

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

Under Sections 11(1), 11(4) and 11B(1) of the Securities and Exchange Board of India Act, 1992

In respect of:

Sr. No.	Names of the Noticee	PAN/CIN
1.	Raashi Fertilizers Ltd.	CIN: U24210MH1985PTC037068 PAN: Not Available
2.	Mr. Chandru Jaisingh Ramsinghani	PAN: Not Available
3.	Mr. Shamlal Madanlal Khetan	PAN: Not Available
4.	Mr. Jitendra Shantilal Mehta	PAN: AAEPM9639B

In the matter of Raashi Fertilizers Ltd.

(The above entities are collectively referred to as “Noticees” and individually by their respective name or Noticee nos.)

1. In the year 2011 Securities and Exchange Board of India (hereinafter referred to as “SEBI”) came up with an online portal/mechanism by the name, SEBI Complaints Redress System (hereinafter referred to as “SCORES”) in order to dispense a better, speedy and proper redressal of investors’ complaints pertaining to the listed companies. This mechanism enabled prompt online transmission of the investors’ complaints to the respective listed companies for redressal. Under the said system, the listed companies, after having received the complaints are required to take appropriate steps to resolve the complaints and upload their Action Taken Reports (hereinafter referred to as “ATR”) in SCORES for the benefit of the complainants. The companies can also upload the ATR by logging in to SCORES by using their SCORES authentication (consisting of user ID and password), which can be obtained by companies after submitting the necessary details to SEBI. Similarly, investors can also upload their complaints and check the status thereof from time to time by logging into SCORES by using their ID and password which they receive after registration with SCORES. The online grievance redressal system facilitates speedy disposal and redressal of investors’ grievances by the listed companies under close monitoring by SEBI.
2. In this regard, SEBI has issued circulars dated June 3, 2011, August 13, 2012 and April 17, 2013, informing listed companies about SCORES mechanism and directing them to obtain SCORES authentication, and take other necessary steps so as to be able to resolve the complaints within the stipulated number of days in terms of the guidance issued to them from time to time. Listed companies have also been directed to upload the ATR on SCORES so that the ATR is accessible to both the complainant investor and SEBI. It has also been informed

that failure to obtain SCORES authentication and to update the ATR in SCORES will be treated as non-redressal of investor complaint and in case of failure to comply with the above instructions, SEBI would be constrained to initiate appropriate actions as per law against such erring companies/entities.

3. I note that apart from the above circulars which were required to be complied with by companies, keeping in view the investors complaints received for redressal by Raashi Fertilizers Ltd. (hereinafter referred to as “*Noticee Company*”), vide letter dated February 15, 2013 the *Noticee Company* was specifically informed about the SEBI circular No. CIR/OIAE/1/2012 dated August 13, 2012 whereby all listed companies including the *Noticee Company* whose securities were listed on stock exchanges were advised to obtain SCORES authentication by September 14, 2012 in terms of the aforesaid circular for resolution of the complaints through SCORES mechanism. Attention was also drawn to the fact that companies whose securities were listed on the stock exchange and against whom investors grievances were pending on SCORES were required to take appropriate necessary steps in terms of instruction stated in the letters/ circulars issued in this regard.
4. I note that despite the aforesaid circulars and letters, no information has been received from the *Noticee Company* and the pending investor complaints against the *Noticee Company* have remained un-redressed. Therefore, a Show Cause Notice (hereinafter referred to as “SCN”) was issued to the *Noticee Company* dated March 28, 2013 requiring the *Noticee Company* to show cause as to why directions including, restraining it from accessing the Securities Market should not be passed against it for the non-compliances, as per the allegations made in the

SCN. It is also observed that subsequently a SCN dated April 17, 2013 was issued to the three Directors of the *Noticee Company*, whereby again attention was drawn to the fact that the *Noticee Company* had not yet obtained SCORES authentication and that investors complaints continued to remain pending. It was further stated in the SCN that a public notice was also issued on January 13, 2013 whereby the *Noticee Company* was asked to obtain SCORES authentication within seven days from the date of the public notice cum advertisement, failing which SEBI would be constrained to take appropriate enforcement action.

5. The aforementioned SCN however could not be delivered to the *Noticee Company* or *Noticee no. 2* (Chairman & Managing Director), although the other two Directors of the *Noticee Company* viz., *Notices no. 3 & 4* (Mr. Shamlal Khetan and Mr. Jitendra Shantilal Mehta) have replied to the SCN vide written replies dated May 9, 2013 and April 25, 2013, respectively. Subsequently, in the interest of principles of natural justice, an opportunity of Personal Hearing was scheduled for the *Notices* on May 29, 2019, however the letter informing the *Notices* about the date of Personal hearing could also not be delivered by post. Therefore, a public notice was issued in the newspapers on December 31, 2019 informing the *Notices* that a Personal Hearing is scheduled to be held on January 8, 2020 in the instant matter. However, none of the *Notices* appeared for the Personal Hearing.
6. Additionally, a letter dated January 20, 2020 was also sent to *Notices no. 3 & 4* at their addresses/email address mentioned in the replies of these *Notices*, advising them to submit any further submissions if they so desire. In response to the same, *Noticee no. 4* (Mr. Jitendra Mehta) has submitted a reply vide email dated February 18, 2020. He was accorded an

opportunity of Personal Hearing on April 16, 2020 and considering the nationwide lockdown due to COVID-19 pandemic, he was heard by me through video-conference facility during which, he reiterated his submissions made in his written replies. Considering the fact that the major investor complaints alleged to be pending against the *Noticee Company* as per the SCN pertained to non-payment of interest and non-redemption of the debt securities issued by the *Noticee Company*, *Noticee no. 4* was advised to submit copies of Balance Sheet of the *Noticee Company* and other proof to substantiate the steps taken by the *Noticee Company* as well as by him to pay interest on the debt securities issued. He was also permitted to submit additional written submissions along with supporting documents including an affidavit to support his contention that he had resigned from the *Noticee Company* in the year 2006 itself. *Noticee no. 4* has submitted his additional submissions vide email dated May 8, 2020 and has requested to submit the aforesaid affidavit within 15 days from lifting of lockdown. However, the same has not been submitted till date.

7. I note that none of the other *Noticees* except for *Noticee no. 4* has appeared for the Personal Hearing despite several efforts made to contact them. The *Noticee Company* and *Noticee no. 2* have not even submitted any reply to the SCN. Keeping in view the facts stated above, I proceed to deal with the matter, based on the materials available on record. I have considered the SCN, the annexures to the SCN, replies submitted by *Noticees no. 3 & 4* and other material on record.
8. It is not disputed that a listed company is under an obligation to timely redress all complaints of its shareholders & investors. I note from the record that the *Noticee Company* was required

to redress the pending complaints and update the ATR in timely manner in terms of the relevant circulars issued by SEBI from time to time governing the subject of redressal of investor's grievances through SCORES. As regards the importance of taking SCORES authentication and resolution of investors complaints, I find it apt to refer to and rely on the observation recorded by Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") in **M/s. Golden Proteins Ltd. v. SEBI** (Order dated September 11, 2015 in Appeal No. 334 of 2015), wherein Hon'ble SAT has observed *"This Tribunal has consistently held that timely redressal of the investors' grievances by the companies is of utmost importance. Keeping this importance in mind, SEBI by circular dated August 2, 2011, SEBI introduced a system of processing investors' complaints in a centralized web based complaints redress system, which is commonly known as 'SCORES'. Under this system, a centralized database of all the complaints and their online movement to the concerned intermediaries is monitored. Similarly, online upload of action taken reports (ATR) by the concerned entities and its viewing by investors of the action on the complaints and their current status etc. all are displayed. Violation of such an important regulatory measure cannot be taken lightly in the facts and circumstances of the present case."*

9. Further, the importance of compliance of circulars/directions issued by SEBI has been highlighted by Hon'ble SAT in **Pashupati Cables Ltd. v. SEBI** (Order dated May 7, 2018 in Appeal No.107 of 2018) by observing that *"Grievance of the appellant that the show-cause notice was not served on the appellant would not survive in the present case, because, it is admitted by the authorized representative of the appellant that SCORES authentication has*

not been obtained in spite of the circulars issued by SEBI from time to time. Once it is admitted that the appellant has violated SEBI Circulars, then directing issuance of a show-cause notice in that behalf would be futile and in such a case, the only question to be considered would be, whether the penalty imposed in the present case is justified or not.”

10. I note from the available records that the *Noticee Company* has neither obtained the SCORES authentication till date nor has taken steps for resolution of the pending investor complaints in spite of repeated reminders from SEBI. In view of the above, there is no explanation available before me justifying the inaction of the *Noticee Company* and not obtaining the SCORES authentication or to explain the reasons behind the non-redressal of complaints even after the lapse of more than seven years from the date of SCN. The above factors constrain me to come to the finding that charges made in the SCN stand established and the *Noticee Company* is liable for the charges made under the SCN.

11. It is observed from the records that *Noticee no. 2* is the Chairman & Managing Director (hereinafter referred to as “**CMD**”) of the *Noticee Company* and responsible for the overall affairs and management of the *Noticee Company*. *Noticee no. 2* has also neither replied to the SCN nor attended the Personal Hearing before me and did not place any explanations or response to the allegations levelled in the SCN. There is no evidence rendered to show any efforts undertaken to obtain SCORES registration or for redressing the pending investor complaints. In view thereof, I am constrained to find *Noticee no. 2* (CMD) also liable for the violations alleged in the SCN.

12. *Noticee no. 3* (Mr. Shamlal Khetan) has submitted his written replies vide letters dated May 9, 2013, May 20, 2013 and July 20, 2013. The relevant extracts from his submissions are summarised as under:

- (a) That he has ceased to be a Director of the *Noticee Company* since February 1, 1998 for which he has enclosed copy of his resignation letter purportedly acknowledged by Chairman/owner of the *Noticee Company* (*Noticee no. 2*).
- (b) That since his resignation was accepted by the *Noticee Company*, it was the duty of the *Noticee Company* to comply with all legal requirements and file the necessary forms in respect of his resignation with Registrar of Companies (hereinafter referred to as “ROC”).
- (c) That he was a professional employee/Technical Director of the *Noticee Company* and subsequently in no way related to the *Noticee Company*, therefore is not aware of any of the investor grievances.
- (d) That he was working as a paid Director in the *Noticee Company* without any financial stake, hence the *Noticee Company*/Chairman would be in the position to resolve pending investor grievances.

13. I have considered the aforesaid submissions of *Noticee no. 3* and find that his primary submission is that he had resigned from the directorship of the *Noticee Company* since 1998 which was much prior to the time of occurrence of the violations alleged in the SCN. However, *Noticee no. 3* has not demonstrated or placed on record any document to support the claim of his resignation, other than a copy of his resignation letter dated January 28, 1998 (containing an acknowledgement purportedly signed by *Noticee no. 2*). In this respect, *Noticee no. 3* has not:

- (a) produced any evidence or document to demonstrate that his resignation letter was actually dispatched by him or received by the *Noticee Company*;
- (b) furnished any Board Resolution in support of the claim that his resignation was considered in the meeting of the Board and duly accepted; and
- (c) demonstrated that any filing was made with ROC with respect to his resignation, as *Noticee no. 3* continues to be shown as a Director in the records of the ROC.

Moreover, it is observed that in the Annual Report/Annual Return (2002-03) filed by the *Noticee Company* subsequent to the purported date of his resignation, *Noticee no. 3* is stated as Director of the *Noticee Company*.

14. *Noticee no. 3* has also submitted that once his resignation was accepted by the *Noticee Company*, it is the responsibility of the *Noticee Company* to comply with all legal requirements and file the necessary forms in respect of his resignation with ROC. I note from the Ministry of Corporate Affairs (hereinafter referred to as “**MCA**”) records that *Noticee no. 3* is being shown as a Director of the *Noticee Company* till date. The records on MCA 21 portal are in the nature of public records required to be filed in terms of provisions of Companies Act, 1956/ Companies Act, 2013. Based on records available on the record of MCA, a presumption is created in favour of its genuineness/authenticity. *Noticee no. 3* seeks to dispute the records of MCA, and therefore he has the burden to disprove the authenticity of the information obtained from MCA and prove that he had indeed resigned in 1998.

15. As the response of *Noticee no. 3* is entirely based on an uncorroborated resignation letter, I find it appropriate to examine the legal position with respect to resignation of Directors. It goes without saying that a company acts through its Directors and a Director can resign by

submitting his resignation to the company evidencing his intention of terminating his tenure of directorship. I find it relevant to refer to the case of **T. Murari v. State**, 1976 46 Comp Cas 613 Mad, wherein Hon'ble Madras High Court dealt with the issue of claim of a Directors' resignation and his consequent liability with respect to the failure of the company to submit Balance Sheet and Annual Return and has held the following:

*"I am of the view that even in the absence of a provision in respect of resignation under the Act or under the articles of association of the company, the resignation tendered by a director or managing director unequivocally in writing will take effect from the time when **such resignation is tendered.**"*

16. The aforesaid principle is reiterated by Hon'ble Bombay High Court in the case of **Suhas Bhand v. State of Maharashtra & Anr**, Cri. W.P. no. 1194 / 2008, & 2331 / 2006 that *"The resignation of a Director is also a part of his contract with the Company. A Director, like any other person, can resign by submitting his resignation to the Company evidencing an intention of terminating his tenure as a Director of the Company. **The resignation must, therefore, be sent to the Company and be received by the Company.** Since the Company is only a legal person, it will have to be sent to the Board of Directors of the Company who acts on behalf of the Company. It must, therefore, to be received by the Board of Directors. Such resignation would come into effect so soon as it is received by the Board, except of course, if there is a specific provision in the Articles of Association of the Company requiring the resignation to be accepted by the Board in which case it would come into effect only upon its acceptance by the Board.*

.....

*We may mention that a Director **may prove the fact of his resignation by producing the copy of his resignation letter received by the Company** and further by the Company having accepted the resignation (if under its Articles of Association, the resignation letter is required to be accepted by the Company)”*

17. As can be seen from above, any Director may tender his resignation to the company, however he must prove that the said resignation letter was sent by him to the company and was indeed received and accepted by the company. In the above backdrop, I note that *Noticee no. 3* has not produced any evidence or document to conclusively establish, with corroboration, that his resignation letter was actually submitted to the *Noticee Company* at the purported date, and that the *Noticee Company* received such resignation letter. *Noticee no. 3* has not produced any Board Resolution, Board Minutes, evidence of postage, or other reliable documents recording or referring to his resignation. On the contrary, the Annual Report/Annual Returns (2002-03) filed by the *Noticee Company* with the ROC refer to *Noticee no. 3* as a Director, even after his purported resignation. In addition, and as stated above, the records of the MCA continue to reflect that *Noticee no. 3* is a Director till date.

18. The claim of *Noticee no. 3* that the said resignation letter bears acknowledgment/signature of the CMD also doesn't advance his claims as the CMD's signature remains unverified. Although the CMD is also a *Noticee* in the present proceedings, he has not attended the hearing and *Noticee no. 3* has not brought any independent verifiable evidence to show that the CMD had indeed received his resignation letter and subsequently placed before the Board for consideration and acceptance. The evidence adduced by the *Noticee* when weighed against the

MCA records showing him as a Director compels me to find the contentions of the *Noticee* to be unreliable and *sans* merit.

19. With regard to his submission that since his resignation was accepted by the *Noticee Company*, it is the duty of the Company to file the necessary form pertaining to his resignation with the ROC, I note that Section 303(2) of the Companies Act, 1956 requires a company to file Form-32 with ROC to inform the change in directorship within 30 days after it has received the resignation from the Director. Hon'ble Supreme Court has held in the case of **Anita Malhotra v. Apparel Export Promotion Counl. & anr.**, (2012) 1 SCC 520, that

“14) Inasmuch as the certified copy of the Annual Return dated 30.09.1999 is a public document, more particularly, in view of the provisions of the Companies Act, 1956 read with Section 74(2) of the Indian Evidence Act, 1872, we hold that the appellant has validly resigned from the Directorship of the Company even in the year 1998 and she cannot be held responsible for the dishonour of the cheques issued in the year 2004.

.....

16) In the light of the above discussion and of the fact that the appellant has established that she had resigned from the Company as a Director in 1998, well before the relevant date, namely, in the year 2004, when the cheques were issued, the High Court, in the light of the acceptable materials such as certified copy of Annual Return dated 30.09.1999 and Form 32 ought to have exercised its jurisdiction under Section 482 and quashed the criminal proceedings.”

20. It can be seen from the aforesaid that Form-32 and Annual Return amongst other documents, have been relied upon by the judicial or other bodies while determining the directorship dispute, hence, even though it is the company's duty to file Form-32 with ROC, absence of the

same will raise doubts regarding the claim of resignation by a Director. When the resignation of a Director becomes a matter of dispute as is the case in present proceedings and there is no Form-32 available on record to support the claim of *Noticee's* resignation, it becomes the Director's duty to prove that he has indeed tendered resignation to the Company by relying on other verifiable documents and as discussed above, the *Noticee* has not been able to substantiate the same to my satisfaction. Additionally, as a principle of good corporate governance as well as in his own interest, a Director ought to ensure that his resignation is duly effected in official record of ROC. This is of paramount importance because outsider entities including shareholders of a company would generally rely on information available in public records such as MCA/ROC to know about the status of a company and about its Directors. Therefore, as a Director of a listed company, the least that is expected of him is that he should take steps for the benefit of shareholders and as soon as he tendered his resignation to the Company as claimed by him, he ought to have ensured that the official records in the public domain shows that he is no longer the Director of the Company as the outsiders are not privy to what is happening inside a company. Therefore, Directors of a listed company have to be extra diligent and transparent in their working to ensure that interest of the shareholders are always protected.

21. However, in the instant matter, the *Noticee* has apparently not bothered to make serious efforts to see to it that his resignation is duly reported to MCA and the same is reflected in the MCA records as soon as he supposedly resigned from the *Noticee Company* in the year 1998 itself. Even after the SCN in the matter was issued and duly served upon him in the year 2013, the

Noticee seems to have not taken note of the fact that the SCN has been served on him because of the fact that he was a Whole Time Director of the Company during the relevant period of time. I note that the *Noticee* has merely enclosed with his reply, a letter dated May 10, 2013 (after receipt of the SCN) addressed through his advocate to the Company with a copy to ROC, seeking the Company to file the necessary forms and comply with all formalities regarding the *Noticee's* resignation in 1998. However, it is observed that the MCA records continue to show him as a Director of the Company till date. The *Noticee* has apparently not been able to demonstrate the change in his directorship status through the Competent Authority/Court of Law. Lastly, it is also observed from the Annual Report/Annual Return of the *Noticee Company* for the year 2002-03 as available with MCA that he is mentioned as a Director which gives me further ground to question the contentions of the *Noticee* and distrust the authenticity of the resignation letter submitted by the Director. Not only the MCA records state that he is a Director of the *Noticee Company* till date, the *Noticee* has also allowed his name to be used in other public documents such as Annual Return/Annual Report of the Company till 2002-03 contrary to his claim that he had resigned in 1998. In the absence of any verifiable evidence to the contrary, it has to be presumed that the said Annual return/Annual Report of the Company must have been filed by or with the knowledge of the CMD/*Noticee no. 2*, therefore, claim of *Noticee no. 3* that his resignation was duly accepted by *Noticee no. 2* holds no ground.

22. In view of the above, I do not find the contentions of *Noticee no. 3* can stand the test of law.

The *Noticee* being a Whole Time Director of a listed company (a position admittedly reflected from his resignation letter) and involved in the day to day affairs of the *Noticee Company* is

under obligation to ensure that the *Noticee Company* abides by all rules and regulations framed by SEBI. The *Noticee* has not demonstrated any steps taken by him or the *Noticee Company* to obtain SCORES authentication or to resolve the investor complaints. He has also not exhibited any form of diligence in his functioning as a Director and for protecting the interest of shareholders which is the foremost duty of a Director of a listed company. The attitude of the *Noticee* appears to be very callous and casual towards the duties that he was expected to discharge as a Director. In view of my aforesaid findings and observations, I do not find any merit that he being a professional employee/Technical Director of the *Noticee Company*, was in no way related to the *Noticee Company* and therefore is not aware of any of the investor grievances and that the *Noticee Company* or Chairman would be in the position to resolve pending investor grievances. Accordingly, I have to hold *Noticee no. 3* liable for the allegations levelled in the SCN.

23. I also note that *Noticee no. 4* has submitted his written replies vide letters dated April 25, 2013, May 17, 2013, July 22, 2013, October 10, 2019, February 18, 2020 and May 8, 2020. His contentions have been summarised as under:

- (a) He has not derived any personal gain by not paying interest to debenture holders, hence it does not call for any punitive action. He has relied on pronouncement of SAT to submit that no punitive action can be taken under Section 11B of the SEBI Act, 1992 and has further, stated that SCN cannot be issued in 2013 for complaints pertaining to 2001.
- (b) He has resigned in September 2006 but the *Noticee Company* could not file Form-32 due to technical difficulty (as one of the Directors of the *Noticee Company* did not have

- DIN). In any case, responsibility to file Form -32 rests with the *Noticee Company* and not with the resigning Director. He has also informed ROC about his resignation.
- (c) He has tried to file Form-32 himself, however since the *Noticee Company* has been dormant due to non-compliance, the said form cannot be filed till the *Noticee Company's* status changes from dormant to active.
 - (d) Proceedings against the *Noticee Company* have been initiated under the provisions of Sick Industrial Companies Act of 1985 and all assets have been taken over by SBI, there seems to be no way to redress investor grievances except to inform reality.
 - (e) He has stated to have replied in general without seeing 14 pending complaints and has requested for copies of complaints to be provided to him.
 - (f) He was a Professional Director and a Company Secretary thereof; his job was confined to maintaining secretarial records. He also held debentures and did not receive interest/redemption; hence he is a victim and not accused.

24. Before proceeding to address the submissions made by *Noticee no. 4* on merit of the allegations made in the SCN against him, I will first deal with the preliminary objections raised by him. *Noticee no. 4* has submitted that the SCN cannot be issued in 2013 for complaints pertaining to 2001. I note that SCORES mandate was made applicable for listed companies in 2011 and the SCN has been issued in the year 2013 against the Company for not taking SCORES registration as well for non-redressal of the investors complaints pending since 2001. Hence, no unreasonable delay can be attributed to initiation of the present proceedings in the year 2013. It is pertinent to mention that those who seek equity must come with clean hands and I find no steps taken by the *Noticees* in respect of the investors complaints which have been pending for more than 20 years. With regards to submission that he has not derived any

personal gain by not paying interest to debenture holders and his reliance on Hon'ble SAT's pronouncement to submit that no punitive action can be taken under Section 11B, it may be noted that the actions envisaged in the SCN for the violations mentioned therein are preventive and remedial in nature, hence these submissions do not call for any further deliberation.

25. Moving on to his other submissions, I note that *Noticee no. 4* has claimed to have resigned as a Director of the *Noticee Company* in 2006 and has enclosed copy of a Memorandum of Understanding (hereinafter referred to as “**MOU**”) dated September 20, 2006 executed between him/his wife (who was also employee of the *Noticee Company*) and *Noticee no. 2* (CMD), *inter alia* recording his resignation from the *Noticee Company*. Contrary to the aforesaid assertion, the MCA records show the *Noticee no. 4* also as a continuing Director of the *Noticee Company* hence, the *Noticee* who is denying the genuineness of the MCA records has the onus to disprove it with opposing incontrovertible evidence. The Hon'ble Supreme Court in the case of ***Gunmala Sales Pvt. Ltd. v. Anu Mehta & Ors***, (2015) 1 SCC 103 while dealing with the power of Court to quash the complaint filed against a Director under Section 138 of the Negotiable Instruments Act, 1881 has held that:

“a) Once in a complaint filed under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director;

b) If a petition is filed under Section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the

complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.

*c) In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about role of the Director in the complaint. **It may do so having come across some unimpeachable, uncontrovertible evidence which is beyond suspicion** or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of the process of the court.”*

26. Though the aforesaid case pertains to the Negotiable Instruments Act, 1881, we may refer to Hon'ble Court's findings for the purpose of guidance. In the present case, *Noticee no. 4* has not produced any evidence such as Annual Return or Board Resolution which might have referred to his resignation, to corroborate his claim to have resigned from the Board of the *Noticee Company*. I have perused the copy of MOU referred to earlier, produced by *Noticee no. 4* and note that it is executed on a plain paper and carries no stamp paper, or seal of the *Noticee Company*. In addition to the above, *Noticee no. 4* has also produced copy of a letter mentioning the period of his directorship in the *Noticee Company* (from January 1986 to August 2006) purportedly signed by *Noticee no. 2* (CMD) and has referred to certain other documents (such as employment letter) bearing signature of *Noticee no. 2*, to emphasise the genuineness of signature of *Noticee no. 2* in the MOU. I do not find that the aforesaid documents lend any value with certainty to the claim of the *Noticee no. 4*, when the public records of MCA show him as a continuing Director. I also note that the copy of the letter of resignation of the *Noticee* dated September 18, 2006 merely evidences the intent of *Noticee's*

resignation but it becomes valid and effective only when it is received by the Company and accepted by the Board of Directors of the Company, however, the *Noticee* has not produced any evidence to even show that his resignation letter was actually received by the *Noticee Company*, duly deliberated and accepted by the Board of the *Noticee Company*.

27. *Noticee no. 4* has also emphasised that it was the *Noticee Company's* duty to inform MCA/ROC about the resignation of the Directors and to file Form -32 and has stressed upon the fact that the Form-32 could not be filed at that time due to the fact that one of the Directors was not having his DIN. He has further claimed that he had subsequently tried to file Form-32, however, since the *Noticee Company* had become sick and dormant, Form-32 could not be filed unless its status becomes active on ROC. I find that the *Noticee* was a Whole Time Director as well as Company Secretary of the *Noticee Company* in charge of statutory compliances by the Company. It is expected that he should have taken immediate substantive and effective steps to ensure rectification in the MCA records. I note that the *Noticee* has enclosed an error message dated August 13, 2014 to show that Form-32 could not be filed subsequently (although it is not clear from the said message that the message pertained to Raashi Fertilizers Ltd.). Further, he has also enclosed a letter dated August 26, 2014 addressed to ROC, requesting for effecting his cessation from the directorship of the Company from the year 2006. However, the MCA records till date show the *Noticee* as a continuing Director.

28. In any case, I do not find any of his aforesaid submissions or steps purportedly taken by him to be material or substantial enough when weighed against the official MCA records clearly mentioning him as Director of the *Noticee Company* till date. Such an unsubstantiated assertion

by the *Noticee* cannot be relied upon specially while dealing with his alleged association with a listed corporate body for the purpose of consequential determination of his responsibility or liability as a Director of a listed company which has miserably failed to redress investors grievances and also to comply with the Regulator's directives to obtain SCORES authentication, as have been alleged in the present proceedings. As a Company Secretary by qualification and profession, the *Noticee* ought to have ensured that his severance from the Company as a Director is duly reflected in all the records available in public domain including the MCA records. However, even after a lapse of 7 years from the date of SCN, the *Noticee no. 4* seems to have acted in a half-hearted manner and all his claims can be seen as an afterthought exercise only to avoid the burden of the instant enforcement proceedings. Therefore, I am not persuaded to accept his contention that he had ceased to be Director of the *Noticee Company* since 2006.

29. I note that *Noticee no. 4* has attempted to offer some explanations/reasons regarding the inability of the Company to redress the investor grievances by stating that the *Noticee Company* had become sick and was not having sufficient staffs to take steps towards redressal of the grievances, does not come to extend any help to the *Noticee*. In this respect, I find it relevant to refer to the order of Hon'ble SAT in the matter of ***Motorol Enterprises Ltd v. SEBI*** (Order dated June 10, 2014 in Appeal no. 59/2014) wherein following has been observed by the Hon'ble SAT:

“Argument of the appellant that it was a sick company and had only few employees and, therefore, investors’ grievances could not be redressed does not impress us, because, obligation under the SEBI Act to comply with investors’ grievances is made mandatory and

for noncompliance stringent penalty of Rs. 1 lac per day is prescribed. Therefore, irrespective of being a sick company and irrespective of their being only few employees, appellant was obliged to redress investors' grievances from time to time".

30. In line with my earlier observations made in respect of *Noticee no. 3*, I find that *Noticee no. 4* also being the Whole Time Director of the *Noticee Company*, was obligated to ensure that the *Noticee Company* should have obtained SCORES registration in compliance with SEBI's directives and thereafter redressed all the investor complaints. Considering that no steps have been taken either to obtain SCORES registration or to attend to the investor grievances which continue to be pending, I am constrained to hold the *Noticee no. 4* as liable for the violations alleged against him in the SCN.

31. As in the case of *Noticee no. 3* who's claim of having resigned from the Company rests on plain paper uncorroborated resignation letter, *Noticee no. 4* also seeks to rely on an uncorroborated and plain paper i.e. MOU to establish his resignation from the Company's Directorship. However, unlike the *Noticee no. 3*, *Noticee no. 4* has produced certain additional documents to support his case that he had resigned as a Director and was employed elsewhere. In this regard, *Noticee no. 4* has produced certain documents to demonstrate that he was employed with a company called Taurian Iron and Steel Co. Pvt. Ltd. (hereinafter referred to as "**Taurian**") and thereafter with a company called Kanakia Spaces Reality Pvt. Ltd. (hereinafter referred to as "**Kanakia**"). He has submitted his employment letter with both of these companies, stating that he was an employee from November 2006 to February 2007 at Taurian, and from February 2007 to August 2017 at Kanakia. He has also enclosed few Employees Provident Fund receipts showing Kanakia as employer and a letter dated March

18, 2019 addressed by Kanakia to Employees Provident Fund Organisation stating that their employee, Mr. Mehta (*Noticee no. 4*) has been in their continuous service from February 2007 and accordingly they have paid his PF dues. Further, he has produced a copy of his Income Tax Return as well as form 16 for the period 2007-08 to substantiate that he was employed with Kanakia at that time.

32. *Noticee no. 4* with the help of aforesaid documents has sought exoneration from the charges made against him in the SCN. It remains undisputed that the official MCA records are still showing his association with the *Noticee Company*. He claims to be a Company Secretary and got appointed with *Noticee Company* on the basis of his professional expertise. As stated above, the *Noticee* has not submitted any verifiable documents to show his severance with the *Noticee Company* and he is still being shown as a Director of the *Noticee Company* as per record of MCA. Though, *Noticee no. 4* has not disputed that his name continues to be reflecting in the records of MCA, he has strongly disputed his relations with *Noticee Company* and to cement his submission, he has submitted his PF record, IT return and subsequent employment letters referred to above. I find that while the MCA records have been undeniably showing the *Noticee* as a Director of the Company thereby holding the *Noticee* liable for the inactions and violations allegedly committed by the Company pertaining to those investors grievance, the opposing evidences produced by the *Noticee* in support of the claim that he had taken employment elsewhere can also not be ignored and deserve to be considered before issuing necessary directions to the *Noticee*.

33. To sum up the matters with respect to *Notices no. 3 & 4*, in the backdrop that both of them have claimed to have resigned from the post of directorship, however, their names continue to be shown in MCA records, Annual Returns/Accounts etc., as continuing Directors of the *Noticee Company*. *Noticee no. 4* has also submitted that he had attempted to get the Form -32 filed with ROC showing the severance of his relationship with the Company, it went *in vain* for one or the other technical reasons. Since, the two *Notices* have not submitted any unimpeachable supporting documents evidencing effecting removal of their names from the records of the *Noticee Company*, the submission of these two *Notices* are not adequate enough to merit their exoneration from the proceedings, as burden of proof that they have resigned and their resignations were duly accepted by the *Noticee Company*, continues to rests on them. In this respect, I note that similar to the facts pertaining to *Notices no. 3 & 4*, in another case where an entity also disputing his directorship with a company, came up for consideration before the Hon'ble SAT in the matter of ***Kalidas Dutta v. SEBI*** (Order dated January 23, 2018 in Appeal No. 262 of 2016). The relevant observations of Hon'ble SAT are reproduced below:

“...we are of the considered opinion that this appeal can be disposed of with a direction to the appellant to obtain appropriate documents/orders from the competent authority to the effect that he was fraudulently appointed as director of the company in question on 10th February, 2015. For this purpose, the appellant is granted time up to one year to do the needful and submit the same to SEBI. In the eventuality of appellant producing the documents to the satisfaction of SEBI that he was fraudulently inducted as one of the directors of the company, SEBI will pass appropriate orders as per law.”

34. While relying on the above observations made by the Hon'ble SAT, in my considered view, it would also be appropriate that these two *Notices* i.e. *Notices no. 3 & 4* be given a time frame

for rectification of the necessary records with MCA by seeking appropriate legal recourse so as to vindicate their stand that they have duly resigned from the Company as per their submissions made before me.

35. It has already been highlighted in the preceding paragraphs that the *Noticee Company* as well as *Noticee no. 2* have not made any efforts for obtaining the SCORES authentication and for resolving the investors' grievances in spite of repeated reminders. It may be noted that protection of investors' interest is a key to secure a successful Securities Market, hence listed companies and their Directors should adopt active and prompt approach towards resolving investors' complaints. It may be emphasised here that in addition to the obligations under the provisions of Companies Act, the listed company is also under an obligation to redress all investors' complaints in compliance with the directions issued by SEBI from time to time in discharge of its regulatory functions.

36. Keeping in view the foregoing discussions and my concluding observations, in exercise of powers conferred upon me under Sections 11(1), 11(4), 11B (1) read with Section 19 of the Securities and Exchange Board of India Act, 1992, in order to protect the interest of investors and the integrity of the Securities Market and also after considering the entire facts of the case and to meet the ends of justice, I hereby issue the following directions:

- a) *Noticee no. 1 (Noticee Company)*, *Noticee no. 2* (Mr. Chandru Jaisingh Ramsinghani), *Noticee no. 3* (Mr. Shamlal Madanlal Khetan) and *Noticee no. 4* (Mr. Jitendra Shantilal Mehta) are restrained from accessing the Securities Market including from issuing prospectus, offer document or advertisement soliciting money from public and they are

further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner, till the investor grievances pending against the *Noticee Company* are resolved. It is clarified that during the period of restraint, the existing holding of securities of the *Noticees* including units of mutual funds, shall remain frozen.

- b) The aforesaid directions shall take effect from the date of issue of this order in respect of *Noticee no. 1* and *Noticee no. 2*. As far as the enforcement of the afore stated direction *qua Noticees no. 3 & 4* is concerned, it is clarified that the same shall come into effect with respect to Mr. Shamlal Madanlal Khetan and Mr. Jitendra Shantilal Mehta, on the expiry of three hundred and sixty fifth (365th) day from the date of issue of this order. Meanwhile, *Noticees no. 3 & 4* are directed to take urgent steps to obtain necessary order from the relevant Competent Authority for rectifying the records of MCA taking into account their resignation from the Directorship of the Company as per their claim made during the proceedings. In case no such order is produced by them before the end of 365th day, then the aforesaid direction shall come into force on the expiry of 365 days i.e. from the 366th day itself. Further, in case the order from a Competent Authority so produced by the aforesaid two *Noticees* is found to be not in favour of Mr. Shamlal Madanlal Khetan and Mr. Jitendra Shantilal Mehta, the direction issued above shall come into force from the date of production of the said order issued by a Competent Authority by the two *Noticees*.
- c) The Order shall come into force with the immediate effect *qua Noticee no. 1 & 2*.

37. A copy of this order shall be forwarded to the *Noticees*, all the recognized Stock Exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

DATE: JULY 30, 2020

S. K. MOHANTY

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA