**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**(ADJUDICATION ORDER NO: Order/PM/SM/2021-22/11346)**

**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 AND IMPOSING PENALTIES) RULES, 1995.**

In respect of

**Shri Chaitya Rajesh Shah**

**(PAN: BEYPS4732N)**

In the matter of Gitanjali Gems Ltd.

## FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **SEBI**) conducted an examination in the dealings in the scrip of M/s Gitanjali Gems Ltd. (hereinafter referred to as **GGL/Company**) to examine the violations of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the **SEBI Act, 1992**), Rules, Regulations, if any, during the period May 31, 2017 to February 05, 2018 (hereinafter referred to as **IP**). The Company is listed on Bombay Stock Exchange (**BSE**) and National Stock Exchange (**NSE**). It was observed that Shri Chaitya Rajesh Shah (hereinafter referred to as **Noticee/you**) failed to comply with regulations 29(2) read with (r/w) 29(3) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **SAST**

**Regulations, 2011**) while dealing in the scrip of Company. Accordingly, SEBI initiated adjudication proceedings against the Noticee under the provisions of section 15A(b)for the aforesaid alleged violation of SAST Regulations, 2011.

## APPOINTMENT OF ADJUDICATING OFFICER

2. Vide communique dated February 09, 2021, the undersigned was appointed as the Adjudicating Officer under section 15-I of the SEBI Act, 1992 r/w rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **Adjudication Rules**, **1995**) to inquire and adjudge under section 15A(b) of the SEBI Act, 1992 for the alleged failure on the part of the Noticees to comply with the provisions of regulations 29(2) r/w 29(3) of the SAST Regulations, 2011.

## SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

3. A Show Cause Notice having reference no. SEBI/HO/EAD-8/PM/SM/3924/3-4/2021 dated February 12, 2021 (hereinafter referred to as **SCN**) was issued to the Noticee under rule 4(1) of the Adjudication Rules, 1995 to show cause as to why an inquiry should not be initiated against the Noticee and why penalty, if any, should not be imposed on the Noticee under section 15A(b) of the SEBI Act, 1992, for the alleged violation of regulations 29(2) r/w 29(3) of the SAST Regulations, 2011 by the Noticee. The allegations against the Noticee are as follows:

a) SEBI conducted an examination in the dealings in the scrip of GGL to examine the violation, if any, of the provisions of SAST Regulations, 2011. It has been observed that the Noticee had traded in the scrip of GGL during the investigation period. SEBI observed that the Noticee had executed the following transactions in the market in the scrip of GGL during the relevant period:

| Date | Buy Quantity | Sell Quantity |
|---|---|---|
| 28-Nov-2017 | 0 | 135000 |
| 30-Nov-2017 | 0 | 652568 |
| 01-Dec-2017 | 0 | 620574 |
| 11-Dec-2017 | 0 | 500000 |
| 13-Dec-2017 | 0 | 500000 |
| 14-Dec-2017 | 0 | 1000000 |
| 15-Dec-2017 | 0 | 1000000 |
| 18-Dec-2017 | 0 | 1000000 |
| 19-Dec-2017 | 0 | 500000 |
| 21-Dec-2017 | 0 | 894754 |

b) It is seen that the Noticee was holding 5.74% of total share capital of GGL as per the shareholding pattern of Gitanjali as on September 30, 2017. In view of the trades executed as given in the above Table, the Noticee's selling crossed 2% of total shareholding in the company on December 13, 2017. Therefore, Noticee was required to make disclosure to the exchange and the company, when his selling crossed 2% of total shareholding of the company on December 13, 2017 under regulations 29(2) r/w 29(3) of SAST Regulations, 2011.

c) As per the requirement of regulations 29(2) r/w 29(3) of SAST Regulations, 2011, any person holding more than 5% of total shareholding of a target company is required to disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, 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 two per cent of total

shareholding or voting rights in the target company, in such form as may be specified.

d) It has been observed by SEBI that no disclosure from the Noticee is available on the websites of the Stock Exchanges i.e. BSE and NSE under regulations 29(2) r/w 29(3) of SAST Regulations, 2011 for the aforesaid transactions made by the Noticee in the scrip of GGL. Vide e-mails dated March 11, 2020, NSE and BSE submitted that they had not received any disclosure from the Noticee under the provision of SAST Regulations, 2011. Further, SEBI, vide e-mail dated March 11, 2020 requested the Noticee to provide the details of disclosures made under regulation 29 of SAST Regulations, 2011 along with the documentary evidence for the aforesaid disposal of shares in the scrip of GGL. However, no reply was received from the Noticee in this regard. The copies of the e-mails dated March 11, 2020 from the Stock Exchanges and copy of the e-mail dated March 11, 2020 to the Noticee provided to the Noticee.

e) In view of the above, it is alleged that the Noticee failed to make disclosure for the aforesaid disposal of shares to the company and to the exchanges and hence violated the provision of regulations 29(2) r/w 29(3) of the SAST Regulation, 2011.

