500	25,17,99,000	-0.14	8.20	
30/04/2010	0	8,40,000	8,40,000	25,17,99,000	-0.33	7.86	
04/05/2010	0	7,41,000	7,41,000	25,17,99,000	-0.29	7.57	
18/05/2010	0	3,12,000	3,12,000	25,17,99,000	-0.12	7.45	
24/05/2010	0	11,50,000	11,50,000	25,17,99,000	-0.46	6.99	
15/06/2010	0	8,02,417	8,02,417	25,17,99,000	-0.32	6.67	
16/06/2010	64,939	0	64,939	25,17,99,000	0.03	6.70	
21/06/2010	0	11,50,000	11,50,000	25,17,99,000	-0.46	6.21	No disclosure made to the company under 13(3) of PIT Regulations, 1992

Date	Market		Net	Share Capital	% change	Actual (%)	Violations
	Buy	Sell					
22/06/2010	0	11,50,000	11,50,000	25,17,99,000	-0.46	5.76	
24/06/2010	0	2,94,000	2,94,000	25,17,99,000	-0.12	5.64	
25/06/2010	0	3,25,000	3,25,000	25,17,99,000	-0.13	5.51	
28/06/2010	0	11,02,000	11,02,000	25,17,99,000	-0.44	5.07	
28/07/2010	0	11,50,000	11,50,000	25,17,99,000	-0.46	4.62	

IA observed that there has been a change in Noticee's shareholding above 2.00% on June 21, 2010 and due to such change, the Noticee was under obligation to make disclosure to the Company for these trades within two working days in terms of regulation 13(3) r/w 13(5) of PIT Regulations, 1992. However, Noticee failed to make disclosure to the Company and hence alleged that the Noticee violated provisions of regulation 13(3) r/w 13(5) of PIT Regulations, 1992.

5. Upon my appointment as AO, vide hearing notice dated November 22, 2017 enclosing the SCN, the Noticee was granted an opportunity of personal hearing on December 14, 2017. In the said hearing notice, the Noticee was also advised to submit reply to the SCN by December 10, 2017. The said hearing notice was served to the Noticee through SPAD. The Noticee vide letter dated December 05, 2017 submitted the reply to the SCN requesting to provide various documents and also for inspection of documents. Further, vide hearing notice dated September 05, 2018, the Noticee was granted another opportunity of hearing on September 24, 2018 and the same was delivered to the Noticee through SPAD as seen from available record. In the hearing notice dated September 05, 2018, it was informed to the Noticee that the undersigned has already provided all the documents replied upon and also provided the copy of SCN along with the Annexures to the Noticee. Noticee, vide e-mail dated September 20, 2018 forwarded a letter dated September 20, 2018 asking for various documents as sought in the earlier letter dated December 05, 2017 and also for inspection of documents. Further, vide hearing notice dated October 26, 2018, Noticee was granted final opportunity of hearing on November 14, 2018. The said hearing Notice was served to the Noticee through SPAD and his e-mail (saurabhk1972@gmail.com). However, the Noticee did not attend the hearing as scheduled on November 14, 2018. After the said hearing opportunity, it was informed to AO by the Noticee as well as ascertained from the dealing Division of SEBI that the Noticee has filed a consent

application. As regards, the said application, it was later on informed to AO that owing to Noticee not renewing the instrument sent as fees for consent application, the application was no longer considered and it was rejected. Pursuant to which Noticee asked for inspection of documents and same was afforded. After receiving information regarding the status of consent application, AO gave further opportunities of hearing and the entire correspondence in on record which is as follows: email reply dated January 05, 2019, reply dated January 05, 2019 Received through Inward (RON January 14, 2019), email reply dated July 01, 2019, Email reply dated July 15, 2019, Email reply dated July 16, 2019, Reply dated July 16, 2019 Received through Inward (RON 17 July, 2019), Email reply dated October 17, 2019, Reply dated October 17, 2019 received through Inward (RON October 23, 2019), Reply dated July 25, 2020 received through Inward (RON July 31, 2020), Email Reply dated August 27, 2020, Reply dated August 27, 2020 received through Inward (RON September 02, 2020), Reply dated September 01, 2021 received through Inward (RON September 03, 2021), Reply dated December 09, 2021 Received through Inward (RON December 16, 2021) and also hearing notices dated June 26, 2019, October 16, 2019 and August 23, 2021 for hearings scheduled on July 10, 2019 and August 30, 2021 respectively, which were duly serviced upon the Noticee. Proof of service and all relevant correspondence is on record. Hearing was attended through Authorised Representative, time was allowed for further reply. Noticee replied vide last letter dated December 09, 2021.

