

WTM/ AB / EFD-1/ DRA-1/21/2019-20

SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: ANANTA BARUA, WHOLE TIME MEMBER

ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of Morepen Laboratories Limited

In respect of:

Sr. No.	Name of the Noticee	PAN/ DIN
1.	Morepen Laboratories Limited	AABCM1083B
2.	Mr. Sushil Suri	AAZPS4778E
3.	Dr. P S Pritam	APZPP0353H
4.	Mr. Deepak Gupta	AADPG5591K
5.	Mr. Manoj Joshi	AAIPJ3183B

The aforesaid entities are hereinafter referred to individually by their respective names/Noticee numbers and collectively as “the Noticees”.

BACKGROUND:

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) noticed some arrangement being perpetrated by certain persons/entities in respect of issuance of Global Depository Receipts (hereinafter referred to as “**GDRs**”) and therefore, conducted investigation into the GDR issue of various companies including Morepen Laboratories

Limited (hereinafter referred to as “**Morepen**”/“**the Company**”/“**Noticee No. 1**”) for its GDR issue made on March 30, 2003, details of which are tabulated as below:

GDR issue date	No. of GDRs Issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
30-Mar-2003	5	15.25	ICICI Bank Ltd., Mumbai	5,00,00,000 equity shares of FV `2 (IGDR=10 equity share)	The Bank of New York, Mellon	Kaupthing Bank Luxembourg	Banco Efisa	Luxembourg Stock Exchange

- During the investigation, it was noted that the GDRs of Morepen were subscribed by two entities namely; Solsec Company Limited (hereinafter referred to as “**Solsec**”), a company incorporated in the British Virgin Islands with registered number 506544 and Seviron Company Limited (hereinafter referred to as “**Seviron**”), a company incorporated in the British Virgin Islands with registered number 506545. Investigation also found that these two entities Solsec and Seviron had obtained a loan of USD 7 million and USD 8 million, respectively, through credit agreement from the Banco Efisa, S.F.E., S.A., a bank based in Lisbon (hereinafter referred to as “**Banco**”) and, further, Morepen had secured the loan obtained by Solsec and Seviron from Banco by pledging the GDR proceeds through Account Charge agreement with Banco. Investigation also found that Noticee No. 2 was the managing director (CMD) of Morepen and had executed the Account Charge agreement and that Noticee No. 3, Noticee no. 4 and Noticee No. 5 were the other directors of Morepen, during the relevant time.

SHOW CAUSE NOTICE, REPLY AND HEARING:

3. Based on the findings made in the investigation, a show cause notice dated June 21, 2017 (hereinafter referred to as, “**SCN**”) was issued to the Noticees wherein Noticee No. 1 was charged with the violations of Section 12A (a), (b) & (c) Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, “**SEBI Act, 1992**”) read with Regulations 3(a), (b), (c) & (d), 4(1) and 4(2) (f), (k) & (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“**PFUTP Regulations, 2003**”) and Noticee No. 2 to 5 were charged with the violations of Section 12A (a), (b) & (c) SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d) and 4(1) of PFUTP Regulations, 2003. Subsequently, two supplementary show cause notices were also issued to the Noticees. First supplementary show cause notice was issued on June 12, 2018 (hereinafter referred to as, “**first Suppl. SCN**”) to Noticee No. 1, in furtherance of the SCN dated June 21, 2017, to modify para 21 of the said SCN seeking reply of the Noticee No. 1 on the specifically proposed direction to bring back an amount of USD 7.13. million. Second supplementary show cause notice was issued on January 01, 2019 (hereinafter referred to as, “**second Suppl. SCN**”) to all the Noticees modifying the violations of the provisions as mentioned in SCN dated June 12, 2017 to the violations of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3, 5(1) and 6(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as “**PFUTP Regulations, 1995**”) read with Regulation 13 of PFUTP Regulations, 2003 by Noticee No. 1 and violations of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3 and 6(a) of PFUTP Regulations, 1995 read with Regulation 13 of PFUTP Regulations, 2003 by Noticees No. 2 to 5. In the SCN, relevant findings of investigations *qua* each of the Noticees alongwith the copies of following documents, relied upon to substantiate the allegations made therein, were also provided to the Noticees:

Annexure No.	Details
1.	Credit Agreement dated March 28, 2003 of Solsec with Banco for USD 7 million
2.	Credit Agreement dated March 28, 2003 of Seviron with Banco for USD 8 million
3.	Letters dated March 28, 2004 of Solsec and Seviron in respect of extension of the final repayment of loan, from March 28, 2004 to June 28, 2004
4.	Certified copy of Board resolution of Morepen passed on March 08, 2003 authorizing Banco to use the GDR proceeds as security against loan
5.	Account Charge agreement dated March 28, 2003 between Morepen and Banco for securing the loans of Solsec and Seviron that were taken from Banco for subscribing to the GDR issue of Morepen.
6.	Bank accounts statements of Morepen with Banco
7.	Morepen's letter dated August 03, 2015 to SEBI

4. The aforesaid SCN and Suppl. SCNs contained *inter alia* the following basic allegations:
- a. Morepen (Noticee No. 1) issued 5 million GDRs (amounting to USD 15.25 million), on March 30, 2003. Solsec and Seviron had together subscribed to GDRs amounting to USD 15 million and the subscription amount was paid by obtaining loan (i.e. through credit agreement) from Banco.
 - b. Mr. Sushil Suri (Noticee No. 2), Chairman and Managing Director (CMD) of Morepen signed an Account Charge agreement with Banco which was an integral part of Credit agreements entered into between subscribers and the Banco. These agreements enabled the subscribers to avail a loan from Banco for subscribing GDRs of Morepen.

- c. The GDR issue may not have been subscribed in entirety had the company not given any such security towards the loans taken by the subscribers from Banco. The arrangement of credit agreements and Account Charge agreement facilitated the subscription of GDR issue in entirety.
- d. The bank account in which GDR proceeds were held, was in the name of Morepen but the amount deposited in the account was not at the disposal of the company as same was pledged as a collateral even prior to issuance of GDRs for the loan availed by Solsec and Seviron.
- e. The directors of Morepen in its Board meeting held on March 08, 2003 authorized Mr. Sushil Suri (Noticee No. 2) to sign the Account Charge agreement which acted as security in connection with the loans availed by the subscribers to use funds deposited in Morepen's bank account as security in connection with the loans. The directors namely Mr. Sushil Suri (Noticee No. 2), Dr. P.S. Pritam (Nominee of LIC) (Noticee No. 3), Mr. Deepak Gupta (Nominee of IDBI) (Noticee No. 4) and Mr Manoj Joshi (Noticee No. 5) who approved the aforesaid Board resolution and authorized Mr. Sushil Suri to sign the agreement with Banco to use funds as a security in connection with loans.
- f. Morepen did not inform BSE about the Account Charge agreement which acted as a security for the loans availed by the subscribers instead vide announcement made to BSE on March 31, 2003 and April 04, 2003, Morepen informed that its GDRs were successfully subscribed.
- g. The company also diverted GDR proceeds to the extent of USD 7.13 million.

5. The Noticees were advised to file their reply within a period of 21 days from the date of receipt of the SCN. The Noticees filed their separate reply/ representation. The contentions raised by the Noticees in their respective replies / written submissions are detailed separately in ensuing paragraphs.
6. The Noticee No.1 has submitted various replies and written submissions vide its letters dated March 13, 2018, November 22, 2018, November 26, 2018, December 14, 2018, December 18, 2018, January 31, 2019, March 08, 2019, May 14, 2019 and annexure to written submissions dated May 14, 2019 which was received on May 17, 2019. The submissions made by Noticee No.1 vide these replies/ written submissions, are summarized as hereunder:

Re: Inspection of documents:

- a. Vide letters dated August 19, 2017 and August 21, 2017, SEBI was requested to provide inspection of all the original documents relating to the investigation, certified copies of the same and opportunity for cross-examination of all the persons whose statements /documents relied upon by SEBI. Though inspection of documents were afforded by SEBI on October 31, 2017 and November 10, 2017, the entire documents were merely ordinary Photostat copies and also many documents were in foreign language.
- b. Since, no original documents were provided for inspection, vide letter dated November 13, 2017, SEBI was requested to provide the certified copies of various documents mentioned in the letter.
- c. SEBI vide letter dated January 12, 2018 declined the request for certified copies of documents and vide another letter dated February 01, 2018 also declined the request made for cross examination stating that no statement of any third party/person was relied upon

for the purpose of investigation/ SCN. SEBI merely provided a compact disc containing soft copies of the documents (not being certified copies).

- d. Many of the documents are also in foreign language of which no translation (much less any authenticated translation) was provided. SEBI has relied upon mere photocopies of the documents and it does not have in possession either original or certified/ authorized copies of the same. SEBI is required to reveal the source of the documents that form the basis of its investigation.
- e. In the matter of *PWC vs. SEBI, SAT Appeal No. 08 of 2011*, the part judgment authored by Ld. Judge N. K. Sodhi directed SEBI to allow the appellants full materials collected during the course of investigation. This direction was supported by the Hon'ble Supreme Court in *SEBI vs. PWC, Civil Appeals No. 6003-6004 of 2012 & 6000-6001 of 2012*.
- f. No response has been received from SEBI as to whether any notice has been issued to Banco Effisa nor provided the reply, if any, filed by Banco Effisa.

