**BEFORE THE ADJUDICATING OFFICER**
**SECURITIES AND EXCHANGE BOARD OF INDIA**
**[ADJUDICATION ORDER NO. ORDER/BM/JR/2024-25/30752]**

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**UNDER SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005**

**In respect of:**

**Nilesh Palande**

**PAN: AGLPP8818Q**

In the matter of **GFL Financials Limited**

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**Background :**

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation in the matter of trading activities of certain entities in the scrip of GFL Financials Limited (hereinafter referred to as **GFL**), which is listed at Bombay stock Exchange (hereinafter referred to as **BSE**). The period of investigation was from September 03, 2012 to May 15, 2013. As per findings of the investigation, there were 17 off-market transactions between 12 suspected entities. Shri Nilesh Palande (hereinafter also referred to as "**Noticee**") was one of the suspected entities. It was revealed that during the period of investigation the Noticee made transaction of 1,57,000 shares of GFL with Shri Sanjiv Kedia and Shri Naresh Shah and no payment towards these transactions was made by the Noticee. Therefore, it was alleged that Noticee had entered into spot delivery contracts without payment/receipt of consideration within the time frame as stipulated under the provisions of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as " **SCRA"**) and thus alleged to have violated section 2(i) of SCRA read with(r/w) sections 13, 16 and 18 of SCRA.

2. Subsequently, an Adjudication Order (hereinafter referred to as "**AO**") (Adjudication Order No. AO/SR/SM/AO/26/2017-18) dated January 31, 2018 was passed against the Noticee for violation of section 2(i) of SCRA read with sections 13, 16 and 18 of SCRA. Noticee appealed before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") against the order passed by the AO dated January 31, 2018. Hon'ble Sat, vide order dated May 14, 2024 disposed the matter stating, inter alia, " *Matter is remitted to the SEBI for fresh consideration in accordance with law with a direction to pass fresh order after hearing the appellant in an outer limit of three months from the date of appearance of appellant before SEBI*. *Appellant shall appear before the SEBI on June 18, 2024 without notice*."

**<u>Appointment of Adjudicating Officer :</u>**

3. In compliance with the above directions of the Hon'ble SAT, SEBI vide communique dated May 21, 2024 appointed the undersigned as the Adjudicating Officer to inquire into and adjudicate under section 23H of SCRA for violation of section 2(i) read with sections 13, 16 & 18 of the SCRA alleged to have been committed by the Noticee.

**<u>Reply and Personal Hearing :</u>**

4. The Authorised Representative (hereinafter referred to as "**AR**") of the Noticee appeared in the SEBI Head Office on June 18, 2024 and collected copy of the Show Cause Notice dated May 31, 2016 (hereinafter referred to as "**SCN**") as per the instruction of Hon'ble SAT. Vide email dated July 11, 2024, the Noticee sought inspection of documents. Acceding to his request, an opportunity of inspection of documents was given to the Noticee on July 31, 2024 which was rescheduled to August 1, 2024 at the request of the AR. The AR inspected the documents on the scheduled date and the Noticee submitted its reply vide letter dated August 19,

2024 to the SCN issued by the erstwhile Adjudicating Officer, stating, inter alia, the following:

- *The Noticee submits that the Noticee has pursued his education in Marathi Medium and unfortunately has not cleared the Higher Secondary Certificate (HSC) examination. The Noticee was very young when he joined Mr. Narendra Shah as an employee in the year 2003 and continued working under Mr. Narendra Shah up until the year 2017. The Noticee was working as sweeper at Mr. Narendra Shah's office for initial years of his employment and thereafter was assigned with various duties like collection of funds etc. The Noticee further submits that he attended night-college alongside his employment to meet his day-to-day expenses.*
- *The Noticee submits that he is currently residing with his mother, wife, and two sons. The Noticee's mother, being senior citizen aged 84 years, and both the sons being minors, the Noticee and his wife are serving as the primary financial support for their family. Consequently, the Noticee and his wife are bearing the sole responsibility for meeting the economic needs and obligations of their dependents. The Noticee further submits that at present he receives a modest monthly salary of Rs. 33,800/- (Rupees Thirty-Three Thousand Eight Hundred only) through NEFT in his Bank Account.*
- *The Noticee repeats and reiterates that the Noticee from the year 2003 up until 2017 was working under Mr. Narendra Shah. During this period of approximately 14 years of employment, all expenses associated to the Noticee's education, accommodation, and meals were borne by Mr. Narendra Shah. The Noticee asserts that his salary was exclusively paid through cheques, with his last recorded salary being approximately Rs. 15,000/- (Rupees Fifteen Thousand only) in the year 2017.*
- *The Noticee contends that for the duration spanning from the Year 2009 to Year 2012, the Noticee was residing at B 201, Dhanyalaxmi Apt, Jivdani Road, Virar East, Vasai, Palghar – 401305, on a rental basis. The Noticee further contends that for the duration spanning from 2012 to 2015 the Noticee was residing at 104/b Dhanyalaxmi Apt, Jivdani Road, Virar East, Vasai, Palghar – 401305. Thereafter, the Noticee on 18" November,*

