BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[Adjudication Order: Order/SM/AS/2023-24/29352-29356]

Under section 15-I of the Securities and Exchange Board of India Act, 1992 read with rule 5 of the Securities and Exchange Board of India (Procedure for Holding Inquiry & Imposing Penalties) Rules, 1995

In respect of –

Noticee No	Name of the Noticee	PAN No
Noticee 1	Rohil Shah	ARAPS8708A
Noticee 2	Romil Shah	ARAPS8707R
Noticee 3	Shah (HUF) B H	AAKHS2700K
Noticee 4	Bhupendrakumar Shah	ACQPS5388B
Noticee 5	Vipul Shah	ADWPS9528E

Noticee 1 to Noticee 5 hereinafter referred to as "**Noticees**"

In the matter of Safal Herbs Limited (formerly known as Parikh Herbals Limited)

A. BACKGROUND

1. Securities and Exchange Board of India ("**SEBI**") carried out an investigation into the trading in the scrip of Safal Herbs Limited (formerly known as Parikh Herbals Limited) (herein after referred to as "**Company/Safal/SHL"**) on the basis of a complaint and Suspicious Transaction Reports from Financial Intelligence Unit – India (FIU-IND). The period of investigation (hereinafter referred to as "**Investigation Period/ IP**") was from February 01, 2013 to September 14, 2015.

2. The focus of investigation was to ascertain whether there was any disclosure violation of provisions of *inter-alia*, Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), SEBI (Prohibition of Insider Trading) Regulations, 1992 (herein after referred to as "**PIT Regulations**").

3. Based on findings of investigation, it was alleged that Noticees have violated Regulation 30(2) read with 30(3) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "**SAST Regulations**") and Noticee 1, Noticee 4 and Noticee 5 have violated Regulation 13(4A) of PIT Regulations and.

4. The text of the aforementioned provisions alleged to have been violated by the Noticees reads as under:

SAST Regulation

Regulation 30(2)

(2) The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

Regulation 30(3)

The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to, —
(a) every stock exchange where the shares of the target company are listed; and
(b) the target company at its registered office.

PIT Regulations

Regulation 13(4A)

Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

B. APPOINTMENT OF ADJUDICATING OFFICER

2. Vide communiqué dated October 10, 2022, it has been informed that the competent authority in SEBI is satisfied that there are sufficient grounds to inquire into the affairs and adjudicate upon the alleged violations as specified above w.r.t. Noticees and appointed the undersigned as Adjudicating Officer under Section 15-I (1) of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules"**) to inquire into and adjudge the aforesaid alleged violations by the Noticees under Section 15A(b) of the SEBI Act. The said provision of the SEBI Act read as under:

"SEBI Act

Penalty for failure to furnish information, return, etc.

***15A.** If any person, who is required under this Act or any rules or regulations made thereunder, -*

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;"

C. SHOW CAUSE NOTICE, REPLY, HEARING

3. A common Show Cause Notice (hereinafter referred to as "**SCN**") dated June 01, 2023 was issued to Noticees under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held against them and penalty, if any, should not be imposed upon them under section 15A(b) of the SEBI Act, for the aforesaid alleged violations by them. The aforesaid SCN and Hearing Notices send to Noticees were duly served, upon the Noticees' last known address as available on records, in terms of Rule 7 of Adjudication Rules. The whole process of the present adjudication proceeding has been mentioned below in tabulated form:

Table No 1

Noticee No	Name of the Noticee	SCN	SCN delivered through	Reply dated	Hearing Concluded
Noticee 1	Rohil Shah	June 01, 2023	SPAD	September dated 15, 2023	September 20, 2023
Noticee 2	Romil Shah		Newspaper Publication- Pune edition of Times of India, Sakal, Nava Bharat	September dated 15, 2023	September 20, 2023
Noticee 3	Shah (HUF) B H		Newspaper Publication – Pune edition of Times of India, Sakal, Nava Bharat	September dated 15, 2023	September 20, 2023
Noticee 4	Bhupendrakumar Shah HUF		Newspaper Publication - Pune Edition of Times of India, Sakal, Nava Bharat	September dated 15, 2023	September 20, 2023
Noticee 5	Vipul Shah		SPAD	July 12, 2023	September 11, 2023

