

WTM/AB/IVD/ID4/15158/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: SHRI 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 Sanraa Media Ltd.

In respect of: -

Sl. No.	Name of the Noticee	PAN
1	Mrs. Uma Karthikeyan	AKPPK3166J

Background:

1. SEBI conducted an investigation into the issuance of Global Depository Receipts (hereinafter referred to as '**GDRs**') in overseas market by Sanraa Media Limited (hereinafter referred to as '**the company**'/ '**SML**') for the period April 01, 2008 to May 31, 2008. After conclusion of the investigations, a Show Cause Notice dated December 08, 2017 ('**SCN**') containing the findings of the investigation was issued to 8 entities including Mrs. Uma Karthikeyan (hereinafter referred to as '**the Noticee**') asking them to show cause as to why action under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') should not be taken against them for the alleged violation of the provisions Section 12A(a), (b), (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4(1), 4(2) (f), (k), (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'), as applicable. A supplementary show cause notice dated June 12, 2018 was also issued to SML (hereinafter referred to as '**supplementary SCN**'), calling upon it to show cause as to why suitable directions

including the direction to bring the money back should not be issued against it under Sections 11(1), 11B and 11 (4) of the SEBI Act.

2. I note that the facts of the matter, as elaborated in the aforementioned order dated January 02, 2019 are as follows:

- a. SML had issued 10 million GDRs (amounting to USD 27.50 million) on May 02, 2008 on the Luxembourg Stock Exchange, equivalent to 2,00,00,000 equity shares of Rs. 10 each.
- b. Clifford Capital Partners A.G.S.A. ('Clifford'), a company incorporated in the British Virgin Islands was the only subscriber to the GDR issue.
- c. The subscription amount was paid by obtaining dollar term loan facility from Banco Elisa S.F.E., S.A. ('Banco') vide Credit Agreement dated April 17, 2008 ('Credit Agreement').
- d. The dollar term loan facility was secured by Account Charge Agreement dated April 30, 2008 ('Account Charge Agreement') between SML and Banco whereby the GDR issue proceeds were pledged to Banco.
- e. The Account Charge Agreement was signed Mr. Annaswami Venkatramani (Chairman of the Company) on behalf of SML, who was authorised to do so by the Board of Directors of SML through a resolution passed in its meeting held on January 31, 2008. The Board of Directors in the same meeting had also approved a resolution authorizing Banco to use the funds as deposited in the account (where GDR proceeds were to be credited) as security in connection with any loan. These agreements enabled Clifford to avail a loan from Banco for subscription of GDRs of SML by providing GDR proceeds as collateral for the loan.
- f. Clifford defaulted on repayment of loan obtained by it, and thereafter GDR proceeds were set off by Banco against the loan amount.
- g. Therefore, SML did not receive consideration for the GDR issue to the extent of US\$ 27.244 million. Further, the arrangement of Credit Agreement and Account Charge Agreement, which resulted in

facilitating the subscription of GDR issue of SML was not disclosed to the stock exchange.

- h. It was found that suppression of such material information was primarily meant to mislead Indian retail investors that GDRs were genuinely subscribed, whereas in reality, the GDR issue was facilitated by SML itself.
3. Thus, it was noted that the GDR issue of SML, was subscribed by a single entity, namely Clifford, by obtaining a loan from Banco. The loan taken by Clifford was secured by SML by way of pledge of the GDR issue proceeds by SML. When Clifford defaulted on the loan, Banco invoked the security and the GDR proceeds to the extent of US\$ 27.244 million were set off against the loan. Hence, the GDRs were effectively issued without any consideration.
4. Mrs. Uma Karthikeyan (Noticee herein) was made a noticee in the matter because she, as an executive director of SML, along with Mr. Sukumar Subramanian, had issued a CEO/CFO certificate on September 04, 2009, which stated that, financial statements for FY 2008-09 of SML do not contain any materially untrue statements, nor omitted any material fact, nor contain statements that might be misleading. Further she attended the Board Meeting where Mr. Annaswami Venkatramani (Chairman of SML) was authorized to sign the Account Charge Agreement and Banco was authorized to use the funds as deposited in the account where GDR proceeds were to be credited as security in connection with any loan. Therefore, it was alleged that the Noticee herein had knowledge about the subscriber to GDR issue and the agreements which enabled Clifford, the sole subscriber to the GDR issue of SML, to avail loan from Banco for subscription of GDRs of SML by providing GDR proceeds as collateral for the loan extended by Banco to Clifford. The GDR issue would not have been subscribed if SML had not given such security towards the loan taken by Clifford. Hence, it was alleged that *inter alia* the Noticee herein was party to the fraudulent scheme and had violated Sections 12A (a),(b)

and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

5. Thereafter, a final order dated January 02, 2019 was issued against the 8 Noticees, wherein the following directions were issued:

- a. *Noticee no. 1 shall recover a sum of US \$27.244 million from Noticee no. 8 and bring back the money into SML's bank account in India within three months from the date of this Order. It is clarified that Noticee nos. 2 to 7 and the other present directors of SML shall ensure and facilitate the compliance of this direction by SML, and furnish a Certificate from a peer reviewed Chartered Accountant of ICAI along with necessary documentary evidences to SEBI, certifying the compliance of this direction, within three months from the date of this Order.*
- b. *The following Noticees are hereby restrained from accessing the securities market and further prohibit them from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of **five years** from the date of this order. During the period of restraint, the existing holding (including units of mutual funds) of the following Noticees shall remain frozen:*

Noticee No.	Name of the Noticees	PAN
2	Mr. Annaswami Venkatramani	AABPV3960F
3	Mrs. Uma Karthikeyan	AKPPK3166J
4	Mr. Sukumar Subramanian	AOUPS4543L
5	Mr. Rajeev Agarwal	AAJPA6719K
6	Mr. Krishnan Rajagopal	AEHPR7931J
7	Mr. Rajendran Sivashankaran	AVAPS0218D
8	Clifford Capital Partners A.G.S.A.	-----

- c. *The following Noticee is hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, from the date of this Order till the expiry of **five years** from the date of bringing back the money into SML's bank account in India (as directed in para 26(a) above). During the period of restraint, the existing holding (including units of mutual funds) of the following Noticee shall remain frozen:*

Noticee No.	Name of the Noticees	PAN
1	Sanraa Media Ltd.	AAACS9093A

6. Aggrieved by the abovementioned order dated January 2, 2019, Mrs. Uma Karthikeyan (the Noticee herein) filed an appeal before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**'). The Hon'ble SAT, vide order dated May 19, 2021 held as under:

"11. We are also satisfied that in view of the aforesaid, the show cause notice was never served upon the appellant nor was the appellant aware of the date of hearing and therefore the proceedings proceeded ex parte which was in violation of the principles of the natural justice. The impugned orders cannot be sustained and are quashed in so far as it relates to the appellant. Both the appeals are allowed with no order as to costs. The matter is remitted to the AO / WTM to pass a fresh order after serving the show cause notice and after giving an opportunity of hearing and thereafter proceed in accordance with law. In this regard, we direct the appellant to appear personally or through Advocate before the AO and WTM on June 15, 2021 and from there onwards the authority will proceed in accordance with law. In the circumstances of the case parties shall bear their own costs."

7. As directed by the Hon'ble SAT, after serving the SCN, an opportunity for personal hearing was granted before me on June 15, 2021 to the Noticee. The Authorized Representative (AR) of the Noticee appeared for the hearing and requested for copies of certain documents, which were directed to be provided to the Noticee. The AR was advised to file a reply and a hearing was also scheduled for October 5, 2021. On the scheduled date, ARs of the Noticee appeared before me and made submissions. The Noticee also filed a reply dated July 28, 2021, before the date of hearing. The submissions of the Noticee, in brief, are as follows:

- a. *The allegations in the SCN relate to the GDR issue which was more than 13 years ago. Initiation of proceedings after such a long delay prejudices the ability of the Noticee to put up an adequate response to the allegations made in the SCN. In support of this submission, the Noticee has relied on judgments like Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim [(1997) 6 SCC 71], HB Stockholdings Ltd. v. SEBI (Order of SAT dated August 27, 2013), Libord Finance Ltd v. Whole Time Member, SEBI (Order of SAT dated March 3, 2008), Rajeev Bhanot and Ors v. SEBI (Order of SAT dated July 09,2021) and Rakesh Kathotia v. SEBI (Order of SAT dated May 27, 2019).*
- b. *The allegation is vague, generic and unsupported by any document or evidence. The SCN does not allege that the Noticee played any such specific role of involvement. The Noticee has relied on the orders of the Hon'ble SAT in the matters of Vikas Bengani v. SEBI (Order dated March 8, 2010) and Dhanalakshmi Bank Ltd. v. SEBI (Order dated April 20, 1999), and order of the Supreme Court in the matter of Commissioner of Central Excise, Bangalore v. Brindavan Beverages Pvt. Ltd. and Ors. [(2007 5 SCC 388] in this regard.*
- c. *The GDR issue at Sanraa was being looked after by Mr. Annaswamy Venkatramani, the Chairman of Sanraa. The Noticee was not a decision-maker or involved in the execution of the GDR documentation. Insofar as the GDR issue, the Noticee was involved only to the extent of approving the board resolution, which was in ordinary course of*

business. Further, the Noticee does not recall signing and approving the resolutions of January 31, 2008.

- d. The Noticee had no knowledge of any fraudulent bank transaction as alleged in the SCN, and had no reason to believe that there was some fraudulent act being committed.*
- e. The Noticee relied on judgments like SMS Pharmaceuticals Ltd. v. Neeta Bhalla and Anr (AIR 2005 SC 2327), Adi Cooper v. SEBI (SAT Appeal No. 124 of 2019), Adesh Jain v. SEBI (SAT Appeal No. 217 of 2020) and submitted that she cannot be held liable for any alleged contravention/ violation merely because of her position as a director in Sanraa and, also having participated in the board meeting of January 31, 2008.*
- f. With respect to the CEO/ CFO certification, the Noticee stated that she signed the certificate based on the explanations and information provided to her. The statements made in the CEO/ CFO certificate were not misleading to the Noticee's knowledge, for the Noticee to be accused of fraud. They were certified based on the knowledge and data available with the Noticee. The Notice was not aware of any transactions wherein the funds in Banco were utilized to release Clifford's loan.*
- g. The requirement of 'intention' is a pre-requisite to prove 'fraud' for violation of PFUTP Regulations.*
- h. Directors/ key managerial personnel cannot be automatically held responsible for the actions of a company, given that there is no specific provision under the SEBI Act making the directors/ key managerial personnel automatically liable for the offences allegedly committed by the company.*
- i. The Noticee has neither derived any benefit nor any advantage from the alleged contravention in the SCN.*
- j. The SCN does not indicate the actions proposed against the Noticee and no specific measures or specific directions sought to be taken have been mentioned.*

Consideration of issues and findings:

8. I have considered the allegations made in the SCN along with the findings of the Investigation; replies received to the aforesaid SCN and submissions made by the Noticee pursuant to the hearing granted to her; and all other relevant material available on record.
9. Before proceeding further, the relevant provisions of law are reproduced hereunder:

SEBI Act –

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

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 recognized 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;***

SEBI (PFUTP) Regulations, 2003

Regulation 3. Prohibition of certain dealings in securities

“No person shall directly or indirectly

- (a) buy, sell or otherwise deal in the 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.*

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

- (1) *Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*

10. At the outset, I note that the Noticee has submitted that there has been a delay in the proceedings and that the delay has caused prejudice to the Noticee. The Noticee has also relied upon judgments like *Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim* [(1997) 6 SCC 71], *HB Stockholdings Ltd. v. SEBI* (Order of SAT dated August 27, 2013), *Libord Finance Ltd v. Whole Time Member, SEBI* (Order of SAT dated March 3, 2008), *Rajeev Bhanot and Ors v. SEBI* (Order of SAT dated July 09, 2021) and *Rakesh Kathotia v. SEBI* (Order of SAT dated May 27, 2019) to contend that there has been inordinate delay in the initiation of the proceedings. It is observed that in the matter of *Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim* (*supra*) cited by the Noticee, the Hon'ble Supreme Court has held that wherever a power is vested in a statutory authority without prescribing a time-limit, such power must be exercised within a reasonable time. In this regard, I note that in the present case, 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 an overseas 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 entities 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, the GDR issues were examined. SEBI initiated investigation as soon as SEBI came to know that such companies have adopted the *modus operandi* as referred to above. 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 in such large number of fraudulent GDR issues. Such information *inter alia* included seeking information on diversion of funds and subsequent tracing of proceeds from large number of entities and the details of (a) GDR issuer companies, (b) custodian of securities, (c) overseas depository, (d) overseas banks, (e) subscribers of GDR issue (mostly overseas), (f) lead manager, (g) various layers of transactions, etc., which was not readily forthcoming. Therefore, SEBI had to collect information and documents from various sources including approaching the foreign regulators for assistance in procuring information and documents from the concerned entities situated outside India from many jurisdictions. 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 these matters was complex, tedious and time consuming. Further, in another GDR matter, one of the entities, namely, Pan Asia Advisors Ltd. even contested the jurisdiction of SEBI over the GDRs which was ultimately decided by Hon'ble Supreme Court in *SEBI Vs. Pan Asia Advisors Ltd. & Anr.* (2015) 14 SCC 71 on July 06, 2015.

11. It is noted that investigation was initiated in respect of 59 GDR issues made by 51 Indian Companies during the period 2002 to 2014. The investigation in the extant matter was completed in the year 2017, and thereafter a SCN dated December 8, 2017 was issued to the Noticees. The service of the said SCN also took additional time, especially as some of the notices had to be affixed, including that of the Noticee herein. Once the said SCNs were served on all the Noticees, personal hearings were granted to the Noticees who had sought for the same. Subsequently, a final order was passed on January 2, 2019. The Noticee herein

filed an appeal before Hon'ble SAT with a delay of 650 days, which was condoned. Subsequently, the matter was remitted to SEBI by the Hon'ble SAT, vide order dated May 19, 2021 for passing of fresh orders. Following the same, as directed by the Hon'ble SAT, an opportunity for personal hearing was granted to the Noticee. As noted above, on the date of hearing, i.e. June 15, 2021, the AR requested for certain documents, and these were directed to be provided to them. The Noticee filed a reply dated July 28, 2021 and another hearing was held on October 5, 2021. From the above facts and circumstances of the case, I am of the view that the time taken in the matter is reasonable, as required by the judgment of the Hon'ble Supreme Court in the matter of *Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim (supra)*. It cannot be said that there was inordinate and unnecessary delay in the matter as contended by the Noticee. It is further noted that there is no provision in the SEBI Act, 1992 which provides limitation period for taking action for the violation of the provisions of the Act or the Regulations made thereunder. On the contrary, I note that Section 11C of the SEBI Act, 1992, expressly provides that SEBI may initiate investigation "at any time", if it has *inter alia* reasonable ground to believe that any person associated with the securities market has violated any of the provisions of the SEBI Act, 1992 or the rules or the regulations made or directions issued thereunder, against such person.

12. 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....”

13. In this connection, it is worth mentioning that in another GDR matter, namely **Jindal Cotex Limited and Ors Vs. SEBI** (Date of Decision: February 5, 2020, SAT Appeal No. 376 of 2019), the Hon'ble SAT held that arguments on delay in investigation and consequently affecting natural justice were devoid of any merit. In the aforesaid matter, the Hon'ble Tribunal, while dismissing the ground of delay acknowledged the complexity involved in the entire manipulative GDR issue and appreciated the time taken by SEBI to gain information relating to the various entities from multiple jurisdictions. I note that the facts and circumstances of the present case are similar to the Jindal Cotex matter and thus the ratio of the Jindal Cotex matter squarely applies to the present matter.

14. Again, in the matter of **G.V. Films Ltd. Vs. SEBI** (Date of Decision: February 15, 2021, SAT Appeal No. 168 of 2020), the Hon'ble SAT opined on the issue of delay in a similar matter pertaining to issue of GDR's as follows:

“Having heard the learned counsel for the parties on this issue, we find that there is no doubt that there has been a delay in the issuance of the show cause notice after 10 years from the date of the GDRs issue. However, on this ground of delay, the proceedings cannot be quashed for the reasons that we find that an investigation was required to be done beyond the borders of India which took time.”

(Underline added)

15. The Noticee has cited several orders of the Hon'ble SAT like *HB Stockholdings Ltd. v. SEBI* (Order of SAT dated August 27, 2013), *Libord Finance Ltd v. Whole Time Member, SEBI* (Order of SAT dated March 3, 2008), *Rajeev Bhanot and Ors v. SEBI* (Order of SAT dated July 09, 2021) and *Rakesh Kathotia v. SEBI* (Order of SAT dated May 27, 2019) to contend that the time taken in the matter is grave enough to vitiate the proceedings. However, in cases specifically relating to the time taken in GDR issues, the Hon'ble SAT has appreciated the complexity involved in such investigations and held that proceedings could not be quashed on grounds of delay. In view of the above, I do not accept that the time taken in the matter would vitiate the proceedings.
16. Moving forward, I note that the Noticee has also stated that she was not provided a copy of the investigation report. From the SCN and Annexures, I find that all the relevant and relied upon documents in support of the SCN and also the findings of the investigation captured in the SCN have been forwarded to the Noticee. I also note that the Noticee has filed a detailed reply in the matter. In view of this, I find that the Noticee has been supplied with all relevant documents to defend her case and no prejudice is caused to the Noticee on this count.
17. The Noticee has also submitted that the SCN is vague and that the allegation against her is generic and not supported by any documentary evidence, and has cited the order of the Hon'ble Supreme Court in the matter of *Commissioner of Central Excise, Bangalore v. Brindavan Beverages Pvt. Ltd. and Ors.* (*supra*) in this regard. I note the SCN issued to the Noticee clearly indicates the specific nature of violations that have been alleged in terms of different provisions of the PFUTP Regulations, 2003. The SCN has also clearly spelt out the provisions under which the directions, if found necessary, would be issued. All documents in support of the allegations made were provided as annexures to the SCN. These include copy of CEO/CFO certificate dated September 4, 2009, issued by the Noticee as well as the board resolution authorizing Banco (certified extract of the minutes) to use the funds as deposited in the account (where GDR proceeds were to be

credited) as security in connection with any loan. Along with the SCN, copies of the following documents relied on to substantiate the allegations were enclosed as Annexures 1 to 10, details whereof are as under:

Annexure no.	Particulars
1	Copy of Letter dated June 17, 2015 received from SML by SEBI inter alia furnishing details such as list of allottees, copy of board resolution, annual reports of the company, intended use of GDR proceeds etc.
2	Copy of Credit Agreement dated April 17, 2008 between Clifford and Banco relating to a dollar term loan facility to subscribe to GDRs of SML
3	Copy of the drawdown notice given by Clifford to Banco for release of funds under the Credit Agreement.
4	Copy of the certified extract of the minutes of the Board meeting of SML held on January 31, 2008 wherein the resolution with respect to opening of bank account with Banco and authorizing Banco to use the funds in such account as security in respect of loan, if any.
5	Copy of the Account Charge Agreement executed on April 30, 2008 between SML and Banco
6	Copy of Bank Account Statement opened by SML with Banco
7	Copy of letter dated February 05, 2009 from SML to Banco requesting transfer of funds from its bank account to the loan account of Clifford.
8	Copy of CEO/CFO certificate dated September 4, 2009, issued by Mrs. Uma Karthikeyan and Mr. Sukumar Subramanian.
9	Copy of SML's Banco Bank Account Statement, which contains details of GDR proceeds received by SML.
10	Copy of email sent to HDFC Bank by SEBI seeking statement of account for the current account maintained by SML.

In view of the above, I find that the SCN provides all necessary documents in support of the allegations made therein. Thus, the judgments cited by the Noticee would not apply to the extant matter, as the SCN clearly lays out the allegations and provides details thereof, including supporting documents. Hence, I am unable to accept the contention of the Noticee.

18. Proceeding further, I note that on June 06, 2007, SML had informed BSE that, at its EGM held on February 1, 2007, the issuance of ADR/GDR/FCCB and other instruments not exceeding USD 27.5 million was considered. Further, vide corporate announcement dated January 31, 2008, SML informed BSE that its Board of Directors, in its meeting held on the same date, decided to form a board committee called the "GDR committee", for issue of GDRs. Thereafter, vide corporate announcement dated May 3, 2008, SML informed BSE on the outcome of the meeting of the GDR committee held on May 2, 2008, stating that it has considered and approved allotment of 10 million GDR's of USD 2.75 each, amounting to a total of USD 27.5 million, representing 20 million equity shares of Rs. 10/- each, at a price of Rs. 55/- per share (including 45/- as premium per share) to The Bank of New York (the depository) on behalf of the GDR holders. Fundabilis GMBH, a Switzerland based entity, was Lead Manager of GDR issue of SML.

19. I note that during investigations, SML had stated to SEBI that the GDR issue was subscribed by 5 entities. However, it was found that the GDR issue was actually subscribed by a single entity, *i.e.* Clifford Capital Partners A.G.S.A. The subscription amount was paid by Clifford Capital Partners A.G.S.A by obtaining dollar term loan facility (amounting to USD 27,500,000) from Banco Elisa S.F.E., S.A., by entering into a Credit Agreement, as noted above. The dollar term loan facility in turn, was secured by pledging of the GDR proceeds by SML to Banco, by way of the Account Charge Agreement. Through the Account Charge Agreement, SML had guaranteed by way of first fixed charge in favour of Banco the rights, title, interest and benefit in and to the account as well as the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof, so as to secure the obligations of Clifford emanating from the Credit Agreement. As noted in preceding paras, the Account Charge Agreement was signed by the Chairman of SML, who was authorized to do so by the Board of Directors of SML through a resolution passed in its meeting held on January 31, 2008. From the copy of the certified extract of the minutes of SML's Board meeting held on January 31, 2008 which was annexed to the Credit Agreement, it is

observed that the Board of Directors of SML had *inter alia* passed the following resolution in the said meeting:

“RESOLVED THAT a bank account to be opened with Banco Efisa, S.A. Lisbon (“the Bank”) or any the branches of Banco Efisa S. A., Lisbon including the off-shore branch outside India for the purpose of Business Operation and also to collect subscription money on the proposed Global Depository issue.

RESOLVED FURTHER THAT Mr. Annaswamy Venkatramani, Chairman of the company be and is hereby authorized to sign, execute any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time as may be required by the Bank.

RESOLVED FURTHER THAT Mr. Annaswamy Venkatramani, Chairman of the company be and is hereby authorized to draw cheques and other documents and to give instructions from time to time as may be necessary to the said Banco Efisa, S.A. or any branch of Banco Efisa S.A., Lisbon, for the purpose of operation of and dealing with the said bank account and to carry out other relevant and necessary transactions and generally to take all such steps and to do all such things as may be required from time to time on behalf of the Company.

RESOLVED FURTHER THAT the Bank be and is hereby authorized to use the funds so deposited in the aforesaid bank account as security in connection with loans if any as well as to enter into any escrow agreement or similar agreements if and when so required.”

20. From the aforesaid extract of the minutes, it is observed that the board of directors of SML had authorized Mr. Annaswami Venkatramani, Chairman of SML to sign, execute any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time as may be required by Banco. The Board of Directors had further authorized Banco to use the funds deposited in the bank account opened with Banco for receiving the subscription money in respect of the GDR issue of the company, as security in connection with loans, if any. Further, from Annual Report of SML for FY 2007-08 (page 30), it is observed that, *inter alia*, the Noticee had attended the aforesaid meeting.

21. I note that the Noticee has admitted that she was involved to the extent of approval of the board resolution. However, she has submitted that the same was in the

ordinary course of business. I note that the Noticee has relied upon the order of the Hon'ble SAT in the matter of *Adi Cooper & Anr. Vs. SEBI (SAT Appeal No. 124 of 2019)* and *Adesh Jain Vs. SEBI (SAT Appeal No. 217 of 2020)* to contend she merely attended the meeting dated January 31, 2008 wherein the above mentioned resolution was passed by the Board of SML and that there was nothing in the resolution that those present at the meeting would notice anything illegal. In this regard, I note that the Hon'ble SAT while dealing with the interpretation of the board resolution, observed that *"the resolution could also mean that the proceeds would be utilized by the bank as security in connection with a loan taken by the company itself"*. Thus, as per Hon'ble SAT also, the interpretation canvassed by the Noticee is only one of the possible interpretation and not the only interpretation. I also find that Hon'ble Supreme Court of India vide its judgment and order dated September 21, 2021 passed in Civil Appeal No. 380 of 2020 – *SEBI Vs. Adi Cooper* and other connected civil appeals, while setting aside the order dated November 05, 2019 passed by Hon'ble SAT in the Adi Cooper matter, held as under:

".....The Securities Appellate Tribunal was impressed by the fact that although the respondent was party to the resolution, being a whole-time director and member of the Board of Directors of the Company, had only resolved that Company may open an account with the EURAM Bank for the purpose of deposit of GDR proceeds. The resolution does not stipulate that the proceeds would be used as security in connection with the loan taken by another entity. The latter part of this submission is not in consonance with the purport of the resolution passed by the Board on January 30, 2008. Whereas, the SEBI had rightly noted that such resolution facilitated the transaction with Vintage and was a fraudulent transaction considering the fact that neither the arrangement nor the resolution was ever disclosed to the shareholders of the Company or the investors of the securities market through BSE. This aspect has not been reckoned by the Appellate Tribunal. This is a manifest error committed by the Appellate Tribunal.

In light of the above, we have no hesitation in taking the view that the Appellate Tribunal was unduly impressed by only one fact; but ought to have construed the resolution in the manner done by the

SEBI and in particular, the inaction of the Board of not disclosing the arrangement to the shareholders or the investors of the securities market through BSE.

As a result, we set aside the impugned judgment and order and instead uphold the view taken by the SEBI vide its decision dated 28.02.2019.....”

22. In the present case also, resolution is similarly worded as the resolution involved in the case of Adi Cooper (supra) was and disclosures regarding loan agreement and pledge agreement were not made by the SML to the stock exchanges. I note that in the matter of Adesh Jain (supra) also, SEBI had preferred a Civil Appeal No. 180 of 2021 before Hon'ble Supreme Court of India, which has been disposed of by Hon'ble Supreme Court vide its order dated September 21, 2021 whereby order passed by Hon'ble SAT in Adesh Jain (supra) has been set aside and the parties have been relegated to Hon'ble SAT for consideration of the appeal of Adesh Jain afresh. Further, in the present case, I note that the Noticee participated in the Board Meeting dated January 31, 2008 wherein the resolution was passed. The Board Resolution states that it “*authorized to use the funds so deposited in the aforesaid bank account as security in connection with loans if any*”. Assuming, for the sake of arguments that authorization to give the monies lying in the Bank account of SML as security was in connection with the loan taken by the SML only, then also it is quite irrational and patently wrong that the company would take loan of money by pledging its account held with Banco where the GDR proceeds were deposited. Thus, the GDR proceeds were pledged for raising the loan which was used for subscription of the GDR issue. The aforesaid resolution enabled the fraudulent scheme. Despite such patently wrong resolution, the Board of Directors, including the Noticee herein, did not raise any issue regarding the same. This fact clearly points to the fact that the Resolution was passed not to facilitate its own loans but to facilitate the loan taken by Clifford by entering into the Credit Agreement. Therefore, the submission made by the Noticee is not tenable.

23. The Noticee has stated that she does not recall signing the board resolution. The Noticee has further stated that she did not have access to the bank account statements, nor did she have any knowledge of the fraud. In this regard, I note that the Noticee has not denied attending the Board Meeting dated January 31, 2008. As per the disclosures made by the company in the Annual Report, the Noticee attended the said Board Meeting. From the Annual Report, I also note that she was a part of the Audit Committee and is a Chartered Accountant (CA). The Noticee was also a whole time executive director of the Company. The Annual Report of SML for 2007-08 names her the Whole Time Director - Director Finance. In such a scenario, I find that the submissions of the Noticee are not acceptable and she cannot plead ignorance. In this context, I note that in another GDR case, namely, *Mohandas Shenoy Adige Vs. SEBI* (Appeal No. 511 of 2020, Order dated July 28, 2021), the Hon'ble SAT noted that the Appellant was a director in the company for several years and was the member of the audit committee which handled/reviewed the financial matters of the Company during the period when the GDR proceeds vanished from the accounts of the Company. In view of the same, the Tribunal held that *"Taking into consideration all these facts, in our view it would be naive to conclude that the appellant Mohandas was only an independent director and had innocently consented to the Board decision authorising Mr. P.V.R. Murthy to deal with the GDR including loan if any."* In the instant matter, I find that the Noticee was not an independent director but Whole Time Director - Director Finance, she was also a member of the audit committee and thus the observations of the aforesaid case applies to the present case as well.

24. Further, I note that in the matter of Kishore Hegde Vs. SEBI (SAT Appeal No. 300 of 2019), vide its order dated November 5, 2019, the Hon'ble SAT held as follows:

"The contention of this appellant that he was not involved in the day to day running of the company cannot be accepted as he was found to be part of the resolution process of the company and his involvement in the issuance of the GDR proceeds. Apart from the above, we also find that the appellant

was also the Chairman of the audit committee of the company. The WTM found that being the Chairman of the audit committee, he did not place any objection as to why the GDR proceeds did not reach the company and how the proceeds were utilized. We are thus, of the opinion that in the light of the findings given by the WTM, the appellant Kishore Hegde was part of the scheme through which issue of GDR by the company was effected through a fraudulent arrangement of loan agreement and pledge agreement. We are also of the opinion that the conduct of the appellant Kishore Hegde was inimical to the interest of the company, to the investors, as well as to the shareholders and, the action of the appellant Kishore Hegde was in violation of Section 12A of the SEBI Act read with Regulations 3 and 4 of the PFUTP Regulations. The order of the WTM debarring the appellant Kishore Hegde from accessing the securities market, etc. for a period of two years does not suffer from any error of law.”

I am of the view that the aforesaid observations apply to the extant case as well. As discussed above, the Noticee was an executive director of SML and was also a part of the audit committee. The Noticee attended all the meetings of the Board. Despite being a CA and having the relevant expertise and training, the Noticee did not raise any concerns regarding the manner of the issuance of the GDRs as referred to above.

25. I note that the Noticee has cited the judgment of the Hon'ble Supreme Court in the matter of *SMS Pharmaceuticals Vs. Neeta Balla (Supra)* to contend that the role of a director in a company is a question of fact depending on the peculiar facts in each case. From the above facts pertaining to the role played by the Noticee in SML it is apparent that she was involved in the GDR issue. I also note that the Noticee has stated that it was not within the Noticee's remit to question, challenge and investigate every single position of fact provided in the company's systems and that too from the Chairman. In this regard, the Noticee has cited the judgment of the Hon'ble Supreme Court in the matter of *Chintalapati Raju vs. SEBI [(2018) 7 SCC 443]* for the purpose that it relied on the 1901 judgment of the House of

Lords in *Dovey and the Metropolitan Bank of England and Wales Vs. John Cory* to contend that she did not have any knowledge or awareness, to be accused of fraud. I note that the factual situation in Dovey's matter is distinguishable from the case at hand due to the changed scenario regarding duties and responsibilities of directors in a company and duties of those executive directors who are also members of the audit committee. In the matter of *N. Narayan Vs. AO, SEBI* (Order dated October 5, 2012), The Hon'ble SAT noted as follows:

"12... The director of a company is expected to exercise due care and diligence in the approval of documents brought on the table during Board meetings. It is the responsibility of a director to identify deficiencies wherever possible by employing verification and scrutiny expected of a prudent man. Meetings of Board of Directors are not rituals where documents are signed at the behest of the chairman or managing director. A director cannot take a stand that he has approved the documents totally depending on the integrity and expertise of the managing director. We are not observing that the director of a company should be a know all, but the duty expected of a prudent person cannot be abdicated by him.

...

With the changing scenario in the corporate world the concept of corporate responsibilities is also rapidly changing day by day. The director of a company cannot confine himself to lending his name to the company but taking light responsibility for its day to day management. While functions may be delegated to professionals, the duty of care, diligence, verification of critical points by directors cannot be abdicated. The directors are expected to have a hands on approach in the running of the company and take up responsibility not only for the achievements of the company but also the failings thereto."

(underline added)

26. Further, I note that in the extant case the Noticee was an executive director and also part of the audit committee. As per the Annual Report of 2007-08, the Noticee

was dealing with work related to finance in SML. She is a CA by profession and hence her expertise was required more to raise red flags during the board meeting where the resolution was passed, regarding the raising of money through issue of GDRs and pledging of the GDR proceeds for securing the loan taken by the sole subscriber of the GDR issue. On the other hand, I note that in the cited case of *Dovey and the Metropolitan Bank of England and Wales Vs. John Cory* the director was deceived by his own officers, whereas in the extant matter, the Noticee was herself part of the Board that passed the aforesaid resolution. Further, the matter of *Chintalapati Raju vs. SEBI [(2018) 7 SCC 443]* is also distinguishable as the appellant therein was a non- executive director during the relevant period, unlike the notice who was an executive director, and also part of the Audit Committee. The Audit Committee, *inter alia*, are required to review financial statements before submissions to the board, and also has the authority to investigate into relating matters. Hence, it was well within the ambit of the Noticee's prescribed duties and functions to, at the very least, raise questions as executive director of the company and also as a member of the audit committee, on events like pledging of the GDR issue proceeds for securing the loan granted by Banco to Clifford and subsequent writing off of the GDR proceeds when Clifford defaulted on its loan obligations.

27. I also note that in her submissions, the Noticee has stated that she was on maternity leave as well as an unpaid sabbatical from March 2011 onwards. Thereafter, she decided not to rejoin SML and resigned from SML on June 1, 2012. Her resignation was accepted by the board of SML on August 28, 2012. I note that the board meeting wherein the above mentioned resolution the use of the GDR proceeds as security was authorized, was held on January 31, 2008. The GDRs were issued on May 2, 2008. Further, SML requested transfer of USD 27.244 million (including interest) towards closure of the loan taken by Clifford on February 05, 2009. Thus, at all these critical points, the Noticee was part of the company and was neither on leave nor had resigned.

28. Further, I note that the Noticee has stated that she was not part of any fraudulent scheme, nor did she have any intent to defraud, which, as per her submissions, is an essential element to prove an allegation of fraud. The Noticee has also cited judgments like *Union of India v. Chaturbhai M. Patel*, *A.L.N, Narayanan Chettyar v. Official Assignee*, *Hanumat v. State of Madhya Pradesh* and *Nandakishore Prasad v. State of Bihar* and submitted that, for proving charges of fraud under PFUTP Regulations, the evidence adduced must be compelling which can be inferred by logical process of reasoning from the totality of facts and circumstances surrounding the allegations. In this regard, I note that on May 3, 2008 SML vide corporate announcement, informed BSE on the outcome of the meeting of the GDR committee held on May 2, 2008, that it has considered and approved allotment of 10 million GDR's of USD 2.75 each, amounting to USD 27.5 million representing 20 million equity shares of Rs. 10/- each at price of Rs. 55/- per share (including 45/- as premium per share) to The Bank of New York (the depository) on behalf of the GDR holders, which would have led investors to believe that the said GDR issue was genuinely subscribed. However, I note that the subscription was through arrangement of obtaining loan and creating a charge on GDR proceeds, which resulted in and facilitated subscription of GDR issue of the company by only Clifford. Thus, by the said disclosure to BSE on May 3, 2008, the investors in India were made to believe that the issuer company i.e. SML has acquired a good reputation in terms of investment potential and hence, foreign investors have successfully subscribed to the GDRs when in fact the GDRs were subscribed by only one subscriber i.e. Clifford and that too with the support of Account Charge Agreement. In this regard, in the *Adi Cooper matter (supra)* the Hon'ble Supreme Court has observed that the board resolution facilitated the transaction and was a fraudulent transaction considering the fact that neither the arrangement nor the resolution was ever disclosed to the shareholders of the Company or the investors of the securities market through BSE. In the present case also it is noted that the Company did not make any disclosure about the Credit Agreement and Account Charge Agreement. In my view, this non- disclosure had the potential to 'induce' or to mislead the investors to remain invested or to invest or to divest in the securities

of the Company. I note that the evidence available on record in the form of board resolutions, Credit Agreement, Account Charge Agreement, disclosure made to the stock exchanges by SML, etc. show higher degree of probability, of bringing out of inducement or misleading investors to deal or abstain from dealing in the securities of the Company and consequential fraud committed. Therefore, I find that evidence available on record and inferences drawn from such evidence show higher degree of probabilities and is in accordance with observations made by the Hon'ble Supreme Court and Hon'ble SAT.

29. Further, as noted above, the Noticee was also a member of the Audit Committee of SML during financial year 2007-2008 and attended 6 meetings (out of 6) as well as in 2008-2009 and attended 5 meetings (out of 5) of the audit committee. I note that the Audit Committee of SML consisted of two independent directors and one executive director, *i.e.*, the Noticee. I note that the default of loan by Clifford and subsequent adjustment of loan by Banco from the GDR proceeds resulting in non-remittance of GDR proceeds amounting to USD to SML occurred during this time. In this regard, Clause 49(II)(D) of the erstwhile Equity Listing Agreement which dealt with the role of the Audit Committee of listed companies specified that one of the duties of the Audit Committee is the oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible. In terms of the said clause, it was the duty of the Audit Committee of SML to examine the financials of the Company and ensure that the same is reported correctly. As discussed in the previous paras, the non-receipt of USD 27.244 million from the GDR proceeds due to loan default by Clifford was fraudulently not disclosed by SML in its Annual Reports or to the stock exchanges. I find that failure to raise any concern regarding the non-receipt of USD 27.244 million, as member of the audit committee as well as the board of directors of SML, shows that the Noticee had knowledge of the fraud but concealed it. I further note that the Noticee was an Executive Director and was present in the Board Meeting dated January 31, 2008 when the

aforementioned Board Resolution was passed, leading to the conclusion that these she was involved in the fraudulent GDR issue by SML.

30. In respect of liability of the directors for the fraud committed by a Company, the Hon'ble Supreme Court, in the matter of *N. Narayanan v. Adjudicating Officer, SEBI* (2013) 12 SCC 152 has observed as under:

“33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.”

31. On perusal of SML's annual report 2008-09, it is observed that SML has not accounted for transfer made on February 05, 2009, of US\$ 27.244 million towards closure of the loan taken by Clifford. However, SML has reported 65.92 crores, as investment in overseas companies under Asset side of the Balance sheet, under the head Long term investment. Thus, SML has reported as long term investments, instead of receivables from Clifford. Therefore, financial statements from FY 2008-09, has not represented a true picture of the state of affairs of SML. Further, I find that, SML's executive directors (including the Noticee herein) on September 04, 2009, had issued a CEO/CFO certificate (Annexure 8 to SCN), which states that, financial statements for FY 2008-09 do not contain any materially untrue statements, nor omitted any material fact, nor contain statements that might be

misleading. However, as noted above, since the financial statements for FY 2008-09 were not correctly stated, to that extent the CEO/CFO Certificate issued *inter alia* by the Noticee on the basis of such financial statements was also vitiated. Hence, I find that the accounting treatment given by SML was misleading, might have influenced the price of its script on stock exchange and could have mislead the investors in taking an informed decision.

32. I note that the noticee has also denied being involved in the day to day management of the company. The Noticee has stated that she resigned from SML on June 1, 2012. Her resignation was accepted by the board of SML on August 28, 2012. The Noticee has also denied any knowledge about the subject GDR issue and related events. I note that the Noticee had issued a CEO/CFO certificate (Annexure 8 to SCN) on September 04, 2009, which stated that financial statements of FY 2008-09 were showing true and fair view. This certificate was part of the Annual Report of SML for FY 2008-09. Further, from the Annual Reports of SML for FY 2007-08, 2008-09 and 2009-10 I observe that the Noticee has been shown as 'Executive Director' of SML. Hence, the claim of the noticee that she was not involved in the day to day affairs of SML and is not aware of the subject GDR issue is not acceptable. I also find from the Annual Report of SML for FY 2007-08, 2008-09 and 2009-10 that the noticee has attended all the board meetings in the said financial years. Hence, I find that the noticee has denied being aware of the subject GDR issue, only to avoid the consequences of this proceeding.

33. I also note that the Noticee has cited the judgment of the Hon'ble Supreme Court in the matter of *Sunil Bharti Mittal v. Central Bureau of Investigation* [AIR 2015 SC 923] and the Hon'ble SAT in *Rahul Shah v. SEBI* [2004 (55) SCL 416(SAT)] to submit that vicarious liability has to be statutorily provided and that the SEBI Act does not provide for the same. In this regard I note that the present proceedings have been initiated against the Noticee for her own acts and omissions, which allowed the perpetration of the fraud involves in the GDR issue of SML, and thus the question of any vicarious liability does not arise.

34. I note that in order dated January 02, 2019 passed by SEBI in the matter of SML, the Company had been found to be guilty of violating Sections 12A (a),(b) and (c) of SEBI Act, 1992 read with regulations 3(a), (b), (c), (d) and 4(1), 4(2) (f), (k) and (r) of PFUTP Regulations, in its GDR issue. On the basis of the discussions made in the foregoing paras, I find that the Noticee was part of the fraudulent arrangement which resulted in facilitating the subscription of GDR issue of SML wherein Clifford obtained a loan from Banco for subscribing to the GDR issue of SML and, SML pledged the GDR proceeds with Banco securing the loan taken by Clifford. I also note that the Noticee had issued a misleading CEO/CFO Certificate certifying the fairness of financial statements of SML for FY 2008-09. Thus, I find that the Noticee has violated the provisions of Section 12A (a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

Directions

35. In view of the above, and in the peculiar facts and circumstances of the matter, I, in exercise of the powers conferred upon me Sections 11(1), 11(4) and 11B read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby restrain the Noticee from accessing the securities market and further prohibit her from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of **5 years** from the date of this order. The period of restraint already undergone by the Noticee in terms of the order dated January 02, 2019 passed in the matter of SML, shall be set off against the aforementioned period of restraint. During the period of restraint, the existing holding (including units of mutual funds) of the Noticee shall remain frozen.

36. This order shall come into force with immediate effect.

37.A copy of this order shall be served on all recognized stock exchanges, depositories and RTA's of Mutual funds to ensure compliance with above directions.

38.A copy of this order may also be sent to the RBI, Enforcement Directorate and Ministry of Corporate Affairs for information and necessary action.

Date: February 25, 2022

Place: Mumbai

ANANTA BARUA

WHOLE TIME MEMBER