*2015 acquired the property situated at B 201, Dhanyalaxmi Apt, Jivdani Road, Virar East, Vasai, Palghar – 401305, and has been residing at the said address since 2015.*

- *The Noticee asserts that he was never engaged in any Securities Market transactions and possesses no familiarity of trading in Securities Market and moreover he never initiated the opening of a Demat account.*
- *The Noticee submits that the Noticee have placed its reliance on Statement of Mr. Narendra Shah dated 24 December, 2014 recorded by SEBI in the matter of SDFC Finance Limited (Now known Insta Finance Limited) (hereinafter referred to as "IFL"), wherein Mr. Narendra Shah has admitted that he has received introducing commission for introducing entities to brokers and has been doing so for the past 15-20 years. Furthermore, Mr. Narendra Shah has also admitted in the said statement to SEBI that he knows the Noticee personally since a long time. However, as the Noticee was not provided with the copy of the said Statement in the referenced matter, it is requested that your goodself may kindly verify the contentions of the Noticee, as submitted hereinbelow, against the records already in possession of the respective Adjudicating Officer.*
- *The Noticee submits that SEBI had received a Suspicious Transaction Report (STR) from the Financial Intelligence Unit India, Ministry of Finance with respect to off market transfers taking place from an account of an entity named Kirti Kantilal Mehta (KKM) in the year 2013, indicating that SEBI was very well aware of the alleged violation since 2013. The Noticee further contends that the investigation by SEBI into the scrip of GFL Financials Limited commenced in the year 2013, and was concluded on 07" January, 2016 as evidenced from the Investigation Report.*
- *Thus, despite of the fact that SEBI was well aware of the alleged violation in the year 2013 and that the Investigation had commenced in the same year itself, no action was taken by SEBI until November 2014 resulting in a significant delay in the proceedings.*

- *The Noticee further contends that in cases concerning alleged violation of Section 2(i) read with Sections 13, 16 and 18 of SCRA, the primary issue to be examined is whether the actual delivery of securities and the payment of price occurred on the same day as the contract or on the following day. Therefore, the officer of SEBI was first obligated to obtain information from entities regarding evidence of payment or receipt of funds in connection with the alleged off-market transfer.*
- *However, it is noteworthy, that the officer of SEBI only took steps to request such proof of payment or receipt of funds from the entities on 13th February, 2015 which is about 2 years after the initiation of the Investigation, thereby causing inordinate delay in the proceedings.*
- *The Noticee further submits that the alleged off-market transfer pertains to the year 2013 and that the SCN was served to the Noticee only on 18th June, 2024, which is after a period of 11 years from the date of the alleged off-market transfer, this inordinate delay in the proceedings has caused huge prejudice to the interest of the Noticee. The Noticee submits that for the alleged violation of off-market transfer of which SEBI was aware in the year 2013 itself, the Noticee has been put to harm after a period of more than 11 years without any valid explanation provided for the delay.*
- *On the scheduled date of Inspection, the Authorised Representative was provided only with the copy of the Investigation Report, along with the Annexures thereto. Although, the Authorised Representative had requested for various documents including Letters dated 13 February, 2015 and 10" September, 2015 sent to the Noticee and the KYC Forms on the basis of which connection has been established etc., the Authorised Representative, was only provided with Investigation Report along with its Annexures.*
- *The Noticee further submits that the Noticee in his Letter dated 11" July, 2024 have specifically requested for certain documents and details which are crucial, relevant for preparing an effective Reply to the captioned SCN. However, SEBI has vehemently refuted to provide these documents, asserting that these*