6. The Noticee submitted many contentions vide his replies dated December 05, 2017 , September 20, 2018, January 05, 2019, June 26, 2019, July 05, 2019, July 16, 2019, October 17, 2019, July 25, 2020, August 27, 2020, September 01, 2021, December 09, 2021. Some of which are mentioned below.

   a) Noticee submitted that the trades in questions appears to be an almost a decade old for which as of now he is fumbling with availability of such record at his place as also to recollect correctly whether there existed any obligation on his part to comply with the requisition of the SEBI Act, 1992 and Rules and Regulation made thereunder. This delayed act, almost after nearing to a decade has certainly prejudices his ability to defend effectively which may jeopardise by capability to defend against the contemplated action against him. He has admitted that he has made the transactions as alleged in the SCN which was provided to him in a tabular format.

b) He submitted that from the SCN, reference of third party communication, statements, documents and information were received during the course of investigation was made at various places and the same appears to have been greatly relied upon for the charges and allegation levelled in the SCN. However, no such documents are provided to him. He asked for all such documents, stated /referred in SCN which will enable him to defend properly and effectively at the time availing the opportunity of personal hearing. Even, no reference of affording an opportunity to inspect the records and documents found in the SCN. He requested to furnish the copy of Investigation Report along with the documents / records received from BSE, other third parties collected during the course of investigation, complete trade history, trade order log, volume order log, price order log, price-volume volatility log, etc. for the investigation period i.e. October 01, 2009 to July 30, 2010. Also the Noticee sought for the justification for selecting the period of investigation.

c) The alleged violation in the SCN is regulation 13(3) r/w 13(5) of PIT Regulations, 1992 under section 15A(b) of SEBI Act, 1992. From the said regulations, "it appears that, the obligation under regulation 13(5)(b) of PIT Regulations, 1992 arises under the circumstances of when such change in shareholding exceeds 2% of total shareholding i.e. threshold limit prescribed under the expectation to not to burden a substantial shareholder to disclose their holding on certain events when there is substantial shareholder to disclose their holding on certain events when there is substantial change and not otherwise. No time limit for such 2% has been stated in the regulation and therefore, there is a reasonable reason to infer that only such transaction or event attracts the provision of regulation 13(5)(b) pursuant to a transaction which is in excess of threshold limit of 2% of total shareholding. Under the circumstances, in absence of specific time period in the regulation the act and conduct to consider on cumulative basis or aggregate basis over a period of time in any manner has not been envisaged in the SEBI (Prohibition of Insider Trading) Regulations, 1992, therefore, in my humble view to construe and conceive the provision of law as has been alleged in the Show Cause Notice is in complete defiance of principle of threshold limit applied and prescribed in the regulations."

d) Referring to the allegation in SCN that "Investigating Authority (IA) observed in the Investigation Report (IR) that your shareholding for the quarter ended September, 2009 was 8.34% and you were categorised as person belonging to public and holding more than 1% of total number of shares during the said IP". In this regard, Noticee replied that, "it refers to a person belonging to public and holding more than 1% of total no. shares. However, the regulation 13(3) refers to 5% of shares or voting rights in a listed company. You are requested to clarify how and on what basis and on the basis of which provision of law investigating authority has come to such conclusion. The regulation 13(3) is silent on time/period at certain intervals for such change in shareholding and prescribes only threshold limit of exceeds 2% of change in total shareholding attracting the provisions. The regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulation, 1992 prescribes the obligation to file disclosure within certain time on happening of certain event under regulation 13(3) of SEBI (Prohibition of Insider Trading) Regulations, 1992. The regulation 13(3) of PIT Regulations, 1992 prescribes threshold limit and not certain intervals of time. Under the circumstances, you are requested to furnish records, material, interpretation, practices and precedents to come to conclusion of considering my sell transaction on cumulative or aggregating on quarterly basis i.e. certain intervals as stated in the title of the table in isolation of transaction per se which has to be based on threshold limit stated in para 5& 6 of the Show Cause notice.

e) Noticee also submitted that "it has been stated that, the impugned proceedings have been initiated on the basis of order of WTM of SEBI dated 22nd September, 2016 to inquire into under section 15-I of SEBI Act, 1992 read with rule 3 of SEBI (Procedure for holding inquiry and imposing penalties by adjudicating officer) Rules, 1995 & adjudge under section 15A (b) of the SEBI Act, 1992 for the alleged violation of the provisions of the SEBI Act, 1992; SEBI (PIT) Regulations, 1992. To the best of my understanding such regulations are repealed on the statute book and no longer exists on statute book. Not only that, in my genuine belief, the provisions which have been alleged are not found to have been incorporated in identical manner in any provisions of new set of regulations i.e. SEBI (PIT)

Regulations, so as to equate the charges with the corresponding provisions of new set of regulations. Under the circumstances, I am at complete loss to understand that on the basis of which documents, records, information and material or the provision of law on the basis of which the learned WTM of SEBI usurped the powers to construe the alleged violation of provision of law on my part on 22nd September , 2016 and thereby usurped the powers to initiate inquiry under section 15-I of SEBI Act, 1992 read with rule 3 of SEBI(Procedure for holding Inquiry and imposing Penalties by Adjudicating Officer)Rules, 1995. You are requested to not only furnish all documents, records, material and information as also clarify/explain the reasons for issuance of such notice.

f) Also, the Noticee submitted that to the best of his remembrance, he has made some disclosures to BSE/ASE. He was searching his old records but this being very old he was facing difficulty in tracing the same. Noticee has written various letters to the BSE requesting them for disclosure details.

g) Disclosure regarding sell of shares of Noticee during period 29/04/2010 to 21/06/2010 were duly made by Noticee as per the provision of section 13(3) of SEBI (PIT) Regulation, 1992. Copy of the disclosure furnished. Copy of corresponding submission made by the company to ASE and BSE obtained from the company are also enclosed.

7. After taking into account, the allegations levelled in the SCN, reply to the SCN and other materials available on record, I hereby, proceed to decide the case on merit.

CONSIDERATION OF ISSUES

8. The issues that arise for consideration in the present case are:

(a) Whether the Noticee has violated the provisions of regulation 13(3) r/w 13(5) of PIT Regulations, 1992?

(b) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act, 1992?

(c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

9. Before proceeding further, it will be appropriate to refer to the relevant provisions of PIT Regulations, 1992 which read as under:-

PIT Regulations, 1992
Continual disclosure
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.*

13(5) *The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two 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.

FINDINGS

10. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder:

Issue (a): Whether the Noticee has violated the provisions of regulation 13(3) r/w 13(5) of PIT Regulations, 1992?

(a) I observe from the material available on record that the holding of the Noticee as on September 29, 2010 was 8.20% (i.e. greater than 5%) of shares of total number of shares in the company. Record also shows that Noticee has traded during investigation period and there has been change in the shareholding of above 2% of shares of total number of shares in the company by the Noticee on June 21, 2018 i.e. from 8.20% to 6.21% of total shareholding of the company. As per regulation 13(3) of PIT Regulations, 1992, any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C regarding the number of shares or voting rights held, 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. It is observed from the SCN that by change in shareholding above 2% of the total shareholding of the Company, the Noticee was required to make disclosures to the Company under regulation 13(3) r/w 13(5) of PIT Regulations, 1992. However, it is alleged that Noticee has not made disclosure to the company within the specified time as prescribed under regulation 13(3) r/w 13(5) of PIT Regulations, 1992 and hence allegely violated the provisions of regulation 13(3) r/w 13(5) of PIT Regulations, 1992.

(b) It is seen from the latest reply of Noticee that the Noticee has made disclosures to the Company and the Company has also inwarded a letter to Exchange as regards said disclosure. Noticee has submitted evidentiary proof of same. I find that the Noticee has made required disclosure to the Company under the provision of regulation 13(3) r/w 13(5) of PIT Regulations, 1992. In light of which, aforementioned allegations levelled against the Noticee do not get established.

(c) In view of the above, issue (b) and (c) do not merit consideration.

<u>ORDER</u>

11. In light of the material available on record and the evidence adduced by the Noticee, I find that allegations of violations of provision of regulation 13(3) r/w 13(5) of PIT Regulations, 1992 levelled against Noticee i.e. Saurabh Kamaleshbhai Shah do not stand established and therefore in exercise of the powers conferred under section 15-I of the SEBI Act, 1992 and rule 5 of the Adjudication Rules, 1995, I hereby dispose off the said SCN without imposing monetary penalty.

12. In terms of the rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticee at his last known address and also to Securities and Exchange Board of India.

Date: December 08, 2022 **SANGEETA RATHOD**

Place: Mumbai **ADJUDICATING OFFICER**