BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ORDER/SR/2022-23/18/21908]

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

Shitalbhai Priyasharan Shah

(Address: 3A, Shantiniketan Co op Housing Society,
Near Gujarat College, Ellis Bridge,
Ahmedabad - 380006)

(PAN: AQXPS9304E)

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 Shitalbhai Priyasharan 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 8.38% (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					
01-Feb-10	0	3,39,770	3,39,770	25,17,99,000	-0.13	8.38	
09-Mar-10	0	22,28,000	22,28,000	25,17,99,000	-0.88	6.14	**No disclosure made to the Company under Reg. 13(3) of SEBI (PIT) Reg.,**
13-Apr-10	0	2,27,000	2,27,000	25,17,99,000	-0.09	4.11	**No disclosure made to the Company under Reg. 13(3) of SEBI (PIT) Reg.,**

IA observed that there has been a change in Noticee's shareholding above 2.00% on March 09 and April 13, 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 disclosures 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 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 that he has filed for consent vide letter dated April 21, 2017. Further, vide hearing notice dated June 26, 2019, the Noticee was granted another opportunity of hearing on July 10, 2019 and the same was delivered to the Noticee through SPAD as seen from available record. Noticee replied vide email dated July 09, 2019 seeking comments on penal provisions and details sought. In the hearing notice dated October 16, 2019, 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 and hearing was scheduled on October 29, 2019. Noticee, vide e-mail and physical letter sent reply dated October 17, 2019 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 January 17, 2020, Noticee was granted final opportunity of hearing and furnished with documents given by OD. Vide various communications AO sought updates on consent applications. Noticee sought inspection vide letter dated January 30, 2020. Inspection letter dated February 27, 2020was sent by AO. Relevant Department of SEBI organized for inspection which was completed on July 17, 2020. Vide email dated August 21, 2020 Noticee was advised to reply to SCN and indicate if a hearing is sought. Company wrote to BSE vide letter dated August 26, 2020 seeking disclosures filed by Company. AO conveyed to Noticee vide email dated August 26, 2020 that, "As seen from record, it is noted that extended periods of delays have been allowed in the interest of natural justice. However, in case Noticees fail to

defend themselves 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." 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. Vide letter dated August 27, 2020 received on September 02, 2020 Noticee sought more time to reply. Vide letter dated August 23, 2021, AO gave further opportunity of hearing any day between August 30, 2021 and September 03, 2021 in person/Voip/webex etc with prior intimation to AO. Noticee replied vide letter dated August 31, 2021 for postponement. Hearing was scheduled and attended by Authorised Representative of Noticee. Noticee sent his latest reply vide letter dated December 09, 2021.

6. The Noticee submitted many contentions vide his various replies, inter alia mentioning the following (paraphrased) points.

   a) Noticee submitted that from the SCN, reference of Investigation Report has been made, and the same appears to have been greatly relied upon for the charges and allegation levelled in the SCN, 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, so the same should be given to him. He requested to furnish the copy of Investigation Report along with the documents / records received from BSE/ASE, justification of change in regulations, etc after which he will ascertain whether all documents have been received, after being satisfied Noticee will conduct inspection of documents and thereafter will reply to SCN. On behalf of the Noticee, company has written to the Exchange to help with copies of disclosures.
   b) Disclosure regarding trade dated 09-Mar-10 and 13-Apr-10 have been made, there is not disclosure violations, as seen from the letter of Company to BSE and letter of Noticee to Company, thus as per Noticee, disclosure were duly made by Noticee as per the provision of section 13(3) of SEBI (PIT) Regulation, 1992. Copy of the disclosures furnished.

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 shareholding of the Noticee for the quarter ended September 2009 was 8.38% (i.e. more than 1%) of the total shareholding of 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 March 09, 2010 and April 13, 2010 i.e. from 8.38% to 6.14 and 4.11 respectively of the 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 allegedly violated the provisions of regulation 13(3) r/w 13(5) of PIT Regulations, 1992.

(b) It is observed from the latest reply of the Noticee that Noticee has furnished copies of his letter to company and Company's letter to Exchange with exchange inward stamp, in turn furnishing the disclosures in Form C, in terms of 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.

ORDER

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. Shitalbhai Priyasharan 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**