*are the only documents available with SEBI. Thus, by not providing relevant information and documents, SEBI has deprived the Noticee of a free and fair opportunity to defend himself thus, breaching Principle of Natural Justice. It is submitted that the documents and information sought by the Noticee are very basic, crucial and relevant to meet and to answer the allegations levelled against him, if any.*

- *At the outset, the Noticee submits that, the Noticee was never engaged in any Securities Market transaction and possess no familiarity of trading in Securities Market and moreover he never initiated opening of any Demat Account. The Noticee repeats and reiterates that the Noticee is totally unaware of the identity of Mr. Naresh Shah and Mr. Sanjiv Kedia and that it was only after the receipt of the Show Cause Notice that the Noticee ever heard of these names.*
- *The Noticee also states that Mr. Narendra Shah with whom he was in employment for a period of 2003-2017 has fraudulently misused the KYC documents of the Noticee, misused the signature on several documents of the Noticee under the pretext of providing loan and have either used his own KYC details viz, address, contact etc or created fake email id's for opening and operation of Bank/ Demat account in names of various entities including the Noticee.*
- *The Noticee submits that M/s Pragati Shares and Stock Services (hereinafter referred to as "Pragati") was registered as a Member on Inter-Connected Stock Exchange of India (hereinafter referred to as "ISE"), which was a Recognized Stock Exchange until the Year 2014. However, pursuant to the Order of SEBI dated 08th December, 2014, ISE took exit through voluntary surrender of recognition as per Exit Circular, 2012. It is pertinent to note that according to the Members Directory on ISE India portal, Mr. Naresh N Shah is the Proprietor of Pragati, however, none of the Contact Numbers mentioned therein, viz. '9324589253', '9320834555', 9321487752 and '28925300' belong to Mr. Naresh Shah. To substantiate this contention of the Noticee, the Noticee would like to bring to your attention that Mr. Narendra Shah has himself admitted in his Statement recorded by SEBI that the*

*Contact No.- 9324589253 belongs to him and it can also be verified on Truecaller ID that the said Contact Number belongs to Mr. Narendra Shah.*

- *Further the Contact Number '9320834555' and '28925300' also belongs to Mr. Narendra Shah. This contention of the Noticee is substantiated by the fact that, as per the KYC documents provided to the Noticee in the matter of Insta Finance Limited, the KYC document of the Noticee and the KYC document of M/s Dadimaa Capital Private Limited depicts the following number '28925300' as Fax Number. However, on perusal of the ISE portal, it came to the knowledge of the Noticee that the said number has been fraudulently shown as Fax Number, however from the Truecaller ID data it can be substantiated that the said Contact Number belongs to Mr. Narendra Shah.*
- *Furthermore, to the Noticee's surprise, the name of the Noticee has been mentioned as the Compliance Officer of the Enterprise. The Noticee repeats and reiterates that Noticee has pursued his education in Marathi Medium and unfortunately has not cleared the Higher Secondary Certificate (HSC) examination. It cannot be comprehended that how can someone who hasn't even cleared his HSC examinations be Compliance Officer of an Enterprise. Apart from that the Noticee has never met Mr. Naresh Shah, who is the so-called Proprietor of M/s Pragati Shares and Stock Services. Hence, it is beyond the comprehension of the Noticee how he has been designated as the Compliance Officer in this matter. This raises serious concerns regarding the possible misuse of his documents. It is conceivable that his documents were forwarded to Mr. Naresh Shah without his consent or knowledge, and that Mr. Naresh Shah, acting in collusion with Mr. Narendra Shah, utilized the Noticee's name as a dummy Compliance Officer merely to satisfy the regulatory requirements of the listed enterprise. Alternatively, it is plausible that Mr. Narendra Shah orchestrated the entire scheme himself, deliberately misusing the Noticee's documents for his own purposes. Regardless of the specifics, one fact is undeniable that the Noticee's documents have been misused.*

- *The Noticee submits that SCN alleges that the Noticee has entered into off market transactions with two individuals namely, Mr. Sanjiv Kedia and Mr. Naresh Shah. However, the Noticee asserts that that he has no knowledge of the identities of these individuals and had not been aware of their existence prior to the receipt of the Show Cause Notice. The Noticee further contends that the Noticee has neither met these individuals nor is acquainted with their identities. Further the Noticee have never dealt in Securities Market up until this date.*
- *The Noticee emphasizes that the outstanding amount was due from Pragati to Mr. Sanjiv Kedia and not from Noticee. It is an established fact that Mr. Naresh Shah is the Proprietor of Pragati, however, it appears that Mr. Narendra Shah is either closely associated with Mr. Naresh Shah or may be the individual actually managing Pragati, as his contact details have been used in Pragati. Regardless of the specifics, it is evident that Mr. Narendra Shah was connected to the outstanding amount due to Mr. Sanjiv Kedia and not the Noticee. This further establishes that Mr. Narendra Shah was the one who facilitated transfer of Shares to Mr. Sanjiv Kedia. It thus follows that Mr. Narendra Shah was the one, who misused the personal documents of the Noticee, forged the signature of the Noticee and thereby carried out the alleged off• market transfer for his own benefit.*
- *In the alternative, assuming for the sake of argument, that the Noticee was a client of Pragati, it still cannot be comprehended by the Noticee as to why he will transfer his own shares to Mr. Sanjiv Kedia in order to clear the amount due by Pragati to Mr. Sanjiv Kedia, when the Noticee has absolutely no connection with either Pragati or Mr. Sanjiv Kedia.*
- *It is also noteworthy that, at one instance, as stated earlier the Noticee has been designated as Compliance Officer of Pragati, whereas, in the letter dated 20" February, 2015 Noticee is described as a client of Pragati. This inconsistency unequivocally demonstrates that the Noticee's name has been misappropriated by Mr. Narendra Shah either alone or in collusion with Mr. Naresh Shah. The Noticee*

*has been fraudulently shown as different entities as per Mr. Narendra Shah's requirements and convenience. Thus, it is evident that the Noticee's identity has been manipulated by Mr. Narendra Shah, who has portrayed the Noticee in different capacities as per his convenience and requirement.*

- *The Noticee submits that, the captioned matter was remitted back to SEBI pursuant to the Order of Hon'ble Securities Appellate Tribunal dated 14" May, 2024, for fresh Adjudication solely on the ground that correspondences viz., Show Cause Notice, Notice of Attachment of Bank/ Demat Account, were never delivered to the Noticee at is actual address at Virar.*
- *The Noticee submits that both the Show Cause Notice and the Notice of Attachment of Bank/ Demat Account bear the address of the Noticee as "**D/28/205, Yogi Nagar Excer Road, Borivali (W), Mumbai- 400092**" which evidently belongs to Mr. Narendra Shah. This contention of the Noticee can be corroborated by the statement of Mr. Narendra Shah dated 24 December, 2014 recorded by SEBI in the matter of Insta Finance Limited wherein, Mr. Narendra Shah has specifically stated "**D/28/205, Yogi Nagar Excer Road, Borivali (W), Mumbai- 400092**" as his Residential address.*
- *The Noticee submits that, the Show Cause Notice alleges that the Noticee, vide its Letter dated 19 October, 2015 responded to SEBIs letters dated 13th February, 2015 and 10" September, 2015. However, the Noticee further submits that, as detailed in the preceding paragraphs, SEBI's records only reflect on address for the Noticee namely "**D/28/205, Yogi Nagar Excer Road, Borivali (W), Mumbai- 400092",** which as previously stated does not belong to the Noticee. Consequently, the question of any of correspondence being delivered to the Noticee does not arise.*
- *Thus, it is evident that the said Letters would not have been delivered to the actual address of the Noticee but rather to the address of Mr. Narendra Shah as cited above. Therefore, the Noticee was never in a position to reply to any correspondence from SEBI, since the said correspondence would have been delivered to the address of Mr. Narendra Shah. Accordingly, it can be reasonably*

