BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ORDER/BM/DS/2021-22/15463]

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

In respect of:

Mr. Harshvardhan Singh Rathore (PAN:BUCPS3345B);

In the matter of
GDR Issue of Maars Software International Limited

BACKGROUND:

1. Hon'ble Securities Appellate Tribunal (SAT), vide Order dated September 28, 2021, in appeal no. 581 of 2021, in the matter of Maars Software International Limited set aside the Adjudication Order dated July 28, 2020 and the matter was restored to the file of Adjudicating (AO) for passing fresh order on merits and in accordance with law.

APPOINTMENT OF ADJUDICATING OFFICER

2. Pursuant to aforementioned order of Hon'ble SAT, the undersigned was appointed as Adjudicating Officer vide Order dated October 04, 2021 under section 15I(1) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI**

Act, 1992") to inquire into and adjudge under Section 15A(a) of SEBI Act, the aforesaid alleged violations committed by Shri. Harshvardhan Singh Rathore hereinafter referred to as the "**Noticee**").

3. SEBI, upon receipt of alerts in its surveillance system, conducted an investigation in regard to certain companies which had come out with their respective issue of Global Depository Receipts (GDR). During the course of investigation, it was observed that Maars Software International Limited (hereinafter referred to as "**MSIL**") had come up with its GDR issue on August 10, 2007. It was alleged in the Investigation Report ("**IR**") that the complete process of GDR issuances by MSIL was devised and structured to the detriment of Indian investors. It was also alleged that MSIL failed to submit certain information sought by SEBI at the time of investigation. By doing so, MSIL and its directors, including the Noticee were alleged to have violated section 11C(3) read with section 11C(6) of SEBI Act, 1992.

4. The observations made under the investigation and the allegations levelled against the Noticee in the SCN are mentioned hereunder.
   a) During the course of investigation, summons on January 12, 2012 and April 20, 2012 were issued under section 11C(3) read with section 11C(6) of SEBI Act, 1992 to Managing Director, MSIL for production of documents listed therein, regarding utilisation of GDR proceeds by MSIL, also listed below.
      i) Details of usage of proceeds of the GDR Issues by Maars, along with the documentary proof in support of the utilization of the funds.
      ii) 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.
      iii) Chronology of events leading to the issue of GDRs along with a certified true copy of the resolution passed by Board of Directors.

iv) Rationale for the appointment of Panasia as LM for GDR issue of Maars.
v) Copies of all the agreements between Maars and Panasia
vi) Copies of agreements with Euram.
vii) Details of the conditions that were laid upon Maars for the withdrawal of GDR proceeds from bank accounts maintained with Euram.
viii) Copy of any other agreement that Maars had with Euram apart from those related to GDR issues.
ix) Details of any agreement of Maars regarding financing for the purpose of subscription by initial investors of GDRs.
x) Copies of agreements that Maars had with Vintage and AP.
xi) Details of nature of business of foreign subsidiaries of Maars.
xii) Bank Account Statement of the foreign subsidiaries of Maars.
xiii) Details of payments made to Panasia or companies associated with Panasia.
xiv) Name of the directors and promoters of Maars at the time of issue of GDRs.
xv) 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.
xvi) Audit Reports of foreign subsidiaries of Maars along with their financial statements for the year ending March 2010 and March 2011.
xvii) Contact details, Nature of business and Bank Account statements of foreign subsidiaries.

b) Vide its letters dated April 09 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. It was observed that both the letters were signed by the Noticee, once as an Authorised signatory and another time as a director of MSIL.

c) In view of the above, it was alleged that MSIL and its directors, including the Noticee, failed to submit the information to SEBI despite repeated issue of summons. Hence, it was alleged that upon failing to submit information as summoned by SEBI, the Noticee violated section 11C(3) read with section 11C(6) of SEBI Act, 1992.

5. SEBI had therefore, initiated adjudication proceedings under the SEBI Act to enquire and adjudge under Section 15A(a) of the SEBI Act, 1992 for the aforementioned alleged violations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. Show Cause Notice no. A&E/EAD-8/KS/VB/8176/3/2019 dated March 28, 2019 (hereinafter referred to as "**SCN**") was issued by, the erstwhile Adjudicating Officer to the Noticee in terms of Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "Adjudication Rules") read with Section 15-I of the SEBI Act, 1992. By the SCN, the Noticee was called upon to show cause as to why an inquiry should not be held against him in accordance with Rule 4 of the Adjudication Rules read with Section 15-I of the SEBI Act and penalty be not imposed under Section 15A(a) of SEBI Act, 1992 for the alleged violations of section 11C(3) read with 11C(6) of SEBI Act, 1992.

7. Show Cause Notice dated March 28, 2019 was issued at the last known address of the Noticee, which was MSIL's communication address through Registered Post Acknowledgement Due. However, the SCN had returned undelivered from the said

address. Thereafter, the SCN was affixed at the last known address of the Noticee on May 14, 2019. However, no reply was received from the Noticee.

8. Vide letter dated September 20, 2019, a final opportunity to submit reply to the SCN and an opportunity of personal hearing was provided to the Noticee. The letter was affixed at his last known address. However, the Noticee failed to submit his reply and also failed to appear for the hearing. Vide letter dated November 11, 2019, Noticee was provided a final opportunity of hearing on November 26, 2019. The letter was affixed at the last known address of Noticee. However, the Noticee failed to appear for the hearing on November 26, 2019.

9. Erstwhile Adjudicating Officer proceeded ex-parte and after considering the facts and circumstances of the case and the material available on record, passed Adjudication Order dated July 28, 2020 imposing penalty under section 15A(a) of SEBI Act, 1992 for the violation of section 11C(3) of SEBI Act, 1992 on the Noticee.

10. Pursuant to the restoration of the case to the file of AO, the Noticee, vide letter and digitally signed e-mail dated October 07, 2021, was directed to appear before the undersigned on October 22, 2021 to collect the show cause notice (SCN). The said letter and e-mail was duly delivered to Noticee at the communication address of the Noticee in Palghar district of Maharashtra and e-mail address harsh.rathod28@gmail.com. Noticee appeared before the undersigned on October 22, 2021 and requested for additional time till November 30, 2021 for submitting his reply to the SCN, which was granted by the undersigned. Noticee was intimated that the hearing will be conducted after taking note of his submissions.

11. Vide mail dated November 24, 2021, Noticee requested for additional time till December 15, 2021 to submit his reply to the SCN. The same was granted by the undersigned vide letter dated November 25, 2021. In the interest of natural justice, vide hearing notice dated December 01, 2021, Noticee was granted an opportunity of hearing on December 17, 2021. Vide letter dated December 07, 2021, Noticee requested for inspection of documents with respect to adjudication proceedings in the instant matter. Noticee was intimated vide mail dated December 14, 2021 that he has been granted inspection on December 20, 2021. The inspection was conducted on the scheduled date and time. During the inspection, Noticee was advised to submit his reply to the SCN on or before January 05, 2022. Vide mail and letter dated January 05, 2022, Noticee submitted his reply to the SCN, which has been reproduced below:

a. *At the outset, it is submitted that I have not violated any provisions of SEBI Act as alleged mentioned above. I humbly submit that I was not involved in any transaction related to GDR's. I submit that I have no knowledge regarding any pledge agreements or any alleged financing relating to GDR's.*
b. *Further, it is evident from the Notice itself that there are no allegations or materials brought on record to establish any violation by me in respect of provisions of SEBI Act as alleged in the Notice. It is submitted that for the violation of the provisions as alleged in the Notice, the specified provisions of SEBI Act are not attracted.*
c. *Furthermore, I vehemently deny each and every allegation levied upon me. It is humbly submitted that the allegations levied upon me are baseless and devoid of any evidence in support of them.*
d. *1 have done my Bachelors in Commerce (B.COM) from Mumbai and had started working as an Accountant in big Corporate Companies. I had joined "Maars Software Intemational Limited" as an Independent Director in and around May 2009 (i.e. much after the GDR period of August 10, 2007), I was appointed as an*

*Independent Director in 2009. Hereto annexed and marked as **Exhibit** - "A" is a copy of my consent letter dated May 4, 2009 to act as an independent Director.*

e. *However, later in and around June 2012, I had started looking for better opportunities with similarlother industries having healthy financial status. Further, vide my letter dated October 1, 2012, I requested the Company to accept my resignation and I had subsequently once again vide my email dated 09th January, 2013 made a request for resignation from the post of independent Director with effect from October 1, 2012. Hereto annexed and marked as **Exhibit - "B"** is a copy of my Resignation letter dated October 1st, 2012 and copy of email dated 09th January, 2013.*

f. *That It is pertinent to mention herein that I was neither a promoter nor a shareholder of the Company or any of its group companies. I was not involved in any transaction related to GDR's." It is further submitted that I have no knowledge regarding any pledge agreements or any alleged financing relating to GDR's as I was not associated with the company during the GDR issue. Also, even in the year 2009 I was being appointed as an independent Director and was never part of any decision making in the Company.*

g. *It is further submitted that as an Independent Director of the Company, I was not involved into day to day affairs of the company and has always given top priorities growth of the stakeholders and has no previous track record of any serious default in statutory compliances in respect of existing laws for the time being in force.*

h. *Grounds for quashing the Notice as against me:*

    i. *No specific averment against me. Notice nowhere suggests what specifically has been erroneous or fraudulent or violative of the specific provisions of law and directly in a completely vague and general manner alleges violations of the provisions of the specified provisions of SEBI Act.*

ii. *No connection with any person / entity in the notice. Notice has also failed to bring out any connection between me and the other persons/entities mentioned in the Notice (other than Noticees), including of the counter parties to sell trades sub-Account's trades. Therefore, by no stretch of imagination, it can be presumed that, I had any relationship/nexus/prior meeting of mind with any entities involved in GDR issuance.*

iii. *The Notice is bad in law and must be struck down/ quashed as against me. In this regard, Noticee relied on the judgements of Hon ble Supreme Court in Gorkha Security Services v. Govt. (NCT of Delhi), (2014) 9 sec 105 and in S.L.Kapoor v.Jagmohan&Ors., (1980) 4 SCC 379. It is humbly submitted that the Notice no were makes out any case of a specific violation of any law and regulation on account of the GDR issuance as undertaken and in no manner provides an opportunity or details of any allegations against me has to meet. The Notice is general and vague in nature and there is no specific case made out against me.*

iv. *Lapses in the show cause notice. There has been a long and unexplained delay in the initiation of proceedings against me. It is a fact on record that the Notice was issued in year 2019 and the alleged nefarious committed in securities market in year 2007 i.e., after a lapse of nearly more than twelve years from the date of issuance of GDRs. Moreover, I would like to submit that the Notice is not forthcoming with any reason or explanation for the inordinate and unwarranted delay in the issue of the present Notice. In this regard, Noticee relied on the judgements of Hon'ble SAT in HB Stock holdings Limited vs. Securities and Exchange Board of India dated 27.08.2013; Khandwala Securities vs. SEBI dated 07.09.2012 in Appeal no. 19 of 2012; and Subhkam Securities Private Limited. vs. Securities and Exchange Board of India (Appeal no. 73 of 2012)* *i. Para-wise reply to the Notice*

*i. The paras no. 1 and 2 of the Notice deals with Securities and Exchange Board of India **("SEBI")** had conducted investigation against several Indian companies that has issued Global Depository Receipts **("GDR")** in overseas market. SEBI had investigated GDR issues by Maars. Further, Pan was -ti-E lead Manager for the GDR issues of the Company. With regard to this it is submitted that the same is a matter of record as neither I was associated with company nor I had any knowledge of the same and so I do not have any comments to offer on the same.*

ii. The paras 3 and 4 of the Notice deal with the investors in the GDR issues.With regard to this it is submitted that the same is a matter of record as neither I was associated with company nor I had any knowledge of the same and so I do not have any comments to offer on the same.

iii. The para 5 to 9 of the Notice deal with the allegation of the Loan and Pledge Agreement for its GDR issue. In this regard, I submit that neither I was aware or associated with company nor I had any knowledge of any pledge or loan agreement.

iv. The paras 10 of the Notice deal with the allegation of the opening of the bank account, In this regard, I submit that neither I was aware or associated with company nor I had any knowledge of any bank account.

v. The para 11 to 19 of the Notice deal with purchase of GDRs issues of the Company. In this regard, I submit that neither I was aware or associated with company nor I had any knowledge of any transactions.

vi. It is humbly submitted that the Notice has failed to provide any cogentevidence/ connections and does not pointed any irregularity /illegality against me and any wrongdoings on the part of other parties cannot be attributed to me. It is further submitted that the SCN has in no manner produced any charge, document, evidence, material or suggestion as to what *exactly was the wrongdoing on my part as regards the scheme of GDR Issuance is concerned and has not even suggested any fraud in GDR Issuance on my part. Further, on a bare perusal of the SCN, it can be prima facie seen that throughout the SCN, the predominant allegation against me is only the issuance of letter requesting for time to provide documents.*

vii. *As regards alleged violations of the provisions of SEBI Act as stated in Para 20 of the Notice, it is stated that: In so far as the alleged violation of Section 12 (A) (a) of the SEBI Actis concerned, it is submitted that I have throughout my conduct of business and as a matter of company policy maintained highest standards of compliance, fairness, integrity and ensured the interests of our investors. From the submissions made by me in the foregoing paragraphs it has been abundantly established that I have never, directly or indirectly, employed any manipulative or deceptive device or contrivance, in relation to the issue, purchase or sale of any shares listed or proposed to be listed on a recognized stock exchange, in contravention of the SEBI Act and rules or regulations made thereunder. Therefore, the Notice has completely erred in alleging that I have violated Section 12A (a) of the SEBI Act.*

viii. *The para 21 of the Notice deal with allegation of violation of Section 11C(3) read with 11C(6) of the SEBI Act. In this regard, it is submitted that SEBI should appreciate the facts which are available before him that the I was merely an Independent Director and had acted in a bona fide manner and solely on the advice of the Board of Directors of the Company and was never part of any GDR transactions since the transactions relates to year 2007 and I was appointed as an Independent Director with effect from May 05, 2009. Accordingly, on the advice of board of directors in a bonafide manner I had signed the letter dated April19, 2012 wherein I had requested for time to provide documents requested by the SEBI. Subsequently, it is matter of fact that documents asked by SEBI was relating to transaction of year 2007 and*

I was not in possession of the said information/ documents required by the SEBI and Accordingly, I had followed up with the company for providing the documents but no documents were being provided to me which ultimately led to non-submission of the information to the SEBI. The SEBI should appreciate that I with bona fide intention in every possible way co- operated with SEBI in order to provide the required information/ documents but due to unavoidable circumstances as stated above the documents were not being sent to the SEBI for which no liability can be attributed to me as failure to provide the documents was not in my control. Thereafter, due to such non-co-operation from the company I had resigned from the post of Independent director and vide my letter dated October 1, 2012 requested the Company to accept my resignation and I subsequently once again vide my email dated 09th January, 2013 made a request for resignation from the post of independent Director with effect from October 1, 2012. Therefore, I being an Independent Director, had just fulfilled the obligations and duties casted upon me by the Company, as I was not aware of the misconduct if any on part of the Company or other Notices and solely acted upon the responsibility imposed upon me of replying to the letter. In light of the above I submit sincerely and with all earnestness that any such omission is not deliberate or intentional. Hence, I have not violated any provisions of Sec 11C(3) and Sec 11C(6) of the SEBI Act.

ix. *That it is humbly submitted that apart from allegation of signing the said letter dated April 19, 2012, the SEBI has failed till date to produce any evidence to establish that there was any pre-existing connection of mine with other Notices or that there is a nexus or connection between me and the Company with respect to alleged GDR proceedings.*

x. *From the abovementioned paras it is clear that the allegations of violating the SEBI Act cannot be alleged against me and the Notice be dropped I quashed forthwith.*

xi. *The para 22 to 23 of the Notice deal with the allegations concerned with other noticees so I do not have any comments to offer on the same.*

xii. *The para 24 to 26 of the Notice deal with penal provision, in this regard, I submit that I have repeatedly demonstrated in preceding paragraphs that I being an Independent Director, had just fulfilled the obligations and duties casted upon me by the Company, as I was not aware of the misconduct if any on part of the Company or other Notices and solely acted upon the responsibility imposed upon me of replying to the letter. In light of the above I submit sincerely and with all earnestness that any such omission is not deliberate or intentional. Hence, I have not violated any provisions of Sec 11C(3) and Sec 11C(6) of the SEBI Act.*

j. *It is further submitted that while taking a decision under the impugned provision, the Learned Adjudicating Officer has to take in to account Section 15J of the SEBI Act, 1992 which specifies the factors to be considered before levying any penalty.*

k. *With regard to Clause (a):- "the amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default": it is submitted that the findings do not lead to the conclusion that there has been disproportionate gain or unfair advantage to us. Noticee relied on Hon'ble SAT's Order dated June sth, 2018 in the matter of KII Industries V/s SEBI. , it is submitted that that the present Notice has failed to show any fund transfer between me and the concerned entities to prove that we received any ill- gotten gains from the said GDR issue, it has only derived baseless connection between me and other entities based on mere surmises and conjectures.*

l. With regard to Clause (b);- "the amount of loss caused to an investor or group of investors as a result of the default" : it is submitted that there are no investor complaints filed at any Stock Exchange or SEBI in respect of the present matter and the same has also not been alleged in the Notice. In absence of any direct information, the allegation of causing loss to other investors is baseless.

m. With regard to Clause (c):- "the repetitive nature of the default." it is stated that our act does not have a repetitive nature of defaults and carries on their job in a dignified and respectful manner. It is submitted that the instances pointed out in the Notice are isolated instances and hence there is no question of repetitive nature of default.

n. Having stated the factors of Section 15J, we would like to draw the attention of your goodself to a few case laws, wherein the respective courts have dealt into the aspect of penalty and factors for levying any penalty on any delinquent. In this regard your goodself kind attention is drawn to Hon'ble Supreme Court's decision in the case of Hindustan Steel. vs. State of Orissa (AIR 1970 SC 253); Ex-Naik Sardar Singh vs.Union of India (1991) 3 SCC 212); Ranjit Thakur vs Union of India(AIR 1987 SC 2386); and Adjudicating Officer vs. Bhavesh Pabari dated 2sth February, 2019

o. Further, I humbly submit that due to Covid-19 pandemic, there was complete lock down in country and I am under huge financial distress. Hence, it is humbly prayed to your good self that before imposing the any minimal penalty, without prejudice, your gnHI should consider my economic distress situation due to the said Covid-19 pandemic situation

p. In this regard, we humbly submit that the Hon 'ble Securities Appellate Tribunal in Alkan Projects Pvt Ltd v. SEBI wherein it was held that the capacity to pay the penalty also has to be considered while imposing penalty.

q. It is submitted that the aforesaid explanations make it quite clear that I have not violated any provisions of the SEBI Act and therefore the directions and findings *of the Notice must be quashed and set aside with immediate effect. The Notice is uncalled for and unjust since there is no justification in subjecting me to such harsh and baseless allegations. It is submitted that, I have not committed any wrong and no charge has been established against me on prima facie, to warrant any action. Therefore, it will be unfair on unwarranted directions under the SEBI Act against me.*

r. *It is submitted that I reserve my right to modify and add additional grounds in these submissions. It is respectfully submitted that the allegations in the Notice do not flow out of the factual position and therefore demolishes the charges and therefore it is humbly prayed that the Notice be set aside and the charges as levelled against me must be dropped.*

s. *I may also be given an opportunity of personal hearing before any decision is taken by your goodself in the present matter.*

12. Vide hearing notice dated January 10, 2022, sent via digitally signed mail, Noticee was provided an opportunity of hearing on January 18, 2022. Noticee informed vide his mail dated January 17, 2022 that due to his personal health issues, he would not be able to appear for the hearing. Thereafter, the Noticee was granted another opportunity of hearing on February 15, 2022. The Authorised Representative (hereinafter referred to as "AR") of the Noticee appeared for the hearing conducted on February 15, 2022 through video-conferencing mode. The AR reiterated submissions already made vide letter dated January 05, 2022. The AR contended that the alleged violations of provisions of SEBI Act, 1992 are not applicable to the Noticee as summons were issued to the Managing director of the Company (MSIL) and not to the Noticee. The AR also submitted that the Noticee was independent director of the Company at the time of occurrence of alleged violations. The AR sought time till February 18, 2022 for submitting evidence regarding the same,

which was granted by the undersigned. The AR was informed that it was the final hearing and no further hearing shall be granted. It was observed that no documentary evidence was submitted by the Noticee till March 04, 2022. Vide mail dated March 04, 2022, Noticee was advised to make submissions latest by March 10, 2022. Vide letter and mail dated March 08, 2022, Noticee made following submissions:

a. *It is submitted that the summons dated 12th January, 2012, 28th March, 2012, 18th April, 2012 and 20th April, 2012 were all issued by SEBI to the Managing Director of Maars Software and not to the independent directors of the Company.*
b. *I was appointed as an Independent Director of Maars Software on 5th May, 2009. Hereto annexed and marked as Annexure A is Form 32 uploaded on the MCA website.*
c. *Thereafter 1st October, 2012 I had given my resignation from Maars Software International Ltd, however the same was not acceded to by the Company. Subsequently again vide my email dated 9th January, 2013 I submitted my resignation letter dated 1st October, 2012 to the Company. As per the MCA records my date of resignation from Maars Software is shown as 1st February, 2016.*
d. *During the relevant time, when the said summonses were issued by SEBI, the managing director instructed me to reply to the summons and seek time to submit the requisite information and documents. I had no knowledge of the GDR's issued by the Company as it was done prior to my appointment.*
e. *Apart from the Form 32 annexed above, the Annual Report of Maars Software for the year 2008-09 (internal page 7) and 2009-10 (internal page 9) would show that I was merely an Independent Director of the Company. Hereto annexed and marked as Annexure B & C is copy of the Annual Report of the Company for the year 2008-09 & 2009-10 respectively.*

f. Thus in view of the fact that the summons were issued to the Managing Director of the Company and that I was an Independent Director of the Company, I cannot be alleged to have violated Section 11C(3) and 11C(6) of the SEBI Act.

g. Considering the aforesaid submissions along with the submissions made by me vide letter dated 5th January, 2022, it is humbly prayed that the present proceedings be quashed against me without imposing any monetary penalty or direction for the alleged violation.

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

13. After perusal of the material available on record, I have the following issues for consideration.

ISSUE I: Whether Noticee has violated section 11C(3) read with section 11C(6) of SEBI Act, 1992?

ISSUE II: Does the violation, if any, on part of the Noticees attract penalty under Section 15A(a) of the SEBI Act?

ISSUE III: If so, how much penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act?

14. The provisions of section 11C(3) and 11C(6) of SEBI Act, 1992 read as under:

SEBI Act, 1992

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—*

(a) to produce to the Investigating Authority or any person authorised by it in this behalf any book, register, other document and record which is his duty under sub-section (2) or sub-section (3) to produce; or

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

(c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or

(d) to sign the notes of any examination referred to in sub-section (7),

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.

FINDINGS

15. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticee, I record my findings hereunder:

ISSUE I: Whether Noticee has violated section 11C(3) read with section 11C(6) of SEBI Act, 1992?

16. I note that two summons were issued by the Investigating Authority (hereinafter referred to as "IA") to the Managing director of MSIL on January 12, 2012 and April 20, 2012 for production of documents and details listed therein, regarding utilization of GDR proceeds.

17. I note that vide letters dated April 09 and April 19 of 2012, MSIL had submitted to the IA that it was in the process of compilation of documents as required by the IA. These letters were signed by the Noticee, once as authorized signatory, and another as director of MSIL. Thereafter, no document or information was submitted by MSIL in this regard.

18. It is to be appreciated that compliance of the summons can be pursued if the summons were first served upon the said persons as it is matter of personal performance of the summons.

19. Documents before me does not show any summons that were specifically issued to the Noticee in his name. I find there were two summons dated January 12, 2012 and April 20, 2012 and both of them were issued to the Managing Director and the company MSIL at its office address and not to the Noticee in name. I further note from the copy of Form 32 dated May 16, 2009 which has been submitted by the Noticee alongwith his reply, he 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 Noticee in his capacity as authorised signatory and as Director of the Company respectively.

20. As already mentioned, performance of compliance of summons is the personal liability of the person to whom it is served and cannot be passed on to others, which in this case has not been issued to the Noticee. Further, I note that penalty has already been imposed on the Company MSIL for non-compliance of same summons which are now being pursued in this proceeding.

21. Furthermore, I take recourse to the Order of Hon'ble SAT in Sayanti Sen v SEBI on August 09, 2019 (Appeal 163 of 2018), wherein it was emphasized that where the Company is the offender, vicarious liability of the Directors cannot be imputed automatically.

22. In view of the above, I do not find it to be a fit case for imposition of penalty under section 15A(a) of SEBI Act, 1992.

23. In view of the above, the SCN dated March 28, 2019 is disposed of, without imposition of penalty.

24. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date: March 21, 2022 **BARNALI MUKHERJEE**

Place: Mumbai **ADJUDICATING OFFICER**