BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SR/SM/2019-20/6809/168]

UNDER SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956, READ WITH RULE 5 OF THE OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of

Himani Jayeshbhai Shah

(Address: S/3 Anand Appt, Nr Bhatta Paldi, Ahmedabad – 380007)

(PAN: BNFPS4975K)

In the matter of trading activities of Pankaj J. Shah HUF and connected entities

BACKGROUND

1. Securities and Exchange Board of India (in short **SEBI**) received a Suspicious Transaction Report from Financial Intelligence Unit, Government of India stating that a client viz. Ms. Swara P. Shah (in short **Swara**) received 19,431 shares of L&T Finance Holdings Ltd. (in short **L&T**) through off-market transactions from certain entities, which had received shares in allotment during Initial Public Offering of L&T. In this regard, Investigating Authority (**IA**) was appointed to investigate the matter. Investigation period was May 10, 2011 to December 31, 2011 (in short **IP**), however, wherever deemed necessary, IA has made reference outside the IP. During investigation, IA observed that certain entities transferred to and from Swara, various shares of L&T in off-market transactions, and thereby violated of the provisions of the Securities Contracts (Regulation) Act, 1956 (in short **SCRA**). In this regard, IA observed that Himani Jayeshbhai Shah (in short **Noticee**) has violated section of 2(i)(a) of SCRA,1956 by executing off-market transactions without consideration.

APPOINTMENT OF ADJUDICATING OFFICER

2. Based upon the findings of IA, Operations Department of SEBI initiated adjudication proceedings against Noticee. SEBI appointed Ms. Sangeeta Rathod as the Adjudicating Officer under section 23-I of SCRA to inquire into and adjudge under the provisions of section 23H of SCRA and rule 4 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (in short Adjudication Rules, 2005) for the alleged violations of section 2(i)(a) read with (r/w) sections 13, 16 and 18 SCRA by the Noticee. The appointment of Ms. Sangeeta Rathod as Adjudicating Officer was conveyed vide communique dated June 21, 2018, whereas all relevant record was conveyed vide office note dated November 18, 2019.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice no. SEBI/HO/EAD/E&AO/SR/PP/OW/31400/3/2019 dated November 26, 2019 (in short **SCN**) was issued to the Noticee in terms of rule 4 of the Adjudication Rules, 2005 requiring the Noticee to show cause as to why an inquiry should not be held against it for the alleged violations of provisions under section 2(i)(a) r/w sections 13, 16 and 18 SCRA, 1956 and why penalty be not imposed on the Noticee under section 23H of the SCRA, 1956 for the alleged violations as specified in the SCN. The SCN was issued to the Noticee through speed post acknowledgement due (SPAD) and the same was delivered. The acknowledgment of service of SCN is on record. It is alleged in the SCN that Noticee transferred 353 shares of L&T to Swara and also received 353 shares of L&T from Swara in off-market transactions. Details of said transactions and relevant demat statements were provided to the Noticee as Annexure B to the SCN. It is also alleged in the SCN that the said off-market transactions were entered into by

the Noticee without making payment for shares received and receiving payment for shares transferred out, thus allegedly violated sections 2(i)(a) read with 13, 16, and 18 of SCRA.

4. An opportunity of hearing was granted to the Noticee on January 09, 2020 vide hearing notice dated December 17, 2019 and also Noticeee was advised to reply to SCN by January 06, 2020. The said hearing notice was delivered to the Noticee as seen from record. Noticee replied to the SCN vide letter dated December 24, 2019. Vide letter dated December 31, 2019, Noticee confirmed for attending the said hearing on the scheduled date i.e. January 09, 2020. But later, vide letter dated January 06, 2020 Noticee requested for postponement of the hearing to further date in February 2020. Acceding to the request, vide hearing notice dated, January 10, 2020, another opportunity of hearing was granted on January 22, 2020. The said hearing notice was sent through SPAD and the same was delivered to the Noticee as seen from record. The authorised representatives (ARs) of the Noticee attended the hearing on the scheduled date i.e. January 22, 2020 and submitted additional reply dated January 20, 2020, a copy of declaration dated September 10, 1997 that "*We, the under signed members of the Mr. Pankajbhai Jivabhai Shah HUF, hereby declare that the following are the members (Co-partners) of the said H.U.F. 1. Pankajbhai Jivabhai Shah HUF (36) (Karta), 2. Mrs. Krupa Pankajbhai Shah (34) (Wife), 3. Kum. Swara Pankajbhai Shah (12) (Daughter) and 4. Arpit Pankajbhai Shah (10), (Son) are the members (Co-Partners) of Mr. Pankajbhai Jivalal Shah, HUF. The all matter of the HUF are administered by Mr. Pankajbhai Jivabhai Shah HUF who is residing at 5, Yashovijay Flats, Near Anandnagar Bosstops, Paldi, Ahmedabad. Whatever stated above is true & correct".* AR reiterated the

submissions made by the Noticee vide reply dated January 20, 2020. Hearing minutes are on record.

5. Noticee submitted reply to the SCN vide letters dated December 24, 2019 and January 20, 2020. The reply of the Noticee are summarized below:

a) *Noticee submitted that there was delay in issuance of SCN as the investigation period is between May 10, 2011 to December 31, 2011and the SCN is having the date November 16, 2019. In this regard, Noticee cited the case laws of Ashok Shivlal Rupani & Anr. versus SEBI, Mr. Rakesh Kathotia & ors vs. SEBI, HB Stockholdings Limited vrs. SEBI.*

b) *Noticee submitted that Noticee was allotted 353 shares through the IPO of L&T on August 05, 2011. Noticee had an on-going financial transaction/privity with Pankaj Shah HUF (**HUF)**. Noticee provided a copy of statement to-and-fro fund transactions between the Noticee and the HUF for the period from 19.04.2011 to 23.03.2012. Noticee stated that there was an outstanding amount of Rs.15,156 due and payable by him to the HUF. In lieu of the said amount of Rs. 15,156 Noticee on 15.09.2019, transferred the aforesaid 353 shares of L&T to Swara (daughter of Pankaj Shah and coparcener of Pankaj J. Shah HUF).*

c) *Mr. Pankaj Shah is the proprietor of the Phoolghar Bal Vikas Kendra and the trustee of Phoolghar Primary School located at Shahpur Area in Ahmedabad (Gujrat) since the last 15 years. He is involved in the management of both the aforesaid schools. He is the karta of Pankaj Shah HUF and also lends small amounts of money to friends and relatives on interest basis. He is also an investor in the stock market.*

d) *Noticee submitted that in view of the above stated arrangement between the Noticee and Pankaj J. Shah HUF, Swara (Coparcener of HUF) was not required to make any payment for the off-market transfer of the said 353 shares of L&T as there was already an out-standing amount of Rs. 15,156 due and payable by the Noticee to the HUF which in effect is a payment made in advance towards the off-market transfer of the said 353 shares of L&T.*

e) *Noticee stated that Swara wanted to offer the said 353 shares of L&T as a margin money to her trading member (Ms. J.M. Financial Services Ltd.) to do transaction*

in F&O segment in the stock market as the market was bullish and booming at that time. Noticee further stated that J.M. Financial Services Ltd. in addition to the aforesaid 353 shares of L&T, also demanded margin money in the form of cash which Swara Shah (coparcener of Pankaj J. Shah HUF) was unable to arrange and as a result of which her plan of doing transaction in the F&O Segment got cancelled. Thereafter, Swara Shah returned the said 353 shares of L&T to the Noticee on 02.01.2012.

f) *Noticee stated that in lieu of the 353 shares received by him from Swara Shah (Coparcener of HUF), he paid Rs.15,200 to the HUF on 09.01.2012. Hence, Noticee did make the payment for the 353 shares of L&T Finance which he received from Swara Shah in off-market.*

g) *Noticee stated that there is no perceptible gain to the Noticee or corresponding loss to anybody. Further there is no history of regulatory infraction by the Noticee and there is no charge of price manipulation or jeopardizing the interest of investors in general. Noticee stated that the objective of SCRA is to prevent undesirable transactions in securities. No such allegation of excessive speculation or manipulation is made against the Noticee. In fact, Noticee incurred loss while selling the said shares.*

h) *Noticee stated that there was not any wider market adverse impact of such transaction as the amount involved was nominal (around Rs. 17,000 for each transaction). There is not even a whisper of such allegation. On the other hand, it is the case of the Noticee that the shares were transferred back to the Noticee's demat account by Swara Shah (Coparcener of HUF) pursuant to which the Noticee made the payment to the HUF. The said transaction cannot further be equated with any undesirable speculation that is sought to be prohibited by section 16 of SCRA. Further, there is no charge that the impugned transaction is a result of excessive or undesirable speculation or that it had any market wide adverse impact. The mitigating factors as enumerated in section 23J of SCRA need to be considered.*

i) *Noticee submitted that in view of the arrangement between the Noticee and the HUF, Swara Shah was not required to make any payment to the Noticee for the transfer of 353 shares of L&T. Further, w.r.t. the transfer of the said 353 shares of L&T from Ms. Swara Shah to Noticee on 02.01.2012, Noticee has made the*

payment to Mr. Pankaj J. Shah HUF. Hence, necessary payments were made and received for the said spot delivery contracts for 353 shares of L&T Holdings Ltd. have, been made and hence, Noticee has not violated sections 16, 13 and 18 of SCRA r/w section 2(i) of SCRA as contended in the SCN.

6. After taking into account, the allegations levelled in the SCN, reply of the Noticee and other material available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES

7. I have carefully perused the charges made against the Noticee as mentioned in the SCN and other material available on record. The issues that arise for consideration in the present case are:

(a) Whether the Noticee has violated the provisions of section 2(i)(a) read with 13, 16, and 18 of SCRA?

(b) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 23H of the SCRA for the alleged violation by the Noticee?

(c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 23J of the SCRA?

8. Before proceeding further, it will be appropriate to refer to the relevant provisions of the SCRA, 1956 which read as under:-

The Securities Contracts (Regulation) Act, 1956

Section 2(i) "spot delivery contract" means a contract which provides for,—

(a) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

Contracts in notified areas illegal in certain circumstances.

13. If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area that it is necessary so to

do, it may, by notification in the Official Gazette, declared this section to apply to such State or States or area, and thereupon every contract in such State or States or area which is entered into after the date of the notification otherwise than between the members of a recognised stock exchange or recognised stock exchanges in such State or States or area or through or with such member shall be illegal:
Provided that any contract entered into between members of two or more recognized stock exchanges in such State or States or area, shall—
(i) be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of Securities and Exchange Board of India;
(ii) require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of Securities and Exchange Board of India.

Power to prohibit contracts in certain cases.

16. (1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.
(2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of notification issued thereunder shall be illegal.

Exclusion of spot delivery contracts from sections 13, 14, 15 and 17.

18. (1) Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.
(2) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control the business of dealing in spot delivery contracts also in any State or area (whether section 13 has been declared to apply to that State or area or not), it may, by notification in the Official Gazette, declare that the provisions of section 17 shall also apply to such State or area in respect of spot delivery contracts generally or in respect of spot delivery contracts for the sale or purchase of such securities as may be specified in the notification, and may also specify the manner in which, and the extent to which, the provisions of that section shall so apply.

FINDINGS

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

10. **Issue (a): Whether the Noticee has violated the provisions of section 2(i)(a) read with 13, 16, and 18 of SCRA?**

a) Owing to the contention of the Noticee regarding delay in issuance of SCN, I note the appointment of undersigned as Adjudicating Officer was conveyed vide communique dated June 21, 2018, whereas all relevant record was conveyed vide office note dated November 18, 2019. Thereafter, SCN was issued on November 26, 2019.