*inferred that Mr. Narendra Shah, by forging the signature of the Noticee, responded on behalf of the Noticee via the letter dated 19 October, 2015 which is annexed as Annexure 4A to the Investigation Report.*

- *The Noticee further submits that in Annexure 2 to the Investigation Report the list of suspected entities and their connection on the basis of KYC Forms, off-market transfers etc. have been given. The Connection with regards to the Noticee has been stated at Sr. No.13, which has been reproduced hereinbelow:*

  > *"**Nilesh Palande: -***
  >
  > *Common mobile no 9320834555 with Stardom (sl.no. 8) Common mobile no 9320834555 and common e-mail id nish palande@rediffmail.com with Hansa Vadera (sl.no.16) Transferred shares in off-market mode to Sanjiv Kedia (sl.no.15)"*

- *It is pertinent to mention herein, that the contact number 9320834555 has been used in various entities mentioned at Sr. No. 8, 11, 12, 16, and 19. However, as stated in the foregoing paragraphs, the contact number 9320834555 belongs to Mr. Narendra Shah. Thus, it can be substantiated that Mr. Narendra Shah has used his personal details while creating fraudulent Demat account of not only the Noticee but also for other entities/ individuals.*

- *Further with regards to the email id namely, nish palande@rediffmail.com, the same is used for entities mentioned at Serial No. 16 and 17 in Annexure 2 to the Investigation Report. The said email id is been linked to various entities/ Individuals in the Investigation Report as well as in various other cases adjudicated by SEBI. Thus, it is apparent that the said email id cannot be* *construed to be as the email id of the Noticee. The Noticee has never used this email, which appears to have been created or misused by Mr. Narendra Shah.*

- *The Noticee submits that during the period when he was in employment with Mr. Narendra Shah, Mr. Narendra Shah had opened the Bank Account of the Noticee for salary purpose, however the said Bank Account was operated by Mr. Narendra Shah. The Noticee further submits that the Bank Account was opened using Telephone Number belonging to Mr. Narendra Shah and the Noticee had no access to the Bank Account except depositing cheque for withdrawal of Salary credited by Mr. Narendra Shah through various proprietary firms.*
- *The Noticee submits that it was only pursuant to the proceedings and after receipt of KYC documents, Bank Statements on 1st August, 2024 in compact disc (CD) in the matter of insta Finance Limited, the Noticee became aware of the fact that Mr. Narendra Ramanlal Shah has fraudulently misused his KYC documents viz., Aadhar Card, PAN Card and passport-sized photograph to open Bank and Demat Account in his name without his knowledge and consent. Furtherance to the same, the Noticee has filed a complaint with the Greater Mumbai Police against Mr. Narendra Shah, alleging therein that Mr. Narendra Shah, being the employer of the Noticee, misused the KYC Documents and also created false Email ID and used his Contact No. with an intent to deceive the Noticee.*

5. In the interest of natural justice an opportunity of personal hearing was given to the Noticee on August 20, 2024 vide notice dated August 12, 2024. The AR appeared on the scheduled date and reiterated the submissions made vide letter dated August 19, 2024. During the course of personal hearing, the Noticee was also provided with copies of the letter/s dated February 13, 2015 and September 10, 2015. The AR also undertook to make further submissions. The Noticee vide letter dated August 26, 2024 submitted, inter alia, the following:

- *It is evident that SEBI's failure to provide all relevant documents and information essential to the Noticee's defence, including critical records such as the Suspicious*

*Transaction Report and KYC forms, constitutes a breach of the Principles of Natural Justice. This conduct has resulted in undue prejudice and an unfair procedural disadvantage for the Noticee, undermining the integrity of the proceedings.*

- *The Noticee submits that M/s Pragati Shares and Stock Services (hereinafter referred to as "**Pragati")** was registered as Member on the Inter-Connected Stock Exchange. The details provided to the Inter• Connected Stock Exchange for its Registration as reflecting on the portal are as follows:*

| ***Sr. No.*** | ***Particulars*** | ***Details*** |
|---|---|---|
| *1* | *Name of the Proprietor* | *Naresh N Shah* |
| *2* | *Contact* | *9324589253*<br>*9320834555*<br>*28925300*<br>*9321487752* |
| *3* | *Name of the Compliance Officer* | *Nilesh K. Palande* |

- *The Noticee submits that Mr. Naresh N Shah has been shown as the Proprietor of Pragati, however, none of the Contact Numbers listed in connection with Pragati belong to Mr. Naresh Shah. Specifically, the Contact Number '**9324589253'** belongs to Mr. Narendra Shah and the said fact has been admitted by Mr. Narendra Shah himself in the Statement provided by him to SEBI.*
- *Furthermore, with respect to the contact '**9321487752'** the Noticee submits that the True Caller ID identifies the owner as "Pooja Kanwar". The Noticee submits that the Noticee is totally unaware as to who the said person is, however, it is evident that the said contact also does not belong to the proprietor of Pragati i.e., Mr. Naresh Shah.*
- *Furthermore, the Noticee finds it both surprising and absurd to discover that the Noticee has been shown as the Compliance Officer of Pragati. The Noticee has pursued his education in Marathi Medium and unfortunately did not pass the*

*Higher Secondary Certificate (HSC) examination. The Noticee submits that his documents were either forwarded to Mr. Naresh Shah without his consent or knowledge, or that Mr. Naresh Shah, acting in collusion with Mr. Narendra Shah, utilized the Noticee's name as a dummy Compliance Officer merely to comply with the regulatory requirements. Alternatively, it is plausible that Mr. Narendra Shah orchestrated the entire scheme himself, deliberately misusing the Noticee's documents for his own purposes. Regardless of the specifics, one fact is undeniable that the Noticee's documents have been misused.*

- *Further, another address attributed to the Noticee as reflected in the Letters dated 13 February, 2015 and dated 10 September, 2015, as well as in the Bank Statement bearing account no. 909010043869177 provided in the matter of Insta Finance Limited i.e., "**23, Jalaram Nagar, Opp. Chamunda Circle, Ganjwala Lane, Borivali (W), Mumbai- 400092",** also belongs to Mr. Narendra Shah. This fact can be substantiated by a conjoint reading of the Statement of Mr. Narendra Shah and KYC Documents of M/s Dadimaa Capital Private Limited (hereinafter referred to as "**Dadimaa")** provided to the Noticee in the matter of Insta Finance Limited.*
- *It is important to note that the KYC Document of Dadimaa, signed by Mr. Narendra Shah in his capacity as Director of Dadimaa, also depicts the same address viz., "23, **Jalaram Nagar, Opp. Chamunda Circle,** Ganjwala Lane, Borivali (W), Mumbai- 400092" as the address of M/s Dadimaa Capital Private Limited.*
- *Moreover, it is noteworthy that the KYC document of Dadimaa is dated 23 September, 2002 which is a year prior to the Noticee joining Mr. Narendra Shah as an employee, whereas the KYC document of the Noticee is dated 23 February, 2006. This demonstrates that the aforementioned address had been associated with Mr. Narendra Shah since 2002, which evidently predates the Noticee's association with Mr. Narendra Shah.*
- *This contention of the Noticee is further supported by the fact that the Hand Delivery Acknowledgements of these Letters, which were provided to the Authorised*

*Representative of the Noticee after the conclusion of the hearing, do not demonstrate that the Letters were received by the Noticee. In fact, with regards to the Letter dated 13 February, 2015 the Hand Delivery Acknowledgement of the said letter states that the said Letter was delivered to some person named "Sumitra" having contact as "9967129816". Further with regards to the Hand Delivery Acknowledgment of another Letter dated 10 September, 2015, the Noticee contends that the acknowledgment in question neither records the name, contact details, nor bears the signature of the individual who purportedly received the said letter. Therefore, it cannot be presumed that the Noticee received the letter in question.*

- *This further substantiates that the Noticee was never in a position to reply to the said Letters. Hence, the allegation that the Noticee has replied to the Letters dated 13 February, 2015 and 10 September, 2015 holds no merit. The said Letters ought to be delivered to Mr. Narendra Shah.*

## Consideration of Issues and Findings:

6. The undersigned has carefully perused the charges made against the Noticee as mentioned in the SCN and the documents available on record. The issues that arise for consideration in the present case are:

   (a) Whether the Noticee has violated the provisions of section 2(i) of SCRA read with sections 13, 16 & 18 of the SCRA?