4. The SCN was sent through speed post acknowledgement due and also through e-mail at chaityashah@hotmail.com. The said SCN was delivered to the Noticee as available on record. Noticee was advised to reply within 15 days of the receipt of the SCN. Vide e-mail dated February 26, 2021 Noticee requested for additional 30 days' time to submit reply to the SCN citing the ongoing pandemic situation. In this regard, Noticee was given 15 days' time to submit reply to the SCN. Noticee vide e-mail dated March 15, 2021 submitted reply to the SCN. Vide hearing notice dated March 16,

2021, Noticee was granted an opportunity of hearing on March 16, 2021 and the said hearing notice was sent to the Noticee through digitally signed e-mail. The authorized representative attended the hearing on the scheduled date on behalf of the Noicee and reiterated the submissions made by the Noticee vide e-mail dated March 15, 2021. The reply of the Noticee vide e-mail dated March 15, 2021 is as follows:

a) *I am a NRI businessman stationed at Hongkong in the Diamond business and have been an NRI since 2010. I have been doing my share transaction through my PIS account with Deutsche Bank as a Private Wealth Management Customer who have been taking care of my equity market transactions and have been completing with the formalities as required with SEBI and RBI.*

b) *The shares of M/s Gitanjali Gems were allotted to me on conversion of warrants which were allotted to me 01st August, 2014 by the company. These warrants were later converted into shares wherein I was allotted 14,08,142 shares on 05th October, 2015 and further 53,94,754 shares were allotted to be 09th August, 2016.*

c) *I was never aware of my shareholding in the company as my accounting and other formalities of my transactions was taken care by Deutsche Bank. Being an NRI I was neither guided by the company nor by Deutsche Bank informing that subsequent to the conversion of the warrants my shareholding in the company has increased to 5.74% and we are required to do any formalities as the holding has increased to more than 5%. I being an NRI have never dealt with such situation and to my utter surprise Deutsche Bank who had full access to my holding and other details had never informed me that i am required to inform the company about my shareholding being more than 5%. I am also*

*surprised that why the company who has all the information does not take the action of informing such information to the exchange, etc as required when they are fully aware of the holdings. I feel that the regulation should be revised wherein a shareholder (in my case i being a NRI), who may not be fully aware of the legal requirements be made responsible for informing such data to the company when the company having full access to this information can directly know about the individuals holding. I would suggest that the regulations should be updated that such information should be directly informed by the Company Suo-moto when they are aware of the changes taking place in the shareholding of the company.*

d) *I as a normal shareholder / investor who had sold these shares in the stock exchange in 2017 as I wanted to encash on my investments.*

e) *Thus, my sincere request to your kind self would be to pardon me from this charge being levied against me. I would request the regulators to kindly update the regulations to allow the company to suo-moto inform the exchanges in case of any change in the shareholding. I would request the regulators to kindly hold Deutsche Bank or the company responsible for not providing this information as they have access to my all information and should have played a vital role of informing me regarding this requirement. Considering the current scenario where all the shareholdings are held in electronic form in the demat account of the shareholder, let the company / custodians / PIS service providers be made responsible for informing the shareholding details to the exchange.*

f) *Hope you kindly consider that i had no intention of not informing this information and pardon me as i have also not been properly guided by my PIS banker Deutsche Bank or the company.*

**CONSIDERATION OF ISSUES AND FINDINGS:**

5. I have taken into consideration the facts and circumstances of the case, reply of the Noticee and the material available on record, the issues that arise for consideration in the present case are:

   **(a) Whether the Noticee have violated the provisions of regulations 29(2) r/w 29(3) of the SAST Regulations, 2011?**

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

   **(c) If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of SEBI Act, 1992?**

6. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST Regulations, 2011 which read as under:

   ***SAST Regulation, 2011***

   ***29(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.*

7. Now I deal with the issues on merit in the matter.

**Issue (a): Whether the Noticee have violated the provisions of regulations 29(2) r/w 29(3) of the SAST Regulations, 2011?**

(a) It has been alleged that the Noticee failed to make the required disclosures to the company and the stock exchanges prescribed under the provision of regulations 29(2) r/w 29(3) of SAST Regulations, 2011 and hence violated the said provisions of SAST Regulations, 2011 for the transaction made during the relevant period.

(b) From the available record, it is noted that the Noticee was holding 5.80% of the total share capital of the Company as on September 30, 2017. Further, Noticee made transactions during the period of investigation, for which the Noticee's selling crossed 2% of total shareholding in the company on December 13, 2017. Therefore, Noticee was required to make disclosure to the exchange and the company, when his selling crossed 2% of total shareholding of the company on November 27, 2017 under regulations 29(2) r/w 29(3) of SAST Regulations, 2011.

(c) With respect to the allegations of non-disclosure for the transactions made during the relevant period, the Noticee has not disputed the fact that he

held 5.74% of the total shareholding on GGL and that pursuant to sale of shares on various dates, the shareholding of the Noticee reduced by 2% on December 13, 2017. However, it has been contended by the Noticee before me that he was not properly guided by his PIS banker Deutsche Bank or the company regarding the disclosure and he was never aware of his shareholding in the company as his accounting and other formalities of my transactions was taken care by Deutsche Bank. Being an NRI he was neither guided by the company nor by Deutsche Bank informing that he are required to do any formalities as the holding changed. The statement that the Noticee was ignorant of the regulatory provisions is not justified. It is a well-established legal maxim that "Ignorantiajuris non excusat", or "ignorance of the law excuses no one". So, I am of the view that ignorance of law cannot be considered as an excuse.

(d) I note that during the relevant period, regulation 29(2) SAST Regulations, 2011 specifically mentions about the disclosure for the acquisition as well as disposal of shares. In this regard, it is noted that Noticee has not made the disclosures for the alleged transactions made as presibed under the said provision of SAST Regulations, 2011. However, regulation 29(3) of SAST Regulations, 2011 prescribes the time line within which these disclosures are to be made only for the acquisition of shares and does not specify any time frame about the disposal of shares. Thus, the obligation to make disclosure within prescribed time limit under regulations 29(2) r/w 29(3) of SAST Regulations, 2011 was only in relation to acquisition of shares and not for the disposal of shares. Also it is noted that the word

"*disposal*" was inserted in regulations 29(3) of SAST Regulations, 2011 by an amendment with effect from September 11, 2018. In the instant case, the alleged violations are failure to make disclosure within the time limit for the sale/disposal of shares by the Noticee under regulation 29(2) r/w 29(3) of SAST Regulations, 2011 for the transactions made during the investigation period.

(e) In this context, I note that Hon'ble SAT in the matter of Mr Ravi Mohan and Ors vs SEBI (Appeal no 97/2014) decided on 16.12.2015 has observed as follows:

*"……*
*27. It is relevant to note that while inserting regulation 7(1A), SEBI has deemed it proper to amend regulation 7(2) with effect from 09.09.2002 by providing that the disclosure obligation under regulation 7(1) and 7(1A) shall be discharged within two days of the events specified under regulation 7(2). Thus, as a result of insertion of regulation 7(1A) and amendment of regulation 7(2), the disclosure obligation in relation to purchase or sale of shares referred to in regulation 7(1A) has to be made within two days of the events specified in regulation 7(2). On perusal of regulation 7(2) it is seen that the events enumerated therein relate only to acquisition of shares and do not relate to sale of shares or voting rights in excess of the limits prescribed under regulation 7(1A). As a result, even though regulation 7(1A) contemplates that an acquirer together with persons acting in concert with him when sell shares of the target company in excess of the limits prescribed under regulation 7(1A) must make disclosure within two days of such sale, in view of the amendment to regulation 7(2), the disclosure obligation under regulation 7(1A) has to be discharged within two days of the events specified under regulation 7(2). Since regulation 7(2) as amended does not contemplate any obligation to disclose sale of shares by an acquirer covered under regulation 7(1A), the question of discharging that obligation arising under regulation 7(1A) read with regulation 7(2) does not arise at all.*

*28…… Thus, by 2002 amendment it is made clear that although disclosure of purchase or sale referred to under regulation 7(1A) has to discharged within two days of purchase or sale, of shares referred to therein, by amending regulation 7(2) it is provided that two days time to make disclosure under regulation 7(1A) shall commence on the happening of events specified under regulation 7(2). Since regulation 7(2) (as amended) does not set out any event relating to sale of shares specified under regulation 7(1A), the question of complying with regulation 7(1A) within two days of sale of shares does not arise at all.*

*29……. Therefore, when the Takeover Regulations, 1997 provides that the disclosure obligation specified under regulation 7(1A) has to be discharged in the manner specified under regulation 7(1A) read with regulation 7(2) and regulation 7(2) does not provide for disclosure in relation to sale of shares in excess of the limits prescribed under regulation 7(1A), SEBI is not justified in holding that the appellants by failing to make disclosure of sales covered under regulation 7(1A) within the stipulated time, have violated regulation 7(1A) read with regulation 7(2) of the Takeover Regulations, 1997. Consequently, SEBI is not justified in imposing penalty on the appellants.*

*……*

*33. For all the aforesaid reasons, the issues raised in these appeals are answered as follows:-*

*a)…*

*b) Disclosure obligation under regulation 7(1A) has to be discharged in accordance with regulation 7(1A) read with regulation 7(2). Since regulation 7(2) does not contemplate for disclosure relating to sale of shares in excess of the limits set out under regulation 7(1A), appellants herein cannot be said to have failed to comply with regulation 7(1A) within the time stipulated under regulation 7(1A) read with regulation 7(2). Consequently penalty imposed on the appellants cannot be sustained ……..”*

(f) In the background of above facts, I have perused the observations of Hon’ble SAT in the matter of Ravi Mohan and Ors vs. SEBI. I note that disclosure requirement that regulation 29(2) mandates is quite clear in its import whereby it has even been clarified that the disclosure requirement would be applicable even if the shareholding of the person falls below 5%

pursuant to disposal. Therefore, the transactions leading to a change of more than 2% pursuant to disposal of shares are subjected to the provisions of regulation 29(2). However, the provisions of Regulation 29(3) which prescribes the time limit for such disclosures came into effect from the aforementioned effective date of amendment. Therefore, the period for disclosure on disposal of shares not being stipulated in the regulations prior to the amendment, effectively renders all disclosure made under regulation 29(2) of SAST Regulations, 2011 irrespective of the date of such disclosures a valid compliance of regulation 29(2) in connection with the disposal transactions dating prior to the amendment. In this context, while in the case of Ravi Mohan and Ors vs. SEBI, I note that the disclosures were made with a delay by the appellants therein. However, in the instant case, admittedly there has been no disclosure filed by the Noticee with respect to his disposal of shares even till date. Therefore, the Noticee by his failure to disclose has continued to act in violation of regulation 29(2) of the SAST Regulations, 2011.

(g) In this context, I would like to rely on observation of Hon'ble SAT in the matter of Coimbatore Flavors & Fragrances Ltd. vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014), wherein it was 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."*

(h) In view of the above, it is concluded that the violation of provision of regulations 29(2) r/w 29(3) of SAST Regulations, 2011, against the Noticee for his failure to make disclosure for the disposal of shares as prescribed under the said provisions of Regulations is established.

**Issue (b): Does the violations, if any, on the part of the Noticee would attract monetary penalty under section 15A(b) of the SEBI Act, 1992?**

(a) It has been established in the foregoing paragraphs that Noticee has violated the alleged provision of SAST Regulations, 2011 and therefore, the aforesaid violations committed by the Noticee attract monetary penalty under section 15A(b) of the SEBI Act, 1992.

(b) In this regard, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund { [2006]5 SCC 361 } – wherein the Hon'ble Supreme Court of India 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 and hence the intention of the parties committing such violation becomes wholly irrelevant……...*"

(c) In view of the above, I conclude that the Noticee is liable for monetary penalty under the provisions of section 15A(b) of the SEBI Act, 1992 which reads as under :

***SEBI Act, 1992***

***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 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.*

**Issue (c): If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of SEBI Act, 1992?**

(a) While determining the quantum of penalty under section 15A(b) of the SEBI Act, 1992, it is important to consider the factors relevantly as stipulated in section 15J of the SEBI Act, 1992 which reads as under:-

***Factors to be taken into account by the adjudicating officer.***

***15J.*** *While adjudging quantum of penalty under section 15-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.*

(b) The material available on record also has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the non-compliance committed by the Noticee. Material on record does not show that failure is repetitive in nature. However, I note that the Noticee had failed to make disclosure within as prescribed under the provisions of regulation 29(2) r/w 29(3) of SAST Regulations, 2011 during the relevant period.

**ORDER**

8. After taking into consideration the facts and circumstances of the case, material/facts on record and also the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 r/w rule 5 of the Adjudication Rules, 1995, hereby impose a penalty of Rs. 5,00,000 (Rupees Five Lakh only) on the Noticee under section 15A(b) of the SEBI Act, 1992, for the failure on their part to comply with the provision of regulation 29(2) r/w 29(3) of SAST Regulations, 2011.

   I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

9. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through Demand Draft in favour of “SEBI -Penalties Remittable to Government of India”, payable at Mumbai, or the online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on

the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

10. The Noticee shall forward said Demand Draft or the details/confirmation of penalty so paid to the Division Chief, Enforcement Department-I, DRA-2, SEBI. The Noticee shall provide the following details while forwarding DD/payment information:

    a) Name and PAN of the entity (Noticee)
    b) Name of the case / matter
    c) Purpose of Payment –Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

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

**Place: Mumbai** **PRASANTA MAHAPATRA**

**Date: April 16, 2021** **ADJUDICATING OFFICER**