6. The submissions made by the Noticees in its reply are summarized below:

6.1. *The Noticee states that in the year 2014, SEBI had issued Show Cause Notice dated 8.09.2014 alleging the same violation. SEBI passed order dated 30.12.2015 against the Noticee imposing a penalty of Rs. 4,00,00,000/- for the alleged violations. The Noticee challenged the order of SEBI before Hon'ble SAT by way of Appeal no. 68 of 2016. The Hon'ble SAT vide order dated 10.06.2019 was pleased to remand the matter back to the Adjudicating officer who decreased the penalty to Rs.9,00,000/- vide order its dated 25.06.2019. Despite the Noticee having paid the penalty for the alleged violations, your good office has once again alleged the same violations qua the Noticee. It is pertinent to note that previously, the scrip was examined for the period from 1.01.2012 and 31.01.2013 and the same matter was forwarded to IVD for further investigation as noted in the Investigation Report. It is thus from the same cause of action and investigation that the new SCN is issued for same alleged violations, now for incidents in 2013-2015. It is submitted that SEBI, on the basis of incomplete information sought to impose penalty of certain violations and post further investigation in the same matter seeks to once again impose penalty for the same alleged offences on the Noticee. Your good office has divided a common cause of action into two periods seeking to impose double penalty on the Noticee. Such division of the same cause of action to impose penalty twice is arbitrary, unjust, goes against principles of natural justice and is violative of fundamental rights of the Noticee.*

6.2. *Noticee submitted that SCN for the same cause of action is issued to the Noticee after an inordinate delay of more than 9 years from cause of action and the subsequent conduct of investigation. Further, The Securities Appellate Tribunal (hereinafter "**SAT**") has repeatedly held that such inordinate delays in the cause of action and the issue of notice are valid grounds to quash the proceedings. For this purpose, Noticee has place repliance on the following SAT's orders-*

6.2.1. Kiran M Joshi v. SEBI, (Appeal no. 524 of 2023 28.06.2023).

6.2.2. Libord Finance Ltd. v. SEBI (Appeal No. 37 of 2008)

6.2.3. Rakesh Kathotia v. SEBI, Appeal No. 7 of 2016

6.2.4. Subhkam Securities Private Limited v. SEBI, Appeal No. 73 of 2012.

6.3. *In the present case, SEBI has failed to expeditiously investigate and decide the alleged violations against the Noticee, in violation of the ratios in Kiran M. Joshi, Subhkam Securities, Rakesh Kathotia, and Libord Finance. SEBI at all times had information of the change in shareholdings of the Noticee as it had issued a show cause notice in 2014 where it had already investigated alleged violations and had the opportunity to investigate even for a further period of 2013 and 2014. The present SCN seeks to create 5 unreasonable hardship for the Noticee. The Noticee is being prosecuted for the same offence twice on the basis of investigations arising out of the same cause of action. Even otherwise, despite investigation of year 2013-2015, your good office issued the Show Cause Notice only on 1.06.2023 i.e. almost 9 years from the date of alleged transactions and almost 4 years from adjudication on penalty by SEBI in 2019 for the same alleged offences.*

6.4. *Without prejudice, it is further submitted that the old PIT Regulations of 1992 are replaced by new PIT Regulations, 2015 and the disclosure requirements on promoters* *imposed by the SAST Regulations are also removed by SEBI vide Circulars bearing Nos. SEBI/HO/ISD/ISD/CIR/P/2020/168, SEBI/HO/ISD/ISD/CIR/P/2021/617, and SEBI/HO/CFD/DCR-3/P/CIR/2022/27, read with Gazette Notification No. SEBI/LAD-NRO/GN/2021/46. The process of disclosure is now automated, and the provisions under which the disclosures were to be made do not now exist.*

6.5. *As per existing law, there is no requirement under the new PIT Regulations, 2015 or the SAST Regulations that disclosures be made. Consequently, no penalty under Section 15A(b) of the SEBI Act, 1992 can be now be imposed. The Hon'ble Supreme Court in the case of Commissioner of Income Tax v. Vatika Township Private Limited ((2015) 1 SCC 1) has held that if a legislation confers a benefit on some persons but without inflicting the corresponding detriment on some other person or on any public generally, and where to confer such benefit appears to have been the legislator's object, then the presumption would be that the legislation is given a purposive construction and should be given retrospective effect. It further held that where the law is enacted for the benefit of a community as a whole, even in the absence of the provision the statute may be held to be retrospective in nature. The Hon'ble SAT in the case of Sudhir Bapusaheb Devkar v. SEBI, relying upon such observation of the Hon'ble Supreme Court in the Vatika case (supra), with respect to an amendment carried out in new PIT Regulations, 2015 held –*

"the amendment made in Regulation 7(2)(a) with effect from April 1, 2019 would apply retrospectively. We are of the opinion that the amendment was a beneficial piece of legislation and the benefit was conferred for the entire community as a whole. As such, even though the amendment came into effect from April 1, 2019, the amended provision would apply with retrospective effect to the transactions made by the appellants."