Re: Jurisdiction of SEBI on GDR issue:

- g. In the matter of *SEBI vs. Pan Asia Advisors Ltd. & Ors. reported in (2015) 14 SCC 71*, the Hon'ble Supreme Court upheld the jurisdiction of SEBI since the fraudulent scheme in that case was held to be directed towards committing fraud on investors in India and in relation to underlying shares of GDRs. The Hon'ble Supreme Court has not upheld any blanket powers available to SEBI over the administration of GDR issue. SEBI has not brought out the impact of the alleged fraudulent transaction on the price of the scrips. None of the subscribers to the GDRs are shown to have any connection with the Company, no allegations have even been levied that the subscribers (Solesec and Seviron) were parties to the alleged

fraudulent scheme, none of purchasers of the underlying shares have been alleged to have any connection with the Company. Therefore, SEBI does not have jurisdiction in the present case for the reason that the issuance of GDRs comes under the purview of the Reserve Bank of India (RBI) and RBI has the sole exclusive jurisdiction in respect of GDRs. Therefore, the present proceedings initiated by SEBI are entirely without jurisdiction.

Re: Delay in investigation:

- h. The GDR issue of Morepen came out in the year 2003. After a lapse of twelve years, SEBI had for the first time asked for information about the same vide its letter dated May 27, 2015 and, thereafter, on June 02, 2016, SEBI appointed investigating authority to investigate into the GDR issue of Morepen. Thus, SEBI sought for information without any mandate to conduct an inquiry/ investigation.
- i. During this period, the Noticee has faced two fire incidents in its corporate office (on May 16, 2014 and on September 22, 2016) causing destruction of documents. The inordinate delay in initiating investigation, has made it impossible to make proper reply causing grave injustice and also violation of principles of natural justice. Such an undue delay is also violative of Article 14 and 21 of the Constitution of India. There is no statutory requirement to preserve documents for more than one and half decade. In support of its contentions, reference of various judgments/orders of Hon'ble Supreme Court, Hon'ble High Court and other Appellate Authorities have been made.

Re: Charges made in the SCN:

- j. Morepen has neither executed any Account Charge agreement dated March 28, 2003, for the loan obligations of Solsec and Seviron, nor was a party to any such transactions. SEBI has

merely relied on ordinary photocopy of this purported Account Charge agreement and does not have in its own possession either the original of this document or the certified/authenticated copy of this document.

- k. The SCN and Supp SCN have failed to place on record any material demonstrating that the Company was aware of any 'Credit Agreement' between Solsec and Seviron with Banco.
- l. The clause 6.3 in of the Credit Agreements dated March 28, 2003 contain a provision of Default Interest to be paid by Solsec and Seviron to Banco. Thus, if indeed there was any fraudulent arrangement or security for loan by Noticee, there would not have been any provision of such 'Default Interest'. It is also in contrary to the allegation made in the SCN that the GDR proceeds were pledged with Banco as collateral even prior to issuance of GDRs.
- m. Morepen was neither concerned nor bound to know the source of funds of the subscriber to its GDR issue. The purported loan arrangement made by the subscribers with Banco is not barred by any law. Morepen is also not aware that vide letter dated March 28, 2004, the final payment date of purported loans of Solsec and Seviron was extended to June 28, 2004.
- n. The resolution passed in the Board meeting of Morepen on March 08, 2003 was merely an enabling resolution and there is no mention of Solsec or Seviron in the resolution. The attempt of SEBI to connect the purported credit agreement of Solsec and Seviron with the purported Account Charge agreement of Morepen with Banco is baseless and unsustainable.
- o. Morepen is incorporated and registered under the Indian jurisdiction and, therefore, the Registrar of Companies, United Kingdom has no jurisdiction to any charge relating to Morepen. The purported charge created on March 28, 2003 is purported to have been signed

on April 02, 2003, is received and noted by Company House on April 04, 2003 when it is entered in the Slavenburg register, whereas the notary and apostile refers to a document signed by Mr. Sushil Suri on March 27, 2003 while this document is not annexed. The documents describing the registered Account Charge agreements with the Registrar of Companies, United Kingdom is not attached. Such an incomplete document cannot form basis of adverse findings by SEBI. The entire approach is unsustainable and shows premeditation on the part of the authority.

- p. The SCN has alleged that GDR proceeds were credited in India in July-August 2003. It is also mentioned that alleged loans by Banco to Solsec and Seviron were not repaid even in March 2004. But the alleged collateral of GDR proceeds got released about 1 year in advance (July-August 2003) of loan repayment (July 2004). As such, SEBI has taken a contradictory stand in making allegation that the GDR proceeds were pledged with the Banco.
- q. The investigation report dated March 20, 2007 alleged violation of Clause 36(7) of the Listing Agreement on the ground that Morepen could not give any satisfactory explanation as to whom the amount of USD 7.13 million was paid. The investigation (which formed basis of the SCN) alleged diversion of USD 7.13 million out of GDR proceeds. Thus, SEBI has not relied on any positive evidence/ material but draws an adverse inference since Morepen failed to explain. Morepen has failed to furnish information / documents due to repeated fire incidents occurred in its office.

Re: Issue of Supplementary Notices:

- r. A second supplementary SCN has been issued by SEBI after conclusion of the hearing on November 26, 2018 and when the matter was reserved for the order. The issuance of Second supplementary SCN is unsustainable and impermissible in law. Even the first Supplementary

SCN dated June 12, 2018 was also issued without any further material found against the Noticee.

- s. In the oral arguments advanced before the Ld. Whole Time Member during the course of hearing as well as in the Written Submissions, *inter alia*, a specific plea with respect to the mis-application of the FUTP, 2003 was raised by the Noticee. The second Supplementary SCN is an afterthought which charges the Noticee with PFUTP, 1995 along with PFUTP, 2003 which was never the original allegation under the investigation report or under the first SCN dated June 21, 2017.
- t. An authority cannot keep on modifying its allegations by issuing multiple show cause notices which also reflects that SEBI itself is not sure as to the exact nature of the alleged violations. This amounts to harassment by the authority.
- u. It is evident from the provisions of Indian Income Tax Act, 1869 and Section 28(7A) of the Customs Act, 1962, wherever required, the legislature has specifically empowered the respective authority to issue supplementary SCN and that SEBI Act, 1992 does not provide any power on SEBI to issue supplementary notice. Section 28(7A) of the Customs Act, 1962 has been inserted vide Finance Act, 2018 only whereby certain amendments were also brought in Securities Contracts (Regulation) Act, 1956 but legislature refrained itself from introducing any such power to SEBI to issue supplementary notice.
- v. SEBI has acted without jurisdiction and authority in issuing the supplementary notices when no new material has been brought on record and the hearing was already completed.

Re: Applicability of 'fraud':

- w. As per the definition of 'fraud' given under PFUTP Regulation, 1995 and PFUTP Regulations, 2003, the common thread is ingredient of 'intent' and to prove fraud within the parameters of the said definitions, the allegation must be substantiated with evidence to show that there was an active intent to deceive.
- x. The investigation has not relied on any evidence/ material to conclude the charge of diversion of funds but draws an adverse inference for non-production of documents. SEBI lacks material particulars relating to alleged diversion of funds of USD 7.13 million to other entities.
- y. As per the observations made by the Hon'ble Supreme Court in the matter of *Kanaiyalal Balderbhai Patel, (2017) 15 SCC 1*, the definition of fraud has been changed from PFUTP Regulations, 1995 to PFUTP Regulations, 2003 which cannot be applied for the alleged wrongful action occurred prior to enactment of PFUTP, 2003. In support of its contentions, reference of various judgments/orders of Hon'ble Supreme Court and Securities Appellate Tribunal have been made.
- z. Again referring to various judgments/orders of Hon'ble Supreme Court, Hon'ble High Court and other Appellate Authorities, it is submitted that the allegations of serious charge of fraud cannot be made on the basis of preponderance of probabilities or on the basis of surmises or conjectures.
- aa. The term 'concealment' (as defined in Black's Law Dictionary, 10th Edition), 'conceal' and 'concealed fraud' (as defined in Ramnath Aiyar's Advance Law Lexicon) refers to deliberate hiding or suppression of a fact. The 'concealment' doesn't cover non-disclosure due to not being careful.

- bb. Similarly, the term ‘contrivance’, ‘contrive’, ‘device’, ‘devise’ (as defined under Ramanath Aiyar’s Advance Law Lexicon, 4th Edition) and ‘device’ (as defined in Black’s Law Dictionary, 10th Edition) means a scheme or plan.
- cc. All these terms such as ‘concealment’, ‘device’ or ‘contrivance’, have implicit in them *mens rea*. Also implicit in fraud is existence of a victim. The act of concealing necessary implies it must be from another person and, therefore, the corollary of this must be that in the absence of a victim there cannot be fraud. Similarly, in the alleged act of inducement, there has to be of a counter party. SEBI has not shown any adverse effect on the Indian investors pursuant to the issuance of the GDRs.
- dd. SEBI has to establish the ingredients of the alleged commission of violation of provisions of the PFUTP, 1995 and PFUTP, 2003 by the Noticee and nothing short of such satisfaction can be taken cognizance of, for a charge of serious nature as fraud.
- ee. The investigation has not relied on any positive evidence/material to conclude against the Noticee on the charge of the diversion of funds, but draws an adverse inference against the Noticee for non-production of documents. It is already informed to SEBI vide letter dated June 22, 2015 that the alleged amount is no longer in the possession of the Noticee as the same has been used for discharging its loan liability and working capital requirements.