b) Owing to various contentions of the Noticee, regarding payment of consideration amount, firstly I will consider the primary issue of the nature of the transactions entered into by the Noticee, as is alleged in the SCN. SCN alleges that the Noticee transferred and received 353 shares each of L&T in off-market transactions to/from Swara and that Noticee did not receive/made payments for consideration towards the said off-market transactions within the period specified for 'spot delivery contracts' under section 2(i)(a) of SCRA, r/w sections 13, 16 and 18 of SCRA. So, the question before me is, whether the off-market transactions made between the Noticee and Swara were in the nature of spot delivery contract and whether Noticee had to comply with provisions of sections 2(i)(a) of SCRA r/w sections 13, 16 and 18 of SCRA. On a plain reading of section 2(i)(a) of the SCRA, it is apparent that a spot transaction gets completed on actual delivery of shares by one party and payment of consideration by the other party either on the same day or the next day of the contract. Therefore, in a 'spot delivery contract' the payment of consideration amount must be done either on the same day or the next day of the transaction as stipulated under section 2(i)(a) of SCRA. In this regard, I refer to the Hon'ble Securities Appellate Tribunal in its order dated July 17, 2007 in the matter of Alok Kehtan Vs. SEBI, Appeal No. 55 of 2007, upheld that: *"……..it is clear that the appellant sold his unlisted shares on 25.08.1999*

in an off market transaction and received the sale consideration of Rs. 22,50,000/- only in January, 2000 which is much beyond the time permitted by section 2(i) of the SCRA. Since the transaction was off market the contract for the sale of shares could only be by way of spot delivery in view of the restriction imposed by the Board under section 16 of SCRA which mandates that the sale consideration ought to have been received either on the same day of the transaction or on the following day. It is, thus, clear that the sale of shares by the appellant on 25.08.1999 in the off market transaction is violative of the restriction imposed under section 16 read with section 2(i) of SCRA." Further, it is pertinent to refer to the observations and decision of the Hon'ble Securities Appellate Tribunal (ins short SAT) in its decision in the case of Mrs. Bhanuben Jaisukhlal Shah v. SEBI (Appeal No. 271 decided on March 5, 2010) in which the above mentioned issue has been elaborately dealt with and the Hon'ble SAT has stated as follows: "*A spot delivery contract has been defined in section 2(i) of the Act the provisions of which, before and after the amendment, have been reproduced hereinabove. Since all the securities prior to the coming into force of the Depositories Act were held in the physical form, spot delivery contract was defined to mean a contract which provided for the actual delivery of the securities and the payment of price therefor either on the same day as the date of the contract or on the next day. In other words, a spot delivery contract is a contract between two persons buying and selling securities off-market where the delivery and payment is effected either on the same day or on the next day".* I note from record that it is not in dispute that the said alleged transactions were off-market and in light of the above case laws the said off-market transactions were in the nature of spot transactions under section 2(i)(a) of the SCRA, as is alleged in the SCN.

c) From the available record, I find that Noticee indulged in two off-market transactions in the scrip of L&T with Swara, as seen from the demat account statements available on record of the Noticee (BO ID - 1203330000436241) and Swara (BO ID – 1203330000437283). I note from the said demat statements that Noticee transferred 353 shares of L&T on September 15, 2011 to Swara and Noticee received 353 shares of L&T from Swara on January 02, 2012 through off-market transactions. Upon perusal of the demat statements I note that demat statement of Swara is classified as individual and I also see that here is no other second holder of the said demat account.

d) As regards, the first off-market transaction of transferring shares to Swara, the Noticee has contended that 1) Noticee had an on-going financial transaction/privity with HUF, 2) that there was an outstanding amount of Rs.15,156 due and payable to the HUF and 3) that in lieu of said amount due and payable, the Noticee transferred shares to Swara. As regards, the second off-market transaction of receiving shares from Swara, Noticee has contended that Noticee paid Rs.15,200 to the HUF, having received shares from Swara. Further, Noticee has contended that Swara and HUF were co-parceners and submitted a copy of a declaration which states that Swara and HUF are co-partners. Noticee has also contended that in view of the arrangement between the Noticee and the HUF, Swara was not required to make any payment to the Noticee and Noticee had made payment to HUF, thus Noticee contends to have not violated section 2(i)(a) of SCRA. As regards, these contentions of Noticee, the question before me is whether I can consider two disparate entities as one party by virtue of them purportedly being co-parceners or co-partners.

As per Black's Law Dictionary, meaning of the word *"coparcener means persons to whom an estate of inheritance descends jointly, and by whom it is held as an entire estate*". In the instant matter, the shares have been applied for in an IPO and were allotted to the Noticee, as is seen from the record, hence the question of being co-parcener or having received the said shares in estate does not arise. Noticee's contention regarding the HUF and Swara being co-parceners and therefore money transferred to one is good enough consideration of shares received by other, is not acceptable to me. Noticee has also mentioned that Swara and HUF are co-partners. In this regard, I note from the evidentiary proof of demat statement (BO ID – 1203330000437283 of Swara) and bank account details (Bank A/C no. 70042010019549 of HUF), that their purportedly being co-partners does not reflect in the actual statements/documents as the record shows that these statements are classified as 'individual' and do not have any joint holders/second holders. Thus, Noticee's contention of Swara and HUF being co-partners is also not acceptable to me for lack of evidentiary proof.

e) In view of the above, it is observed that Noticee had transferred and received shares of L&T to and from Swara in off-market transactions for which Noticee was required to receive/make payment considerations. However, Noticee did not receive/make payment consideration for the said off-market transactions. Hence, by not making/receiving payment either on the same day or next day of the said transaction made in off-market as per the requirements prescribed under section 2(i)(a) of SCRA, the Noticee has violated the provision of section 2(i)(a) of SCRA, r/w sections 13, 16 and 18 of SCRA and hence, the allegations levelled against the Noticee stand established.

11. **Issue (b): Do the violations, if any, on the part of the Noticee attracts monetary penalty under section 23H of the SCRA for the alleged violation by the said Noticee?**

After taking into account the aforesaid entire facts / circumstance of the case, it is noted that the said violations of provisions of section 2(i)(a) of SCRA r/w sections 13, 16 and 18 of SCRA by the Noticee attracts the imposition of monetary penalties upon the Noticee under section 23H of the SCRA, which is reproduced below:

SCRA, 1956

Penalty for contravention where no separate penalty has been provided.

23H. *Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

12. **Issue (c) - What would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 23J of the SCRA?**

a) While determining the quantum of penalty under sections 23H of the SCRA it is important to consider the factors stipulated in section 23J of the SCRA which reads as under:-

SCRA, 1956

23J "Factors to be taken into account by the adjudicating officer-

While adjudging quantum of penalty under section 23 I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default."

b) I observe that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any made by the Noticee and the loss, if any suffered by the investors due to the aforesaid violations. Also, material available on record does not show that the violation was repetitive in nature. Plain reading of section 23H of SCRA during period of violation has no minimum penalty, however, Noticee has made transactions of total 706 shares of L&T, which is miniscule and therefore, I take a lenient view for imposing monetary penalty. Therefore taking into consideration the facts/circumstance of the case and the above case laws, I am of the view that the Noticee is liable for a monetary penalty of Rs. 25,000/- (Rupees Twenty Five Thousand only) for violations of provision of section 2(i)(a) of SCRA r/w sections 13, 16 and 18 of SCRA.

ORDER

13. In exercise of the powers conferred under section 23-I of the SCRA and rule 5 of the Adjudication Rules, 2005, I hereby impose a penalty of Rs. 25,000/- (Rupees Twenty Five Thousand only) on the Noticee i.e. Himani Jayeshbhai Shah under section 23H of SCRA for violations of provisions of provision of section 2(i)(a) of SCRA r/w sections 13, 16 and 18 of SCRA.

14. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order by one of following two modes:

a. By using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html

b. By way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai

15. Details of Demand Draft made as given in format below shall be sent to "The Division Chief, EFD-DRA-III, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C - 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051." and also to e-mail id :- tad@sebi.gov.in

    a) Case Name
    b) Name of the 'Payer/Noticee'
    c) Date of Payment
    d) Amount Paid
    e) Transaction No.
    f) Bank Details in which payment is made
    g) Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)

16. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

17. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of rule 6 of the Adjudication Rules, 2005.

Date: February 17, 2020 **SANGEETA RATHOD**

Place: Mumbai **ADJUDICATING OFFICER**