Therefore, in view of the aforesaid, the Noticee ought to be given the benefit of change in the law for the benefit of the entire class of Promoters and as such the allegations qua the Noticee in the SCN do not sustain.

The Order of the Hon'ble Supreme Court in the case of Commissioner of Income Tax v. Vatika Township Private Limited is annexed herewith and marked as Annexure 8. The Order of the Hon'ble SAT in Sudhir Bapusaheb Devkar v. SEBI is annexed herewith and marked as Annexure 9.

6.6. *The Noticee has merely alienated his shares/changed his shareholding in the company, and as such he has not performed any action which adversely affects the securities market, nor has he put any investor monies at risk. Noticee submitted that Supreme Court in SEBI v. Pan Asia Advisors Ltd., (2015) 14 SCC 71, had laid down the purpose of the SEBI, observing that its key mandate is to protect investors and the securities markets from threats. Thus, in the present case, no penalty ought to be levied upon the Noticee since his actions have not created any adverse impact on the securities market, nor has it resulted in loss of investor money or threated the financial credit of the country.*

D. CONSIDERATION OF ISSUES AND FINDINGS

7. As the inquiry in the matter has been completed, I have perused the charges levelled against Noticees in the SCN issued, reply filed by Noticees and material available on record. The issues that arise for consideration in the present case are:
   Issue No I Whether Noticees are liable under 15A(b) of the SEBI Act?
   Issue No. II If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15A(b) of the SEBI Act?
   Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with rule 5(2) of the SEBI Adjudication rules?

Issue No I. Whether Noticees are liable under 15A(b) of the SEBI Act?

8. Before moving forward, I find it appropriate to dealt with the preliminary objection raised by Noticees regarding issue of delay in issuance of SCN. Noticees have contended that SCN has been issued after a gap of almost 9 years from the date of transactions which led to the alleged violations. In this regard, I note that it has been continuously reiterated by the appellate courts in catena of cases that SCN would be issued within the reasonable time period and the reasonable time period depends on each case facts and circumstance and no hard and fast rule can be laid down in this regard.

9. I note that investigation is a detailed process involving analysis of various data, gathering of evidences, etc. that shall stand the test of legal scrutiny at various judicial fora. This generally consumes considerable time and effort depending on the number of entities involved, the complexity of the transactions, correspondences with the entities involved etc. In the present case, SEBI, had on the basis of complaint and Suspicious Transaction Reports from Financial Intelligence Unit – India (FIU-IND) initiated the examination in the scrip of Safal Herbs Ltd. for the period February 01, 2013 to September 14, 2015 in the year 2015. Thereafter, for the purpose of detail examination the case was referred to Investigation department of SEBI in the month of January 01, 2016. I also note from the records that Investigating Authority was appointed on February 2018. The investigation involved voluminous correspondence with the intermediaries and

entities involved and thereafter the data collected was analysed. On completion of investigation, investigation report was approved by the competent authority on April 01, 2021. Thereafter, undersigned was appointed as adjudicating officer in June, 2021. Subsequently, I note from the records that various clarifications, with respect to the relevant documents/evidences and action approval, were sought with the operational department of SEBI. On receipt of complete evidence in the instant matter from operational department of SEBI and due to change in the action approved, a new communiqué dated October 10, 2022 appointing undersigned dated was issued, accordingly, SCN was issued on June 01, 2023.

10. Further, I also note that Noticees have merely contended that delay in the matter have prejudiced them however, neither in their reply nor during the hearing, they could point out any particular document or information which they could not retrieve due to delay in the matter, which has prejudiced their defense. Moreover, Noticees have also filed his submissions in reply to the SCN and availed the hearing opportunity of hearing.

11. In view of this, I am of the view that no prejudice has been cause to said Noticee and the SCN has been issued within reasonable part of time. At this juncture I find it relevant to rely on Hon'ble SAT order in the matter of

11.1. M/s. **Adamina Traders Private Limited vs. SEBI** (Appeal No. 331 and 366 of 2020) dated December 15, 2021:

"We do not find any evidence to hold that there was an inordinate delay in the issuance of the show cause notice. This contention is accordingly rejected. Further, nothing has been shown as to how this delay has prejudiced the appellant. In the absence of any prejudice the delay, if any, cannot be set aside."

11.2. In Appeal No. 482 of 2020 in the matter of **Rajendra Hukumchand Gupta. vs. SEBI** (order dated June 8, 2021) wherein Hon'ble SAT held that: "As regards the issue of delay in issuing the notice we find that the appellant was not at all prejudiced by the issuing of notice on 29th October, 2020, as he could not show any inability to defend the proceeding due to any delay. The respondent SEBI was required to carry investigation and then issue notice in the case and therefore this plea cannot be sustained."

12. I have considered the cases cited by Noticees in support of their contention and I am of the view that the cases relied upon by Noticees *viz* Kiran M Joshi v. SEBI, Libord Finance Ltd. v. SEBI, Rakesh Kathotia v. SEBI, Subhkam Securities Private Limited, can be factually distinguished from the facts and circumstances of the present case.

13. Noticee 5 has contended that SEBI had issued Show Cause Notice dated 8.09.2014 alleging the same violation and SEBI had passed order dated 30.12.2015 against the said Noticee. Similarly, Noticee 1 to Noticee 4 have contended that SEBI had issued Show Cause Notice dated 8.09.2014 alleging the same violation and SEBI had passed order dated 31.03.2015 against the said Noticees. Noticees have further submitted that SEBI, on the basis of incomplete information sought to impose penalty of certain violations and post further investigation in the same matter seeks to once again impose penalty for the same alleged offences on the said Noticee. Noticees has contended that SEBI has divided a common cause of action into two periods seeking to impose double penalty on the said Noticees, which is arbitrary, unjust, goes against principles of natural justice and violates fundamental rights of the Noticee.

14. In this regard, I note that in the previous proceedings SEBI conducted investigation of the scrip of Safal Herbs Ltd for the period from Jan 01, 2012 and Jan 31, 2013 and accordingly, the then adjudicating officers had issued the said SCNs and accordingly, passed the aforesaid adjudication orders. In the present case, as already stated, IP was from February 01, 2013 to September 14, 2015. Thus, I note that the cause of action is not same, as is being contended by the Noticees, and thus, the alleged violations committed by said Noticees also pertains to a different period. Further, I also note that Noticees has not disputed the transactions which triggered the disclosure violations. Thus, the contention of Noticees that SEBI sought to impose double penalty is not acceptable

15. I note that SCN dated June 01, 2023 made allegation with respect to the Noticees on the basis of the fact that Noticees were promoters of SHL or promoter along with persons acting in concert with them. In this regard, I note from the records that

BSE, vide email dated May 21, 2020, provided the details of promoter shareholdings to SEBI which is tabulated below-

Table No 2

	Dec 2012		**Mar 2013-Sep 2013**		**Dec 2013**		**Mar 2014**		**Jun 2014-Mar 2015**		**Jun 2015-Sep 2015**		**Dec 2015**	
Name	**No of shares**	**% of shareholding**	**No of shares**	**% of shareholding**	**No of shares**	**% of shareholding**	**No of shares**	**% of shareholding**	**No of shares**	**% of shareholding**	**No of shares**	**% of shareholding**	**No of shares**	**% of shareholding**
V C Shah	1000	0	1000	0	1000	0	1000	0	1000	0	1000	0	1000	0
N R Doshi	1000	0	1000	0	1000	0	1000	0	1000	0	1000	0	1000	0
V J Shah	1000	0	1000	0	1000	0	1000	0	1000	0	1000	0	1000	0
Bhojawani Securities Pvt Ltd	1900000	1.9	1900000	1.9	1547000	1.55	1547000	1.55	1547000	1.55	1547000	1.55	1547000	1.55
Purvi S Shah	100000	0.1	100000	0.1	50000	0.05	-	-	-	-	-	-	-	-
Roshan S Shah	13000	0.01	13000	0.01	13000	0.01	13000	0.01	1000	0	1000	0	1000	0
Rohil B Shah	5000	0.01	5000	0.01	5000	0.01	-	-	-	-	-	-	-	-
Romil B Shah	35000	0.04	35000	0.04	35000	0.04	35000	0.04	35000	0.04	35000	0.04	35000	0.04
Ronak B Shah	85000	0.09	35000	0.04	35000	0.04	35000	0.04	-	-	-	-	-	-
Sunita S Shah	18000	0.02	18000	0.02	18000	0.02	18000	0.02	18000	0.02	18000	0.02	18000	0.02
Shrenik H Shah	180000	0.18	180000	0.18	55000	0.06	18000	0.02	5000	0.01	5000	0.01	5000	0.01
B H Shah HUF	14000	0.01	14000	0.01	14000	0.01	14000	0.01	14000	0.01	14000	0.01	14000	0.01
S H Shah HUF	220000	0.22	220000	0.22	220000	0.22	95000	0.1	10000	0.01	10000	0.01	10000	0.01
A V Shah	176000	0.18	176000	0.18	176000	0.18	76000	0.08	1000	0	1000	0	1000	0
A D Parikh	786000	0.79	786000	0.79	786000	0.79	786000	0.79	86000	0.09	11000	0.01	86000	0.09
Bhupendraku	3495000	3.5	3399000	3.4	2659000	2.66	568000	0.57	456000	0.46	456000	0.46	456000	0.46

	Dec 2012		Mar 2013-Sep 2013		Dec 2013		Mar 2014		Jun 2014-Mar 2015		Jun 2015-Sep 2015		Dec 2015	
Name	**No of shares**	**% of shareholding**	**No of shares**	**% of shareholding**	**No of shares**	**% of shareholding**	**No of shares**	**% of shareholding**	**No of shares**	**% of shareholding**	**No of shares**	**% of shareholding**	**No of shares**	**% of shareholding**
mar H Shah														
Vipul Shah	7421500	7.42	4637500	4.64	3855500	3.86	1308500	1.31	1025500	1.03	1025500	1.03	1025500	1.03
Dhananjay V Parikh	12193000	12.19	12193000	12.19	12193000	12.19	12193000	12.19	3418000	3.42	2348000	2.35	3418000	3.42
Dhananjay Vasantbhai Parik	-	-	-	-	-	-	-	-	3000000	3	3000000	3	3000000	3

Therefore, Noticees were promoters of SHL during the Investigation Period.

Disclosure under Regulation 30(2) of SAST Regulations

16. I note that Regulation 30(2) read with Regulation 30(3) of SAST Regulations specifically mandate that promoters along with persons acting in concert with him should mandatorily disclose the aggregate shareholding and voting rights in target company as of the thirty first day of March, within seven working days from the end of each financial year, to the Stock Exchanges and the Target Company.

17. In the present case, from the analysis of the information received from BSE vide email dated May 21, 2020 and from Registrar and Transfer agents (“**RTA”)** vide email dated July 16, 2020, I note the following details pertaining to shareholding of Noticees and disclosures made under the Regulation 30(2) of SAST Regulations:

Table No 3

Name of entity	Time Period	No. of shares	% of shareholding	Remarks
Romil Shah	Dec 31, 2012- Dec 31, 2015	35000	0.04	Romil B Shah, has submitted the required disclosure under Regulation 30(1) / 30(2) of SAST Regulations, 2011 for the years ended March 31, 2013

				and March 31, 2014. However, the same has not been submitted for the year ended March 31, 2015.
B H Shah HUF	Dec 31, 2012- Dec 31, 2015	14000	0.01	Shah (HUF) B H, has submitted the required disclosure under Regulation 30(1) / 30(2) of SAST Regulations, 2011 for the years ended March 31, 2013 and March 31, 2014. However, the same has not been submitted for the year ended March 31, 2015.
Rohil B Shah	Dec 31, 2012- Jan 28, 2014	5000	0.01	Rohil B Shah has not submitted the required disclosure under March 31, 2015.
	Jan 31, 2014- Dec 31, 2015	0	0.00	
Vipul Shah	Dec 31, 2012- Jan 11, 2013	7421500	7.42	Mr. Vipul Shah, has submitted the required disclosure under Regulation 30(1) and 30(2) of SAST Regulations, 2011 for the years ended March 31, 2013 and March 31, 2014. However, the same has not been submitted for the year ended March 31, 2015.
	Jan 18, 2013-Jan 25, 2013	6872500	6.87	
	Feb 1, 2013- Feb 8, 2013	5102500	5.1	
	Feb 15, 2013- Mar 1, 2013	4802500	4.8	
	Mar 8, 2013- Nov 1, 2013	4637500	4.64	
	Nov 8, 2013- Jan 17, 2014	3855500	3.86	
	Jan 24, 2014- Feb 14, 2014	2004500	2	
	Feb 21, 2014- Feb 28, 2014	1854500	1.85	
	Mar 7, 2014-Mar 14, 2014	1508500	1.51	
	Mar 21, 2014-Jun 6, 2014	1308500	1.31	
	Jun 13, 2014- Dec 31, 2015	1025500	1.03	
Bhupendrakumar Shah	Dec 31, 2012- Jan 11, 2013	3495000	3.50	Mr. Bhupendrakumar H Shah, has submitted the required disclosure under Regulation 30(1) / 30(2) of SAST Regulations, 2011 for the years ended March 31, 2013 and March 31, 2014. However, the same has not been submitted for the year ended March 31, 2015.
	Jan 18, 2013-Nov 1, 2013	3399000	3.40	
	Nov 8, 2013- Jan 17, 2014	2659000	2.66	
	Jan 24, 2014- Feb 28, 2014	1040000	1.04	
	Mar 7, 2014-Jun 6, 2014	568000	0.57	
	Jun 13, 2014- Dec 31, 2015	456000	0.46	

18. The above table shows that Noticees had failed to disclose their yearly shareholding for the FY 2014-15 to the Stock Exchanges as stipulated under Regulation 30(2) read with Regulation 30(3) of SAST Regulations. Thus, I find that, by not making the mandatory due disclosure, Noticees are liable for failure to make disclosure in terms of the provision of Regulation 30(2) read with Regulation 30(3) of the SAST Regulations. Therefore, the allegations against that Noticees have violated Regulation 30(2) read with Regulation 30(3) of SAST Regulations stands established.

<u>Disclosures under Regulation 13(4A) of PIT Regulations</u>

19. I note that Regulation 13(4A) of PIT Regulations specifically mandates promoter(s) of a listed company to disclose any change in his holdings in a company, to the company and the stock exchanges from the last disclosure made by him, if such change results into – a) value of shares exceeding Rupees 5 Lakh; b) 25,000 shares; or c) 1% of total shareholding or voting rights where the shares of the company are listed, whichever is lower. Further, Regulation 13(5) of PIT Regulations mandates that the disclosures should be made within 2 working days of the receipts of intimation of allotment of shares, or the acquisition or sale of shares or voting rights.

20. I further note that under Regulation 13(4A) of PIT Regulations the disclosure of the number of shares and change in shareholding is required to be made in "Form D". Form D, as specified under Regulation 13(4A) contains specific details about transactions of the concerned person such as: *Name, PAN No. & Address of Promoter, Shareholding/ Voting Right held by the Promoter, No. of shares/voting rights acquired/ sold, date of receipt of allotment advice/ acquisition of shares/ sale of shares specify, date of intimation to company, mode of acquisition (market purchase/ public/ rights/ preferential offer etc./ sale), No. & % of shares/ voting rights post acquisitions or sale, Trading Member through whom the trade was executed with SEBI registration no. of the TM, Exchange on which the trade was executed, Buy quantity, Buy Value, Sell quantity, sell value*.

21. In the present case, from the analysis of the information submitted by BSE vide email dated May 21, 2020 and that by RTA vide email dated July 16, 2020, I note

the following details pertaining to change of shareholding under the Regulation 13(4A) of PIT Regulations with respect to the Noticee 1, Noticee 4, and Noticee 5 as promoters of SHL:

Table No 4

		Shareholding of the entitiy/Noticee before the transactions		Disclosure Triggering Transaction		Change in shareholdings
S.N.	**Name of entity**	**Date of transactions**	**Holding of shares**	**Date of transactions**	**Holding of shares**	
1	Vipul Shah	1-Jan-2013	7421500	January 18, 2013	6872500	549000
		25-Jan-2013	6872500	February 1, 2013	5102500	1770000
		08-Feb-2013	5102500	February 15, 2013	4802500	300000
		01-Mar-2013	4802500	March 8, 2013	4637500	165000
		01-Nov-2013	4637500	November 8, 2013	3855500	782000
		17-Jan-2014	3855500	January 24, 2014	2004500	1851000
		14-Feb-2014	2004500	February 21, 2014	1854500	150000
		28-Feb-2014	1854500	March 7, 2014	1508500	346000
		14-Mar-2014	1508500	March 21, 2014	1308500	200000
		06-Jun-2014	1308500	June 13, 2014	1025500	283000
2	Bhupendra kumar Shah	11-Jan-2013	3495000	January 18, 2013	3399000	96000
		01-Nov-2013	3399000	November 8, 2013	2659000	740000
		17-Jan-2014	2659000	January 24, 2014	1040000	1619000
		28-Feb-2014	1040000	March 7, 2014	568000	472000
		06-Jun-2014	568000	June 13, 2014	456000	112000
3	Rohil Shah	28-Jan-2014	5000	31-Jan-2014	0	5000

22. From the above table, I note that, the aforesaid transactions by Noticee 4 and Noticee 5 who were promoters of SHL during the relevant period, triggered the disclosure requirements under the Regulation 13(4A) of the PIT Regulations, as their shareholding breached the threshold change of 25,000 shares as specified under the Regulation 13(4A) of the PIT Regulations. I note from the BSE email dated May 21, 2020 that BSE had not received any disclosures from the aforementioned Noticee 4 and Noticee 5 under Regulation 13(4A) of the PIT Regulations with respect to impugned aforementioned transactions. Noticees 4 to 5 have the responsibility to make disclosure each and every time whenever threshold of change of 25,000 shares are breached. Further, I note that allegation of the violation of Regulation 13(4A) of the PIT Regulations does not stand with respect to Noticee 1 since the change of shareholding during relevant period is only 5000 shares (less than 25000).

23. In view of the aforesaid facts and circumstances, I find that the said Noticees 4 and Noticee 5 have failed to make disclosure in terms of the provision of Regulation

13(4A) of the PIT Regulations. Therefore, the allegations that Noticees 4 and Noticee 5 have violated Regulation 13(4A) of PIT Regulations stands established.

Issue No. II If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15A(b) of the SEBI Act?

24. Noticees submitted that as per existing law, the process of disclosure is now automated, and the provisions under which the disclosures were to be made do not now exist. Further, Noticees submitted that they have merely alienated their shares/changed his shareholding in the company, and as such they have not performed any action which adversely affects the securities market, nor have they put any investor monies at risk. In this regard, I note that due to implantation of technological advancement, stock exchanges have enabled automated disclosures, however, it still does not absolve any entity from making mandatory disclosures under SAST Regulations and PIT Regulations as applicable during investigation period. I note that disclosure requirement under SAST Regulation and PIT regulations are meant to ensure timely dissemination of material and price sensitive information to enable investors to make well-informed investment decisions. Further, I note that disclosures under PIT Regulations and SAST Regulations are mandatory irrespective of any loss caused to any public/investors and irrespective of whether the insider gained any unfair advantage on account of such non-disclosure or not. Such disclosures also bring about transparency and enable the investors in the scrip to take an informed investment or disinvestment decision. I also note that the importance of disclosures under SAST Regulation and PIT regulations have been highlighted by appellate court in various orders. At this juncture, it is pertinent to refer the following Hon'ble SAT's orders:

    24.1. in the matter of **Coimbatore Flavors & Fragrances Ltd. vs SEBI** (Appeal No. 209 of 2014 order dated August 11, 2014), has also held that "*Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same*."

24.2. in the matter of Appeal No. 66 of 2003 **-Milan Mahendra Securities Pvt. Ltd. vs. SEBI**–the Hon'ble SAT, vide its order dated April 15, 2005 held that, "*the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market*."

24.3. **Akriti Global Traders Ltd. vs. SEBI, [2014] 122 CLA 531**

"… *Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay."*

24.4. **Mr. Ankur Chaturvedi vs SEBI (Appeal no. 434 of 2014 and Order dated August 04, 2015),** Hon'ble SAT has held that "*As rightly pointed out by the adjudicating officer the entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Therefore, omission on the part of the appellant in failing to make disclosures was detrimental to the interest of the investors in the securities market and hence no fault can be found with the decision of SEBI in imposing penalty.*"

24.5. **Virendra kumar Jayantilal Patel v. SEBI (Appeal No. 299 of 2014 dated October 14, 2014)** had observed that, "*obligation to make the disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly, argument that the failure to make the disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make the disclosures.''*

25. In view of above, I find that Noticees' contention, that no penalty ought to be levied upon the said Noticees since their actions have not created any adverse impact on the securities market, nor has it resulted in loss of investor money or threated the financial credit of the country, is not acceptable.

26. Noticees have further contended that no penalty under Section 15A(b) of the SEBI Act can be imposed and benefit of change in the law for the benefit of the entire class of Promoters has to be given. Noticees have also contended that there is no requirement under the new PIT Regulation 2015 that disclosure ought to be made. In this regard, I note that the requirement of Continual disclosures amendment as prescribed under regulation 30(2) of SAST Regulations omitted by the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2021 which came into effect from April 01, 2022. I note that said amendment is prospective in nature and cannot apply to the trades which the Noticees had executed during the Investigation Period i.e. February 01, 2013 to September 14, 2015. Further, I note that PIT Regulations, 1992, have been repealed by the PIT Regulations, 2015. Regulation 12 of PIT Regulations, 2015 provides for repeal and savings and accordingly, any proceedings for contraventions of provisions of the PIT Regulations, 1992 are saved and, hence, can be proceeded with under the said PIT Regulations, 2015 as if PIT Regulations, 1992 have never been repealed. Considering the foregoing, the instant proceedings initiated against the Noticees for their alleged violations of provisions of the PIT Regulations, 1992 can be continued as such.

27. In view of above facts and circumstances and importance of mandatory timely disclosure in securities market, I am of the view that case relied upon by Noticees *i.e.* Sudhir Bapusaheb Devkar v. SEBI. can be factually distinguishable from the present case. Thus, I find that such contention of Noticees wrt to beneficial construction is not acceptable.

28. Further, I rely on the order passed by Hon'ble Supreme Court of India, in the matter of **SEBI vs. Shri Ram Mutual Fund** [2006] 68 SCL 216(SC), held that- "*In our considered opinion, penalty is attracted as soon as the contravention of the*

statutory obligation as contemplated by the Act and the Regulations is established..."

29. In view of above facts and circumstances, I note that Noticees are liable for the monetary penalty as mentioned under 15A(b) of the SEBI Act for the violation of provision of Regulation 13(4A) of the PIT Regulations and Regulations 30(2) read with Regulations 30(3) of SAST Regulations.

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with rule 5(2) of the SEBI Adjudication rules?

30. While determining the quantum of penalty under sections 15A(b) SEBI Act, I have considered factors listed in section 15J of SEBI Act read with Rule 5(2) of the Adjudication Rules. Further, Hon'ble Supreme Court, in its order **SEBI vs Bhavesh Pabari** (2019) 18 SCC 246 held that- "*We, therefore, hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15-J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15-J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty*." Therefore, in the light of Bhavesh Pabri (Supra) judgment, I find that the investigation period of the relevant disclosure is February 01, 2013 to September 14, 2015. Thereafter, the filling of disclosure has now become automated and system driven. Thus, considering the amount of time elapsed and significant changes have been introduced in the system, the same has been considered as a mitigating factor. Further, the material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticees and the loss, if any, suffered by the investors as a result of the Noticees' failure.

E. Order

31. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs, and in exercise of the powers conferred upon me

under section 15-I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose the following penalties on Noticees:

Noticee No	**Name of the Noticee**	**Penalty under**	**Penalty Amount**
Noticee 1	Rohil Shah	15A(b) of SEBI Act	2,00,000/- (Rupees Two Lakhs Only) (Joint and Several Liability)
Noticee 2	Romil Shah		
Noticee 3	Shah (HUF) B H		
Noticee 4	Bhupendrakumar Shah		
Noticee 5	Vipul Shah	15A(b) of SEBI Act	1,00,000/- (Rupees One Lakh Only)

32. I find that aforementioned penalties are commensurate with the violations committed by the Noticees as mentioned in the above paragraphs to meet the ends of justice in the present matter.

33. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the SEBI website www.sebi.gov.in on the following path by clicking on the payment link. **ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW**

34. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticees.

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

Date: September 20, 2023
Place: Mumbai

Soma Majumder
Adjudicating Officer