Re: Proposed direction for bringing back money:

- ff. The SCN or the Supp. SCN does not give notice of the specific directions that SEBI proposes to issue in exercise of its powers under Sections 11, 11(4) and 11B of the Act. The first Supp. SCN merely mentioned as to why directions including the direction to bring back

and amount of USD 7.13 million should not be issued. In the matter of *Gorkha Security Services v. Govt. NCT of Delhi & Ors. (2014) 9 SCC 105*, the Hon'ble Supreme Court ruled that it would be incumbent for a show cause notice to contain the exact nature of the measure that it proposes to take. The Hon'ble Securities Appellate Tribunal (SAT) has also followed the principle in the matter of *Royal Twinkle Star Club Private Ltd v. SEBI* (decided on February 03, 2016).

gg. The proposed direction to bring back an amount of USD 7.13 million would be impractical and also lead to an infructuous decision as the GDR proceeds have been utilized to repay the bank loans and as working capital in the Noticee. There is no charge that the monies are with the Noticee or any of the promoters.

hh. The proceedings under Sections 11 and 11B of the SEBI Act, 1992 are remedial in nature and not penal. No measure can be a remedy at this stage where more than 15 years have elapsed from the date of alleged wrongdoing. A direction to not access the securities market would be unfair, inappropriate and contrary to the objective of benefitting the interest of investors.

7. Mr. Sushil Suri (Noticee No. 2) has not filed any separate reply. I note that in the aforementioned reply/ written submissions filed by the Noticee No. 1 dated December 14, 2018, December 18, 2018, May 14, 2019, it is mentioned that the same are also filed on behalf of Noticee No. 2. Further, during the personal hearing held on April 24, 2019, the Advocates have appeared on behalf of Noticee No.1 as well as Noticee No. 2.
8. Dr. P S Pritam (Noticee No. 3) has filed its replies vide letters dated July 20, 2017, November 21, 2018 and April 17, 2019. The submissions made by the Noticee No. 3 in its said replies are summarized as hereunder :

- a. The Noticee No. 3 participated in the relevant Board meeting as a nominee director of Life Insurance Corporation of India (LIC). He had joined the Board of Morepen on January 04, 1996 and ceased to be a nominee director on March 30, 2003.
 - b. As per Section 6A(2) of Chapter-III of LIC Act, 1956, a nominee director appointed by LIC would not incur any obligation or liability by the reasons only of his being a director or for anything done or omitted to be done in full faith in discharge of his duties as director.
 - c. The Noticee No. 3 was neither promoter of the Company nor involved in any day-to-day affairs nor assigned any specific area of work/ responsibility as a nominee director.
 - d. The act of SEBI prosecuting Noticee No. 3 is, therefore, illegal and ultra vires and therefore, the SCNs issued by SEBI should be withdrawn.
9. Mr. Deepk Gupta (Noticee No. 4) vide his letter dated July 07, 2017, October 15, 2018, January 07, 2019 and April 12, 2019 has replied to the SCN dated June 21, 2017 and Second Suppl. SCN. The submissions made by Noticee No. 4 are summarized as hereunder:
- a. The Noticee No. 4 was a full time employee of erstwhile Industrial Development Bank of India (erstwhile IDBI) established under Industrial Development Bank of India Act, 1964 which has been transferred and vested into Industrial Development Bank of India Limited vide Industrial Development Bank (Transfer of Undertaking and Repeal) Act, 2003 (repeal Act).
 - b. Morepen was granted certain financial assistance under the Loan Agreement dated December 09, 1997 from erstwhile IDBI and in terms of the said loan agreement, the Noticee

No. 4 was appointed as director of the Morepen with effect from April 16, 2002 and was withdrawn from the Board of Morepen on September 16, 2004.

- c. As a full time employee of IDBI, the Noticee No. 4 had a very limited role as a nominee director of IDBI on the Board of Morepen and he was neither involved in day to day business nor discharging any responsibility of the Company.
 - d. In terms of Section 30A of the IDBI Act, 1964, a director appointed in pursuance of any arrangement entered into between erstwhile IDBI and an industrial concern shall not incur any obligation or liability. The protection of Section 30A of the IDBI Act, 1964 was continued in terms of Section 15(2) of the IDBI Repeal Act.
 - e. Based on the aforesaid provisions and fact that Noticee No. 4 was a nominee director on the Board of Morepen being a full time employee of IDBI, the SCNs issued by SEBI should be withdrawn.
10. Mr. Manoj Joshi (Noticee No. 5) has filed its replies vide letters dated August 21, 2018, December 06, 2018 and May 09, 2019. The submissions made by the Noticee No. 5 are summarized as hereunder:
- a. The Noticee No. 5 was appointed as an independent and non-executive director of the Company and was never involved in the day to day business of the Company nor responsible for the conduct of the business of the Company including issuance of GDRs. He was neither shareholder of the Company nor having any signing authority.
 - b. The SCN is silent on the exact role and involvement of the Noticee. The agenda of the said Board meeting is not available and only the extract of Board resolution dated March 08, 2003

has been provided in the SCN which does not mention the name of Solsec and Seviron. The extract of said Board resolution also do not suggest whether execution of the Account Charge agreement was discussed in the said meeting. Thus, SEBI could not presume that the Noticee No. 5 had knowledge of specific Account Charge agreement or the names of the entities i.e. Solsec and Seviron. The allegations made in the SCN are vague and unsubstantiated. No material has been brought on record except relying on the Board resolution dated March 08, 2003 which is enabling in nature so as to provide for various exigencies.

- c. Based on his memory of the Board meeting held on March 08, 2003, neither loan agreement nor Account Charge agreement were presented or even discussed and the names of Solsec and Seviron were also not mentioned. Being a non-executive director he would have signed the resolution as a matter of procedure. The Noticee No. 5 is not aware with the alleged diversion of funds raised from the GDR issue.
- d. In show cause notices issued by SEBI against independent directors have been dropped for lack of any material against them in the matters of Amazan Capital Limited, K Sera Sera Limited, Maars Software International Limited and Asahi Infrastructure & Projects Limited.
- e. The Hon'ble Supreme Court in the matter of *Kanaiyalal Baldevbhai Patel, (2017) 15 SCC 1*, has observed that the definition of fraud has been changed from PFUTP Regulations, 1995 to PFUTP Regulations, 2003 and, therefore, the same cannot be applied for the alleged wrongful action occurred prior to enactment of PFUTP, 2003.
- f. The SCN and Suppl. SCN has been issued after 14-15 years of the date of alleged violations. In terms of observations made by Hon'ble SAT in the matter of *HB Stockholding Ltd. vs. SEBI*,

such inordinate delay causes prejudice to Noticee in defending the allegations and the proceedings are liable to be set aside.

- g. In terms of Section 103 of the Indian Evidence Act, 1872, SEBI needs to prove that the agenda papers of the Board meeting of Morepen held on March 08, 2003 had a mention of Solsec and Seviron.
 - h. The requirement of complete inspection of documents is yet to be complied with and, therefore, the proceedings qua the Noticee should be set aside.
11. Opportunities of personal hearing were provided to the Noticees on November 09, 2018, November 26, 2018 and April 24, 2019. Noticee No. 4 appeared in person on November 09, 2018 and made his submissions. On November 26, 2018, submissions were made on behalf of Noticee No. 1. On April 24, 2019, Advocates appeared on behalf of Noticee No.1 as well as Noticee No. 2. Noticee No. 4 appeared in person and made his submissions based on earlier reply filed by him. The Noticee No. 5 was represented by his Advocates. The hearing notice dated March 25, 2019 was served on Noticee No. 3 by way of affixture but he failed to appear for the personal hearing. After completion of hearing held on April 24, 2019, the written submissions were also received from Noticee No. 1, 2 and 5 (detailed in above paras).

CONSIDERATION OF ISSUES AND FINDINGS:

12. I have perused the SCN dated June 21, 2017, along with its annexures, two Suppl. SCNs dated June 12, 2018 and January 01, 2019, the replies filed by the Noticees, submissions made during the course of personal hearing, and written submissions filed after availing the opportunity of hearing, as detailed in para 11 above.

13. I note that the Noticees, apart from refuting the allegations made in the SCN and Suppl. SCNs, have raised some preliminary issues like jurisdiction of SEBI in the present matter, not providing inspection of original documents, denial of certified copies of the documents, issuance of Suppl. SCNs, delay in initiating proceedings, applicability of PFUTP Regulations, 2003, etc. As such, before examining the allegations made in the SCN and Suppl. SCNs, on merits, I shall first deal with these issues raised by the Noticees in the following paragraphs.