   (b) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 23H of the SCRA for the alleged violation by the said Noticee? and,

   (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 23J of the SCRA?

7. Before proceeding further, it will be appropriate to refer to the relevant provisions of the SCRA, 1956 which read as under:-

***Section 2(i) of the SCRA***

*"Spot delivery contract means a contract which provides for, -*

*a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality".*

***Section 13 of the SCRA***
***Contracts in notified areas illegal in certain circumstances.***

*13. If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area that it is necessary so to do, it may, by notification in the Official Gazette, declare this section to apply to such State or States or area, and thereupon every contract in such State or States or area which is entered into after the date of the notification otherwise than between members of a recognised stock exchange or recognised stock exchanges in such State or States or area or through or with such member shall be illegal:……….*

***Section 16 of the SCRA***
***Power to prohibit contracts in certain cases.***

*16 (1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.*

*(2) All contracts in contravention of the provisions of sub-section (1) entered into after then date of notification issued thereunder shall be illegal."*

***Section 18 of the SCRA***
***Exclusion of spot delivery contracts from sections 13, 14, 15 and 17.***
*18. (1) Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts. (2) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control the business of dealing in spot delivery contracts also in any State or area (whether section 13 has been declared to apply to that State or area or not), it may, by notification in the Official Gazette, declare that the provisions of section 17 shall also apply to such State or area in respect of spot delivery*

*contracts generally or in respect of spot delivery contracts for the sale or purchase of such securities as may be specified in the notification, and may also specify the manner in which, and the extent to which, the provisions of that section shall so apply.*

## Findings

8. The undersigned have gone through the submissions made by the Noticee and the other material on record and now proceed to deal with the same. Before going into the merits, the undersigned would like to first deal with the preliminary objections raised by the Noticee. In regard to inordinate delay in the initiation of proceedings, the Noticee submitted that the investigation in the matter commenced on receipt of the Suspicious Transaction Report (STR) in the year 2013 and was concluded in January 7, 2016. Further, the first correspondence in the matter was sent by the SEBI official in the month of November 2014 and the proof of payment was requested from the entities on February 13, 2015 which is after 2 years from initiation of the case.

9. It may be noted that SEBI being a robust regulatory cannot initiate investigation as soon as a STR is received from the Financial Intelligence Unit. The STR is analysed and only when SEBI is of the opinion that certain irregularities are observed in regard to the securities market and further investigation is required that SEBI initiates a formal investigation in the matter. Further, the role of all the entities involve in the matter was analysed during the course of the investigation. Hence, there was no significant delay in the proceedings.

10. The Noticee also submitted that the transaction pertains to the year 2013 and the SCN was delivered to him in June 2024 after 11 years. It is noted that after the appointment of the AO vide order dated March 1, 2016, SCN dated May 31, 2016 was issued to the Noticee by the erstwhile AO at the last known address available on record. Hence, there was no delay in issuance of SCN. The SCN was affixed.

Further, the hearing notice was delivered at the same address. On receiving no reply from the Noticee, erstwhile AO passed an order dated January 31, 2018 against the Noticee imposing penalty of Rs. 1,50,000/-. As the Noticee did not pay the penalty amount, recovery proceedings were initiated against him and his bank account was frozen. The Noticee subsequently filed an appeal before Hon'ble SAT after delay of 2209 days and the matter was remitted to SEBI for fresh consideration. Finally the copy of he SCN was collected by the AR of the Noticee on June 18, 2024. Therefore, the undersigned finds that there is no substance in the submission of the Noticee that there is a delay of 11 years.

11. The Noticee had also submitted that despite his request he was not provided with copies of KYC forms, copy of the STR, date on which SEBI became aware about the off-market transfers, date on which STR was received and immediate action taken by SEBI. It is noted that SEBI had provided the Noticee with the copy of the investigation report and the annexures thereof which were the most relevant documents in the proceedings and also relevant for the Noticee. Further, it is also noted that the Noticee was provided with copies of letter/s dated February 13, 2015 and September 10, 2015 as requested by the Noticee. The Noticee was also given time to give its comments on the same. The Noticee failed to explain how the copy of the STR and other documents sought by him (and not provided) was relevant to the proceedings. Therefore, the undersigned do not find any prejudice has been caused to the Noticee for not being provided with the said documents.

ISSUE (a) Whether the Noticee has violated the provisions of section 2(i) of SCRA read with sections 13, 16 & 18 of the SCRA?

12. It is alleged that during the period of investigation, the Noticee had transferred 1,57,000 shares of GFL through off-market to Mr. Sanjiv Kedia and Mr. Naresh Shah and no fund was received by the Noticee from the entities to whom the shares were transferred on the same day or next day of the said spot delivery

contract. As per section 2(i) of SCRA, a spot delivery contract in securities market is said to be completed only if delivery/transfer of securities and payment therefor has been made within the prescribed time i.e. on the same day or the next day. The Noticee submitted that he worked with Mr. Narendra Shah as a sweeper. Mr. Narendra Shah opened a bank account for him using his own credentials to transfer his salary. He was never associated with the securities market. The Noticee had never heard of Mr. Sanjiv Kedia and Mr. Naresh Shah.

13. It is noted that the SCN dated May 31, 2016 bear the address of the Noticee as "D/28/205, Yogi Nagar Excer Road, Borivali (W), Mumbai 400092" which did not belong to the Noticee. Further the Noticee had a common contact number 9320834555 with 4 other entities. From the material available on record, it is noted that the said phone number belonged to Mr. Narendra Shah.

14. Further, it is noted that the bank account of the Noticee had the address "23, Jalaram Nagar, S.V. Road, Near Chamunda Cir., Borivali West, Mumbai". Further, the bank account was opened by Mr. Narendra Shah for the Noticee to pay his salary. This was the same address where the letters dated February 13, 2015 and September 10, 2015 was sent to the Noticee which the Noticee never received. On perusal of documents submitted by the Noticee, it is noted that this address is mentioned as the address of Mr. Naresh Shah in a different matter. Further, vide email dated September 13, 2024, Noticee submitted copy of the agreement of purchase of property at 104B Dhanyalaxmi Apt. Jivdani Road, Virar East, Vasai, Palghar 401305 on May 8, 2012 wherein he resided from 2012 to 2015. However, SEBI letter dated February 13, 2015 addressed to the Noticee sent at the address 23, Jalaram Nagar, S.V. Road, Near Chamunda Cir., Borivali West, Mumbai was hand delivered to "Sumitra" on February 14, 2015. Therefore, it cannot be established that the correct address of the Noticee was available on record of the bank or with SEBI.

15. From the submission of the Noticee it is also noted that on coming to know that Mr. Narendra Shah had had misused his name and signature, the Noticee has filed a complaint with the Greater Mumbai Police against Mr. Narendra Shah.

16. It appears that bank account of the Noticee was used by Mr. Narendra Shah to transact in securities in the name of the Noticee without his knowledge. All the contact detail of the Noticee available on public records belonged to Mr. Narendra Shah, his employer or Mr. Naresh Shah. The undersigned is of the view that the material available on record implicating the Noticee for carrying out the spot delivery contracts does not outweigh the submissions of the Noticee wherein his name, contact details and account details have been misused. In view of the above, the undersigned finds that the allegation of violation of section 2(i) of SCRA read with sections 13, 16 & 18 of the SCRA by the Noticee does not stand established.

17. Further, considering that the alleged violation against the Noticee does not stand established, it is noted that Issues (b) and (c) do not require any consideration.

**ORDER**

18. Accordingly, taking into account the aforesaid findings, the adjudication proceedings initiated against the Noticee i.e., Nilesh Palande vide SCN dated May 31, 2016 stand disposed of without any penalty.

19. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

BARNALI MUKHERJEE
Digitally signed by BARNALI MUKHERJEE
Date: 2024.09.13 12:27:37 +05'30'

**Date: September 13, 2024** **BARNALI MUKHERJEE**

**Place: Mumbai** **ADJUDICATING OFFICER**