

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.EAD-5/SVKM/DS/AO/ 48/2015-16]

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

In respect of:

Shri Vipul Shah

PAN No.: ADWPS9528E

X-1102, Sacred Heart Township,

Pune – 411 040

In the matter of Safal Herbals Limited

BRIEF FACTS

1. SEBI conducted an examination into the alleged irregularities in the trading in the shares of Safal Herbals Ltd. (hereinafter referred to as 'SHL') and into possible violation of the provisions of SEBI Act, 1992 and various Rules and Regulations made thereunder for the period from January 01, 2012 and January 31, 2013. Shares of SHL are listed on Bombay (BSE) and Ahmedabad Stock Exchanges(ASE).
2. Shri Vipul Shah(hereinafter referred to as 'Noticee') offloaded his holdings in SHL between April 01, 2012 and December 31, 2012 without making the requisite disclosures under SEBI (PIT) Regulations and Takeover Regulations.

3. SEBI, therefore, initiated Adjudication Proceedings against the Noticee under Section 15A(b) of the SEBI Act, 1992 (hereinafter referred to as SEBI Act, 1992) for the alleged violation of Regulations 13(3), 13(4A) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations, 1992') and Regulations 29(2) read with 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as 'SAST Regulations, 2011'), Regulations 30(2) read with 30(3) of SAST Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI vide order dated March 27, 2014 appointed Shri A. Sunilkumar as the Adjudicating Officer under section 15 I of SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as Rules) to inquire into and adjudge under section 15A(b) of SEBI Act, 1992 the aforesaid allegations. Consequent to the transfer of Shri A. Sunil Kumar, the undersigned was appointed as the Adjudicating Officer vide order dated June 22, 2015.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notice No. ASK/RGA/26235/2014 dated September 08, 2014 (hereinafter referred to as SCN) was issued to Noticee under Rule 4 of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(b) of SEBI Act for the aforesaid allegations as detailed in the said SCN.
6. The said SCN was returned undelivered and was, therefore forwarded to Pune Stock Exchange vide letter dated October 17, 2014 for effecting Delivery. Vide letter dated November, 20, 2014, Noticee authorized Adv. Bharat Merchant of M/s Thakordas & Madgavkar to appear on his behalf.

7. Noticee was granted an opportunity of personal hearing on December 23, 2014. Vide letter dated December 23, 2014, Noticee filed his reply to the SCN. The gist of submissions of the Noticee are as under:

- that Noticee resigned from SHL on November 15, 1997.
- On February 24, 1998, Noticee made an application to the Registrar of Companies in Form 32 for removal of his name from the Directors of SHL.
- In 1991, the Physical share Certificates of the Noticee were lost or misplaced and not traceable. Since 1998 or thereabouts Noticee never had physical share Certificates in his custody. As the net worth of the Company was negative, the Noticee did not make any Application with respect to lost shares. Since work in the company was closed from 1997 no complaint was also filed.
- In 2001, the Noticee at the instance of Dhananjay Parikh who is the Compliance Officer of SHL, was asked to issue fresh resignation letter and he complied. Noticee had no role to play in the management either as Director or otherwise in the affairs of the Company. Noticee was fully ignorant of the goings on in the said company and no information was given by the then management of Dhananjay Parikh to Noticee.
- Entire sequence of events has been manipulated by the new management of the said Company without consulting the Noticee and Noticee not being party thereto, cannot be made liable in the matter pursuant to the present notice
- Noticee is also in the process of filing criminal Complaint against the new management of the said Company with regard to the machinations and alleged transfers reported by new management involving and/or implicating the Noticee in the matter.

8. Noticee was granted another opportunity of personal hearing on January 27, 2015.. Noticee appeared for the hearing on January 27, 2015 and reiterated his submissions made vide letter dated December 23, 2014. Noticee further undertook to file additional written submissions on or before February 10, 2015.

9. Subsequently Noticee vide letter dated February 11, 2015, filed the following documents :

- I. Copy of complaint to :
 - i.Present Board of Directors of the company
 - ii.Share Transfer Agent – Cameo Corporate Ltd., Chennai
 - iii.Bombay Stock Exchange
 - iv.The Regional Director, MCA
 - v.ROC
 - vi.Commissioner of Police, Pune
- II. Copy of Form 32 dated 11.11.1997 filed with MCA by the Noticee

10. Subsequent to the transfer of erstwhile Adjudicating Officer, another opportunity of hearing was provided by the undersigned to the Noticee on September 18, 2015.

11. The authorized representatives (ARs) of the Noticee appeared for the hearing on September 18, 2015 and reiterated the submissions made earlier. It was submitted that another promoter of SHL Shri Dhananjay Parikh had dematted and sold the shares of the Noticee in three transactions. Noticee also submitted that RTA, Cameo Corporate Services Ltd. has admitted that the identity and the specimen signature on the transfer deeds for the impugned transactions does not match with that of the Noticee thereby implying that these transactions were not executed by the Noticee.

12. In the hearing on September 30, 2015, a letter dated February 26, 2015 issued by RTA was filed and it was claimed that the relevant shareholder's name, address and the signature do not match with the data/ records given by SHL. The RTA, Cameo Corporate Services Ltd., was issued summons dated September 30, 2015 to appear in the Adjudication Proceedings for recording of evidence on October 08, 2015.

13. Ms. Sreepriya S, Company Secretary of Cameo Corporate Services Ltd., RTA appeared in the hearing on October 08, 2015 when Notice was also present and she submitted the following:

- It was admitted that RTA has received 5,23,000 shares of Parikh Herbal Ltd. on 3 different dates i.e. on: 25/09/2012, 27/10/2012 and on 26/12/2012 for transfers and the transfers were effected after due compliance with the regulations governing the same including verification of the specimen signature.
- RTA filed copies of the transfer deeds and copies of the same was made available to the Noticee.
- For the transfer effected on 25.09.2012, the same was received in 4 certificates of 15,000 shares each of ₹.10 each and after the transfer 6,00,000 shares of ₹. 1 each were issued. The transferees were Jaysh Chunnilal Shah HUF, Vijay Chunnilal Shah HUF, Alpa Vijay Shah and Rupal Jayesh Shah, receiving 1,50,000 shares each.
- All the transfers were approved by the transfer committee of the company and the approval of the transfer committee was communicated by Mr. Mukesh B Desai, Director of the Company to the RTA giving clearance for the aforesaid transfer, only then the transferees were given new shares.
- On the date of transfer, the name of the company was changed and communicated to BSE. Copies of the Board Resolution approving Mr. Desai to provide instructions to the RTA have been filed and copies thereof were also made available to the Noticee.
- In the present case the RTA did not receive any complaint with respect to loss of shares involving the impugned transactions.
- Referring to RTA's letter dated 26.02.2015, the Company Secretary for the RTA has clarified that the signature on the said letter does not match with the specimen signature available with them and also the address. She further stated that it is not correct to state that the specimen signature on the transfer deed does not match with their records. The transfers were effected after due compliance of all requirements including the verification of specimen signature

and approval of the transfer committee of the company. In addition, she filed copy of the share certificate of the company showing the signature of the noticee as one of the directors. This was also one of the reasons for effecting the transfers apart from transfer committee recommendations.

- However, the AR of the noticee contended that the signature on the transfer deeds does not belong to the Noticee but admitted the change in address. AR of the Noticee further pointed out that the witnesses in the transfer documents were different in all the 3 transfer deeds.

14. Vide letter dated October 26, 2015, Noticee filed Signature Comparison Report and Handwriting Comparison Report stating that his signature does not match with the signature on transfer deeds.

15. Vide letter dated October 24, 2015, Noticee filed written submissions and reiterated the earlier submissions

- Noticee submitted the following documents bearing his signature
 - PAN card
 - Copy of the passport
 - Bank statement of the Noticee with the Axis bank where he is holding current account since 2002, wherein the bank has noted that “*signature tallys with the specimen furnished to us*”

CONSIDERATION OF ISSUES AND FINDINGS

16. I have carefully perused the replies to the SCN, oral submissions of Noticee and the documents available on record. The issues that arise for consideration are :

- a) Whether Noticee has violated provisions of Regulations 13(3), 13(4A) read with 13(5) of PIT Regulations, 1992 and Regulations 29(2) read with 29(3) of SEBI SAST Regulations, 2011, Regulations 30(2) read with 30(3) of SAST Regulations, 2011?

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

c) If yes, what should be the quantum of penalty?

17. It would be appropriate here to refer to the aforesaid provisions of the PIT Regulations, 1992 and SAST Regulations, 2011 which read as under:

SEBI (Prohibition of Insider Trading) Regulations, 1992

Disclosure of interest or holding by directors and officers and substantial shareholders in listed companies

Initial Disclosure

13. (1)

Continual disclosure.

(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.

(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.

(5) The disclosure mentioned in sub-regulations (3) and (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.

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

Disclosure of acquisition and disposal.

29.(1)

(2) Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company

representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

Continual disclosures.

30(1)

(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.

(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.

Findings

18. It is alleged that Noticee who held 1,26,51,500 shares constituting 12.65% of the total paid up capital of the company has offloaded 52,30,000 shares constituting 5.23% in the company during September, 2012 and December 2012 without making necessary disclosures under the relevant Regulations.

19. Parikh Herbals Pvt. Ltd. was incorporated with an authorised Capital of ₹ 10 Lakhs in the year 1994. It came out with an IPO in the year 1995 with an offer of 1.25 lakh shares with a nominal value of ₹10/- per share. The shares were split from ₹10/- to ₹1/- per share with effect from August 10, 2012. In 2011, the name of the company was changed to Safal Herbals Ltd.

20. Noticee is a promoter of SHL and was allotted 12,65,150 equity shares of the company. However, after split of shares his shareholding went upto 1,26,51,500. Noticee disposed off 5.23% of his holdings in SHL i.e. 52,30,000 equity shares in the following manner:

Date of transaction	Opening balance	No. of shares sold	Closing balance	Total paid-up capital	% holding (change in holding)	Value of the shares sold (in ₹)
25-Sep-12	12651500	600,000	12,051,500	100000000	12.05 (0.60)	23,190,000.00
27-Oct-12	12,051,500	1,698,000	10,353,500	100000000	10.35 (1.70)	72,334,800.00
26-Dec-12	10,353,500	2,932,000	7,421,500	100000000	7.42 (2.93)	46,912,000.00

21. As per Regulation 13(3), Noticee was required to make the disclosure with respect to the change in his shareholding when such change exceeded 2% of total shareholding in the company. Further, as per Regulation 13(4A) of PIT Regulations, 1992 any person who is a promoter or part of the promoter group of a listed company is required to disclose to the company and to the stock exchange the change in shareholding if the change exceeds ₹ 5 lac in value or 25000 shares or 1% of the total shareholding or voting rights, whichever is lower. Noticee being a promoter of SHL, had sold 52,30,000 shares on the abovementioned dates which exceeded the benchmark limit as prescribed under Regulation 13(4A) of PIT Regulations, 1992 both in terms of value and quantity of shares. Thus, Noticee was required to disclose change in his shareholding to the company i.e. SHL and the stock exchange(s) i.e. BSE and ASE where the shares of the company are listed within two days from the date of sale under Regulation 13(4A) read with regulation 13(5) of PIT Regulations, 1992 which he has not complied with.

22. As per Regulation 29(2) read with 29(3) of SAST Regulations, 2011 any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, is required to disclose every acquisition or disposal of shares of such

target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified within two days of the date of acquisition/sale to the target company and to the stock exchange(s). The promoter group shareholding in SHL for the quarter ended September 2012 was 33.33%. From the above table at para 20, it is observed that Noticee had sold 29,32,000 shares on December 26, 2012, as a result his shareholding in SHL decreased from 10.35% to 7.42% a decrease of 2.93%. Since, the sale of shares on December 26, 2012 exceeded the benchmark limit as prescribed under Regulation 29(2) of SAST Regulations, 2011, Noticee was required to disclose such disposal of shares of SHL to the company i.e. SHL and also to the stock exchange(s) within two days of such disposal under Regulation 29(2) read with 29(3) of SAST Regulations, 2011 which he has not complied with.

23. Further, as per Regulation 30(2) read with 30(3) of SAST Regulations, 2011, the promoters together with the persons acting in concert are required to make yearly disclosures to the stock exchanges and to the target company at its registered office, of the aggregate shareholding and voting rights of promoters and persons having control over the company within 7 working days from the end of financial year. Noticee being a promoter of SHL, was required to make disclosure under Regulation 30(2) read with 30(3) of SAST Regulations, 2011. There is no dispute that the Noticee did not make the necessary disclosure in terms of SAST Regulations, 2011 as above.

24. The contention of the Noticee is that he had resigned from the Board of the company on November 15, 1997. However, Noticee has admitted that he is a promoter of SHL. Noticee has further submitted that his share certificates were lost and are not traceable. Noticee has further submitted that another promoter of SHL had fraudulently transferred the shares as the signatures on the transfer deed does not match with Noticee's signatures. In support of the same, Noticee has relied upon letter dated February 26, 2015 from the RTA.

25. In this connection, it will be useful to rely on the evidence of the official of RTA who issued the said letter. She appeared in the adjudication proceedings and stated that the transfer of shares were carried out after verification of the specimen signature on the transfer deeds and other regulatory requirements. A copy of the share certificate was also filed showing the signature of the noticee as one of the Directors. She has also informed that all the transactions were effected after receiving the recommendations from the transfer committee of the company. Hence, the statement of the RTA who is a professional engaged in the task of undertaking transfer of shares and a SEBI registered Intermediary is relied.

26. Noticee has submitted Signature Comparison Report and Handwriting Comparison Report stating that his signature was forged on the transfer deeds. Hon'ble Allahabad High Court in its order in the matter of Balkrishna Das v. Radha Devi, AIR 1989 All 133 observed the following:

“The expert’s evidence is only a piece of evidence and the weight to be given to it has to be judged along with other evidence as evidence of this nature is ordinarily not conclusive. Such evidence, therefore, cannot be taken as substantive piece of evidence but is there to corroborate the other evidence.”

27. The main contention of Noticee for not filing complaint regarding lost shares was that SHL was closed down its major business activities and company's networth became negative. Further, the trading in the shares of the company was also suspended till January 13, 2012 and that the shares allotted to him were locked in. The said locked in shares were released on April 30, 2012. However, even thereafter Noticee did not file an FIR or lodge complaint with RTA to stop transfers of the lost shares. Any prudent man shall immediately inform the company and the RTA if his shares are lost. He takes all necessary steps to stop further transfer of lost shares to third parties. Besides he would apply to the company and RTA for obtaining duplicate shares by furnishing indemnity bonds etc. to protect his economic interests. Nothing of the sort was done by the Noticee.

28. On perusal of complaints made by the Noticees to various authorities, it is observed that during the course of hearing held on January 27, 2015, Noticee submitted that he is in the process of filing complaints to various authorities. It is noted that the SCN was issued to the Noticee on September 08, 2014. Subsequent to that Noticee filed written submissions vide letter dated December 23, 2014 and January 21, 2015. Following that Noticee appeared before the previous Adjudicating Officer for personal hearing on January 27, 2015 and sought time for filing complaints before various authorities. Nothing stopped him from filing complaints before the various authorities before issuance of SCN which an ordinary man of prudence would do immediately on loss of share certificates. It is noted that Noticee took 6 months that too post hearing in filing the complaints before various authorities. Further, RTA has submitted that they never received any complaint from Noticee with respect to the loss of shares certificates. The Noticee did not dispute the same during the hearing. Therefore, it appears to be an afterthought by the Noticee.
29. Noticee has submitted that in another Adjudication order, the co-promoters of SHL were penalized for fraudulently issuing share certificates and also receiving the consideration for the sale of shares. In this regard, it may be noted that in the said Adjudication order, Noticees i.e. co-promoters of SHL were charged and penalised for the non-disclosure of the change in shareholding in the and not for any fraudulent practices. Thus, the aforesaid argument of the Noticee is not correct.
30. It may be noted that Noticee did not write to RTA regarding loss of shares and to stop further transfer of the said shares although the shares were lost in 1997 until he received SEBI's SCN dated September 08, 2014. Noticee has forwarded a copy of Police complaint dated January 31, 2015. However, the said complaint is made to Police after the receipt of SCN by the Noticee. With respect to the contention of the Noticee that the approval of the Board of Directors was obtained after the transfer, it is noted that the Company Secretary of the RTA who was examined stated that the transfer was effected based on the recommendation of the transfer committee besides verifying the specimen signature. Necessary documents were filed, copies of which were provided to the Noticee.

31. Noticee has claimed that he resigned as Director of Parikh Herbals Ltd. on November 15, 1997 and at the instance of Dhananjay Parikh, he has submitted fresh resignation letter in the year 2001. However, even as per the latest filings (October, 2015) with BSE, Noticee is still shown as the promoter of the company holding 10,25,500 shares (1.03%) in the company.

32. Vide order dated 29.04.2014, in the matter of G Suresh v. SEBI, Hon'ble SAT held that

“True and timely disclosures by an acquirer of shares in a company or an important regulatory tool intended to serve a public purpose of disseminating this information to the company as well as to Stock Exchange expeditiously. Such disclosures are very important as they help investors to take an informed decision in investing in the scrip of said company.”

33. In view of the above it is established that the Noticee has violated Regulations 13(3), 13(4A) read with 13(5) of PIT Regulations, 1992 and Regulations 29(2) read with 29(3) of SEBI SAST Regulations, 2011, Regulations 30(2) read with 30(3) of SAST Regulations, 2011 by not making necessary disclosure to the company as well as to the stock exchanges regarding change in the shareholding on 3 different dates i.e. September 25, 2012, October 27, 2012 and December 26, 2012 as detailed in the para 20.

(b) Does the non-compliance, if any, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?

34. As the violation of the statutory obligation under Regulation 13(3), 13(4A) read with 13(5) of PIT Regulations, 1992, Regulation 29(2) read with 29(3) of SAST Regulations, 2011, Regulations 30(2) read with 30(3) of SAST Regulations, 2011 has been established, I am convinced that it is a fit case for imposing monetary penalty under section 15A(b) of SEBI Act, 1992, which reads as under:-

Penalty for failure to furnish information, return, etc.

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

(a)

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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)

c) If so, what should be the quantum of penalty?

35. To begin our analysis of the penalty to be imposed, it will be appropriate to refer to the judgment of the Hon'ble Supreme Court of India in the matter of Civil Appeal No.1364 -1365 of 2005 in **SEBI vs. Roofit Industries Limited** dated November 26, 2015 wherein while interpreting Section 15A of SEBI Act, 1992, it observed as under:

"5. It would be apposite for us to begin our analysis of the penalty to be imposed by laying out Section 15A(a) as it stood subsequent to the 2002 amendment, for the facility of reference:

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

(a) to furnish any document, return or report to the Board, fails to furnish the same, 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; In

In the connected appeals before us, the Appellant has imposed a penalty of Rs. 75 lakhs despite the failure having continued for substantially more than 75 days. Learned Senior Counsel for the Appellant has contended that the Appellant has discretion to impose a penalty below the number of days of default regardless of the words whichever is less. He has argued that there would be no purpose to Section 15J if the Adjudicating Officers discretion to fix the quantum of penalty did not exist, and that such an interpretation would render certain Sections of the SEBI Act as expropriatory legislation due to the crippling penalties they would impose. We do not agree with these submissions. The clear intention of the amendment is to impose harsher penalties for certain offences, and we find no reason to water them down. The wording of the statute clarifies that the

penalty to be imposed in case the offence continued for over one hundred days is restricted to Rs. 1 crore. No scope has been given for discretion. Prior to the amendment, the Section provided for a penalty not exceeding one lakh fifty thousand rupees for each such failure, thus giving the Appellant the discretion to decide the appropriate amount of penalty. In this context, the change to language which does not repose any discretion is even more significant, as it indicates a legislative intent to recall and remove the previously provided discretion. Additionally, Section 15J existed prior to the amendment and was relevant at that time for adjudging quantum of penalty. Once this discretionary power of the adjudicating officer was withdrawn, the scope of Section 15J was drastically reduced, and it became relevant only to the Sections where the Adjudicating Officer retained his prior discretion, such as in Section 15F(a) and Section 15HB. This ought to have been reflected in the language of Section 15I, but was clearly overlooked. Section 15J has become relevant once again, subsequent to the Securities Laws (Amendment) Act, 2014, which changed Section 15A(a), with effect from 8.9.2014, to read as follows:

15A. Penalty for failure to furnish information, return, etc. - If any person, who is required under this Act or any rules or regulations made thereunder,-

(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

The purpose of amendment was clearly to re-introduce the discretion of the Adjudicating Officer which was taken away by the SEBI (Amendment) Act, 2002. Had the failure of the Respondent taken place between 29.10.2002 and 8.9.2014, the penalty ought to have been Rs. 1 crore, without the possibility of any discretion for reduction.” (Emphasis supplied)

36. In the instant case also, the failure under Section 15A(b) has occurred on September 25, 2012, October 27, 2012 and December 26, 2012, which is between October 29, 2002 and August 08, 2014 amendments to the SEBI Act, 1992. As the default is for more than 100 days on each of the occasion, the penalty is restricted to ₹1 crore @ ₹ 1 lakh per day for each default in terms of Section 15 A(b) of SEBI Act 1992 as it

existed then and having regard to the aforesaid judgment of the Hon'ble Supreme Court in Roofit case discussed above in detail.

37. Hon'ble SAT in the order dated September 04, 2013 in the matter of Vitro Commodities Pvt. Ltd. v. SEBI held that :

"...provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other."

38. It is to be noted that language of the Regulation 29 of the SAST Regulations, 2011 is same as Regulation 7 of the earlier SAST Regulations of 1997. Therefore, as per the above ruling of Hon'ble SAT Regulation 29 (2) of the SAST Regulation, 2011 is a corollary of Regulation 13 (3) of the PIT Regulations, 1992 as both of them are identical. Hence, penalty needs to be imposed for the violation of one provision only following the above order of Hon'ble SAT in the matter of Vitro Commodities Pvt. Ltd. v. SEBI.

ORDER

39. After taking into consideration the nature and gravity of the charges established, the orders of Hon'ble Supreme Court in the matter of SEBI v. Roofit Industries Ltd. (cited supra) and Hon'ble SAT in the matter of Vitro Commodities Pvt. Ltd. v. SEBI and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Rules, I hereby impose a penalty of ₹4,00,00,000 /- (Rupees Four Crores Only) on the Noticee which will commensurate with the violation committed by him.

Violation	Penalty (in ₹)
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Regulation 13(3), 13(4A) read with 13(5) of PIT Regulations, 1992, <u>and</u> Regulation 29(2) read with 29(3) of SAST Regulations, 2011	3,00,00,000
Regulations 30(2) read with 30(3) of SAST Regulations, 2011	1,00,00,000
Total	4,00,00,000

40. The Noticee shall pay the said amount of penalty by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Chief General Manager, Enforcement Department, SEBI, SEBI Bhavan, Plot No. C- 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

41. In terms of rule 6 of the Rules, copy of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai

DATE: 30.12.2015

S V KRISHNAMOHAN

CHIEF GENERAL MANAGER &

ADJUDICATING OFFICER