Re: Jurisdiction of SEBI:

14. The Noticee No. 1 and Noticee No. 2 have submitted that in *Civil Appeal No. 10560 of 2013; SEBI vs. Pan Asia*, the Hon'ble Supreme Court has not recognised any blanket powers available to SEBI over the administration of GDR issue but upheld the jurisdiction of SEBI over GDR issue since the fraudulent scheme in that case was held to be directed towards committing fraud on investors in India and in relation to underlying shares of GDRs in Indian Securities market.
15. I note that the scrip of Noticee No.1 has been listed on BSE Ltd. ('BSE') and National Stock Exchange of India Ltd. ('NSE') even prior to issue of GDR by it. If any listed company issues securities by making further issue of capital through further public offer, preferential allotment, rights issue, etc., it has to comply with the applicable provisions of the Companies Act, 2013 (previously Companies Act, 1956), securities laws including SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (previously SEBI (Disclosure and Investor Protection) Guidelines, 2000 and SEBI (ICDR) Regulations, 2009), SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (previously equity Listing Agreement), etc. Listed companies are required to disclose all material information to the investors to take an informed decision, in terms of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (previously equity Listing Agreement). If there is any issue of GDR by a listed company, then such information is also required to be disclosed by the listed company

to the stock exchanges where its shares are listed. On receipt of listing approval of GDR from the overseas stock exchanges, the Indian issuer company submit the required documents for final in-principle listing approval from the Indian stock exchange for listing of underlying shares and on obtaining the final approval from the Indian stock exchange, the Indian issuer company can admit the underlying shares to the depository in India for dematerialization. Even if GDRs are listed outside India, various regulations of SEBI applies in different eventualities like, if the GDRs gives the right to the GDR holders to exercise voting rights, acquisition of GDRs attracts the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 [previously SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997], trading in the GDRs on the basis of unpublished price sensitive information pertaining to the issuer company attracts SEBI (Prohibition of Insider Trading) Regulations, 2015 [previously SEBI (Prohibition of Insider Trading) Regulations, 1992] and PFUTP Regulations, 2003 (previously PFUTP Regulations, 1995). Therefore, it is not correct to say that SEBI has no jurisdiction in respect of GDR or that jurisdiction is limited only in case of fraudulent issue of GDR.

16. I, further, note that the jurisdiction of SEBI over GDR issue came into consideration of the Hon'ble Supreme Court in the *Pan Asia* matter (*supra*) wherein the issue was discussed in detail. The relevant portion of the judgment of Hon'ble Supreme Court is reproduced as under:

“79. The definition of ‘securities’ under Section 2(h) in particular sub-clause (iii) of Section 2(h)(a) of SCR Act, 1956 makes it clear that rights and interests in securities are also to be construed as securities as defined in Section 2(h). Therefore even if GDR as such is not specifically referred to under the definition of ‘securities’ under Section 2(h) by virtue of sub-clause (iii) of the said section, any rights or interests in securities would also fall within the definition of securities. Viewed in that respect, every issue of GDR is based on the underlying shares of the issuing company deposited with the Domestic Custodian Bank which clearly falls under the definition of securities of Section 2(h), the Global Deposit Receipts which create rights and interests in those securities, the Global Deposit Receipts would automatically fall and come within the definition of Section 2(h) viz., ‘securities’. Once when the said legal position is insurmountable, any argument based on the said submission should be rejected.

80. It is true that the creation of GDR and its trading in the global market are governed by the respective laws of the country in which they are dealt with. But one special feature to be borne in mind is that in the case on hand, the allegations levelled against the issuing company in connivance with the respondents are that a make believe affair was created, as though there was genuine creation of GDRs and its investments by the foreign investors on the very date when the GDRs were issued and thereby the global performance of the issuing company in the local market of the issuing company had a boost in the commercial sector, which lured the local investors to develop their keen interest to make the investments on a higher share value by virtue of the investment made by the foreign investors and in that process it is alleged that the issuing company itself provided every scope for the foreign investments to be financed and in reality the ultimate investment was made by Indian investors viz., the ordinary share holders. The said fact would certainly call for a probe at the hands of SEBI on whom a duty is cast under Section 11(1) to protect the interest of investors in securities and the security market.....

81.

82. We are therefore convinced that having regard to the nature of allegations in the interests of investors in securities as well as the statutory obligation/duty cast upon SEBI to protect their interests, SEBI has got every jurisdiction to proceed against the respondents as well as the issuing company. The contention made on behalf of the respondents that the only authority which can proceed against the issuing company can be only for violation of the FEMA Act or the RBI Act is therefore not appealing to us.....

(emphasis supplied)

17. In para 80 of the aforesaid Order, the Hon'ble Supreme Court noted that the allegation against the issuer company involved therein was that it in connivance with the respondents therein created a belief that there was genuine issue of GDRs which were fully subscribed by the foreign investors on the date of its issuance which, in turn, lured the investors in India to make investments in the securities of the issuer company whereas in fact the issuer company itself facilitated subscription of its GDR issue. On perusal of the SCN and Suppl. SCNs, I note that in the present matter, it is alleged that Morepen issued 5 million GDRs (amounting to USD 15.25 million), on March 30, 2003, which were subscribed by Solsec and Seviron by obtaining loan, through credit agreement, from Banco. Morepen had signed an Account Charge

agreement with Banco which was an integral part of credit agreements entered into between subscribers and Banco and that these agreements enabled subscribers to avail a loan of USD 15 million from Banco for subscribing the GDRs of Morepen and, as such, Morepen facilitated the subscription of its own GDR issue and thus GDR issue proceeds worth USD 15 million were not at the disposal of Morepen at the time when it made disclosures to the Stock Exchanges regarding the alleged successful subscription of its GDR issue, making investors in India to believe that funds raised through the GDR issue are at the disposal of the Company. The crux of the allegations noted by the Hon'ble Supreme Court in *Pan Asia's* matter was the scope provided by the issuer company to facilitate subscription of its own GDR issue and to make believe that the GDR issue was genuinely subscribed by foreign investors. Thus, the allegations made in the present matter are no different from those involved in the matter of *Pan Asia*. This being so, in terms of observations made by the Hon'ble Supreme Court in para 80 of the aforesaid order, SEBI has the jurisdiction to proceed against, *inter alia*, the issuer company in respect of the GDRs issued abroad. Thus, the contentions raised by the Noticee No. 1 and Noticee No. 2 with regard to jurisdiction of SEBI over GDR issue is not tenable in facts of case or under law.

Re: Inspection of Documents:

18. I also note that the Noticee No. 1, Noticee No. 2 have contended that, though inspection of documents were afforded by SEBI, the entire documents were merely ordinary photostate copies and also some of documents were in foreign language. It is also contended by the Noticees that their request for certified copies of those documents was declined by SEBI's letter dated January 12, 2018 and the request for opportunity of cross examination was also rejected by SEBI's letter dated February 01, 2018. In this respect, I note that the copies of documents which were relied upon by SEBI in making allegations in the SCN and Suppl. SCNs were already provided to the Noticees along with the SCN dated June 21, 2017, as detailed in

para 3 above. Further, pursuant to request made by the Noticee No. 1 and Noticee No. 2, opportunity of inspection of documents was afforded which was availed by these Noticees on October 31, 2017 and November 10, 2017. Noticee No. 1 in its letter dated November 22, 2018 has admitted the availing of opportunity of inspection and also stated that SEBI vide letter dated December 13, 2017 provided copies of some additional documents. From the said letter dated November 22, 2018 of Noticee No. 1, it is evident that Noticee No. 1 had written repetitive letters to SEBI such as letters dated December 28, 2017, February 01, 2018 and October 25, 2018 which were replied by SEBI vide letters dated January 12, 2018, February 01, 2018 and November 01, 2018, respectively. It is also mentioned by Noticee No. 1 in its letter dated November 22, 2018 that SEBI vide its detailed letter dated November 01, 2018 dealt with the requests for documents made by Noticee No. 1, in all its previous letters, and communicated that an opportunity for inspection of documents were already provided by SEBI and no other fresh documents were relied upon by SEBI while issuing the Suppl. SCN and that no statement of any person was relied upon. Thus, the request for cross examination made by the Noticee was rightly rejected by SEBI letter dated February 01, 2018. Request for specific documents or request for inspection of original is being disposed of as under:

Sr. No.	Documents sought by the Noticees	Whether request for documents is tenable or not
1.	Deposit Application Form of Morepen made to Banco	The Deposit Application Form was submitted by Morepen to Banco which is located in Portugal i.e. outside India. This document has neither been relied nor referred to in the SCN and thus, not relevant. Hence, the request made by the Noticee for this document is untenable.
2.	Memorandum of Association (it's part of Deposit Application Form)	The MoA pertain to Morepen itself. This document has neither been relied nor referred to in the SCN and thus, not relevant. Hence, the request made by the Noticee for this document is untenable.
3.	Account Charge Agreement	The Account Charge Agreement was signed and

