BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SR/2022-23/41/22692]

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
Jigar Harshadkumar Shah

(Address: First Floor, Chunibhai Chambers,
Behind City Gold Cinema ,
Ashram Road
Ahmedabad - 380009)
(PAN: ANEPS2005E)

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 Jigar Harshadkumar Shah (hereinafter referred to as **Noticee**) has violated the provisions of clause 1.2 of Code of Conduct specified under Part A of Schedule I read with Regulation 12(1) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **PIT Regulations, 1992**).

APPOINTMENT OF ADJUDICATING OFFICER

2. Based on the investigation, SEBI initiated adjudication proceedings against the Noticee, to inquire into and adjudge, under section 15HB of the Securities and Exchange Board of India Act, 1992 (in short the **SEBI Act, 1992**) for alleged violations

of provisions of clause 1.2 of Code of Conduct specified under Part A of Schedule I read with Regulation 12(1) of PIT Regulations, 1992 by the Noticee. 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 15HB of the SEBI Act, 1992 for alleged violations of provisions of clause 1.2 of Code of Conduct specified under Part A of Schedule I read with Regulation 12(1) of the PIT Regulations, 1992 by the Noticee. Subsequently, the matter was transferred and undersigned was appointed AO vide order dated July 10, 2017.

<u>SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING</u>

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 clause 1.2 Code of Conduct specified under Part A of Schedule I read with Regulation 12(1) of the PIT Regulations, 1992 and why penalty be not imposed on the Noticee under section 15HB 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, IA has observed in the Investigation Report (IR) that the Noticee being the compliance officer of RDIL was under an obligation to implement the code of conduct under clause 1.2 Code of Conduct specified under Part A of Schedule I read with Regulation 12(1) of the PIT Regulations, 1992, however, you failed in your responsibility to implement and supervise the Code of Conduct of RDIL. It is therefore alleged that you have, prima facie, violated clause 1.2 Code of Conduct specified under Part A of Schedule I read with Regulation 12(1) of the PIT Regulations. Noticee was advised to show cause as to why an inquiry should not be held against you in terms of Rule 4 of the Adjudication Rules, 1995 read with section 15-I of the SEBI Act, 1992 and why penalty, if any, should not be imposed on you under section 15HB of the SEBI Act, 1992 for the alleged violations mentioned. IR sent with SCN.

5. Noticee replied vide letter dated January 27, 2017 informing that he has received the SCN through RDIL and he acknowledged receipt, made various contentions and sought documents relied upon. Upon my appointment as AO, vide hearing notice dated November 21, 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 November 30, 2017 submitted the reply to the SCN requesting to provide various documents and also for inspection of documents and that Noticee has filed a consent application dated March 7, 2017.Office of AO ascertained from the relevant Department of SEBI regarding whether such an application was pending, upon ascertaining the matter was kept on abeyance. Vide email dated October 19, 2019 relevant department informed about status of consent application of Noticee. Vide email (secretarial at radheinfra dot com) dated November 05, 2019 the company sent a letter on behalf of the Noticee to relevant Department of SEBI regarding rejection of the said consent application. Vide letter dated January 17, 2020 sent and delivered by SPAD, documents sought by Noticee were sent with an advice to reply within 15 days from receipt. Noticee sent a reply dated January 30, 2020 seeking inspection of documents. Inspection request was sent by undersigned AO to the relevant Department vide letter dated February 27, 2020 with a copy to Noticee. Relevant department vide email dated July 17, 2020 sent email regarding sharing all the documents for inspection by email with the Noticee. Noticee sent a copy of letter it sent to BSE dated July 25, 2020 asking BSE to provide system and records of receipt of disclosure and dissemination of the same so as to enable the Noticee to verify what could have happened to their postal sending of registered AD at prevalent point of time. In this regard, vide email dated August 21, 2020 Noticee was advised to file reply to the SCN else the matter shall be proceeded upon on the basis of material on record. Vide email dated August 26, 2020 relevant Department sent final confirmation to AO that inspection has been provided to Noticee. Undersigned AO vide email dated August 28, 2020 advised the Noticee that, extended periods of delay have been allowed in the interest of natural justice, however, in case Noticee fails to defend itself against the charges levied in the SCN through written submissions/personal hearings, the material already on record (including letters mentioned in trailing email) will be

