BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/KS/VC/2020-21/8357-8360)

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) REGULATIONS, 2005

In respect of:

1. **Maars Software International Limited**

   PAN: AAACM4527H

2. **Mr. Pravin Champalal Jain**

   PAN: ABDPJ4945R

3. **Shri Harshawardhan S Rathore**

   PAN: BUCPS3345B

4. **Shri Nikunj Babulal Choradiya**

   PAN: AGQPC6235M

In the matter of

GDR Issue of Maars Software International Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), upon receipt of alerts in its surveillance system, started investigation in regards to

certain companies which had come out with their respective issues of Global Depository Receipts (**GDR**). During the course of investigation, it was observed that Maars Software International Limited (hereinafter referred to as '**MSIL**'/'**Noticee 1**') had come up with its GDR issue on August 10, 2007. In this regard, it is observed that one Pan Asia Advisors Ltd (hereinafter referred to as '**Pan Asia**') was the Book Running Lead Manager for the said GDR issue of MSIL. Further, it was also observed that one Mr. Arun Panchariya (hereinafter referred to as '**AP**') was the founder, director as well as 100% shareholder of Pan Asia. It is alleged in the Investigation Report (**IR**) that the complete process of GDR issuances by MSIL was devised and structured by AP in connivance with MSIL to the detriment of the Indian investors wherein loans were arranged for the subscription of GDRs of MSIL by Vintage FZE (hereinafter referred to as '**Vintage**') another company wherein AP was Managing Director, 100% shareholder and Authorized Signatory, and, thereafter, using certain Foreign Institutional Investors (**FIIs**), got the GDRs converted into underlying shares and sold them in the Indian securities market with the help of certain domestic entities connected to him. It is further alleged that the money received from the sale of underlying shares was used to pay the loans of Vintage, thereby, fraudulently making Indian investors pay for such GDR issue of MSIL. It is observed that MSIL was listed on Bombay Stock Exchange (**BSE**) and it was delisted from BSE w.e.f. May 11, 2018.

2. On the basis of the said investigation, it is alleged by SEBI that MSIL and its then Managing Director, Mr. Pravin Champalal Jain (hereinafter referred to as '**Noticee 2**'/ '**Pravin**'), by being part of the abovementioned scheme to defraud

Indian investors, have violated the provisions of Section 12A(a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') read with Regulations 3(b), (c), (d), 4(2)(c), (f), (k) & (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'). Further, it is also alleged that MSIL had failed to submit certain information demanded by SEBI. Also the managing director of MSIL had failed to appear in person and, by doing so, MSIL and its directors Mr. Harshawardhan S Rathore (hereinafter referred to as '**Noticee 3**'/'**Harshawardhan**') & Mr. Nikunj Babulal Choradiya (hereinafter referred to as '**Noticee 4**'/'**Nikunj**') have violated the provisions of Section 11C(3) read with 11C(6) of SEBI Act. Further, it is also alleged that MSIL had failed to disclose details of outstanding GDRs in its quarterly disclosures of shareholding pattern to BSE and, therefore, has violated the provision of Clause 35 of Equity Listing Agreement (hereinafter referred to as '**Listing Agreement**') read with Section 23E of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SCRA**'). For the purpose of the present order, Noticee 1, Noticee 2, Noticee 3 and Noticee 4 are collectively referred to as '**Noticees**'.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Suresh Gupta was appointed as the Adjudicating Officer vide Order dated June 15, 2016 under Section 19 read with Section 15-I(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**SEBI Adjudication Rules'**) and Section

Section 23-I(1) of SCRA read with Rule 3 of Securities Contracts (Regulation) (Procedure For Holding Inquiry And Imposing Penalties) Rules, 2005 (hereinafter referred to as '**SCRA Adjudication Rules**') to inquire into and adjudge under the provisions of Section 15A(a) & Section 15HA of the SEBI Act, and Section 23E of SCRA, the violations of the relevant provisions of SEBI Act, PFUTP Regulations and Listing Agreement, alleged to be committed by the Noticees. Subsequently, the undersigned was appointed as the Adjudicating Officer vide order dated July 05, 2018.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

4. A common Show Cause Notice ref. A&E/EAD-8/KS/VB/8176/2019 dated March 28, 2019 (hereinafter referred to as '**SCN'**) was issued to the Noticees under the provisions of Rule 4(1) of SEBI Adjudication Rules and Rule 4(1) of SCRA Adjudication Rules to show cause as to why an inquiry should not be held against them and why penalty, if any, should not be imposed on them under Sections 15A(a) & 15HA of the SEBI Act and Section 23E of SCRA for alleged violation of the relevant provisions of law.
5. The relevant part of SCN including details in respect of alleged violations by the Noticees are as given below:
   a. *It is observed from the Investigation Report (hereinafter referred to as "IR") that Maars issued 73,80,000 GDRs (amounting to US$17.22 million) and issue closed on August 10, 2007. Further, Pan Asia Advisors Ltd. (herein after referred to as 'Pan Asia') was the Lead Manager of GDR issue of Maars. Summary of the GDR issues as provided by Maars is tabulated below:*

Table 1

GDR issue close date	No. of GDRs issued	Capital raised (US mn.)	No. of equity shares underlying GDRs	Lead Manager	Bank where GDR proceeds were deposited
August 10 2007	*73,80,000*	*17.22*	*738,00,000*	*Pan Asia Advisors Ltd.*	*EURAM Bank, Austria*

b. *The following were the investors in the GDR issue of Maars as submitted by Maars.*

Table 2

Sl. No.	Name of Subscriber	GDRs Subscribed	Amount paid (US$)	% to total GDR issue
1.	Rexflec Limited	13,80,000	33,53,400	18.70
2.	Figura Group	15,00,000	36,45,000	20.33
3.	Tradetec corporation	14,50,000	35,23,500	19.65
4.	Imagination Network INC	14,80,000	35,96,400	20.05
5.	Trendsetter Enterprises Corp	15,70,000	38,15,100	21.27

Loan & Pledge Agreement signed among Maars, Vintage & Euram.

c. *It is alleged that the entire GDR issue was subscribed by only one subscriber Vintage FZE (Now known as Alta Vista International FZE) (hereinafter referred to as 'Vintage') which signed a Loan Agreement dated July 27, 2007 with European American Investment Bank AG (hereinafter referred to as 'Euram Bank') wherein Euram Bank lent Vintage, an amount of US$ 17.93 million for payment to subscribe GDRs of Maars. The loan agreement was signed by one Shri Arun Pancharia (herein after referred to as 'AP') on behalf of Vintage, in the capacity of its Managing Director on July 31, 2007.*

d. *The following was inter-alia mentioned in the Loan agreement:*

"6.7 In order to secure all and any of the Bank's claims and entitlements against the Borrower, arising now or in the future out of or in connection with the Loan or any other obligation or liability of the Borrower to the Bank, including without limitation other loans granted in the future, it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be demanded by the Bank

- *Pledge of certain securities held from time to time in the Borrower's account no. 540 016 at the Bank as set out in a separate pledge agreement which is* *attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*

- *Pledge of the account no. 540 016 of the Borrower held with the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement."*

e. *Further, a Pledge Agreement was signed between Maars and EURAM Bank.The agreement was signed by the Noticee 2 on August 01,2007, on behalf of Maars as Director of Maars. The following Resolution was passed by the Board of Directors of Maars at its meeting dated March 31,2007.*

   "RESOLVED THAT a bank account be opened with Euram Bank ("the Bank") or any branch of Euram Bank, including the Offshore Branch, outside India for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of the Company.

   RESOLVED FURTHER THAT Mr. Pravin Jain, Managing Director, be and are 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 and to carry and affix, Common Seal of the Company thereon, if and when so required.

   RESOLVED FURTHER THAT Mr. Pravin Jain, Managing Director, be and are hereby authorized to draw cheques and other documents, and to give instructions from time to time as may be necessary to the said Euram Bank or any of branch of Euram Bank, including the Offshore Branch, for the purpose of operation of and dealing with the said bank account and 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 arrangements if and when so required."

f. *The aforesaid Pledge Agreement was an integral part of Loan Agreement entered into between Vintage and EURAM Bank. The preamble of the aforesaid Pledge Agreement states*

"By loan agreement (hereinafter referred to as "Loan Agreement") dated July, 2007, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahmadi House, Jebel AH Free Trade Zone, Jebel AH, Dubai, United Arab Emirates ("the Borrower") in the amount of $ USD 17,933,400.00 million. The Pledgor has received a copy of the Loan Agreement and acknowledges and agrees to its terms and conditions."

g. *Further, the pledge created in the Pledge Agreement is stated below:-*

"2. <u>Pledge</u>

2.1. In order to secure any and all obligations, Present and future, whether conditional or unconditional of the ***<u>Borrower</u>*** *towards the bank under the Loan Agreement and any and all respective amendments thereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the* ***<u>Loan Agreement</u> -*** *including those limited as to condition or time or not yet due - irrespective of whether such claims have originated from the account relationship, from bills of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations")* ***<u>the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:</u>***

2.1.1. all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount of $ USD 17,933,400.00 existing from time to time at present or hereafter on the ***<u>securities account(s) no. 540 016</u>*** *held with the Bank (hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein.*

2.1.2. all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 540 016 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account ") and all amounts credited at any particular time therein.

(the Pledged securities account and the Pledged Time Deposit account hereinafter referred to as the "Pledged Accounts", the Pledged Securities and the Pledged Accounts hereinafter collectively referred to as "Collateral")

2.2. The Pledgor agrees to deposit with the Bank all dividends, interest and other payments, distributions of cash or other property resulting from the Pledged Securities and funds."

h. *Further, following condition have been put in the Pledge agreement for the realization of the pledge.*

"6. Realization of the Pledge

6.1 In the case that the Borrower fails to make payment on any due amount, or default in accordance with the Loan Agreement, The Pledgor herewith grants its express consent and the Bank is entitled to apply the funds in the Pledged Accounts to settle the Obligations. In such case the Bank shall transfer the funds on the Pledged Accounts, even repeatedly, to an account specified by the Bank

6.2 Notwithstanding the foregoing, in the case that the Borrower fails to make payment on any due amount, or defaults in providing or increasing security, the Pledgor herewith grants its express consent and the Bank is entitled to realize the Pledged Securities (i) at a public auction for those items of Pledged Securities for which no market price is quoted or which are not listed on a recognized stock exchange or (ii) in a private sale pursuant to the provisions of Section 376 Austrian Commercial Code unless the Bank decides to exercise its rights through court proceedings. The Pledgor and the Bank agree to Realize those items of the Pledged Securities for which a market price is quoted or which are listed on a stock exchange through sale by a Broker Publicly authorized for such transactions, selected by the Bank.

6.3 The Bank may realize the Pledge rather than accepting payments from the Borrower after maturity of the claim if the Bank has reason to believe that the Borrower's payments may be contestable."

i. *It is noted that the bank account no. 540016 is the account which Maars has maintained with Euram Bank to keep the proceeds of GDRs, thus it is alleged that Maars has pledged money received through issuance of GDRs to secure rights of Euram Bank against the loan given by Euram Bank to Vintage for subscription of GDR issue (as mentioned in Loan agreement of Vintage). This account (540016) is also referred to as borrowers (Vintage) account in the Loan Agreement. It is alleged that the common ownership of a bank account which belongs to both the borrower/ subscriber and the Issuer Company in which the GDR proceeds are received added to a guarantee by Issuer Company for the loan taken by subscriber to its GDRs. It is alleged that these agreements enabled Vintage to avail the loan from Euram Bank for subscribing GDRs of Maars and the GDR issue would not have been subscribed* *had Maars not given such security towards the loan taken by Vintage. It is also alleged that the Noticees did not inform Bombay Stock Exchange or shareholders of the company about signing the Pledge Agreement.*

Acquisition, Cancellation and Sale of GDRs:-

j. *It is noted that pursuant to the issuance of GDRs, Vintage became the sole holder of the GDRs issued, thereby becoming the majority shareholder of Maars. As on August 10,2007, Vintage was holding 95.32% of the capital of the company. These GDRs were then transferred through over the counter transactions to Sub-Account viz. India Focus Cardinal Fund, KII Ltd and through Exchange to Rhodes Diversified, Sophia Growth, Mavi Investments Fund Ltd. Following table gives the details of transfer of GDRs from account of Vintage (maintained with Euram) to that of Sub-Accounts.*

Date	***Name of Acquirer***	***Name of Seller***	***Quantity of GDRs Acquired***	***Value of GDRs Acquired ($)***	***Trading Platform***	***Value per GDR($)***
20-Nov-07	*Rhodes*	*NA*	*11,00,000*	*8,81,980*	*Exchange*	*0.80*
19-Dec-07	*Rhodes*	*NA*	*12,50,000*	*10,02,251*	*Exchange*	*0.80*
04-Jan-08	*Sophia*	*NA*	*10,00,000*	*10,02,001*	*Exchange*	*1.00*
08-Jan-08	*Rhodes*	*NA*	*6,00,000*	*10,51,651*	*Exchange*	*1.75*
24-Jan-08	*Mavi*	*NA*	*4,50,000*	*5,40,990*	*Exchange*	*1.20*
15-Sep-08	*Rhodes*	*NA*	*3,25,000*	*2,47,572*	*Exchange*	*0.76*
15-Sep-08	*Sophia*	*NA*	*6,75,000*	*5,14,189*	*Exchange*	*0.76*
01-Sep-09	*IFCF*	*Euram*	*6,25,000*	*2,50,000*	*OTC*	*0.40*
03-Sep-09	*KII*	*Euram*	*4,50,000*	*2,26,800*	*OTC*	*0.50*
21-Sep-09	*IFCF*	*Euram*	*10,00,000*	*5,00,000*	*OTC*	*0.50*
	Total		***74,75,000***	***62,17,434***		

k. *It is alleged that AP is 100% shareholder of India Focus Cardinal Fund (IFCF) through its company Cardinal Capital Partners Ltd. AP and his family members are major investors in the fund through their associate companies. AP was director of IFCF until October 28, 2010.It is noted that Credo Investments Holding Ltd, an* *associate company of KII was found to have an agreement with Vintage. According to this agreement, Vintage provided a Loan of USD 20,00,000 to Credo to further lend it to KII, to enable KII to purchase securities of several Indian companies including those of Maars, either in India or overseas market. As per the agreement, KII got GDRs converted into underlying shares and sold the resultant shares in the Indian Markets. The sale proceeds were then to be used to purchase further securities to repeat the said process until KII decided to terminate the agreement. The agreement also ensured that Vintage take full liability of the dealings of KII in the GDRs of Indian companies and any loss incurred by KII to be borne by Vintage only. The agreement was signed by AP on behalf of Vintage.*

l. The cancellation of the GDRs of Maars started from December 07, 2007 till September 22,2009. Following are the details of cancellation requests completed till June 30,2012.

Transaction Date	***Sub-Account receiving shares after cancellation of GDRs***	***GDRs Cancelled***	***Shares Released***	***Date of receiving shares***
07-12-07	*Rhodes*	*6,00,000*	*60,00,000*	*10-Dec-07*
13-12-07	*Rhodes*	*2,00,000*	*20,00,000*	*14-Dec-07*
20-12-07	*Rhodes*	*3,00,000*	*30,00,000*	*24-Dec-07*
24-12-07	*Rhodes*	*3,75,000*	*37,50,000*	*27-Dec-07*
28-12-07	*Rhodes*	*3,00,000*	*30,00,000*	*31-Dec-07*
02-01-08	*Rhodes*	*3,75,000*	*37,50,000*	*04-Jan-08*
04-01-08	*Sophia*	*2,00,000*	*20,00,000*	*07-Jan-08*
09-01-08	*Rhodes*	*4,00,000*	*40,00,000*	*10-Jan-08*
09-01-08	*Sophia*	*6,00,000*	*60,00,000*	*10-Jan-08*
14-01-08	*Rhodes*	*75,000*	*7,50,000*	*15-Jan-08*
14-01-08	*Sophia*	*75,000*	*7,50,000*	*15-Jan-08*
28-01-08	*Mavi*	*2,60,000*	*26,00,000*	*29-Jan-08*
19-09-08	*Sophia*	*4,55,000*	*45,50,000*	*22-Sep-08*
04-09-09	*IFCF*	*6,25,000*	*62,50,000*	*07-Sep-09*
10-09-09	*KII*	*4,50,000*	*45,00,000*	*ll-Sep-09*
22-09-09	*IFCF*	*5,02,800*	*50,28,000*	*23-Sep-09*

Total		***57,92,800***	***5,79,28,000***	

m. *The shares received by the above Sub-Accounts viz, Rhodes, Sophia, IFCF and KII were then sold. The details of the counterparties to these sales during the period January 01 2007 to September 21,2011 are given below:-*

FII	***CP PAN***	***CP Name***	***Sell Volume***	***Sell value (Rs.)***	***% to total Sale***
Mavi	*AAACB4324K*	*Basmati*	*16,59,858*	*67,52,550*	*63.8*
Mavi	*AABCA6702F*	*Alka*	*6,47,500*	*26,61,225*	*24.9*
Mavi	*ACRPP5552H*	*SV Enterprises*	*1,92,318*	*7,82,707*	*7.4*
Mavi		*Others*	*1,00,324*	*4,06,797*	*3.9*
Mavi Total			***26,00,000***	***1,06,03,279***	*100*

FII	***CP PAN***	***CP Name***	***Sell Volume***	***Sell value (Rs.)***	***% to total Sale***
Rhodes	*ACRPP5552H*	*SV Enterprises*	*17,78,870*	*1,31,86,581*	*20.7*
Rhodes	*AAACJ8850C*	*JMP*	*10,82,219*	*76,21,952*	*12.6*
Rhodes	*AADPS8309K*	*Bharat C Shah*	*8,83,913*	*69,29,878*	*10.3*
Rhodes	*AAVPR5584R*	*Ajay Roongta*	*9,21,143*	*40,12,300*	*10.7*
Rhodes		*Others*	*39,45,858*	*2,77,76,936*	*45.7*
Rhodes Total			***86,12,003***	***5,95,27,647***	*100*

FII	***CP PAN***	***CP Name***	***Sell Volume***	***Sell value (Rs.)***	***% to total Sale***
Somerset	*ACRPP5552H*	*SV Enterprises*	*8,00,000*	*65,69,000*	*17.9*
Somerset	*AAACC4789R*	*Cherry Cosmetics*	*6,22,505*	*31,68,550*	*13.9*
Somerset		*Others*	*30,52,495*	*2,26,83,950*	*68.2*
Somerset Total			***44,75,000***	***3,24,21,500***	*100*

FII	***CP PAN***	***CP Name***	***Sell Volume***	***Sell value (Rs.)***	***% to total Sale***

Sophia	*AALCS3212Q*	*SPM Financial Advisory*	*14,84,983*	*57,22,244*	*17.3*
Sophia	*ACRPP5552H*	*SV Enterprises*	*19,37,625*	*49,88,506*	*22.5*
Sophia	*AABCA6702F*	*Alka*	*5,80,290*	*23,50,175*	*6.7*
Sophia		*Others*	*45,97,102*	*1,38,96,537*	*53.5*
Sophia Total			***86,00,000***	***2,69,57,462***	*100*

n. It is observed that Rhodes and Sophia (both are separate classes of investment of Somerset India Fund (Somerset)) purchased 49,50,000 GDRs of Maars (67.07% of total GDRs issued by Maars). Out of these, 39,55,000 GDRs (79.90% of GDRs purchased by Rhodes and Sophia) were cancelled by Rhodes and Sophia resulting in 3,95,50,000 shares. Somerset (including Rhodes and Sophia) sold off 2,16,87,003 shares. Indian Clients like SV, JMP, Ajay Roongta, Alka and SPM Financial Advisory were the major Counterparty to all of these trades. Mavi cancelled GDRs of Maars and received 26,00,000 shares. It sold all of it in Indian markets. 96.1 % of the shares sold by Mavi were purchased by Basmati, Alka and SV. IFCF also sold 61,31,239 shares of Maars. 60.2 % of shares sold by IFCF were purchased by Basmati, SV Enterprises, JMP and SPM Financial Advisory Ltd.It is observed that SV Enterprises, Alka, Oudh and Basmati have been found to be related to AP as observed from the Bank account statements, the Demat statements and KYC of these entities. The connections among entities and with AP are explained below.

Sr. No	***Name of Entity***	***Details of connection***
1	*Alka India Ltd (Alka)*	• *AP is among the promoters of Alka.* • *As per Annual Return of Basmati filed with MCA on September 30, 2005, Alka and Oudh are among the shareholders of Basmati.*

		Together, they hold 37.68% of the shares of Basmati. • Alka and Oudh have common phone number (9702001974) in their KYC documents available with their respective brokers viz, Mansi Share & Stock Advisors Pvt Ltd, Alankit Assignments Ltd and Arch Finance Ltd. (Source: MCA and BSE filing of Alka. KYC documents with B. Lodha Securities Ltd. Indiabulls Securities Ltd, Mansi Share & Stock Advisors Pvt Ltd, Alankit Assignments Ltd and Arch Finance Ltd, Ssj Finance & Securities Pvt. Ltd, Madhya Pradesh stock Exchange Indiabulls Securities Ltd, Shriram Insight Share Brokers Ltd and Multiplex Capital Ltd.)
2	*Basmati Securities Pvt Ltd (Basmati)*	• *Basmati holds 27.8% of the shares of Oudh.* • *As per Annual Return of Basmati filed with MCA on September 30, 2005, Alka and Oudh are among the shareholders of Basmati. Together, they hold 37.68% of the shares of Basmati.* • *Basmati and Oudh have common authorised signatory (Rahul C Shah) for operating their demat accounts as per the KYC documents provided by depository participants - Shriram Insight Share Brokers, K & A Securities Pvt Ltd and Motilal Oswal Securities Ltd.* • *Basmati and Oudh have common phone number (9619040060) and address - Room No. 5, Ground Floor, Heera Mahal Building, 250 Kalbadevi Road, Mumbai - 400002 in the KYC documents available with depository participant Shriram Insight Share Brokers Ltd.* • *Basmati and Oudh have common phone number (32015743) and address - 5/7 Kothari House 2nd Floor Office No 4 Fort Mumbai in the KYC documents available with brokers/ depository participants B.lodha Securities Ltd., Motilal Oswal Securities Ltd, Anand Rathi Share and Stock Brokers Ltd and Networth Stock Broking Ltd.* • *Basmati and Oudh have common phone number (24526764) and address - Kothari House 1st Floor 5/7 Oak Lane Fort Bombay in the KYC documents available with broker Vertex Securities Ltd.* *(Source: MCA and BSE filing of Alka. KYC documents available with Religare Securities Ltd. and Cpr Capital Services Ltd, Shriram Insight Share Brokers, K & A Securities Pvt Ltd, Motilal Oswal Securities Ltd., Shriram Insight Share Brokers Ltd., B.lodha Securities Ltd. and Networth Stock Broking Ltd., Anand Rathi Share and Stock Brokers Ltd and Vertex Securities Ltd.*

3	Oudh Finance& Investment Pvt Ltd. (Oudh)	• Basmati holds 27.8% of the shares of Oudh. • As per Annual Return of Basmati filed with MCA on September 30, 2005, Alka and Oudh are among the shareholders of Basmati. Together, they hold 37.68% of the shares of Basmati. • Basmati and Oudh have common authorised signatory (Rahul C Shah) for operating their demat accounts as per the KYC documents provided by depository participants - Shriram Insight Share Brokers, K & A Securities Pvt Ltd and Motilal Oswal Securities Ltd. • Basmati and Oudh have common phone number (9619040060) and address - Room No. 5, Ground Floor, Heera Mahal Building, 250 Kalbadevi Road, Mumbai - 400002 in the KYC documents available with depository participant Shriram Insight Share Brokers Ltd. • Basmati and Oudh have common phone number (32015743) and address - 5/7 Kothari House 2nd Floor Office No 4 Fort Mumbai in the KYC documents available with brokers/ depository participants B.lodha Securities Ltd., Motilal Oswal Securities Ltd, Anand Rathi Share and Stock Brokers Ltd and Networth Stock Broking Ltd. • Basmati and Oudh have common phone number (24526764) and address - Kothari House 1st Floor 5/7 Oak Lane Fort Bombay in the KYC documents available with broker Vertex Securities Ltd. (Source: MCA and BSE filing of Alka, KYC Documents available with Shriram Insight Share Brokers, K & A Securities Pvt Ltd, Motilal Oswal Securities Ltd., Shriram Insight Share Brokers Ltd., B.lodha Securities Ltd. and Networth Stock Broking Ltd., Anand Rathi Share and Stock Brokers Ltd and Vertex Securities Ltd.)
4	SV Enterprise / Sarfaraz Khan Pathan (SV	• SV is the proprietary firm of Mr. Sarfaraz Khan Pathan. • SV is involved in fund transactions with Alka. From the statement of SV's account no. 002405013273, maintained with ICICI Bank, it is observed that during the period from January 1, 2010 to April 30, 2010, SV received Rs. 83 lakh from Alka and transferred Rs. 85 lakh to Alka. • In the demat account of Sarfaraz Khan Pathan maintained with Shah Investors Home Limited, the nominee of the account is mentioned as Ashok and the witnesses are Satish Panchariya and Madanlal Bugaliya (Source: Bank account statements of Gujarat Enterprise's account no. 2306 with Gujarat Mercantile Co-op Bank Ltd., SV's account no.

		002405013273 with ICICI Bank, KYC documents of SV available with ICICI Bank and KYC of demat account of SV with Shah Investors Home Limited)
5	*Cherry Cosmetics Pvt Ltd (Cherry)*	• *Cherry, Alka have common phone number (9820113530) in the KYC documents available with their respective brokers - Cpr Capital Services Ltd., Indiabulls Securities Ltd. and B.lodha Securities Ltd.*

o. These clients after purchasing from the Sub-Accounts sold the shares to Indian retail clients and thus completed the disposing of the GDRs. In view of the above, it is alleged that the Noticee-1 and Noticee-2 have violated Sections 12A(a), (b) and (c) of the SEBI Act read with regulations 3(b), 3(c), 3(d), 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations.

p. The alleged violations of the relevant provisions of the SEBI Act and PFUTP Regulations by the Noticees as brought out above, if proved, makes the Noticees liable for monetary penalty under the provisions of Section 15HA of the SEBI Act.

<u>Non-furnishing of information and misleading submissions by Maars:-</u>

q. In terms of Section 11 C(3) read with 11 C(6) of the SEBI Act, it is obligatory on any person so summoned to produce the necessary documents / information / appear in person to/ before the Investigating Authority. It is alleged that during the course of investigation, summons were issued under Section 11 C(3) read with 11 C(6) of the SEBI Act to the Noticee 1 for production of documents regarding utilisation of GDR proceeds by the company. It is alleged that the Noticee-1 didnt comply with the summons and didn't submit the documents sought by the SEBI. Following documents/information sought vide summons/emails/letters (Annexure VI - Copy of Correspondence between SEBI and Maars) were not provided by Maars.

- *Details of usage of proceeds of the GDR Issues by Maars, along with the documentary proof in support of the utilization of the funds.*
- *Copies of bank account statements of Maars maintained with Euram Bank.*

- *Copies of bank account statements of Maars in India highlighting transactions related to repatriation of GDR proceeds.*
- *Chronology of events leading to the issue of GDRs along with a certified true copy of the resolution passed by Board of Directors.*
- *Rationale for the appointment of Panasia as LM for GDR issue of Maars.*
- *Copies of all the agreements between Maars and Panasia*
- *Copies of agreements with Euram.*
- *Details of the conditions that were laid upon Maars for the withdrawal of GDR proceeds from bank accounts maintained with Euram.*
- *Copy of any other agreement that Maars had with Euram apart from those related to GDR issues.*
- *Details of any agreement of Maars regarding financing for the purpose of subscription by initial investors of GDRs.*
- *Copies of agreements that Maars had with Vintage and AP.*
- *Details of nature of business of foreign subsidiaries of Maars.*
- *Bank Account Statement of the foreign subsidiaries of Maars.*
- *Details of payments made to Panasia or companies associated with Panasia.*
- *Name of the directors and promoters of Maars at the time of issue of GDRs.*
- *Details of money paid by the foreign subsidiaries, be it on account of purchases or expenses or loan, to other entities for more than USD 25,000 from incorporation. Maars was specifically asked to provide details like name of entities to which payments were done, purpose of payment and amount paid by its foreign subsidiaries.*
- *Audit Reports of foreign subsidiaries of Maars along with their financial statements for the year ending March 2010 and March 2011.*

- *Contact details, Nature of business and Bank Account statements of foreign subsidiaries*

r. *It is alleged that managing director of Maars was also summoned to appear in person at SEBI Head Office with documents sought. It is observed that summons was acknowledged by the company and an extension of two months was sought. It is noted that despite seeking repeated extensions of deadlines to reply to the summons, Maars did not provide any information to SEBI. Further, no representative of company appeared in SEBI office for recording of statement as summoned.*

s. *In view of the observation(s) mentioned at above paragraph, it is alleged that the Noticed, Noticee-3 and Noticee-4 being directors of Noticee-1 have violated the provisions of Section 11C(3) read with 11 C(6) of the SEBI Act*

t. *The alleged violations of the relevant provisions of the SEBI Act by the Noticees as brought out above, if proved, makes the Noticees liable for monetary penalty under the provisions of Section 15A(a) of the SEBI Act.*

u. *It is also alleged that Maars failed to disclose details of outstanding GDRs in its quarterly disclosures of shareholding pattern to BSE. As per BSE website (www.bseindia.com), the equity held with custodian is shown as nil for Maars during the period January 01, 2007 till September 21, 2011. Therefore, it is alleged that the Noticee 1 has violated Clause 35 of the Listing Agreement read with Section 23E of SC(R)A.*

v. *The alleged violations of the relevant provisions of the Listing Agreement by the Noticee 1 as brought out above, if proved, makes the Noticee 1 liable for monetary penalty under the provisions of Section 23E of SC(R)A.*

6. I note that the SCN was sent to the respective addresses of MSIL, Harshawardhan and Nikunj as per available records, via Speed Post Acknowledgement Due (SPAD). However, the SCN had returned undelivered

from the addresses of the said Noticees. Thereafter, the SCN was affixed at the last known address of MSIL, Harshawardhan and Nikunj on May 14, 2019. However, no reply was received from MSIL, Harshawardhan and Nikunj. Subsequently, vide letter dated September 20, 2019, a final opportunity to submit reply to the SCN was provided to Noticee 1, 3 & 4. Vide the same letter, an opportunity of personal hearing was also provided to MSIL, Harshawardhan and Nikunj. The said letter was affixed at the last known addresses of MSIL, Harshawardhan and Nikunj. However, all three Noticees viz. MSIL, Harshhawardhan and Nikunj failed to submit any reply to the SCN and they also failed to appear for the purpose of personal hearing. Thereafter, vide hearing notice dated October 16, 2019, MSIL was provided with a final opportunity of personal hearing on October 31, 2019. I note that the said hearing notice was also affixed at the last known address of MSIL. However, MSIL once again failed to appear for personal hearing on the said date. Similarly, vide letter dated November 11, 2019, a final opportunity of personal hearing was provided to Harshawardhan and Nikunj on November 26, 2019. I note that the said hearing notice was affixed at the last known address of Harshawardhan and Nikunj. However, both Harshawardhan and Nikunj failed to appear for personal hearing on the said date.

7. Further, SCN was delivered to the address of Noticee 2/Pravin on May 23, 2019 and the acknowledgement of such delivery is available in the file. However, Noticee 2 failed to submit any reply to the SCN. Subsequently, vide hearing notice dated September 27, 2019, Noticee 2 was provided with a final opportunity to submit his reply on or before October 09, 2019. Noticee 2 was

also provided with an opportunity of personal hearing on October 11, 2019 vide the same letter. Vide Email dated October 11, 2019, Noticee 2 requested for inspection of documents. Accordingly, vide letter dated October 16, 2019, the request of Noticee 2 for inspection of documents was forwarded to the concerned department. The said letter was delivered to the Email ID of the Noticee by way of a digitally signed Email and acknowledgement of receipt of the same is available in the file. Subsequently, vide Email dated February 13, 2020, the concerned department of SEBI informed that, vide letter dated February 03, 2020, an opportunity of inspection of documents was granted to Noticee 2 on February 12, 2020. However, Noticee 2 neither appeared for the purpose of inspection nor sought any adjournment. Subsequently, vide letter dated February 14, 2020, Noticee 2 was provided with a final opportunity to submit his reply to the SCN on or before February 28, 2020. Further, a final opportunity of personal hearing was also provided to Noticee 2 on March 04, 2020. The said letter was delivered at the address of Noticee 2. However, I note that Noticee 2 neither submitted any reply to the SCN till date nor appeared for personal hearing on the given date.

In this regard, it is pertinent to note the observations of Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**') in the matter of Sanjay Kumar Tayal & Others vs. SEBI decided on February 11, 2014. Hon'ble SAT observed as follows:

"*…As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the* *adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices…*"

Now I proceed to deal with the matter on the basis of material available on record.

CONSIDERATION OF ISSUES AND FINDINGS:

8. I have taken into consideration the facts and circumstances of the case, the material available on record. I note that the allegations levelled against the Noticees are as below:

    a. MSIL and it's Director Pravin, in connivance with entities connected/related to AP, had executed the scheme of fraudulent issuance of GDRs wherein they had issued GDRs and pledged the GDR proceeds with Euram Bank so that Vintage could take loan for the subscription of GDRs. Thereafter, certain FIIs had converted the GDRs into underlying shares and had sold them in the Indian securities market with the help of the entities connected with AP. Therefore, it is alleged that MSIL and its director Pravin have violated the provisions of Section 12A(a), (b) (c) of SEBI Act read with 3(b), (c), (d), 4(2)(c), (f), (k) & (r) of PFUTP Regulations.

    b. MSIL and its directors Harshawardhan & Nikunj, by their failure to submit the required information as well as failure to appear in person before SEBI, have violated the provisions of Section 11C(3) read with 11C(6) of SEBI Act.

    c. MSIL, by its failure to disclose regarding the outstanding GDRs in the quarterly shareholding pattern submitted to BSE, has violated the provisions of Clause 35 of Listing Agreement read with Section 23E of SCRA.

9. In view of the above, the issues for consideration before me are:-
   a. Whether MSIL and its director Pravin, in light of their role in GDR issue of MSIL, have been responsible for fraudulent issue of GDRs and, as a consequence, whether have violated the provisions of Section 12A(a), (b) (c) of SEBI Act read with 3(b), (c), (d), 4(2)(c), (f), (k) & (r) of PFUTP Regulations?
   b. Whether MSIL and its directors Harshawardhan & Nikunj have violated the provisions of Section 11C(3) read with Section 11C(6) of SEBI Act?
   c. Whether MSIL has violated the provision of Clause 35 of Listing Agreement read with Section 23E of SCRA?
   d. If yes, whether the Noticees are liable for penalty?
   e. If yes, what should be the quantum of penalty that should be imposed on the Noticees?
10. Before moving forward, the relevant extracts of the provision of law, allegedly violated by the Noticees, are mentioned as under-

SEBI Act

Investigation.

11C.

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

(6) If any person fails without reasonable cause or refuses—

…….

(b) to furnish any information which is his duty under sub-section (3) to furnish; or

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.

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;

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(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.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(c) advancing or agreeing to advance any money to any person thereby inducing any other person to offer to buy any security in any issue only with the intention of securing the minimum subscription to such issue;

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

(r) planting false or misleading news which may induce sale or purchase of securities.

11. Before moving forward, I note that facts of the matter of GDR issue of MSIL were under examination in the appeal No. 126 of 2013 along with GDR issues of 5 other companies. The said matter was decided by Hon'ble SAT by way of an order dated October 25, 2016. The Hon'ble SAT, in the matter of Pan Asia Advisors Ltd. vs. SEBI, while discussing the GDR issue of Asahi Infrastructure & Projects Ltd., observed that a similar *modus operandi* was employed by all the 6 issuer companies, including MSIL. The Hon'ble SAT noted the following vide its order dated October 25, 2016:

"*b) PAN Asia was appointed as Lead Manager to the GDRs issued by six entities namely; (i) Asahi Infrastructure & Projects Ltd. ("Asahi" for short), (ii) IKF Technologies Ltd. ("IKF" for short), (iii) Avon Corporation Ltd.*

("Avon" for short), (iv) K Sera Sera Ltd. ("K Sera" for short), (v) Cat Technologies Ltd. ("Cat" for short) and (vi) Maars Software International Ltd. ("Maars" for short). All these companies are hereinafter referred to as 'issuer companies'.

c) Since the appellants had adopted the same modus operandi in all the six companies, for convenience, we set out facts relating to the GDRs of Asahi."

Thus, at the prima-facie level, Hon'ble SAT had observed that the modus operandi in the cases of all the issuer companies, including MSIL, was same.

a. Whether MSIL and its director Pravin, in light of their role in GDR issue of MSIL, have been responsible for fraudulent issuances of GDRs and, therefore, have violated the provisions of Section 12A(a), (b) (c) of SEBI Act read with Regulations 3(b), (c), (d), 4(2)(c), (f), (k) & (r) of PFUTP Regulations?

12. I note from the IR that, before the issuance of GDR, MSIL had an issued a total of 6,61,60,200 fully paid up equity shares of Rs. 10/-each and 1,12,60,000 preference shares of Rs. 10/- each. Thereafter, by appointing PanAsia as Lead Manager, MSIL decided to raise funds from investors outside India through the issuance of GDRs. Consequently, on August 10, 2007 MSIL had issued 7,38,00,000 equity shares which resulted in allotment of 73,80,000 GDRs having total value of USD 17.22 Million. The said GDRs, issued by MSIL, were fully subscribed and the issue closed on August 10, 2007 itself.

13. I further note from the IR that the total capital raised by MSIL through the said GDR issue was US $1,79,33,400 which is equal to Rs. 72,93,51,378 (conversion price of USD 1=Rs. 40.67 as on August 10, 2007). The market capital of MSIL prior to GDR issue was Rs. 27,52,00,000.

Thus, I note from the above data that the capital raised under the GDR issue was 265.02% of the market capital of the company prior to the GDR issue.

14. I note from the IR that SEBI, on the basis of investigation in the scrip of MSIL, alleged that the complete process of GDR issuance by MSIL was devised and structured by AP in connivance with MSIL to the detriment of the Indian investors, wherein AP arranged for loans for the subscription of GDRs by Vintage, a Dubai based company, allegedly 100% owned and controlled by AP. MSIL, in turn, helped AP in arrangement of those funds by signing a pledge agreement, with European American Investment Bank AG (hereinafter referred to as '**Euram Bank**'), a bank based in Vienna, Austria, thereby, providing security for such loan taken by Vintage. Thereafter, these GDRs were converted into underlying shares and sold to Indian investors with the help of certain FIIs registered with SEBI or their Sub-Accounts as well as certain Indian entities connected to AP. At the same time, MSIL misled the Indian investors by not disclosing information regarding pledge agreements signed by Pravin, whereby the funds received by MSIL under the GDR issue were given as collateral for the loan taken by Vintage. In light of this, it is alleged that the activities of MSIL and it's then Managing Director Pravin, in connivance with AP and his connected entities, involved in the whole scheme, created a wrong impression before the Indian investors that foreign investors were interested in investing in MSIL due to its reputation and future prospects and therefore, defrauded them.

15. In the background of the allegations as mentioned above, I proceed to note in the ensuing paragraphs the scheme of events that took place in respect of the above GDR issuance by MSIL.

16. Firstly, I note that the Board of Directors of MSIL, in its meeting dated March 31, 2007, had passed the following resolution:

"RESOLVED THAT a bank account be opened with Euram Bank. ("the Bank") or any branch of Euram Bank, including the Offshore Branch, outside India for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of the Company.

RESOLVED FURTHER THAT Mr. Pravin Jain, Managing Director, be and are 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 and to carry and affix, Common Seal of the Company thereon, if and when so required.

RESOLVED FURTHER THAT Mr. Pravin Jain, Managing Director, be and are hereby authorized to draw cheques and other documents, and to give instructions from time to time as may be necessary to the said Euram Bank or any of branch of Euram Bank, including the Offshore Branch, for the purpose of operation of and dealing with the said bank account and 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 arrangements if and when so required."

I note from the above resolution that Board of Directors of MSIL had resolved to open a bank account with Euram Bank for its GDR issue and authorized

Pravin to sign any document in this regard. I further note that Euram Bank was also authorized to use any funds deposited with it as a security to any loans.

17. I further note from the subscriber's side, as part of the GDR scheme that, fourteen days prior to the issuance of the aforesaid GDRs, Vintage had entered into a loan agreement dated July 27, 2007 with Euram Bank by which Euram Bank advanced loan to Vintage expressly for subscribing to the GDRs to be issued by MSIL which observation I note from the covenants of the loan agreement brought out in subsequent paragraph(s). The said loan agreement was signed by AP as the Managing Director of Vintage on July 31, 2007. I further note from the IR that AP was the founder and director of Vintage and Alkarni, a company registered in British Virgin Island with its entire share capital held by AP and his family, is the 100% shareholder of Vintage. In view of these facts, I hold that Vintage was controlled by the AP during the relevant period of time.

18. As noted above, on perusal of the Loan Agreement, I note that the following has, *inter alia,* been mentioned therein –

   1. *Currency and the amount of facility:*
      USD 17,933,400.00
      (The amount is exactly the same amount raised by MSIL through the said GDR offering.) (Explanation supplied).
   2. *Nature and purpose of facility:*
      To provide funding enabling Vintage FZE to take down GDR issue of MAARS Software International Limited's Luxemburg public offering and may only be transferred to Euram account nr 540 016, for MAARS Software International Limited

(The specific purpose of the loan/ draw down was for the purpose of subscribing to the GDR issue of MSIL. 540 016 is the client account number of MSIL.)(Explanation supplied).

6. <u>Security</u>

6.1. In order to secure all and any of the Bank's claims and entitlements against the Borrower, arising now or in the future out of or in connection with the Loan or any other obligation or liability of the Borrower to the Bank, including without limitation other loans granted in the future , it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be demanded by the Bank:

- *Pledge of certain securities held from time to time in the Borrower's account no 540 016 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*
- *Pledge of the account no. 540 040 of the Borrower held with the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*

From the aforesaid Loan Agreement, I note that Vintage had availed of a loan facility to the extent of USD 17.933 Million from Euram Bank solely for the purpose of subscribing to the GDRs of MSIL.

19. At the same time, MSIL opened its account (A/c No. 540 016) with Euram Bank for the purpose of credit of proceeds of GDR Issue. I also note that, four days after the day when Vintage had entered into loan agreement with Euram Bank, as discussed in pre-paragraphs, MSIL also entered into a pledge agreement dated August 01, 2007 with Euram Bank which was signed by Pravin as the Managing Director of MSIL. By the said pledge agreement, MSIL pledged the

proceeds of its GDR issue with Euram Bank as security for the loan given by Euram Bank to Vintage for subscribing to its GDRs. The salient Clauses of the Pledge Agreement *inter alia* are as under:

1. *Preamble*

   By loan agreement (hereinafter referred to as the "Loan Agreement") dated July , 2007, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates ("the Borrower") in the amount of $ USD 17,933,400.00 million. The Pledgor has received a copy of the Loan Agreement and acknowledges and agrees to its terms and conditions.

2. *Pledge*

   2.1. In order to secure any and all obligations, present and future, whether conditional or unconditional of the Borrower towards the bank under the Loan Agreement and any and all respective amendments thereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the Loan Agreement – including those limited as to condition or time or not yet due – irrespective of whether such claims have originated from the account relationship, from bills of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations") the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:

   2.1.1. all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount of $ USD 17,933,400.00 existing from time to time at present or hereafter on the securities account(s) no. 540 016 held with the Bank *(hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein.*

2.1.2. *all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 540 016 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account ") and all amounts credited at any particular time therein.*

(the Pledged securities account and the Pledged Time Deposit account hereinafter referred to as the "Pledged Accounts", the Pledged Securities and the Pledged Accounts hereinafter collectively referred to as "Collateral")

2.2. *The Pledgor agrees to deposit with the Bank all dividends, interest and other payments, distributions of cash or other property resulting from the Pledged securities and funds.*

6. *Realisation of the Pledge:*

6.1. *In the case that the Borrower fails to make payment on any due amount, or defaults in accordance with the Loan Agreement, the Pledgor herewith grants its express consent and the Bank is entitled to apply the funds in the Pledged Accounts to settle the Obligations. In such case the Bank shall transfer the funds on the Pledged Accounts, even repeatedly, to an account specified by the Bank.*

6.2. *Notwithstanding the foregoing, in the case that the Borrower fails to make payment on any due amount, or defaults in providing or increasing security, the Pledgor herewith grants its express consent and the Bank is entitled to realize the Pledged Securities (i) at a public auction for those items of Pledged Securities for which no market price is quoted or which are not listed on a recognized stock exchange or (ii) in a private sale pursuant to the provisions of Section 376 Austrian Commercial Code unless the Bank decides to exercise its rights through court proceedings. The Pledgor and the Bank agree to realize those items of the Pledged Securities for which a market price is quoted or which are listed on a stock exchange* *through sale by a broker publicly authorized for such transactions, selected by the Bank.*

6.3. *The Bank may realize the Pledge rather than accepting payments from the Borrower after maturity of the claim if the Bank has reason to believe that the Borrower's payments may be contestable.*"

20. I note that the Pledge Agreement refers to the Loan Agreement dated July 27, 2007 between the borrower i.e. Vintage and Euram Bank, whereby Vintage was granted a loan of USD 17,933,400.00 and it is stated that the Pledger i.e. MSIL had received a copy of the said Loan Agreement and had also acknowledged and agreed to the terms and conditions of the said loan agreement. Therefore, I observe that, while signing the Pledge Agreement, MSIL was very much aware that Vintage had acquired loan only to subscribe to the GDR issue of MSIL. Further, as the pledge agreement was signed by Pravin on behalf of MSIL, in his capacity as the Managing Director of MSIL, I note that he had, as clearly mentioned in the pledge agreement, acknowledged receiving the said loan agreement and agreed to its terms and conditions after perusing the said agreement. On perusal of the contents of the Pledge Agreement, it is noted that MSIL had agreed to pledge all its rights, title and interest in and to the securities deposited in the Pledge Securities Account and funds in Pledged Time Deposit Account so as to secure the present and future obligations of Vintage. The Pledge Agreement also expressly states that:

"*In the case that the Borrower fails to make payment on any due amount, or defaults in accordance with the Loan Agreement, the Pledgor herewith grants its express consent and the Bank is entitled to apply the funds in the Pledged Accounts to settle the Obligations*".

I note from the perusal of the Pledge Agreement and the Loan Agreement that

- Clause 6.1 of the Loan Agreement specifies that the Pledge Agreement was an integral part of the Loan Agreement.
- The preamble of the pledge agreement clearly mentions that the pledge is being created for the purpose of the loan agreement.

Therefore, in view of the above points, I hold that both the loan agreement and pledge agreement are intertwined with each other and support each other. Therefore, one cannot be read in isolation of another.

21. I am of the view that the GDR proceeds of MSIL were not freely held unencumbered fund and further MSIL was not allowed to withdraw the same without prior written approval of Euram Bank. In this regard I note it relevant to rely upon the observations of the Hon'ble SAT, incorporated in its Order dated October 25, 2016 in the matter of Pan Asia Advisors Limited vs. SEBI as follows:

   "*28.... there can be no dispute that the GDR subscription amounts running into several million US $ were not available to the issuer companies till the loan taken by Vintage for subscribing to GDRs were repaid to Euram Bank. Admittedly, the loans were repaid by Vintage after a long period of time. Therefore, in the facts of present case, findings recorded by SEBI that in reality there was no fund movement after the GDRs were subscribed, cannot be faulted.*"

22. Further, I am of the view that the only reason the funds remained unemployed was because the same were pledged with Euram Bank and MSIL was not allowed to withdraw the same without prior written approval of Euram Bank.
23. Further, I note from the corporate announcements available on BSE website that MSIL had informed BSE on August 16, 2007 that:

"*Maars Software International Ltd. has informed BSE that the Board of Directors of the Company at its meeting held on August 10, 2007, inter alia, has approved the following:*

-Allotment of underlying Equity shares of 7,38,00,000 of Rs. 10/- each fully paid-up against issue of 7,380,000 Global Depository Receipts (GDR) favoring Deutsche Bank Trust Company Americas"

Further, MSIL, vide its letter dated November 02, 2011, informed SEBI that the following were the investors in the GDR issue of MSIL:

Sl. No.	**Name of Subscriber**	**GDRs Subscribed**	**Amount paid (US$)**
1.	Rexflec Limited	13,80,000	3,353,400
2.	Figura Group Limited	15,00,000	3,645,000
3.	Imagination Network Inc.	14,80,000	3,596,400
4.	Tradetec Corporation	14,50,000	3,523,500
5.	Trend Setter Enterprises Corp.	15,70,000	3,815,100
		73,80,000	**17,933,400**

24. I incidentally note from the IR that the above entities were also subscribers in other GDR issues also. In order to contact these initial investors, SEBI had sent emails to their available (Email) addresses and also had issued summons to their contact addresses as per records. However, all the Emails and summons returned undelivered. Thereafter, SEBI contacted the respective Financial Markets Regulators of Hong Kong and Singapore. In this regard, I note that following:

    i. The Securities and Futures Commission of Hong Kong, vide its Email dated July 31, 2012, informed SEBI that Imagination Network Inc. is not present at the address given above.

ii. The Monetary Authority of Singapore, vide its Email dated July 27, 2012, informed SEBI that the building Prudential Tower, where Tradetec Corporation is supposed to have an office at Level 47, does not have a Level (floor) 47. The highest floor is Level 30.

I note that copies of the above referred email letters have been shared with the Noticees vide annexure 7 to the SCN. In this regard, I note that the matter of GDR issue of MSIL came up for consideration by the Hon'ble SAT vide appeal No. 126 of 2013 (Pan Asia Advisors Ltd. vs. SEBI) along with GDR issues of 5 other companies. The said matter was decided by Hon'ble SAT by way of an order dated October 25, 2016. The Hon'ble SAT in the aforesaid matter while noting that same *modus operandi* was adopted in all the six issuer companies, for convenience discussed the GDR issue of Asahi Infrastructure & Projects Ltd., and noted, *inter alia,* as follows: -

"*It is equally interesting to note from the investigation carried out by SEBI that the alleged initial subscribers to the GDRs were nonexistent entities because, e-mails and summons issued to those entities were return back undelivered. Moreover, the respective securities market regulators of the Countries in which the alleged initial subscribers were supposed to be situated have informed SEBI that the addresses of the initial subscribers are either non-existent or do not belong to those entities. In case of Tradetec the address shown was 'level 47, Prudential Tower, 30 Cecil Street, Singapore, 049712'. Investigation carried out by SEBI through the Monetary Authority of Singapore revealed that there was no level 47 and the highest floor of Prudential Tower was level 30 and that Tradetec is not even listed in the office directory of Singapore. One of the alleged initial subscriber known as Rexflex Ltd. was found to be controlled by AP and admittedly the name of Rexflex Ltd. has now been changed PAN Asia Management Ltd. Even in case of other issuer companies, the WTM of SEBI* *has recorded a finding in para 15 of the impugned order that those entities do not exist at the given address and the names of those entities do not exist in the official directory of the Countries in which the said entities were supposed to be situated. In these circumstances, findings recorded in the impugned order that the names of initial subscribers exist only in fiction and that the appellants have artificially sought to create an impression that the GDRs were initially subscribed by foreign investors other than Vintage cannot be faulted.*"

25. The abovementioned information, forwarded by the respective Securities Market Regulators of Hong Kong and Singapore clearly show that the initial subscribers, submitted by MSIL to SEBI, do not exist and that MSIL had submitted wrong information. In this regard, I note that Pravin, as the Managing Director of MSIL, had signed the pledge agreement corresponding to the loan agreement between Vintage and Euram Bank wherein it was clearly mentioned that the loan was being given to Vintage only to subscribe to the GDR issue of MSIL and the proceedings of the loan agreement may only be transferred to Euram Bank Account no. 540 016 (bank account of MSIL). Therefore, in view of the scheme of the GDR issue as described in the initial paragraphs of this order, I note that, from the beginning, MSIL and Pravin were aware of the fact that Vintage was the only initial subscriber of the GDR issue. In light of the whole scheme of things as explained it only stands to reason that despite clear knowledge of the subscriber to the GDR issue, MSIL and it's Managing Director Pravin have disclosed non-factual information which buttresses their *malafide* intention behind withholding the correct actual information.

26. Therefore, in light of the above observations and the fact that MSIL itself had secured the loan taken by Vintage for the subscription of its GDR and the

documents related to that were signed by Pravin himself, I am of the view that, from the initial stage, MSIL and Pravin were well aware that the GDRs were subscribed only by Vintage.

27. Therefore, as noted above in pre-paragraphs, MSIL didn't disclose the details of loan agreement of Vintage and its own Pledge Agreement with Euram Bank at the time of the GDR issue. In this regard, I note that the Hon'ble SAT, in its order dated February 05, 2020, in the matter of Jindal Cotex Ltd. vs. SEBI, has clearly delineated the importance of disclosure of loan agreement and pledge agreement and the requirement of their disclosures in the following terms:

"*The contention that Pledge Agreement was not required to be disclosed under the Listing Agreement is not correct as the Listing Agreement, which forms the very basis of a disclosure based regulatory regime, requires every material information to be disclosed to the Stock Exchange at the earliest, sometime in a matter of minutes and others in a matter of days. When the company has lent the entire proceeds of the GDR issue to the tune of US$ 38.75 million as security for a third party abroad to avail a loan on the basis of that security and thereby potentially jeopardizing the entire proceeds is not a non-event but an important material information affecting all the stakeholders. We would hold that such events have to be disclosed in bold letters so that the investors of the company as well as those who are subscribing to its GDR issue etc. should be fully aware of those highly material facts.*
…… The basic question to be answered is whether the issue was subscribed by a loan taken by Vintage on the basis of pledging the proceeds of the GDR issue as security for the said loan taken by a third party and that too a party located abroad and whether sufficient disclosures of material events associated with the issue was properly done. We are of the considered view that the method adopted by the appellants was vitiated through fraud………"

Therefore, in light of the above observations of Hon'ble SAT, I am of the view that non-disclosure of loan agreements and pledge agreement was done so as to create a fraudulent impression in the minds of the public investors that the said GDR issue was genuine in nature and the company had received the funds and the same were available for the free use of MSIL.

28. I also note that MSIL being a listed company and Pravin, being its Managing Director at the time of such issuance of GDRs, are expected to ensure adherence and compliance with the provisions of securities laws. I am also of the view that listed companies and their directors assume a huge responsibility towards their investors and the market. Further, I am of the view that MSIL and Pravin had purposefully entered into Pledge Agreement at the time of the GDR issue in order to secure loan in favour of Vintage at the time of GDR issue so that the said GDR issue could be fully subscribed.

29. In the same context, I also note that Hon'ble Supreme Court of India, in its judgment dated July 06, 2015, in the matter of SEBI vs. Pan Asia Advisors Ltd. & Ors, had explained the object of creating and trading in GDRs outside India in the following terms:

"*60. On a consideration of the 2000 Regulations, the 1993 Scheme and the Master Circular issued by RBI periodically one can discern that for creation of GDRs which can be traded only at the global level, the issuing company should have developed a reputation at a level where the marketability of its investment creation potential will have a demand at the hands of the foreign investors. Simultaneously, having regard to the development of the issuing company in the market and the confidence built up with the investors both internally as well as at global level, the issuing company's desire to raise foreign funds by creating GDRs should have the* *appreciation of investors for them to develop a keen interest to invest in such GDRs. Mere desire to raise foreign investments without any scope for the issuing company to develop a market demand for its GDRs by increasing the share capital for that purpose is not the underlying basis for creation of GDRs. In fact for creating of GDRs apart from the desire of the issuing company to raise foreign funds, the marketability of such shares in the form of GDRs should have an applicable potential at the global level. To put it differently, by artificial creation of global level investment operation, either the issuing company on its own or with the aid of its Lead Manager cannot attempt to make it appear as though there is scope for trading GDRs at the global level while in reality there is none. The above fact has to be kept in mind when dealing with an issue relating to creation of GDRs, in as much as, when the GDRs gets fully subscribed at the global level providing scope for huge foreign investment, the same will have a serious impact at the internal investment market in the form of high appreciation of share value whereby the issuing company and the investor will be greatly benefited mutually. Such a real growth structurally and financially is the underlying principle in the creation and trading of GDRs at the global level.*"

Therefore, I observe that the company has issued GDRs without disclosing the actual subscribers clearly giving an impression that the company has developed a reputation at a level where the marketability of its investment creation potential will have a demand at the hands of the foreign investors. The same not only provides scope for huge foreign investment but may also lead to high appreciation of share value.

30. In this regard, I am of the view that the above general disclosure that the allotment of underlying Equity shares of 7,38,00,000 of Rs. 10/- each fully paid-up against issue of 7,380,000 GDRs favoring Deutsche Bank Trust Company

Americas clearly establishes the malafide intention on the part of MSIL as well as it's the then Managing Director Pravin. Further, the purpose behind such disclosure has been elaborately explained by the Hon'ble SAT, in its order dated October 25, 2016 in the matter of Pan Asia Advisors Ltd. vs. SEBI, in following words:

"*It is apparent that the appellants knew that if the investors in India come to know that the GDRs of the issuer companies have not been subscribed by foreign investors but by the entities controlled by the Managing Director (AP) of PAN Asia, then it would not generate interest in minds of the investors in India to subscribe to the shares of issuer companies. Therefore, in order to create an artificial impression that global investors have shown keen interest in investing in the issuer companies by subscribing to the GDRs, appellants by a dubious method introduced fictitious and non-existent initial subscribers to the GDRs of the issuer companies so as to mislead the investors in India in believing that the global investors have shown keen interest in investing in the GDRs of issuer companies. In these circumstances, decision of SEBI that the appellants attempted to committed fraud on the investors in India by introducing fictitious initial subscribers cannot be faulted.*"

In view of this, I hold that the deliberate act on the part of MSIL and Pravin to submit non-factual information was an important part of the whole schemes of GDR issue and the same was done only for the purpose of defrauding Indian investors by creating an impression that the GDRs of MSIL have been subscribed by genuine foreign entities on the basis of its fundamentals and future prospects.

31. I further note from IR that these GDRs were sold by way of Over the counter (**OTC**) transactions to FIIs and their sub-accounts such as Rhodes Diversified, Mavi Investment Fund Limited, Sophia Growth, India Focus Cardinal Fund

(‘**IFCF**’) and KII Ltd. In this regard, I note from the IR that IFCF was an entity connected with AP. I further note that, vide an agreement dated July 13, 2009, Vintage had given a loan of US $ 20,00,000 to Credo Investment Holding Ltd., holding company of KII for onward lending to KII, *inter alia*, to purchase GDRs of MSIL. Thereafter, I note that the said GDRs were converted into underlying shares by IFCF and KII. Pursuant to the said conversion, IFCF and KII sold these shares in Indian Securities Market to the entities connected with AP. Incidentally, I note from the investigation report that no wrongdoing, whatsoever, has been identified on part of MSIL and its Managing Director in respect of the above leg of the scheme.

32. To put the entire discussion in a nutshell, I find that MSIL, by appointing Pan Asia as the lead manager, issued GDRs on August 10, 2007. A loan agreement entered into between Vintage and Euram Bank to the extent of the whole GDR proceeds of MSIL, secured by a corresponding pledge agreement between MSIL and Euram Bank, was instrumental in the subscription of the complete GDR issue by Vintage. I note that the two agreements were drawing strength from each other. At the same time, MSIL did not disclose the aforesaid loan agreement and pledge agreement. Thereby, MSIL created an impression that the GDRs were genuinely subscribed by foreign entities.

33. Thus, I note that the issuance of GDRs by adopting the explained *modus operandi* and the consequential misleading and false disclosure render the whole schemes of things a fraudulent act orchestrated by MSIL and its the then Managing Director Pravin with the help of AP and his associates.

34. In view of the above, I further hold that, using the GDR issue, the fraudulent impression, created before the investors in Indian securities market, showed MSIL as a company to be of international reputation and better investment opportunity. I am of the view that the said impression was made possible only through an elaborate fraudulent planning detailed above.

35. In view of the foregoing, I find that the fraudulent GDR schemes crafted; false and misleading corporate announcements made and material and price sensitive information viz., (i) execution of pledge agreement dated August 01, 2007 by MSIL in favour of Euram Bank pledging the proceeds of GDR issue for providing security to the loan taken by Vintage, (ii) execution of loan agreement dated July 27, 2007 by Vintage for obtaining loan from Euram Bank for subscribing the GDR issue of MSIL, (iii) Vintage was the only subscriber of GDR issued in August 2007 by MSIL, suppressed by MSIL are price sensitive information and have the strength to impact the scrip price of MSIL.

36. In this regard, I note that the facts of the present matter and the *modus operandi* employed in the present GDR issue are similar to facts and *modus operandi* in the GDR issue of Cals Refineries Ltd. wherein the Hon'ble SAT vide its order dated October 12, 2017 has made the following observations:

"*In these circumstances, the conclusion drawn by SEBI that opening a bank account with Banco and executing the Account Charge Agreement were the acts done by Cals through its directors to finance Honor for subscribing the GDRs issued by Cals in gross violation of Section 77(2) of the Companies Act, 1956 and the provisions contained in the SEBI Act and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for convenience), cannot be faulted.*"

37. Further, the following observations made by the Hon'ble SAT in matter of V. Natarajan vs. SEBI(Order dated June 29, 2011 in Appeal No.104 of 2011) are worth mentioning:

"*... we are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 were violated. These regulations, among others, prohibit any person from employing 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 an exchange. They also prohibit persons from engaging 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 that are listed on stock exchanges. These regulations also prohibit persons from indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true. Any advertisement that is misleading or contains information in a distorted manner which may influence the decision of the investors is also an unfair trade practice in securities which is prohibited. The regulations also make it clear that planting false or misleading news which may induce the public for selling or purchasing securities would also come within the ambit of unfair trade practice in securities.*"

38. I incidentally note from the IR that SEBI had attempted to examine the utilization of the funds of the GDR issue. In this regard, it is noted that four different summons dated January 12, 2012, March 28, 2012, April 18, 2012 and April 20, 2012 were issued by SEBI to MSIL/its Managing Director. However, MSIL never provided the information sought by SEBI. In light of this, due to the lack of evidences, the utilization of funds of the GDR issue could not be examined by SEBI.

39. In view of the above, I note that the scheme of arrangement of MSIL, in allotting GDR issue to only one entity i.e. Vintage which subscribed to the GDR issue by obtaining loan from Euram Bank and which was secured by MSIL by pledging its GDR proceeds, seen along with the false and misleading corporate announcements made by MSIL stating that the GDRs were issued and allotted without disclosing the crucial details pertaining to the aforesaid Loan and Pledge Agreements which were price sensitive information, lead to a conclusion that the same were done in a fraudulent manner. Therefore, I find that MSIL has violated the provisions of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(b), (c), (d) and 4(2)(c), (f), (k), (r) of PFUTP Regulations.

40. I further note from Form-32 dated February 13, 2008 that Pravin had resigned from the position of Managing Director of MSIL w.e.f. January 14, 2008. Therefore, I am of the view that Pravin was the Managing Director of MSIL at the relevant period. Further, the pledge agreement was signed by Pravin in his capacity as the Managing Director of MSIL. He was also the authorized person on behalf of MSIL to execute other documents in relation to the GDR issue. In this regard, as the Managing Director of MSIL, Pravin was central to the whole scheme on part of MSIL. I note that, by virtue of the provisions of Section 2(26) of the Companies Act, 1956 (Section 2(54) of the Companies Act, 2013), Pravin, being the Managing Director of MSIL at the relevant time, had been vested with substantial powers of management. Pravin was also in charge of and responsible for the conduct of the business of MSIL, an artificial juridicial person and he assumes the character as “officer in default” for any violation. In this regard it is pertinent to rely upon the provisions of Section 5 of the

Companies Act, 1956 (section 2(60) of the Companies Act, 2013) read with Section 27 of the SEBI Act. Additionally, I would also like to quote the observations of the Hon'ble Supreme Court of India in the matter of Shri N. Narayanan vs. SEBI decided on 26.04.2013, wherein it was observed that- "*...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.*" Further, Hon'ble High Court of Madras in Madhavan Nambiar vs Registrar of Companies (2002 108 CompCas 1 Mad) has held that –"*... Section 5 of the Companies Act defines the expression "officer who is in default". The expression means either (a) the managing director or managing directors ; (b) the whole-time director or whole-time directors ; (c) the manager ; (d) the secretary ; (e) any person in accordance with whose directions or instructions the board of directors of the company is accustomed to act; (f) any person charged by the board with the responsibility of complying with that provision ; (g) any director or directors who may be specified by the board in this behalf or where no director is so specified, all the directors.*

...Section 29 of the Companies Act provides the general power of the board....Therefore it follows there cannot be a blanket direction or a blanket indemnity in favour of the petitioner or other directors who have been nominated by the Government either ex officio or otherwise. Hence the second point deserves to be answered against the petitioner.... There may be a delegation, but ultimately it comes before the board and it is the board and the general body of the company which are responsible..."

41. Further, I note that Section 27 of SEBI Act also deals with offences by Companies. In the said provision, Section 27(1) says that, in case of a default by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
42. In light of the above discussions regarding the scheme of GDR issue of MSIL, I am of the view that Pravin had played the major role from the side of MSIL as, by virtue of the Board Resolution dated March 31, 2007, he was given sole authority to open the bank account with Euram Bank and sign any other document necessary for the GDR issue. Further, I note that it is Pravin who had signed everywhere on behalf of MSIL be it KYC document or the pledge agreement. Further, Pravin was given the sole authority to operate the said bank account with Euram Bank.
43. Therefore, in view of the above, I hold Pravin to be equally liable for the abovementioned fraud carried out by MSIL, in collusion with AP, on the Indian investors and has violated the provisions of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(b), (c), (d) and 4(2)(c), (f), (k), (r) of PFUTP Regulations.

b. Whether MSIL and its directors Harshawardhan and Nikunj have violated the provisions of Section 11C(3) read with Section 11C(6) of SEBI Act?

44. It is alleged that MSIL and its directors Harshawardhan and Nikunj, by their failure to submit the complete and correct information regarding the GDR issue

of MSIL have violated the provisions of Section 11C(3) read with 11C(6) of SEBI Act.

45. I note that Section 11C(3) of SEBI Act requires any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before the Investigating Authority or any person authorised by it in this behalf which the investigating authority considers relevant or necessary for the purposes of its investigation.

46. In this regard, I note that SEBI had issued two different summons to the Managing Director, MSIL on January 12, 2012 and April 20, 2012, wherein it was advised to submit certain documents listed therein. Further, vide summons dated March 28, 2012 and April 18, 2012, the Managing Director of MSIL was summoned to appear in person before the Investigating Authority along with the details sought by the said respective summons. Subsequent to the respective summons, MSIL, vide its letters dated February 07, 2012, April 09, 2012 and April 19, 2012 requested time to submit the documents and information listed in the above-mentioned summons.

47. In this regard, it is alleged that MSIL and it directors Harshawardhan and Nikunj have failed to submit the following information to SEBI despite repeated issuance of summons:

- Details of usage of proceeds of the GDR Issue by MSIL, along with the documentary proof in support of the utilization of the funds.
- Copies of bank account statements of MSIL maintained with Euram Bank.
- Copies of bank account statements of MSIL in India highlighting transactions related to repatriation of GDR proceeds.

- Chronology of events leading to the issue of GDRs along with a certified true copy of the resolution passed by Board of Directors of MSIL.
- Rationale for the appointment of Panasia as LM for GDR issue of MSIL.
- Copies of all the agreements between MSIL and Panasia
- Copies of agreements with Euram.
- Details of the conditions that were laid upon MSIL for the withdrawal of GDR proceeds from bank accounts maintained with Euram.
- Copy of any other agreement that MSIL had with Euram apart from those related to GDR issue.
- Details of any agreement of MSIL regarding financing for the purpose of subscription by initial investors of GDRs.
- Copies of agreements that MSIL had with Vintage and AP.
- Contact details, Nature of business and Bank Account statements of foreign subsidiaries[1]

48. I note that, vide its letters dated February 07, 2012, April 09, 2012 and April 19, 2012 MSIL had submitted to the investigating authority that it was in the process of compilation of documents as required by the Investigating Authority. In this regard, I note that the letter dated February 07, 2012 was signed by Nikunj as a director of MSIL. Further, the letters dated April 09, 2012 and April 19, 2012 were signed by Harshawardhan, once as an Authorized Signatory and another

[1] Also, certain documents/information were sought by way of an Email dated April 20, 2012. However, only the documents/information sought by way of a summons, duly signed by the competent authority, have been considered for the purposes of the above mentioned allegations.

time as a director of MSIL. Thereafter, no document/information in this regard was submitted by MSIL.

49. Further, I note from the IR, that SEBI had attempted to examine the end use of the said GDR proceeds. In this regard, I note from the IR that the details regarding information mentioned above regarding certain details in respect of the said GDR issue were important for the purpose of present investigation as the same were required to examine the details of GDR issue and the use of funds raised by MSIL by way of the said GDR issue. The IR carries remarks that due to the failure of MSIL and its directors Harshawardhan and Nikunj to submit the said information, SEBI could not examine the end use of the funds and establish complete cycle of flow of funds with regards to the funds raised by way of the GDR issue. Further, I note from the IR that SEBI had suspicion that MSIL had routed the GDR proceeds back to AP related entities for repayment of loan taken by Vintage. However, due to the deliberate non-submission of the above information by MSIL, SEBI could not investigate the said angle and the same has hampered a very crucial aspect of investigation in GDR issue of MSIL.

    Therefore, I hold that MSIL has failed to furnish the above sought information and thereby hampered the investigation of SEBI; thereby, has violated the provision of Section 11C(3) of SEBI Act.

50. I further note from the Form-32 dated February 13, 2008, as available on the website of Ministry of Corporate Affairs, that Nikunj was appointed as Managing Director of MSIL on January 14, 2008 and he had resigned as the Managing Director of MSIL w.e.f. July 07, 2016. Therefore, at the time when the

abovementioned summons were issued by the Investigating Authority of SEBI, Nikunj was the Managing Director of MSIL. Therefore, I am of the view that Nikunj was liable to furnish the abovementioned information to the Investigating Authority under Section 11C(3) of SEBI Act. I note that Nikunj has failed to perform his obligation under SEBI Act. Therefore, I hold that Nikunj has violated the provisions of Section 11(C)(3) of SEBI Act.

51. I further note from Form 32 dated May 16, 2009, as available on the website of Ministry of Corporate Affairs, that Harshawardhan was appointed as Independent Director of MSIL w.e.f. May 05, 2009. I find that letters dated April 09, 2012 and April 19, 2012 of MSIL to SEBI, wherein MSIL had requested for extension of time to submit the said information, were signed by Harshawardhan in his capacity as a Director of the Company. I note from letter dated April 19, 2012, signed by Harshawardhan as a Director, affirmatively confirming compilation of documents as sought by SEBI through the summons. Further, I note that though an Independent Director, nowhere in the reply letters Harshawardhan had claimed that he was not in possession of the said information/ documents. Therefore, the available records only suggest me that Harshawardhan was aware of the said summons and was capable of furnishing the necessary information / documents as there was no specific mentioning about his inability to furnish the required information / documents. In light of this, as a director of MSIL, Harshawardhan was obligated to submit the said information to Investigating Authority of SEBI which he had clearly failed to do. Therefore, I hold that Harshawardhan, has also violated the provisions of Section 11(C)(3) of SEBI Act.

52. However, I note that the power to try an entity and punish accordingly, if required, under Section 11C(6) lies with some other forum and the same is outside the purview of an Adjudication Proceedings. Therefore, I hold that the provisions of Section 11C(6) of SEBI Act cannot be made applicable in the present adjudication proceedings.

53. I further note that there is a mention in the IR that summons dated March 28, 2012 and April 18, 2012 were issued to Managing Director of MSIL to appear before the Investigating Officer which he failed to do. However, no adjudication proceedings under the relevant provision of law has been approved against the said allegation. Therefore, I am unable to proceed in regards to the said allegation.

c. Whether MSIL has violated the provision of Clause 35 of Listing Agreement read with Section 23E of SCRA?

54. It is also alleged that MSIL had failed to disclose details of outstanding GDRs in its quarterly disclosures of shareholding pattern to BSE. In view of the above, it is alleged that MSIL has violated Clause 35 of the Listing Agreement read with Section 23E of SCRA.

55. In this respect, I note that MSIL had issued GDRs on August 10, 2007. Thereafter, in terms of the listing agreement, MSIL was required to disclose shares proportionate to outstanding GDR issue under the heading ‘Shares held by Custodians and against which Depository Receipts have been issued’ to the stock exchange (viz, BSE in this matter). However, I note from the quarterly shareholding pattern for the quarters ended September 2007 to March 2013,as available on BSE website under Clause 35 of Listing Agreement, that MSIL had

failed to disclose the details of shares proportionate to outstanding GDRs as 'Shares held by Custodians and against which Depository Receipts have been issued'. Therefore, I hold that MSIL has repeatedly violated the provision of Clause 35 of Listing Agreement read with Section 23E of SCRA.

d. If yes, whether the Noticees are liable for penalty?

56. As established in the pre-paragraphs, MSIL and it's the then Managing Director Pravin have violated the provisions of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(b), (c), (d) and Regulations 4(2)(c), (f), (k) and (r) of PFUTP Regulations. Therefore, MSIL and Pravin are liable for a penalty under Section 15HA of SEBI Act. The text of the said provision of law is being reproduced below:

SEBI Act

Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

57. It has further been established that MSIL, it's the then Managing Director Nikunj and its director Harshawardhan have violated the provisions of Section 11C(3) of SEBI Act. Therefore, MSIL, Nikunj and Harshawardhan are liable for penalty under Section 15A(a) of SEBI Act. The text of the said provision of law is being reproduced below:

SEBI Act

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made there under,—*

(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

58. It has also been established that MSIL has violated the provisions of Clause 35 of Listing Agreement read with Section 23E of SCRA. Therefore, MSIL is liable for penalty under Section 23E of SCRA. The text of the said provision of law is being reproduced below:

SCRA

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. *If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.*

59. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely; -

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

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

(c) the repetitive nature of the default.

60. With regard to the above factors, it may be noted that the investigation report has not quantified the profit made or the loss caused to general investors on account of the violations committed by the Noticees. However, I note that the violation of MSIL under Clause 35 of Listing Agreement was a repeated violation as discussed elsewhere in this order. Further, MSIL and its directors viz. Harshawardhan and Nikunj had failed to provide information to Investigating Authority despite issuance of different summons.

61. Further, in light of recent order dated August 02, 2019 of Hon'ble SAT in the matter of P G Electroplast vs SEBI, I also note that, vide Order dated September 05, 2017, Hon'ble Whole Time Member of SEBI has debarred MSIL from issuing equity shares or any other instrument convertible into equity shares or any other security for a period of ten years. Vide the same order, Noticee 2 was also prohibited from accessing the capital market directly or indirectly, and dealing in securities or instruments with Indian securities as underlying, in any manner whatsoever, for a period of ten years. Further Noticees 3 and 4 were also prohibited from accessing the capital market directly or indirectly, and dealing in securities or instruments with Indian securities as underlying, in any manner whatsoever, for a period of one year.

ORDER

62. After taking into consideration the facts and circumstances of the case, material/facts on record and also the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of SEBI Adjudication Rules and Section 23-I of the SCRA read with Rule 5 of SCRA Adjudication Rules, hereby impose the

following penalty on the Noticees under Sections 15A(a) & 15HA of the SEBI Act and Section 23E of SCRA for their violation of the provisions of SEBI Act and PFUTP Regulations, as discussed in this order:

Name of the Noticee	**Provision**	**Penalty**
Maars Software International Limited	Section 15HA of SEBI Act	Rs. 10,00,00,000 (Rupees Ten Crore)
	Section 15A(a) of SEBI Act	Rs. 10,00,000 (Rupees Ten Lakh only)
	Section 23E of SCRA	Rs. 15,00,000 (Rs. Fifteen Lakh only)
Pravin Champalal Jain	Section 15HA of SEBI Act	Rs. 1,00,00,000 (Rupees One Crore)
Harshawardhan S Rathore	Section 15A(a) of SEBI Act	Rs. 10,00,000 (Rs. Ten Lakh only)
Nikunj Babulal Choradiya	Section 15A(a) of SEBI Act	Rs. 10,00,000 (Rs. Ten Lakh only)

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

63. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

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

65. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees Maars Software International Limited, Pravin Champalal Jain, Harshawardhan S Rathore & Nikunj Babulal Choradiya and also to the Securities and Exchange Board of India.

Place: Mumbai	**K SARAVANAN**
Date: July 28, 2020	**CHIEF GENERAL MANAGER**
	AND ADJUDICATING OFFICER