	Dated 28/03/2003 with authentication by Notary Public of Gibraltar & Apostile Certificate	executed by Morepen with Banco which is situated outside India. A copy of the document as received by SEBI from overseas market regulator has been provided to the Noticees. Original is not available with SEBI. Hence, the request made by the Noticee for original document is untenable.
4.	Particulars of Mortgage or Charge created by Morepen in favor of Banco	The Charge is created by Morepen in favor of Banco which is situated outside India. Inspection of a copy of this document was provided to the Noticee. Original is not available with SEBI. Hence, the request made by the Noticee for original document is untenable.
5.	Letter addressed by ECS International, Gibraltar office to Banco Efisa, Portugal informing about Mr. J Harper's retirement	The said letter was written to Banco which is situated outside India and the letter was also written by an entity based outside India. This document has neither been relied nor referred to in the SCN and thus, not relevant. Hence, the request made by the Noticee for this document is untenable.
6.	Credit Agreement between Banco Efisa & Seviron March 28, 2003	A copy of Credit Agreement dated March 28, 2003 between Banco Efisa & Seviron has already been provided to the Noticees along with the SCN. Original is not available with SEBI. Hence, the request made by the Noticee for original/certified copy of document is untenable.
7.	Minutes of Meeting of Board of Directors of Morepen, dated March 25, 2003.	The Minutes of the meeting pertain to Morepen itself. Further, a copy of the same has already been provided to the Noticees along with the SCN. Original is not available with SEBI. Hence, the request made by the Noticee for original/certified copy of document is untenable.
8.	Seviron seeking extension of repayment of loan from 28/03/2004 to 28/06/2004.	A copy of this document has already been provided to the Noticees along with the SCN. Seviron is located outside India and the loan document was also executed outside India. Original is not available with SEBI. Hence, the request made by the Noticee

		for original/certified copy of document is untenable.
9.	Solsec seeking extension of repayment of loan from 28/03/2004 to 28/06/2004.	A copy of this document has already been provided to the Noticees along with the SCN. Solsec is located outside India and the loan document was also executed outside India. Original is not available with SEBI. Hence, the request made by the Noticee for original/certified copy of document is untenable.
10.	Account Statement of Morepen with Banco	The bank account statement pertain to Morepen itself having opened an account with Banco which is situated outside India. A copy of the bank account statements was also provided along with the SCN dated June 21, 2017. Original is not available with SEBI. Hence, the request made by the Noticee for original/certified copy of document is untenable.
11.	Confirm & Release Instructions in respect of Escrow Account No. 5044583104 of Morepen with Banco	The document pertain to Morepen itself in respect of its Escrow Account with Banco which is situated outside India. Inspection of copy of escrow bank account statement was afforded to the Noticee. Original is not available with SEBI. Hence, the request made by the Noticee for original/certified copy of document is untenable.
12.	Instructions from Morepen to Banco	The documents pertain to Morepen itself giving instructions to Banco, for transfer of GDR proceeds, which is situated outside India. Inspection of a copy of this document was afforded to the Noticee. Original is not available with SEBI. Hence, the request made by the Noticee for original document is untenable.
13.	SEBI proceedings for Appointing Investigating Authority	The document pertain to internal records of SEBI and confidential in nature. Hence, the request made by the Noticee for this document is untenable.
14.	Email communication between Mr. Jon Connolly of	These documents are email exchanged with an entity situated outside India. Inspection of a copy of

	BNY, Mellon with SEBI	this document was afforded to the Noticee. Hence, the request made by the Noticee for original/certified copy of document is untenable.
15.	SEBI request for information to Bank of New York Mellon	These documents are correspondences with foreign entity situated outside India. Inspection of a copy of this document was afforded to the Noticee. Hence, the request made by the Noticee for original/certified copy of document is untenable.
16.	Email Communications between SEBI and Bank of New York Mellon	These documents are correspondences with foreign entity situated outside India. Inspection of a copy of this document was afforded to the Noticee. Hence, the request made by the Noticee for original/certified copy of document is untenable.
17.	Email from Bank of New York Mellon is in response to SEBI's request for information	These documents are correspondences with foreign entity situated outside India. Inspection of a copy of this document was afforded to the Noticee. Hence, the request made by the Noticee for original/certified copy of document is untenable.
18.	Email between SEBI and NSDL	These documents are not referred to in the SCN and thus, not relevant. Hence, the request made by the Noticee for this document is untenable.
19.	Bank Account Statement of Morepen with Bank of Punjab for 01/04/2003 to 30/04/2003	This is the bank account statement of Morepen of the account with Bank of Punjab. Inspection of a copy of bank account statement was afforded to the Noticee. Original is not available with SEBI. Hence, the request made by the Noticee for original/certified copy of document is untenable.
20.	Summons to appear to Mr. Sushil Suri (with Annexures) before SEBI	Original was issued to Mr. Sushil Suri (Noticee No. 2). These documents are not referred to in the SCN and thus, not relevant. Hence, the request made by the Noticee for this document is untenable.
21.	Bank Statement of Morepen with Banco Effisa 02/04/2003 to 28/12/2007	This is the bank account statement of Morepen itself having an account with Banco which is situated outside India. Inspection of a copy of the bank account statement was afforded to the

		Noticee. Original is not available with SEBI. Hence, the request made by the Noticee for original/certified copy of document is untenable.
22.	Statement of Mr. Ajay Sharma recorded before SEBI	The statements of Mr. Ajay Sharma, CFO of Morepen has neither relied upon nor referred to in the SCN and thus, not relevant. Hence, the request made by the Noticee for this document is untenable.
23.	Investigation Report along with annexures, if any	The relevant findings of the investigation have been brought out in the SCN and the copies of documents relied upon in the SCN have also been provided to the Noticees. Hence, the request made by the Noticee for these documents is untenable.
24.	Format for handing over fresh case - IVD to EFD	The document pertain to records of SEBI in respect of its internal procedure which has neither been relied upon nor referred to in the SCN and thus, not relevant. Hence, the request made by the Noticee for this document is untenable.
25.	SEBI's letter to Portuguese Securities Market Commission (CMVM) to obtain information from Banco Efisa	These documents are correspondences with foreign regulators under agreement of confidentiality. Inspection of a copy of this document was afforded to the Noticee. Original is not available with SEBI. Hence, the request made by the Noticee for original/certified copy of document is untenable.
26.	CMVM's letter providing information received from Banco along with Annexures, if any	These documents are correspondences with foreign regulators under agreement of confidentiality. Inspection of a copy of this document was afforded to the Noticee. Hence, the request made by the Noticee for original document is untenable.
27.	Documents Annexed to Credit Agreement	These documents were executed between the overseas parties outside India i.e. Solsec and Seviron, with Banco. Inspection of a copy of this document was afforded to the Noticee. Original is not available with SEBI. Hence, the request made

		by the Noticee for original/certified copy of document is untenable.
28.	Document dated 28/03/2004 from Banco to Solsec extending date of repayment from 28/03/2004 to 28/06/2004	The document pertain to entities based outside India and the document was executed also outside India. Inspection of a copy of this document was afforded to the Noticee. Original is not available with SEBI. Hence, the request made by the Noticee for original/certified copy of document is untenable.
29.	Morepen's Email dated 27/01/2017 to SEBI forwarding copies of MoM dated 08/03/2003	The document is an email sent by Morepen itself to SEBI. Inspection of a copy of this document was afforded to the Noticee. Hence, the request made by the Noticee for original/certified copy of document is untenable.
30.	Bank Account Statement (Morepen's Account with Banco)	The document pertains to the Bank Account Statement of Morepen itself having an account with Banco which is situated outside India. Inspection of a copy of this bank account statement was afforded to the Noticee. Original is not available with SEBI. Hence, the request made by the Noticee for original/certified copy of document is untenable.
31.	Email from HDFC Bank providing statement of Account No. 01CA11012451, Bank of Punjab (01/04/2003-31/12/2004)	The document pertains to the Bank Statement of Morepen itself. Inspection of a copy of this bank account statement was afforded to the Noticee. Hence, the request made by the Noticee for original/certified copy of document is untenable.
32.	Annexure to Email from HDFC Bank providing Statement of Account and as stated above	The document pertains to the Bank Statement of Morepen itself. Inspection of a copy of this bank account statement was afforded to the Noticee. Hence, the request made by the Noticee for original/certified copy of document is untenable.
33.	SEBI's email dated 07/07/2015 asking company to provide Bank Account	Email has been sent to Morepen itself. Inspection of this a copy of this bank account statement was afforded to the Noticee. Hence, the request made

