**WTM/ AB /EFD-1/DRA-1/ 13/2018-19**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**CORAM: SHRI ANANTA BARUA, WHOLE TIME MEMBER**

**ORDER**

**Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of Sanraa Media Ltd.**

In respect of: -

| Noticee No. | Name of the Noticees | PAN |
|---|---|---|
| 1 | Sanraa Media Ltd. | AAACS9093A |
| 2 | Mr. Annaswami Venkatramani | AABPV3960F |
| 3 | Mrs. Uma Karthikeyan | AKPPK3166J |
| 4 | Mr. Sukumar Subramanian | AOUPS4543L |
| 5 | Mr. Rajeev Agarwal | AAJPA6719K |
| 6 | Mr. Krishnan Rajagopal | AEHPR7931J |
| 7 | Mr. Rajendran Sivashankaran | AVAPS0218D |
| 8 | Clifford Capital Partners A.G.S.A. | ---------- |

*The aforesaid entities are hereinafter referred to by their respective names/serial numbers or collectively as "the Noticees".*

***Background:***

1. SEBI investigated the issuance of Global Depository Receipts ('**GDRs**') in overseas market by Sanraa Media Limited (hereinafter referred to as "**the company/ SML**") for the period of April 01, 2008 to May 31, 2008 which revealed that SML issued 10.00 million GDRs (amounting to USD 27.50 million) on May 02, 2008 on the Luxembourg Stock Exchange, equivalent to 2,00,00,000 equity shares of Rs. 10 each. Summary of the GDR issue of SML is tabulated below:

| GDR issue date | No. of GDRs issued (mn.) | Capital raised (USD mn.) | Local custodian | No. of equity shares underlying 1 GDR | Global Depository Bank | Lead Manager | Bank where GDR proceeds deposited | GDRs listed on |
|---|---|---|---|---|---|---|---|---|
| 02-May 2008 | 10.00 | 27.50 | ICICI Bank | 2 shares of face value of Rs. 10/- each issued at price of Rs. 55/- for each share. | The Bank of New York | Fundabilis, GMBH, Switzerland | Banco | Luxembourg Stock Exchange (LSE) |

***Show Cause Notice, Reply and Personal Hearing:***

2. A Show Cause Notice dated December 08, 2017 ('**SCN**') containing the findings of the investigation was issued to the Noticees asking them to show cause as to why action should not be taken for the alleged violation of the provisions Section 12A(a), (b), (c) of the Securities and Exchange Board of India Act, 1992 ('SEBI Act') read with Regulations 3 (a), (b), (c), (d) and 4(1), 4(2) (f), (k), (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('**SEBI (PFUTP) Regulations**'). Along with the SCN, copies of documents relied on to substantiate the allegations, the following documents were enclosed as Annexures 1 to 10:

| Annexure no. | Particulars |
|---|---|
| 1 | Copy of Letter dated June 17, 2015 received from SML by SEBI inter alia furnishing details such as list of allottees, copy of board resolution, annual reports of the company, intended use of GDR proceeds etc. |
| 2 | Copy of Credit Agreement dated April 17, 2008 between Noticee no. 8 and Banco relating to a dollar term loan facility to subscribe to GDRs of SML |
| 3 | Copy of the drawdown notice given by Noticee no. 8 to Banco for release of funds under the Credit Agreement. |
| 4 | Copy of the certified extract of the minutes of the Board meeting of SML held on January 31, 2008 wherein the resolution with respect to opening of bank account with Banco and authorizing Banco to use the funds in such account as security in respect of loan, if nay. |
| 5 | Copy of the Account Charge Agreement executed on April 30, 2008 between SML and Banco |
| 6 | Copy of Bank Account Statement opened by SML with Banco |
| 7 | Copy of letter dated February 05, 2009 from SML to Banco requesting transfer of funds from its bank account to the loan account of Noticee no. 8 |

| | |
|---|---|
| 8 | Copy of CEO/CFO certificate dated September 4, 2009, issued by Noticee no. 4 and Noticee no. 3 |
| 9 | Copy of SML's Banco Bank Account Statement, which contains details of GDR proceeds received by SML. |
| 10 | Copy of email sent to HDFC Bank by SEBI seeking statement of account for the current account maintained by SML. |

3. A supplementary show cause notice dated June 12, 2018 was also issued to Noticee no. 1 (**'supplementary SCN'**), calling upon to show cause as to why suitable directions including the direction to bring the money back should not be issued against it under section 11(1), 11B and 11 (4) of the SEBI Act.

4. The aforesaid SCN contained following observations of investigation:

   a. The scrip of Noticee no. 1 company was listed on BSE. Clifford Capital Partners A.G.S.A. (earlier known as Seazun Limited) (hereinafter referred to as Noticee no. 8), a company incorporated in the British Virgin Islands was the only subscriber to the GDR issue and that the subscription amount was paid by obtaining dollar term loan facility from Banco Elisa S.F.E., S.A. (hereinafter referred to as **'Banco'**) vide Credit Agreement dated April 17, 2008 (**'Credit Agreement'**) (Annexure 2 to SCN). The dollar term loan facility was secured by Account Charge Agreement dated April 30, 2008 (**'Account Charge Agreement'**) (Annexure 5 to SCN) between SML and Banco whereby the GDR issue proceeds were pledged to Banco. The Credit Agreement was entered into between Noticee no. 8 and Banco for the specific purpose of subscribing to the GDR issue by SML.

   b. The Account Charge Agreement was an integral part of the Credit Agreement. The Account Charge Agreement was signed by Noticee no. 2 i.e. Mr. Annaswami Venkatramani (Chairman of the company) on behalf of SML, who was authorised by the Board of Directors through a resolution passed in its meeting held on January 31, 2008. The Board of Directors in the same meeting had also approved a resolution authorizing Banco to use the funds as deposited in the account (where GDR proceeds were to be credited) as security in connection with any loan. Noticee no. 2 to 7 had attended the board meeting held on January 31, 2008. Therefore, it has been alleged that the company and its directors including Noticee no. 2 to 7 had knowledge about the subscriber to GDR issue and the Credit Agreement. These agreements enabled

Noticee no. 8 to avail loan from Banco for subscription of GDRs of SML by providing GDR proceeds as collateral for the loan extended by Banco to Noticee no. 8. The GDR issue would not have been subscribed if SML had not given such security towards the loan taken by Noticee no. 8. Hence, investigation concluded that SML and its directors namely Noticee no. 2 to 7, acted as party to the fraudulent scheme. Further, the fraudulent arrangement of Credit Agreement and Account Charge Agreement, which resulted in facilitating the subscription of GDR issue of the company was not disclosed to the stock exchange.

c. Investigation observed that information regarding execution of Account Charge Agreement was material information about contingent liability to the extent of proceeds from GDR issue. Suppression of such material information shows that the corporate announcement was primarily meant to mislead Indian retail investors that GDRs were genuinely subscribed, whereas in reality, the GDR issue was facilitated by SML itself.

d. Investigation observed that SML requested transfer of an amount of USD 27.244 million to Noticee no. 8 towards repayment of the loan taken by Noticee no. 8 for subscription of GDR's issued by SML. On account of default on repayment of loan obtained by Noticee no. 8, GDR proceeds were set off by Banco. Therefore, SML did not receive consideration for the GDR issue to the extent of US$ 27.244 million.

e. Investigation observed that on February 05, 2009 (Annexure 7 to SCN), SML requested transfer of USD 27.244 million (including interest) towards closure of the loan taken by Noticee no. 8. However, the same was not accounted as receivables from Noticee no. 8, but was reported as an investment in overseas companies (Rs. 65.92 crores) in the financial statements for F.Y. 2008-09, 2009-10 and 2010-11. Hence, investigation concluded that the accounting treatment given by SML was fraudulent.

f. The annual report of SML for the financial year 2008-09 contained a misleading CEO/CFO Certificate which was signed by Noticee no. 3 and 4, stating that the financial statements were showing true and fair view, whereas the financial statements for financial year 2008-09 did not state the true and fair view because they did not account for the receivables from Noticee no. 8, even when SML had paid to Banco for the closure of loan taken by Noticee no. 8.

g. Considering the fact that Noticee no. 8 was the sole subscriber to the GDR issue and it defaulted in repayment of the dollar term loan taken from Banco, investigation concluded that equity shares underlying GDR's to the extent of USD 27.244 million were acquired by Noticee no. 8 fraudulently, free of cost.

5. The Noticees were also advised to file their reply within a period of 21 days from the date of receipt of the SCN. In response to SCN, the company had filed its reply dated 20/04/2018 and in response to supplementary SCN, the company has filed its reply dated 30/07/2018, noticee no. 5 filed its reply dated 12/02/2018, noticee no. 4 filed its reply vide email dated 24/01/2018 and noticee no. 8 filed its reply dated 7/03/2018. The response of these noticees is summarized as under:

**a. Noticee no. 1**

i. That noticee no. 1 has disclosed every material development in respect of the GDR issue to the stock exchange. Since the fact of the GDR issue was itself disclosed to the stock exchange and approved by the shareholders of the company, the other procedural requirements like opening of bank account with Banco, appointing a banker to the issue. etc. are not required to be disclosed.

ii. That the authority to Banco to use the funds of the company as security was at that point of time a standard condition provided and required by Banco to act as banker to the GDR issue. As part of the standard documentation, such a condition to keep the funds as security was insisted upon by Banco and agreed to by the company upon insistence of the merchant banker.

iii. That there is nothing on record to suggest that the company was aware that the charge over the account of the company would be utilized by Banco as security for the loan taken by noticee no. 8. If that was the case then, the Board would have recorded this fact, in the minutes of its meeting dated 7/12/2006 that such an arrangement exists. That the company was not aware that the security which was authorized to be created would be used as security for loan taken by notice no. 8.

iv. That there is no allegation in the SCN that by the very fact of executing the Account Charge Agreement, Noticee no. 1 has violated any provision of law.

v. That the Account Charge Agreement was executed at the insistence of Banco and was part of multiple agreements, documents executed with Banco for GDR issuance.

vi. That the Board of the company in its meeting held on 7/12/2006 had already approved the use of GDR proceeds as security and the relevant disclosures were also made to the stock exchange, hence, no separate disclosure was required when the Account Charge Agreement was executed.

vii. The SCN fails to establish that a fraud was committed in the GDR issue. The SCN has in no manner throughout produced any charge, document, evidence, material or suggestion as to what exactly was the wrongdoing as regards the scheme of GDR is concerned and has not even suggested any provision of law or regulation applicable to GDR issuance which has been violated.

**b. Noticee no. 4**

i. That he was not involved in the day to day affairs of the company especially finance.

ii. That he resigned from the company on 22/01/2012, which was also intimated to the company and RoC.

iii. That he has not attended all the Board meeting of the company from the date of his appointment. That he was not aware of the details of the subject GDR issue and its subsequent events.

iv. That he has not signed any documents referenced in the annexures to the SCN.

**c. Noticee no. 5**

i. That he had never attended nor participated in any Board meeting of SML through videoconferencing or teleconferencing, or signed any documents or minutes of the company.

ii. That he was appointed as an independent director of the company.

iii. That he has not attended any board or general meeting of the company.

iv. That he is not signatory to any bank account of the company.

v. That he has not signed any Annual Account or any document of the company.

vi. That he has never drawn any kind of remuneration or sitting fees from the company.

vii. That he had no knowledge of the day to day affairs or transaction of the company.

viii. That he has resigned from the Board of SML and the company is yet to file the relevant forms with RoC.

**d. Noticee no. 8**

i. That Noticee no. 8 entered into the Credit Agreement with Banco to subscribe for GDR of the company. Noticee no. 8 was never in contact with the company and they were never knowingly a party to the alleged fraudulent scheme.

6. An opportunity of personal hearing was granted to the Noticees on October 29, 2018 which was communicated vide letters dated September 06, 2018. As the hearing notice could not be served on Noticee no. 1, 2, 3 and 6 through Speed Post, a copy of the hearing notice was affixed at their last known addresses. The hearing notice was also served on the advocates representing Noticee no. 1 to 7. On the date of personal hearing, Mr. V. Arunagiri, Advocate appeared on behalf of Noticee no. 1 to 7. Noticee No.1 to 7 through their advocate have filed written submission dated November 28, 2018. Noticee no. 8 was not present, neither was represented by any advocate/counsel, on the date of personal hearing.

***Consideration of issues and findings*:**

7. I have considered the SCN and the supplementary SCN along with the findings of the Investigation and all the Annexures as referred to in para 2 of this order; replies received to the aforesaid SCN/supplementary SCN and submissions made by the noticees pursuant to the hearing granted to them; and all other relevant material available on record.

8. Before proceeding further, the relevant provisions of law are reproduced hereunder:

***SEBI Act –***
***Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.***

*12A. No person shall directly or indirectly –*
*(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
*(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
*(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the Rules or the Regulations made thereunder;*

***SEBI (PFUTP) Regulations, 2003***

***Regulation 3. Prohibition of certain dealings in securities***

*"No person shall directly or indirectly*

*(a) buy, sell or otherwise deal in the securities in a fraudulent manner;*

*(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*

*(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*

*(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

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

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

*(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:—*

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*(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.*

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9. SML was listed on BSE. By virtue of being a listed company, it was required to make all disclosures that would have had an impact on the price of its script, including important corporate announcements to the stock exchange, in accordance with clause 36 of the erstwhile Listing Agreement to enable the investors to take informed investment or disinvestment decision. On perusal of corporate announcements made by SML to BSE, it was observed that on June 06, 2007 SML had informed BSE that, at the EGM held on 01/02/2007, considered issuance of ADR/GDR/FCCB and other instruments not exceeding USD 27.5 million. Further, vide corporate announcement dated 31/01/2008 SML informed BSE that BoD in its meeting held on 31/01/2008, decided to form a board committee called

as GDR committee for issue of GDR's. SML vide corporate announcement dated 03/05/2008, informed BSE on the outcome of the meeting of the GDR committee held on 02/05/2008, that it has considered and approved allotment of 10 million GDR's of USD 2.75 each, amounting to USD 27.5 million representing 20 million equity shares of Rs. 10/- each at price of Rs. 55/- per share (including 45/- as premium per share) to The Bank of New York (the depository) on behalf of the GDR holders. Fundabilis GMBH, a Switzerland based entity, was Lead Manager of GDR issue of SML.

10. SML vide letter dated June 17, 2015 (Annexure 1 to SCN) provided the list of the GDR allottees to SEBI which is as under:

| Sl. No. | Subscriber details | No. of GDRs |
|---|---|---|
| 1 | Fundabilis, GMBH Munstergasse, 12, 8001, ZURICH.<br>Dr. Heinz Kuble | 23,63,636.36 |
| 2 | Zorbex Limited, Calle Buriana 37, Puerta 5, Piso 3, VALENCIA.<br>Mr. Diego Peris | 14,54,545.45 |
| 3 | Investec (Switzerland) AG, Talacker 41, CH-8039, ZURITH<br>Mr.Reto Juoni | 29,09,090.91 |
| 4 | Aguanave Limited, R.Cintura do porto, ED 254, Santos 1205108.<br>Mr. Gervaso Martins | 21,81,818.18 |
| 5 | Geolog-Logistics R.Quilombo-5, stp-rep office.<br>Mr. John Lestro | 10,90,909.09 |
| | **Total** | **1,00,00,000.00** |

11. From the copy of the certified extract of the minutes of SML's Board meeting held on January 31, 2008 (Annexure 4 to SCN) which was annexed to the Credit Agreement(Annexure 2 to SCN), it is observed that the Board of Directors of SML had *inter alia* passed the following resolution in the said meeting:

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

*RESOLVED FURTHER THAT Mr. Annaswamy Venkatramani, Chairman of the company be and is hereby authorized to sign, execute any application, agreement,*

*escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time as may be required by the Bank.*

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

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

12. Further, from Annual Report of SML for FY 2007-08 (page 30), it is observed that the noticee nos. 2 to 7 had attended the aforesaid meeting. From the aforesaid extract of the minutes, it is observed that the board of directors of SML had authorized Noticee No. 2, Chairman of SML to sign, execute any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time as may be required by Banco. The Board of Directors had further authorized Banco to use the funds deposited in the bank account opened with Banco for receiving the subscription money in respect of the GDR issue of the company, as security in connection with loans, if any.

13. I note that Noticee no. 1 i.e. SML entered into an Account Charge Agreement dated April 30, 2008 (Annexure 5 to SCN) with Banco which was signed by Noticee No. 2 in the capacity of Chairman and director of SML, wherein, SML has agreed to give as security, the GDR proceeds, against loan availed by Noticee no. 8 from Banco. On perusal of the Account Charge Agreement (Annexure 5 to SCN), I find that it clearly states that the borrower i.e. Noticee no. 8 has been granted a loan of USD 27,500,000 vide Credit Agreement (referred in Account Charge Agreement as Loan Agreement) dated April 17, 2008 (Annexure 2 to SCN). Thus, I note from the Account Charge Agreement that SML had guaranteed by way of first fixed charge in favour of Banco all the right, title, interest and benefit in and to the account as well as the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof, so as to secure the obligations of Noticee no. 8 emanating from the Credit Agreement.

14. I note that noticee no. 1 has contended that the authority to Banco to use the funds of the company as security was at that point of time a standard condition provided and required by Banco to act as banker to the GDR issue and as part of the standard documentation, such a condition to keep the funds as security was insisted upon by Banco and agreed to by the company upon insistence of the merchant banker. However, I do not find any merit in such a contention, since the said noticee has not provided any evidence to show that Banco or the merchant banker specifically insisted on keeping the proceeds of GDR issue as security or that the execution of the Account Charge Agreement was part of the standard documentation. On the contrary, as a normal banking practice, insistence of keeping the funds marked as lien/pledge would only be insisted by a banker, if the customer intends to avail any credit facility or act as guarantor/security on behalf of a third party.

15. The SCN alleged that Noticee no. 8 was the only entity to have subscribed to 10 million GDRs (amounting to USD 27.5 million) of SML by obtaining a dollar term loan facility of USD 27.5 million by entering into a Credit Agrcement dated April 17, 2008 with Banco to subscribe to GDRs of SML. The Credit Agreement was signed by Mr. Samuel Ernest Hurley on behalf of Noticee no. 8 for subscription of GDRs of SML.

16. On perusal of the Credit Agreement (Annexure 2 to SCN), I note that Noticee no. 8 had availed the loan facility to the extent of US $ 27.5 million from Banco to subscribe to the GDRs of SML. Further, on reading together the Credit Agreement and bank account statement of SML with Banco (Annexure 6 to SCN), it is observed that the entire GDR proceeds received by SML on May 2, 2008 in its bank account bearing A/c. no. 6367857.15.001 held with Banco were from Noticee no 8. Therefore, it is observed that the GDR issue of SML (10 million GDRs amounting to USD 27.5 million) was subscribed by only one entity i.e. Noticee no. 8 and not by five entities as was stated in SML's letter dated June 17, 2015 (Annexure 1 to SCN) to SEBI. I further note that an extract of the minutes of the meeting of the BoD of SML held on 31/01/2008 (Annexure 4 to SCN) was also annexed with the Credit Agreement. Thus the said extract of minutes which belonged to the company, that were annexed to the Credit Agreement shows that SML has not only extended security to the loan of Noticee no. 8, but has also aided the subscriber in obtaining the dollar term loan facility from Banco.

17. Further, on 03/05/2008 SML vide corporate announcement, informed BSE on the outcome of the meeting of the GDR committee held on 02/05/2008, that *it has considered and approved allotment of 10 million GDR's of USD 2.75 each, amounting to USD 27.5 million representing 20 million equity shares of Rs. 10/- each at price of Rs. 55/- per share (including 45/- as premium per share) to The Bank of New York (the depository) on behalf of the GDR holders*, which would have led investors to believe that the said GDR issue was genuinely subscribed. However, I note that the subscription was through arrangement of obtaining loan and creating a charge on GDR proceeds, which relulted in and facilitated subscription of GDR issue of the company by only Noticee No.8. Thus, by the said disclosure to BSE on 3/5/2008, the investors in India were made to believe that the issuer company i.e. SML has acquired a good reputation in terms of investment potential and hence, foreign investors have successfully subscribed to the GDRs when in fact the GDRs were subscribed by only one subscriber i.e. Noticee no. 8 and that too with the support of Account charge agreement. I also note that noticee no. 1 has contended that the BoD of SML in its meeting held on December 07, 2006 had already approved the use of GDR proceeds as security and the relevant disclosures were also made to the stock exchange, hence, no separate disclosure was required when the Account Charge Agreement was executed. However, I note that the 'Outcome of Board Meeting' held on December 07, 2006 disclosed by SML to BSE does not mention any fact in respect of use of GDR proceeds as security. Hence, this contention made by noticee no. 1 is factually incorrect and untenable. Further, the company provided incorrect information to SEBI vide letter dated June 17, 2015 (during investigation) stating that the GDR's were allotted to five investors (which did not include Noticee no. 8).

18. I note that SML vide letter dated February 05, 2009 (Annexure 7 to SCN) requested Banco to transfer an amount of US $27,055,751.53 and interest of US$ 188,332.62 from its bank account number 6367857 to loan account number 6223036 of Noticee no. 8. Further, Noticee no. 2 authorised Banco that, to transfer necessary amounts towards interest and fee's due resulting from the loan granted by the bank associated with the Account Charge Agreement dated April 30, 2008. Thus, it is evident from the above that SML had kept GDR proceeds as security to secure the rights of Banco against the loan given to Noticee no. 8 for subscription to GDR issue (as mentioned in Credit Agreement).

19. I note that GDR proceeds were deposited in SML's Banco bank account no. 6367857.15.001 on May 02, 2008 (Annexure 6 to SCN). I also note that SML vide letter dated June 17, 2015 (Annexure 1 to SCN) *inter-alia* submitted that the end use of proceeds of GDRs and bank statements were not available with SML. Further, Noticee no. 2 vide email dated April 10, 2017 to SEBI, informed that the company is now defunct and no details are available. However, on perusal of SML's Banco Bank account statement (Annexure 6 to SCN), it was observed that, an amount of US $ 27.244 million (US$27,055,751.53 + Interest of US$ 188,332.62) was transferred to Noticee no. 8 and US$ 1.1335 million was transferred to SML's HDFC bank account in India. With regards to amounts transferred to Noticee no. 8 (US $27.244 million), the noticees no. 1 to 7 fail to offer any satisfactory explanation for the same.

20. On perusal of SML's annual report 2008-09, it is observed that SML has not accounted for transfer made on February 05, 2009, of US$ 27.244 mn towards closure of the loan taken by Noticee no. 8. However, SML has reported 65.92 crores, as investment in overseas companies under Asset side of the Balance sheet, under the head Long term investment. Thus, SML has reported as long term investments, instead of receivables from Noticee no. 8. Therefore, financial statements from FY 2008-09, has not represented a true picture of the state of affairs of SML. Further, I find that, SML's executive directors (Mr. Sukumar Subramanian and Mrs. Uma Karthikeyan) on September 04, 2009, had issued a CEO/CFO certificate (Annexure 8 to SCN), which states that, financial statements for FY 2008-09 do not contain any materially untrue statements, nor omitted any material fact, nor contain statements that might be misleading. However, as noted above, since the financial statements for FY 2008-09 were not correctly stated, to that extent the CEO/CFO Certificate issued by Noticee no. 3 and 4 on the basis of such financial statements was also vitiated. Hence, I find that the accounting treatment given by SML was misleading, might have influenced the price of its script on stock exchange and could have mislead the investors in taking an informed decision.

21. On perusal of the corporate announcement made by SML to BSE during the period January 2008 to June 2009, it is observed that SML did not inform BSE with regard to: a) outcome of board meeting dated January 31, 2008, b) Execution of Account Charge Agreement dated April 30, 2008 entered into with Banco for subscription of GDRs and c) transfer of US$ 27.244 mn., on February 05, 2009, towards closure of the loan taken by Noticee no. 8

for subscription of GDRs. I find that, all these three events were price sensitive information and could have impacted the price of the scrip of SML I note that noticee no. 1 has argued that since the fact of the GDR issue was itself disclosed to the stock exchange and approved by the shareholders of the company, the other procedural requirements that were discussed in the meeting of BoD held on January 31, 2008 like opening of bank account with Banco, appointing a banker to the issue. etc. are not required to be disclosed. However, I note that though the requirements were corollary to the issue of GDR, but they were material in nature and could have impacted the price of the scrip.

22. I note that noticee no. 4 has denied being involved in the day to day management of the company. He also states that he has not signed any document forming part of annexure to the SCN. He also contends that he had resigned from the company on 22/01/2012 and the same was reported to the company and RoC. He has also denied any knowledge about the subject GDR issue and related events. I note that, Noticee no. 3 and 4 had issued a CEO/CFO certificate (Annexure 8 to SCN) on September 04, 2009, which stated that financial statements of FY 2008-09 were showing true and fair view. This certificate was part of the Annual Report of SML for FY 2008-09. I note that noticee no. 4 has not produced any evidence to show that he has initiated any steps/ action against SML for allegedly fraudulently using his name and signature to issue a certificate forming part of its Annual Report. I find that Noticee no. 4 has plainly denied having signed any annexure forming part of SCN, merely to evade the consequences of this proceeding. Further, I observe that noticee no. 4 claims to have resigned from SML on January 22, 2012 which is much after GDR issue and disclosures relating to the same. However, I note that, he would still be liable for all acts/omission during his tenure as director of SML, which is the subject matter of this proceeding. Further, from the Annual Reports of SML for FY 2008-09, 2009-10, 2010-2011, I observe that noticee no. 4 has been shown as 'Executive Director' of SML. Hence, the claim of noticee no. 4 that he was not involved in the day to day affairs of SML and is not aware of the subject GDR issue is not acceptable. I also find from the Annual Report of SML for FY 2008-09, 2009-10, 2010-11 that noticee no. 4 from the date of his appointment (September 28, 2007), has attended all the board meetings in the said financial years. Hence, I find that noticee no. 4 has merely denied being aware of the subject GDR issue, only to avoid the consequences of this proceeding.

23. Noticee no. 5 has contended that he had never attended any of the board meetings or general meeting of the company and further argues that since he was an independent director, he was not involved in the day to day affairs of the company However, from the Annual Report of SML for the FY 2007-08, it is shown that the said noticee No. 5 had attended the board meeting held on January 31, 2008 which enabled noticee no. 2 to sign the Account Charge Agreement. I note that besides plainly denying his attendance at all the board meeting of SML, noticee no. 5 fails to provide any evidence in support of his claim such as record of attendance register of SML or minutes of meeting or any other proof. I also note that, noticee no. 5, even after such knowledge of being shown as an attendee in all board meetings of SML for FY 2007-08, fails to show that any steps are/ were taken to rectify the records/intiate any action against SML for making such alleged false claims in its Annual Report. Furthermore, noticee no. 5 claims to have resigned from SML, however, he fails to provide any details in respect of such claim such as date of resignation or copy of letter of resignation, copy of e-form filed with RoC in respect of his resignation .etc. It is pertinent to note that noticee no. 5 has not produced any evidence to show that he has resigned from SML. Therefore, in view of the above, it appears that noticee no. 5 has denied being present in any of the board meetings/general meetings of SML only to avoid the consequences of the present proceedings.

24. In view of the above, I find that SML had mislead the investors into believing that the GDR issue was successful, whereas at the backend, there was only one subscriber Noticee No.8 and subsisting arrangement of Credit Agreement (between Banco and Noticee No.8) and Account Charge Agreement (between SML and Banco) which made the GDR issue successful. Had SML not given security to the loan taken by Noticee no. 8, noticee no. 8 would not have got finance to subscribe to GDR's, consequently the GDR issue would not have been successful as the noticee no. 8 was the only allottee to the issue. By entering into the Account Charge Agreement for facilitating the subscription of its own GDR's, SML has played a fraud on the securities market and mislead the investors and created a false impression about the company in the securities market. Further, SML requested Banco to transfer of US $27.244 million (including interest) towards closure of the loan taken by Noticee no. 8. However the same was not accounted as receivables from Noticee no. 8, but reported as an investment in overseas companies amounting to Rs 65.92 crores in the annual report for the FY 2008-09 and thereafter. Further, the company has not disclosed all material information about overseas investments in the annual report as per the materiality

concept of Accounting Standard 1 (AS 1) and as per Schedule VI of The Companies Act, 1956. Therefore, financial statements for FY 2008-09, 2009-10 and 2010-11, are vitiated to that extent, which could have mislead the investors and might have influenced the price of its scrip. Hence, SML has violated the provisions of sections 12A (a),(b) and (c) of SEBI Act, 1992 read with regulations 3(a), (b), (c), (d) and 4(1), 4(2) (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003. Further, members of the Board of Directors of SML, namely Noticee nos. 2 to 7, who approved the board resolution and authorized Noticee no. 2, which enabled to sign the Account Charge Agreement, thereby acted as parties to the fraudulent arrangement for subscription of GDR by only by Noticee No.8. I also note that Noticee no. 3 and 4 had issued a misleading CEO/CFO Certificate certifying the fairness of financial statements of SML for FY 2008-09 and the finding in para 20 that they were also misleading to the investors. Hence, I find that, the aforesaid directors viz. Noticee nos. 2 to 7 have violated the provisions of sections 12A (a),(b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.

25. Noticee no. 8 claims that he was never in contact with the company and they were never knowingly a party to the alleged fraudulent scheme. I note that the Credit Agreement executed between Noticee no. 8 and Banco included some conditions precedent at Schedule 1 to the Credit Agreement, which were essentially required to be fulfilled before disbursement of any loan amount by the bank (Banco). One of the condition precedent was that Banco should have received (and noticee no. 8 should have been notified of the receipt) the certified copies of Board minutes and resolutions of SML approving and authorizing the execution, delivery and performance of security obligations under the Credit Agreement. Thus, I observe that noticee no. 8 had knowledge of the fact that the issuer of GDR (i.e. SML) itself was acting as a security provider for the loan being taken by noticee no. 8 for subscribing to GDR of SML. Further, I note that GDR proceeds of USD 27.5 mn with the interest earned on deposit account were deposited in SML's bank account held with Banco. However, as Noticee no. 8 defaulted in repayment of loan, SML requested Banco on February 5, 2009, to transfer USD 27.244 mn lying in its account to loan account of Noticee no. 8. It is therefore evident that, the GDR's that were acquired by Noticee no. 8 to the extent of USD 27.244 mn were at free of cost. Hence, the claim of noticee no. 8 that he was never knowingly a party to the fraudulent scheme is untenable and baseless. Therefore, I find that the Noticee No.8 has also violated provisions of sections 12A (a), (b),

(c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4 (1) of SEBI (PFUTP) Regulations, 2003.

## Directions

26. In view of the above, and in the peculiar facts and circumstances of the matter, I, in exercise of the powers conferred upon me under section 19 read with sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992, hereby direct as under:

(a) Noticee no. 1 shall recover a sum of US $27.244 million from Noticee no. 8 and bring back the money into SML's bank account in India within three months from the date of this Order. It is clarified that Noticee nos. 2 to 7 and the other present directors of SML shall ensure and facilitate the compliance of this direction by SML, and furnish a Certificate from a peer reviewed Chartered Accountant of ICAI along with necessary documentary evidences to SEBI, certifying the compliance of this direction, within three months from the date of this Order.

(b) The following Noticees are hereby restrained from accessing the securities market and further prohibit them from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of **five years** from the date of this order. During the period of restraint, the existing holding (including units of mutual funds) of the following Noticees shall remain frozen:

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

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

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

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

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

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

**Date: January 02, 2019**
**Place: Mumbai**

**ANANTA BARUA**
**WHOLE TIME MEMBER**