relied upon to take the instant adjudication proceedings to its end. Vide letter dated August 27, 2020 Noticee requested for more time. Hearing Notice dated August 23, 2021 was sent to Noticee for hearing scheduled from August 30, 2021 to September 03, 2021 at any date between 11:00 AM to 04:00 PM through any mode convenient to Noticee. Noticee sought postponement. Another opportunity of hearing was provided vide email dated October 13, 2021 for any date from October 20 to 22, 2021, failing which matter will be proceeded upon on the basis of material on record. Noticee intimated about his Authorized representative and confirmed about attending the hearing as scheduled. Hearing proceedings were completed on October 20, 2021. Noticee attended with Authorised Representative. Minutes were confirmed over email. During the hearing Noticee requested for additional time to be given for reply, the same was given. Noticee filed a reply dated December 18, 2021.

6. Noticee replied through various letters as given below.

The Noticee submitted vide letter dated January 27, 2017, interalia as under:

- Noticee had joined Company on March 27, 2009 and was appointed compliance officer on April 25, 2009, he resigned from company on January 31, 2010. SCN has been issued after a long delay. Noticee has changed many jobs and it is humanly not possible to recollect. To make me responsible for charges levelled for entire IP is contrary to law. Nothing in record shows my failure in fulfilling the responsibility to implement the Code of Conduct. SCN is vague.
- Existence of a Code of Conduct is not in dispute there inviting and invoking the violation of clause 1.2 r/w regulation 12(1) is contradictory. No reference have been made to the event/transactions/implementation/supervision and monitoring for which failure has been observed on my part attracting the violation of clause 1.2 of the Model Code of Conduct. There appears to be confusion/dilemma as to whether failure is respect of clause 1.2 of the Model Code of Conduct or of the Code of Conduct of RDIL. RDIL Code of Conduct was in place since incorporation of regulation 12(1) and was tested for a sufficiently long time.

The Noticee submitted vide letter dated December 18, 2021, interalia as under:

- Noticee did not trade in the scip, by use of word ‘trading’ there appears to be a mis-joinder of cause and action. IA knows about the fact that in the Code of RDIL Mr. Ashish Patel is named compliance officer, there appears to be a case of approbate reprobate by dragging the Noticee in the present proceedings. No evidence on record to show change in name of the compliance officer in place of existing compliance has been brought and placed on record, not a single incident of non-compliance of code of RDIL or Code specified under Part A of Schedule I of regulation 12(1) of PIT Regulations, 1992 is found and alleged against Noticee.

- Model Code of Conduct in PIT Regulations provide a broad regulatory framework but does not prescribe the manner in which certain provisions are to be administered by such listed company. In absence of no specific violation found in the Radhe Insider Code there is no need to invite and invoke the provision of section 15HB of the SEBI Act, 1992.
- There was a practice of disclosing trades of designated employees and their dependents trades timely, to the Exchange.

CONSIDERATION OF ISSUES

7. The issues that arise for consideration in the present case are:
   a) Whether the Noticee has violated the provisions of clause 1.2 of Code of Conduct specified under Part A of Schedule I read with Regulation 12(1) of the PIT Regulations, 1992?
   b) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HB 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?

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

PIT Regulations, 1992

Code of internal procedures and conduct for listed companies and other entities.

12. (1) All listed companies and organisations associated with securities markets including:(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ; (b) the self-regulatory organisations recognised or authorised by the Board; (c) the recognised stock exchanges and clearing house or corporations; (d) the public financial institutions as defined in section 4A of the

Companies Act, 1956; and (e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.

SCHEDULE I

[Under regulation 12(1)]

PART A MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

1.0 Compliance Officer

…..

1.2 The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

Explanation : For the purpose of this Schedule, the term 'designated employee' shall include :— (i) officers comprising the top three tiers of the company management; (ii) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.

SEBI Act, 1992

PENALTIES AND ADJUDICATION

15HB.Penalty for contravention where no separate penalty has been provided.- *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

FINDINGS

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

(a) SCN alleges that the Noticee has violated the provisions of clause 1.2 of Code of Conduct specified under Part A of Schedule I read with Regulation 12(1) of the PIT

Regulations, 1992. In this regard, I note that the clause 1.2 prescribes that the compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of “Price Sensitive Information”, pre-clearing; of designated employees’ and their dependents’ trades etc. Upon perusing the annexure to the SCN i.e. the IR page no. 23 to 25, I note that the allegations regarding whether he Model Code of Conduct for Prevention of Insider Trading as specified in Part A of Schedule of PIT Regulations is in place, it describes the violation of clause 4.2 (opposite trades) by the MD of the Company and thereby violation of clause 1.2 by the Noticee.

(b) From the replies of the Noticee, contention of the Noticee regarding the SCN being vague cannot be accepted as the annexure to SCN which contains the IR, gives a specific instance which leads to the allegation of the clause 1.2 of Code of Conduct specified under Part A of Schedule I read with Regulation 12(1) of the PIT Regulations, 1992. Further, contentions of the Noticee regarding his tenure being only upto a certain date, it is noted from the IR that the said opposite trades have been carried out during the tenure of the Noticee in RDIL. Also as regards, the contentions of Noticee that SCN fails to specify which compliance officer failed to ensure compliance of clause 1.2 of the Code of conduct specified in Part A of Schedule 1 read with Regulations 12(1) of the PIT regulations 1992, Noticee being the compliance officer which is an admitted position, was also responsible for the implementation of the Code of Conduct, hence the said contention of Noticee is not acceptable.

(c) From the various remaining contentions of the Noticee such as Mode code being broad regulatory framework, disclosures being made etc. I note that Noticee has not defended the actual fact of the non-compliance of the clause 1.2 as seen from the opposite trades executed by the MD of the company. Noticee has not given any evidentiary proof of such non-compliance having not happened or that corrective or remedial actions were taken upon such clause 4.2(opposite trades) event happening. In light of which I am of considered view that allegations against the Noticee that, Noticee has the provisions of clause 1.2 of Code of Conduct specified under Part A of Schedule I read with Regulation 12(1) of the PIT Regulations, 1992 stand established. I am also of the view that the said violations attract imposition of monetary penalty.

10. In light of the above findings, question that arises before me is what should be the quantum of such penalty that can be levied for the violations established in preceding paras. In this regard while determining the quantum of penalty, it is pertinent to refer to and consider the factors stipulated in section 15J of SEBI Act read with Rule 5 (2) of the Adjudication Rules, which reads as under:-

> *15J "Factors to be taken into account by the adjudicating officer-*
> *While adjudging quantum of penalty under section 23 I, the adjudicating officer shall have due regard to the following factors, namely:-*
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
> *(b) the amount of loss caused to an investor or group of investors as a result of the default;*
> *(c) the repetitive nature of the default."*

I note that record does not show that any profit made by the Noticee or losses if any caused by the said non-compliances by the Noticee. I further note from the record that nothing indicates the said violations to be repetitive in nature on part of the Noticee. I am of a considered opinion that penalty of Rs. 1,00,000/- is appropriate in this matter.

ORDER

11. 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 impose a penalty of Rs. 1,00,000/-(Rs. One lakh only) for the charges of violations as alleged in the said SCN and established as seen from the above para. I am of the view that the said penalty is commensurate with the defaults committed by the Noticee i.e. Jigar Harshadkumar Shah.

12. Demand Draft in favour of "SEBI- Penalties Remittable to Government of India ", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT>Orders>Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/ RTA /AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in The said confirmation of e – payment made in the format as given below should be sent to "The Division Chief, EFD1 – DRA - V, Securities and

Exchange Board of India, SEBI Bhavan, Plot no. C - 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e- mail id:- tad@sebi.gov.in

1. Case Name:
2. Name of payee:
3. Date of payment:
4. Amount Paid:
5. Transaction no:
6. Bank Details in which payment made
7. Payment made for: penalties/ disgorgement/recovery/ settlement amount and legal charges along with order details)

In terms of the Rule 6 of the Adjudication Rules, 1995, a copy of each of this order is being sent to the Noticee and also to Securities and Exchange Board of India.

Date: December 30, 2022 **SANGEETA RATHOD**

Place: Mumbai **ADJUDICATING OFFICER**