	Statements where GDR proceeds were utilized and end use of GDRs.	by the Noticee for original/certified copy of document is untenable.
34.	Morepen's Letter dated 03/08/2015 to SEBI	The letter pertain to Morepen itself. Inspection of this letter was afforded to the Noticee. Hence, the request made by the Noticee for original/certified copy of document is untenable.
35.	Morepen's email dated 09/10/2015 to SEBI	The said email was issued by Morepen itself. Inspection of a copy of this letter was afforded to the Noticee. Hence, the request made by the Noticee for original/certified copy of document is untenable.
36.	Ajay Sharma (CFO of Morepen) – statement before investing Authority on 01/03/2017	The statement of Ajay Sharma, CFO of Morepen has neither been referred nor relied on in the SCN and thus, not relevant. Inspection of a copy of this document was afforded to the Noticee. Hence, the request made by the Noticee for original/certified copy of document is untenable.
37.	Summary of cancellation of GDRs as provided by custodian ICICI Bank	A summary of cancellation of GDRs, as received from ICICI Bank, is provide in the SCN. Further, ICICI Bank was the local custodian appointed by the Morepen itself for its GDR issue. Inspection of a copy of this document was afforded to the Noticee. Hence, the request made by the Noticee for original/certified copy of document is untenable.
38.	Details of trades observed from DEMAT Account as provided by NSDL	Inspection of a copy of the document was afforded to the Noticee. Hence, the request made by the Noticee for original/certified copy of document is untenable.
39.	Letter issued by Commission de surveillance Luxembourg to SEBI responding SEBI's	These documents are correspondences with foreign regulators under agreement of confidentiality. Inspection of a copy of relevant document has been

	request for information	afforded to the Noticee. Hence, the request made by the Noticee for original/certified copy of document is untenable.
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19. It is observed that Noticee has been demanding various documents which are not relied upon in the SCN thus not relevant and, therefore, the contentions raised in this regard is not tenable, as dealt in respective column in para 18 above. It is also noted that the Company has asked for original/certified copies of their own documents like Memorandum of Association, particulars of charge or mortgage created by Morepen in favor of Banco, Minutes of Meeting of Board of Directors of Morepen dated March 25, 2003, etc. which it is required to maintain at its registered office for inspection by the shareholders, in view of Section 94 of the Companies Act, 2013. Such demand suggests that the Company is not maintaining the documents and records, as required Section 94 of the Companies Act, 2013 which is highly unbecoming of a public listed company. Therefore, SEBI may like to make a reference to the Registrar of Companies ("ROC"), with regard to maintenance of records as per provisions of the Companies Act, 2013 for information and necessary action, if any.
20. The Noticee No. 1 has relied upon the minority judgment of Hon'ble Securities Appellate Tribunal (SAT) in the matter of *PWC vs. SEBI, SAT Appeal No. 08 of 2011* which was supported by the Hon'ble Supreme Court in appeal by PWC (*Civil Appeals No. 6003-6004 of 2012 & 6000-6001 of 2012*) directing SEBI to provide all the documents collected during the course of investigation. The Noticee No.1 has also relied upon the order of Hon'ble Calcutta High Court passed in the matter of *M.S. Naina v. Collector of Custom reported in 1971 SCC Online Cal 202*. In this regard, I note that the Hon'ble SAT in the matter of *Shri B. Ramalinga Raju vs. SEBI (SAT Appeal No. 286 of 2014)* observed as follows:

"21.Apex Court in case of Price Waterhouse has specifically recorded that the directions

given in that case are general directions given as and by way of clarifications without going into the merits of the case. Therefore, directions given in the facts of Price Waterhouse cannot be said to be the ratio laid down by the Apex Court applicable to all other cases. In these circumstances, appellants are not justified in contending that the directions given by the Apex Court in case of Price Waterhouse must be applied to the case of the appellants.”

21. I also note that in the matter of *RRPR Holding Pvt. Ltd. vs. SEBI, Writ Petition (civil) No 9114 of 2018* wherein prayer was made for a direction to SEBI to provide inspection of documents, the Hon’ble Delhi High Court vide order dated October 26, 2018, observed as under:

“The SEBI shall ensure the inspection of all materials that have been investigated pertaining to the show cause notice, which is the subject matter of the investigation, is provided. However, if there is any confidential material concerning a third party, which too might be under investigation or other confidential material, which the SEBI feels would be prejudicial, it is open to it to segregate or de-tag such material while complying with the order.”

(emphasis supplied)

22. In this regard, I note that the Hon’ble SAT, in the matter of *Reliance Commodities Ltd vs. NSDL and SEBI*, in its order dated July 23, 2019, has observed as under:

“2. Having heard the learned counsel for the parties and having perused the list of documents so required for inspection we are of the opinion that the documents sought for is nothing but a roving and fishing enquiry. We accordingly do not find any merit in the submission of the learned counsel for the appellant that these documents are essential for the purpose of filing an appropriate reply.

3. However, we are of the opinion that if any document is relied by the respondent while disposing of the matter such document should be made available to the appellant. The appeal is accordingly disposed of. Misc. Application No.189 of 2019 is also disposed of.”

23. I note that the copies of documents relied upon by SEBI in the SCN were already provided to the Noticees along with the SCN dated June 21, 2018 and subsequently, inspection of

documents were also afforded to the Noticees. I, further, note that additional documents were provided in a CD vide letter dated November 01, 2018. I also find that the Noticees have filed a detailed reply and, therefore, alleged non affording inspection of original or certified copies of such documents which are not relied on in the SCN or which were not available as mentioned in respective column in para 18 above, has not caused any prejudice to the Noticees. On the contrary, Noticee has been making demand of unnecessary documents which are roving and fishing in nature. In view of the above, I note that the contentions raised by the Noticees that inspection of original/certified copy of documents were not provided, are not tenable.

24. The Noticee No. 1 and Noticee No. 2 have also contended that SEBI has not responded to their query as to whether any show cause notice was issued to Banco or not, nor provided the reply filed by the Banco, if any. In this context, I note that the proceedings were initiated by SEBI for the alleged violations of SEBI Regulations made by the issuer company as indicated in the SCN and Suppl. SCNs. The Noticees are required to explain their position i.e. their act and omission in respect of allegations made in the SCN and Suppl. SCNs. The issuer of GDRs which has violated the SEBI Regulations, as alleged in the SCN and, accordingly, SCN has been issued to Noticees.

Re: Alleged delay in investigation:

25. The Noticees contend that the impugned GDR issue took place in 2003 and the SCN is issued in 2017 i.e. after a lapse of almost one and half decade. Hence, the present proceedings ought to be withdrawn on the ground of delay and laches. I note that there is no provision in the SEBI Act which provides limitation period for taking action for the violation of the provisions of the Act or the Regulations made thereunder. I note in terms of Section 24(1) of the SEBI Act, 1992, any contravention to the provisions of SEBI Act and the Rules and Regulations framed thereunder is punishable with imprisonment for a term which may extend to the period

of ten years and thus there is no limitation for initiating action for the same. In *Ravi Mohan & Ors. v. SEBI* and other connected appeals decided on August 27, 2013, the Hon'ble SAT while referring to its own decision in *HB Stockholdings Ltd. v. SEBI (Appeal no. 114 of 2012 decided on August 27, 2003)* and decision of Hon'ble Supreme Court in *Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India)* reported in 2003 (158) ELT 129 (S.C.), held as under:

"...Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice...."

26. The ratio laid down by Hon'ble SAT in the aforesaid case, was upheld and reiterated by it, in a recent order in the matter of *Kunal Pradip Savla & Ors v. SEBI (Appeal no. 231 of 2017)* decided on April 13, 2018. However, as stated above, there should not be any unreasonable delay in taking action when the violation has come to the notice.
27. SEBI investigated issue of GDRs in the overseas markets by the Indian companies on receipt of a complaint, in the year 2009, regarding misuse of GDR route by few companies. The investigation *prima facie* revealed that in many of the GDR issues, money for subscribing to GDR was availed as a loan by the subscribers, from Bank wherein the issuer company gave security for such loan taken by the subscribers, by pledging/creating charge on the GDR issue proceeds. It was also observed that such subscribers subscribed the GDRs without any valid consideration and sold the underlying shares in the securities market in India. Accordingly, where such *modus operandi* was *prima facie* observed such GDR issues made before the year 2009 were examined. SEBI initiated investigation as soon as SEBI came to know that such

companies have adopted the *modus operandi* as referred to above. It is noted that transaction of pledging the GDR proceeds by Morepen with Banco to secure the loan obtained GDR subscribers was done in the clandestine manner and the information of pledging of GDR proceeds was not filed before RoC for recording the same in the register of charges as required under Companies Act, 2013 (previously Companies Act, 1956). Since, the GDRs are issued abroad and related transactions were carried out outside India, SEBI had to call information from the various entities situated abroad. Such information included *inter alia* the details of (a) issuer companies, (b) custodian of securities, (c) overseas depository, (d) overseas banks, (e) subscribers of GDR issue, (f) lead manager, (g) various transactions, etc. These information were not readily forthcoming. Therefore, SEBI had to approach the foreign regulators for assistance in procuring information from the concerned entities situated outside India. The foreign regulators had also to collect this information from the concerned entities and then to furnish to SEBI. Thus, the process of collection of information in the matter was complex, tedious and time consuming. It is noted from SEBI order dated June 16, 2016 that investigation was initiated in respect of 59 GDR issues made by 51 Indian Companies during the period 2002 to 2014. Morepen was one such scrip where such *modus operandi* was also observed and the investigation was completed in March, 2017. I note that after completion of the investigation, the SCN was issued to the Noticees on June 21, 2017. In the above circumstances, the investigation has been conducted and proceedings have been initiated in reasonable time. Thus, the plea of Noticee is not tenable either in fact or in law.

Issuance of Supplementary SCNs:

28. The Noticee No. 1 and Noticee No. 2 have challenged authority and jurisdictions of SEBI in issuance of Suppl. SCNs. It is contended that first Suppl. SCN was issued without any further material found against the Noticee and the second Suppl. SCN was issued after conclusion of the hearing on November 26, 2018 and when the matter was reserved for the order.

29. As mentioned in para 3 above, vide first Suppl. SCN, the Noticee no. 1 was also called upon to show cause as to why suitable directions including the direction to bring back an amount of USD 7.13 million should not be issued against it. Vide second Suppl. SCN issued, against all the Noticees, violations of the relevant provisions of PFUTP Regulations, 1995 were alleged.
30. The Noticee has relied upon the provisions of Indian Income Tax Act, 1869 and Section 28(7A), 124 of the Customs Act, 1962, Section 23 of the Income Tax Act, 1869 and Section 17 of the Works of Defence Act, 1903, and contended that wherever required, the legislature has specifically empowered the respective authority to issue supplementary SCN, whereas the SEBI Act, 1992 does not provide any power on SEBI to issue supplementary notice. In this respect, on perusal of the said provisions, I note that Section 28(7A) of the Customs Act, 1962 deals with 'recovery of duties not levied or not paid or short-levied or erroneously refunded'. Section 124 of the Customs Act, 1962 deals with 'issue of show cause notice before confiscation of goods etc.' Section 23 of the Income Tax Act, 1869 deals with power of collector to issue further notice in assessing any person, any source of income which has been overlooked. Similarly, Section 17 of the Works of Defence Act, 1903, provides the power to collector to issue supplementary notice where any person entitled for compensation has not been given notice or not awarded compensation. Also, specific provision for issuing supplementary SCN under Income Tax Act has to be understood in the light of prohibition contained in Section 147 thereof on reopening of assessment after expiry of four years from the relevant assessment year. These provisions are in relation to taxations levied on various assesses and are intended to protect the interest of assesses and, therefore, has no relevance in respect of securities laws. Further, there is no such provision in securities laws restricting initiation of investigation or enforcement of securities laws violation when it comes to light. Further, I note that show cause notice or supplementary show cause notice is inbuilt requirement in any *quasi-judicial* proceedings as a part and parcel of principles of natural justice and need not be specifically

provided for in the legislation. I note that after issuance of first Suppl. SCN to the Noticee No.1 and after issuance of second Suppl. SCN, all the Noticees were given an opportunity to advised to file their reply in accordance with the principles of natural justice and also to avail opportunity of hearing by personal appearance which opportunities have also been availed by the Noticees in the present case and, therefore, the contentions raised by the Noticees are not tenable either in facts or in law.

Application of PFUTP Regulations, 2003:

31. I note that before the second Suppl. SCN was issued on January 01, 2019, during the hearing held on November 26, 2018 as well as in written submission, the Noticee No. 1 had pointed out that the alleged wrongful issuance of GDRs took place in March 2003 while the PFUTP Regulations, 2003 came into effect on July 17, 2003 and, therefore, the provisions of PFUTP Regulations, 2003, as alleged in the SCN, cannot be invoked in the present case. In this respect, the Noticee No. 1 and 2 have alleged that the issuance of second Suppl. SCN was an afterthought. As GDR was issued on March 30, 2003 and the PFUTP Regulations, 2003 came into effect on July 17, 2003 therefore, PFUTP Regulations, 2003 was not attracted in respect of GDR issue made on March 30, 2003 and the said issue would attract the relevant provisions of PFUTP Regulations, 1995.
32. Accordingly, a fresh opportunity for filing reply and availing personal hearing was provided after issuance of Suppl. SCNs, I do not find that any injustice has been caused to the Noticees by issuance of Suppl. SCNs by SEBI. The issuance of Suppl. SCNs was required to meet with the principles of natural justice. Thus, I find that the contentions raised by the Noticees that no supplementary SCN could have been issued has no merit.
33. I note that under the SCN dated June 21, 2017, the Noticees were charged with the violation of the provisions of PFUTP Regulations, 2003 alongwith provisions of Section 12A (a), (b) &

(c) of SEBI Act, 1992. Vide Suppl. SCN dated January 01, 2019, the charges were modified and the Noticee were charged for violations of provisions of Regulations 3, 5(1) and 6(a) of PFUTP Regulations, 1995 readwith regulation 13 of PFUTP Regulations, 2003 alongwith provisions of Section 12A (a), (b) & (c) of SEBI Act, 1992. The relevant extract of the provisions are as below:

SEBI Act, 1992

“Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

Section 12A: No person shall directly or indirectly

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (d)”*

PFUTP Regulations, 1995

“Prohibition of certain dealings in securities

- 3. No person shall buy, sell or otherwise deal in securities in a fraudulent manner.*

Prohibition on unfair trade practice relating to securities

6. No person shall -

(a) in the course of his business, knowingly engage in any act, or practice which would operate as a fraud upon any person in connection with the purchase or sale of, or any other dealing in, any securities;"

PFUTP Regulations, 2003

"Repeal and savings

13. (1) *The Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 is hereby repealed.*

(2) *Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, any violation of regulations 3, 4, 5 and 6 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 shall be investigated and proceeded against in accordance with the procedure laid down in these regulations.*

(3) *Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, any investigation pending, at the commencement of these regulations shall be continued and disposed of in accordance with the procedure laid down in these regulations."*

34. As can be noted from the relevant extract of provisions of Regulations 3 and 6(a) of PFUTP Regulations, 1995 and Section 12A (a), (b) & (c) of SEBI Act, 1992, as quoted above, all these violations contemplate either "manipulative or deceptive device", a form of the fraud or "fraud" itself. Therefore, for attracting the violation of these provisions, there must be fraud committed by a person. Earlier the "fraud" was defined under Regulation 2(c) of PFUTP Regulations, 1995. Subsequently, PFUTP Regulations, 1995 were repealed and PFUTP

Regulations, 2003 came into force, on July 17, 2003 which defined “fraud” in Regulations 2(1)(c) thereof. Since, in the present case, the violations alleged pertain to period prior to July 17, 2003, therefore, the definition of “fraud” as given under the PFUTP Regulations, 1995 shall apply in the present case to determine the violations alleged.

35. A perusal of said definition of “fraud” as provided under Regulation 2(c) and quoted above, shows that there must be intention of one party to the contract to deceive another party to the contract. In this regard, reference may also be made to the observations made by the Hon’ble Supreme Court in the matter of *Kanaiyalal Baldevbhai Patel, (2017) 15 SCC 1*, wherein, it was observed that:

“27. On a comparative analysis of the definition of "fraud" as existing in the 1995 regulation and the subsequent amendments in the 2003 regulations, it can be seen that the original definition of "fraud" under the FUTP regulation, 1995 adopts the definition of "fraud" from the Indian Contract Act, 1872 whereas the subsequent definition in the 2003 regulation is a variation of the same and does not adopt the strict definition of "fraud" as present under the Indian Contract Act. It includes many situations which may not be a "fraud" under the Contract Act or the 1995 regulation, but nevertheless amounts to a "fraud" under the 2003 regulation.”

Further, in the aforesaid judgment Hon’ble Supreme Court observed the comparison of relevant provisions of PFURP Regulations, 1995 and PFUTP Regulations, 2003, as follows:

Quote

FUTP 1995		FUTP 2003 (APPLICABLE REGULATION)		Amen dment of 2013
Reg 2(c) Definitio ns	“Fraud” includes any of the following acts committed by a party to ac contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:- (1.) The suggestion, as to a fact, of that which is not true, by one who does not believe it to be true; (2.)The active concealment of a fact by one having	Reg 2(c) Defini tions	“fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include-	

	knowledge or belief of the fact; (3.) A promise made without any intention of performing it; (4.) Any other act fitted to deceive; (5.) Any such act or omission as the law specially declares to be fraudulent; (6.) And "fraudulent" shall be construed accordingly		(1) A knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment; (2) A suggestion as to a fact which is not true by one who does not believe it to be true; (3) An active concealment of a fact by a person having knowledge or belief of the fact; (4) A promise made without any intention of performing it; (5) A representation made in a reckless and careless manner whether it be true or false; (6) Any such act or omission as any other law specifically declares to be fraudulent, (7) Deceptive behavior by a person depriving another or informed consent or full participation, (8) A false statement made without reasonable ground for believing it to be true. (9) The act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.	
Reg 3 (Prohibition of certain dealings in securities)	No person shall buy, sell or otherwise deal in securities in a fraudulent manner.	Reg 3 (Prohibition of certain dealings in securities)	Prohibition of certain dealings in securities No person shall directly or indirectly- (a) buy, sell or otherwise deal in securities in a fraudulent manner; (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under; (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange; (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.	
Reg 4 (Prohibition against	No person shall- (a) Effect, take part in, or enter into, either directly or indirectly, transactions in securities,	Reg 4 (Prohibition	(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.	Explanation.- For the

Market Manipulation)	with the intention of artificially raising or depressing the prices of securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person; (b) Indulge in any act, which is calculated to create a false or misleading appearance of trading on securities market; (c) Indulge in any act which in reflection of prices of securities based on transactions that are not genuine trade transactions; (d) Enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress, or cause fluctuations in the market price of securities; (e) Pay, offer or agree to pay or offer, directly or indirectly, to any person any money or money's worth for inducing another person to purchase or sell any security with the sole objection of inflating, depressing, or causing fluctuations in the market price of securities.	against Manipulative, Fraudulent and Unfair Trade Practices)	(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:- (a.) Indulging in a act which creates false or misleading appearance of trading in the securities market; (b.) Dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss; ... (e.) Any act or omission amounting to manipulation of the price of a security; ... (q.) An intermediary buying or selling securities in advance of a substantial client order or whereby a futures or option position is taken about an impending transaction in the same or related futures or options contract.	purposes of this subregulation, for the removal of doubt, it is clarified that the acts or omissions listed in this subregulation are not exhaustive and that an act or omission is prohibited if it falls within the purview of regulation 3 notwithstanding that it is not included in this sub-regulation or is described as being committed only by a certain category or persons in this sub-regulation'
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Unquote

36. Definition of “fraud” as given under Section 17 of the Indian Contract Act, 1872 which is *pari materia* to the definition of “fraud” as provided under Regulation 2(c) of PFUTP Regulations, 1995, provides as under:

“17. “Fraud” defined. —“Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent , with intent to deceive another party thereto of his agent, or to induce him to enter into the contract:—

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

Explanation. — Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.”

37. I note that original SCN was issued on premise that Noticees had violated the provisions of PFUTP Regulations, 2003 and second Supplementary SCN was issued on January 01, 2019 to modify by replacing the provisions of PFUTP Regulations, 2003 with PFUTP Regulations, 1995. I find that the original SCN dated June 21, 2017 did not bring out the allegation of fraud, in terms in which it is envisaged under Regulation 2(c) of the PFUTP Regulations, 1995 ingredient of which is mentioned in paras 35 and 36 above. Therefore, the facts constituting the allegation of violation of those provisions of PFUTP Regulations, 1995 which are dependent on the definition and ingredients of “fraud” under Regulation 2(c) of PFUTP Regulations, 1995 which is in *pari materia* with the definition given under Indian Contract Act, 1872, as referred to in para 36 above, were not captured and reflected in the original SCN. In view of the difference in the definition of “fraud” under the PFUTP Regulations, 1995 and PFUTP Regulations, 2003, as observed by the Hon’ble Supreme Court in Kanaiyalal case (*supra*), violations of the provisions of Regulations 3 and 6(a) of PFUTP Regulations, 1995 read with regulation 13 of PFUTP Regulations, 2003 along with provisions of Section 12A (a), (b) & (c) of SEBI Act, 1992, has not been made out, as alleged against the Noticees in the SCN.
38. Even though the alleged violation of aforesaid Regulations in respect of fraud could not be made out, as referred to in para 37 above, however, charges in relation to misleading information can still be maintainable. I note that the original SCN has noted that Morepen did not inform BSE about the execution of Account Charge agreement dated March 28, 2003 with

the Banco which acted as a security for the loans availed by the subscribers and also that the GDR issue was subscribed by only two entities i.e. Solsec and Seviron. Instead, Morepen vide announcement made to BSE on March 31, 2003 and April 04, 2003 made a misleading disclosure that the issue of GDRs were successfully subscribed. Thus, the original SCN alleged that, by making such misleading disclosure, Morepen violated the provisions of Regulation 4(2)(f), (k) and (r) of the PFUTP Regulations, 2003. It is observed that the second supplementary SCN also makes similar allegation of misleading disclosure made by Morepen which resulted into violation of Regulation 5(1) of the PFUTP Regulations, 1995. Therefore, in respect of allegation for making misleading disclosures by Morepen, the charging provisions of regulation of PFUTP Regulations, 2003 and PFUTP Regulations, 1995 are in *pari materia*. The said provisions of PFUTP Regulations, 2003 and PFUTP Regulations, 1995 are reproduced hereunder for the ease of reference:

Prohibition of misleading statements to induce sale or purchase of securities

5. (1) No person shall make any statement, or disseminate any information which -

(a) is misleading in a material particular; and

(b) is likely to induce the sale or purchase of securities by any other person or is likely to have the effect of increasing or depressing the market price of securities, if when he makes the statement or disseminates the information-

(i) he does not care whether the statement or information is true or false; or

(ii) he knows, or ought reasonably to have known that the statement or information is misleading in any material particular.

Nothing in this sub-regulation shall apply to any general comments made in good faith in regard to -

(a) the economic policy of the Government,

(b) the economic situation in the country,

- (c) trends in the securities markets, or
- (d) any other matter of a similar nature,
- whether such comments be made in public or in private.

Similarly, Regulation 4(2)(f), (k) & (r) of PFUTP Regulations, 2003 provides as under:

Regulation 4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1)
- (2) *Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—*
 - (a)
 - (f) *publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;*
.....
.....
 - (k) *an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors.*
.....
 - (r) *planting false or misleading news which may induce sale or purchase of securities.*
.....

39. Thus the provisions of Regulation 5(1) of PFUTP Regulations, 1995 and Regulation 4(2)(f), (k) & (r) of PFUTP Regulations, 2003 are *pari materia* and thus the original SCN readwith second Suppl. SCN captures the ingredients of Regulation 5(1) of PFUTP Regulations, 1995, as alleged

against the Noticee No. 1. Even though original SCN referred to PFUTP Regulations, 2003, as the relevant provisions are in *pari materia* with PFUTP Regulations, 1995, such charges are sustainable in law and in facts. Also, the Noticee No. 1 has been given an opportunity to reply to the said charge. In the present case, SCN alleges that Morepen did not inform to the Stock Exchanges about entering into Account Charge Agreement whereby proceeds of the GDR were pledged as a collateral for the loan availed by the subscribers to subscribe its GDR issue provided misleading information about successful subscription of GDRs and accordingly, investors in India were misled. I find that Noticee No. 1 entered into account charge agreement prior to the issue of GDRs for the purpose of securing the loans availed by Solsec and Seviron from Banco, for subscribing to the GDR issue of Noticee No. 1, therefore, at the time of making of disclosure to the stock exchange, Noticee No. 1 was aware that GDR was not successfully subscribed and at that time GDR proceeds were not at its disposal as the same were pledged. Such misleading statements had the potential to induce the investors to trade in the shares of Morepen because investors believing that the GDR issue of Morepen was successfully subscribed by the overseas investors. Therefore, I find that Noticee No. 1 has violated provisions of Regulation 5(1) of PFUTP Regulations, 1995. I note that Noticee No. 1 made GDR issue with an arrangement that it pledged the GDR proceeds for the loans availed by the subscribers for subscribing to the GDR issue of Noticee No. 1 and made false and misleading disclosures, as alleged in the SCNs.

40. With regard to the allegation of diversion of funds amounting USD 7.13 million, SCN states that an amount of USD 15.25 million was transferred to Morepen's bank account with Banco on April 02, 2003 i.e. USD 0.25 million in Account no. 6058718.15.001 and USD 15 million in Account no. 6058718.15.002. It has been further stated that out of the aforesaid amount of USD 15.25 million, an amount of USD 7.85 million was received in Morepen's Bank account in India held with Bank of Punjab during July 18, 2003 to August 25, 2003. SCN alleges that an amount of USD 7.13 million was debited in Morepen's account (Account No.

6058718.15.001) held with Banco, on July 19, 2004 and was transferred to unknown entities. SCN has alleged that USD 7.13 million did not come to Indian bank account of Morepen and has been transferred to unknown entities from its bank account held with Banco. Whereas, Morepen has claimed that as per its Annual Report for the financial year 2007-08, at page 41, GDR proceeds have been utilized for payment to Banks/Loans (Rs. 3826.83 Lac) and for working capital (Rs. 2622.09 Lac). Thus, there are two versions, one, as alleged in the SCN and the other in the Annual Report of the Morepen. In terms of Section 177(4) (viii) of the Companies Act, 2013, audit committee has to monitor the end use of funds raised through public offers and, therefore, the audit committee may look into the correctness of information provided in the Annual Report of Morepen and report the same to the Board of Directors of Morepen for taking appropriate corrective action, if any.

DIRECTIONS:

41. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B read with Section 19 of the SEBI Act, 1992, directs that Noticee No. 1 is prohibited from accessing the securities market, directly or indirectly, and also restrained from buying, selling or otherwise dealing in the securities including units of mutual funds, either directly or indirectly or in any other manner whatsoever, for a period of one year.
42. This Order shall come into force with immediate effect.
43. A copy of this order shall also be forwarded to the recognized stock exchanges, depositories and registrar and transfer agents of mutual funds, for ensuring compliance with the order.
44. SEBI may forward a copy of this order to ROC in respect of observations made in para 19 above, with respect to maintenance of records by the Company.

45. SEBI may also send a copy of this order to the audit committee of the Company with regard to the observations made in para 40 above with respect to correctness of statement made in its Annual report.

Place: Mumbai

Date: September 24, 2019

(Sd/-)

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA