BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/MC/RM/2022-23/16101]

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 –

Uma Karthikeyan (AKPPK3166J) having address at Unit 1, 86-88, Leechte Road, Mount Wavereley -3149, Victoria, Australia

In the matter of Sanraa Media Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated adjudication proceedings under Section 15HA of SEBI Act,1992 (hereinafter referred to as, '**SEBI Act**') against Mrs. Uma Karthikeyan **("Noticee")** for alleged violation of the provisions of Section 12A(a),(b),(c) of the SEBI Act, 1992 read with Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred as '**PFUTP Regulations'**).

2. Shri Suresh B. Menon was appointed as the Adjudicating Officer (hereinafter referred as AO), vide communique dated November 23, 2017, under Section 15-I of the SEBI Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **'Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 15 HA of the SEBI Act, the aforesaid alleged violations by the Noticee. Subsequently, Dr. Anitha Anoop was appointed as AO in the matter vide communique of appointment of AO dated March 25, 2019.

3. Order dated November 29, 2019 was passed in the matter imposing penalty of Rs.1 Crore to be paid jointly and severally by the Noticee along with 4 other persons for violating Sections 12A(a), (b),(c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) & 4(1) of the PFUTP Regulations. This order was appealed before the Hon'ble Securities Appellate Tribunal (SAT) by the Noticee vide Appeal No. 514 of 2020. Hon'ble SAT vide Order dated May 19, 2021 remitted the matter to AO as given hereunder:

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

APPOINTMENT OF ADJUDICATING OFFICER

4. Subsequent to the aforesaid SAT order, Shri Amit Pradhan was appointed as Adjudicating Officer under Section 15-I of the SEBI Act read with Rule 3 of the Adjudication Rules vide order dated May 24, 2021 to inquire into and adjudge under section 15HA of the SEBI Act, the aforesaid alleged violations against the Noticee. Subsequently, the undersigned was appointed as Adjudicating Officer *vide* order dated June 18, 2021. The appointment of the AO was communicated *vide* order dated June 21, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice No. A&E/EAD-3/SBM-ASR/4442/1/2018 dated February 12, 2018 (hereinafter be referred to as, the "**SCN**") was served upon the Noticee on May 28, 2021 under Rule 4 of the Adjudication Rules and read with Section 15I of the SEBI Act to show cause as to why an inquiry should not be held and penalty not be imposed against Noticee under aforesaid Sections for the aforesaid alleged violations.

6. Briefly, the allegations made in the SCN against the Noticee are given below:

7. Sanraa Media Ltd. (hereinafter referred to as '**Sanraa**') issued 10.00 million GDRs and raised US$ 27.50 million, on May 02, 2008. It was alleged that the GDRs of Sanraa were subscribed entirely by Clifford Capital Partners AGSA (earlier known as Seazun Limited and hereinafter referred to as '**Clifford**') after obtaining a loan of US$ 27.50 million from bank based in Lisbon, Portugal viz. Banco Efisa S.F.E., S.A. (hereinafter referred to as '**Banco**'), for this purpose. Simultaneously, Sanraa pledged its entire GDR issue proceeds with Banco for the loan taken by Clifford towards subscription of GDRs to be issued by Sanraa. Credit agreement for the purpose of extending loan to Clifford from Banco and Account charge agreement for Sanraa providing entire GDR proceeds as collateral to Banco against the loan taken by Clifford were signed by Banco, Clifford and Sanraa.

8. It was further alleged that Sanraa made following misleading disclosure to Bombay Stock Exchange (hereinafter referred to as '**BSE**') on May 03, 2008:
"Company's Board Committee (GDR Committee) formed by the Board of Directors on January 31, 2008 for the issue of Global Depository Receipts for 27.5 Million US$ held on May 02, 2008, considered, approved allotment of 10,000,000 Global Depositary Receipts of US $ 2.75 each amounting to US$ 27.5 million representing 20,000,000 Equity shares of Rs. 10 each at the price of

Rs. 55/-per share (including Rs. 45/-as premium per share) to The Bank of New York (the Depository) on behalf of the GDR Holders."

9. It was alleged that the above disclosure by Sanraa might have led investors of the company to believe that the said GDRs issue was genuinely subscribed by the investors without any agreement like Account charge agreement signed by the company. Therefore, it was alleged that the arrangement of credit agreement and account charge agreement which resulted in subscription of GDRs issue of the company, was not disclosed to the stock exchange and Sanraa reported misleading news to the stock exchange which contained information in a distorted manner and, prima-facie, might have influenced the decision of investors.

10. It was also alleged that Sanraa provided misleading information to SEBI in respect of the list of subscribers to the GDRs. Further, it was alleged that Clifford failed to repay the loan taken by it from Banco for subscription of GDRs. Allegedly, it was Sanraa which ultimately repaid the loan taken by Clifford as it is observed that Sanraa requested Banco to transfer an amount of US $27.244 million (its entire GDR subscription amount and interest accrued) towards closure of the loan taken by Clifford for subscription of GDRs issued by Sanraa.

11. Therefore, it was alleged that the scheme of issuance of GDRs (total 10 million GDRs) and the issue of underlying shares (2 shares underlying against each GDR) was fraudulent. Hence, it was alleged that Sanraa, prima-facie, violated the provisions of sections 12A (a),(b) and (c) of SEBI Act read with regulations 3(a), (b), (c), (d) and 4(1), 4(2) (f), (k) and (r) of PFUTP Regulations.

12. The Account charge agreement was signed by Mr. Annaswamy Venkatramani (Chairman of Sanraa). Board of directors of the Sanraa at the relevant time viz., Annaswamy Venkatramani, Mrs. Uma Karthikeyan the Noticee, Mr. Sukumar Subramanian, Mr. Rajeev Agarwal, Mr. Krishnan Rajagopal and Mr. Rajendran Sivashankaran, approved the board resolution on January 31, 2008, which allegedly authorised and enabled Mr. Annaswamy Venkatramani to sign, prima-

facie, fraudulent agreements like Account charge agreement with Banco. Thus, it was alleged that Noticee and aforesaid entities, prima-facie, acted as parties to the fraudulent scheme pertaining to the GDR issue of Sanraa.

13. Therefore, it was alleged that Noticee and aforesaid entities, prima-facie, 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.

14. The GDR issue of Sanraa, was subscribed by a single entity, namely Clifford, by obtaining a loan from Banco. The loan taken by Clifford was secured by Sanraa by way of pledge of the GDR issue proceeds by Sanraa. When Clifford defaulted on the loan, Banco invoked the security and the GDR proceeds to the extent of US$ 27.244 million were set off against the loan. Hence, the GDRs were effectively issued without any consideration.

15. Noticee as an executive director of Sanraa, along with Mr. Sukumar Subramanian, issued a CEO/CFO certificate on September 04, 2009, which stated that, financial statements for FY 2008-09 of Sanraa do not contain any materially untrue statements, nor omitted any material fact, nor contain statements that might be misleading. Further, she attended the Board Meeting where Mr. Annaswami Venkatramani (Chairman of Sanraa) was authorized to sign the Account Charge Agreement and Banco was authorized to use the funds as deposited in the account where GDR proceeds were to be credited as security in connection with any loan. Therefore, it was alleged that the Noticee had knowledge about the subscriber to GDR issue and the agreements which enabled Clifford, the sole subscriber to the GDR issue of Sanraa, to avail loan from Banco for subscription of GDRs of Sanraa by providing GDR proceeds as collateral for the loan extended by Banco to Clifford. The GDR issue would not have been subscribed if Sanraa had not given such security towards the loan taken by Clifford. Hence, it was alleged that the Noticee was party to the fraudulent scheme and violated Sections 12A (a),(b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

16. The aforesaid sections and provisions are reproduced below:

SEBI Act, 1992

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-

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

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.*

17. Noticee appeared before Mr. Amit Pradhan on June 15, 2021 (AO then), through Mr. Rushin S. Kapadia, Advocate, the authorised representative of the Noticee. During the hearing and vide request letter dated June 03, 2021, Noticee sought inspection of certain documents.

18. In view of the request of the Noticee, inspection of following documents was provided to the Noticee on November 24, 2021:
    a) Credit agreement dated 17.04.2008 between Clifford Capital Partners AGSA and Banco Efisa S.F.EL,S.A.
    b) Account Charge Agreement dated 30.04.2008 with Banco
    c) Minutes of meeting held on 31.01.2008
    d) Instructions dated 05.02.2009 from Sanraa to Settle loan account
    e) Copies of Corporate Announcements dated 31.01.2008 and 02.05.2008 made on Stock Exchange by Sanraa
    f) Sanraa's letter dated 17.06.2015 along with annexures
    g) CMVM, Portugal Letter dated 18.03.2016 along with its annexures
    h) Email dated 24.04.2017 from Investec Bank (Switzerland) AG
    i) Statement of Mr. A. Venkatramani dated 17.03.2017
    j) Statement of Mr. Sushil Kaushik dated 21.03.2017
    k) Annual reports of Sanraa for FY 2008-09 , 2009-10 , 2010-11
    l) CEO/CFO certificate dated 04.09.2009

19. Further, vide email dated November 30, 2021, statement of Sanraa's bank account numbers 06752050000026 and 01412000005348 with HDFC bank, Chennai branch was also provided to the Noticee.

20. Noticee filed her reply vide letter dated December 10, 2021. An opportunity of personal hearing before undersigned was provided to the Noticee through video conferencing on December 21, 2021 and Mr. Somasekhar Sundaresan, Advocate, Ms. Yungandhra Khanwilkar, Advocate, Mr. Rushin Kapadia, Advocate (Authorised Representatives of the Noticee) and Noticee attended the hearing and reiterated the submissions made by the Noticee in her reply. Further, Noticees submitted post hearing supplemental note dated February 08, 2022 in the matter.

21. The submissions of the Noticee in her reply and supplemental note are summarized as below:

22. The allegations in the SCN relate to the GDR issue which was more than 13 years ago. Initiation of proceedings after such a long delay, prejudices the ability of the Noticee to put up an adequate response to the allegations made in the SCN. The Noticee has not been associated Sanraa since March 2011, and has been away from India, oblivious of developments in the matter. Noticee does not have access to any documents which she may require to put in an adequate defense against the allegations made in the SCN. As such the delay has prejudiced the Noticee's ability to defend herself effectively. In support of this submission, the Noticee has relied on judgments like Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim [(1997) 6 SCC 71], HB Stockholdings Ltd. v. SEBI (Order of SAT dated August 27, 2013), Libord Finance Ltd v. Whole Time Member, SEBI (Order of SAT dated March 3, 2008), Rajeev Bhanot and Ors v. SEBI (Order of SAT dated July 09,2021) and Rakesh Kathotia v. SEBI (Order of SAT dated May 27, 2019).

23. The allegation is vague, generic and unsupported by any document or evidence. The SCN does not allege that the Noticee played any such specific role of involvement. The Noticee has relied on the orders of the Hon'ble SAT in the matters of Vikas Bengani v. SEBI (Order dated March 8, 2010) and Dhanalakshmi Bank Ltd. v. SEBI (Order dated April 20, 1999), and order of the Supreme Court in the matter of Commissioner of Central Excise, Bangalore v. Brindavan Beverages Pvt. Ltd. and Ors. [(2007 5 SCC 388] in this regard.

24. The GDR issue at Sanraa was being looked after by Mr. Annaswamy Venkatramani, the Chairman of Sanraa. The Noticee was not a decision-maker or involved in the execution of the GDR documentation. In so far as the GDR issue, the Noticee was involved only to the extent of approving the board resolution, which was in ordinary course of business. Further, the Noticee does not recall signing and approving the resolutions of January 31, 2008.

25. The Noticee had no knowledge of any fraudulent bank transaction as alleged in the SCN, and had no reason to believe that there was some fraudulent act being committed. Noticee was not aware of the existence of the credit agreement dated April 17, 2008, account charge agreement April 30, 2008 and/or the instructions issued to close the loan. The Noticee was not authorized or been a signatory of the credit agreement, account charge agreement and/or the instructions issued to close the loan. There is not a single piece of evidence that shows that the Noticee was involved in the aspects surrounding the credit agreement dated April 17, 2008 or the account charge agreement dated April 30, 2008 or the communication regarding release of loan of Clifford. The entire issuance of GDR was managed by the Chairman of Sanraa.

26. The Noticee relied on judgments like SMS Pharmaceuticals Ltd. v. Neeta Bhalla and Anr (AIR 2005 SC 2327), Katen Parekh v. SEBI (SAT order dated July 14, 2006) and submitted that she cannot be held liable for any alleged contravention/violation merely because of her position as a director in Sanraa and, also having participated in the board meeting of January 31, 2008.

27. With respect to the CEO/CFO certification, the Noticee stated that the signing of the CEO/ CFO certificate by the Noticee was not fraudulent since she signed the certificate based on the explanations and information provided to her. The statements made in the CEO/CFO certificate were not misleading to the Noticee's knowledge, for the Noticee to be accused of fraud. They were certified based on the knowledge and data available with the Noticee. The Notice was not aware of any transactions wherein the funds in Banco were utilized to release Clifford's loan. Noticee has relied on judgment of Lord Halsbury in Dovey and the Metropolitan Bank (of England and Wales) Ltd. Vs. John Cary (1901 AC 477 (HL)).

28. The requirement of 'intention' is a pre-requisite to prove 'fraud' for violation of PFUTP Regulations. In the present case, no such intention on the part of the Noticee has even been alleged in the SCN. Thus, it is submitted that the Noticee has not indulged in any manipulative, fraudulent or deceptive transaction or scheme as alleged et al.

29. The SCN merely states that the Noticee was signatory to the board resolution dated January 31, 2008. Basis this participation in the board meeting, a presumption is made that the Noticee was part of some scheme to manipulate the market. However, there is no evidence to show how the Noticee was involved in the alleged scheme to manipulate the market. Directors/ key managerial personnel cannot be automatically held responsible for the actions of a company, given that there is no specific provision under the SEBI Act making the directors/ key managerial personnel automatically liable for the offences allegedly committed by the company. The Noticee relied on judgments like Nirmal Bang Securities (P) Ltd. V. SEBI SAT Order dated October 31, 2003), Nandakishore Prasad v. State of Bihar, Hanumat v. State of Madhya Pradesh and submitted that the circumstance of being part of board meeting cannot lead to only one conclusion that the Noticee was part of some scheme of fraud.

30. In the SCN, SEBI has not demonstrated the exact role or involvement of the Noticee in relation to the alleged violations in the SCN. Thus, it appears that SEBI has proceeded against the Noticee only on account of her being a director of Sanraa at the relevant time under the principle of vicarious liability. The Noticee relied on judgments of Supreme Court Judgment in Sunil Bharti Mittal v.Central Bureau of Investigation case, Hon'ble SAT in the matter of Rahul Shah v. SEBI and SEBI order in Home Trade Limited and submitted that there is no specific provision under the SEBI Act making the directors/ key managerial personnel automatically liable for the offences allegedly committed by the company. In the present case, other than being party to the board resolution of January 31, 2008, SEBI has not adduced any document/evidence to demonstrate that the Noticee was part of some scheme to manipulate and/ or defraud the securities market.

31. The Noticee has neither derived any benefit nor any advantage from the alleged contravention in the SCN. Noticee submitted that the alleged violation has not resulted in any harm or loss caused to the securities market.

32. The Noticee has already been subjected to a debarment from accessing securities market from January 2, 2019 to May 19, 2021 due to the ex parte order dated January 2, 2019 of the Learned Whole Time Member in respect of the same proceedings. Thus, no more monetary penalty ought to be imposed on the Noticee as she has already suffered a debarment for the same charge.

33. Further, the Noticee has relied on judgments in the matter of Prafull Anubhai Shah v. SEBI by Hon'ble SAT (Appeal No. 389 of 2021 decided on June 28, 2021) and Hon'ble Supreme Court (Civil Appeal No. 6320 on December 06, 2021) submitting that the facts of the Noticee are identical to the said case and the ratio therein squarely applies to the instant case. In Prafull Anubhai Shah v. SEBI, SEBI had passed an order against one of the directors on the board of Soma Textiles and Industries Limited for having been part of the meeting where a resolution was passed for issuance of the GDR and for opening of an account with Banco. The SEBI order in the case gave no finding whatsoever as to whether

Prafull Anubhai Shah had any role to play in the issuance of the GDR. The said SEBI order was set aside by Hon'ble SAT and confirmed by the Hon'ble Supreme Court.

34. As the inquiry in the matter has been completed, I now proceed to decide the case on the basis of SCN issued, replies made by the Noticee and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

35. The issues that arise for consideration in the instant matter are:

Issue No. I	Whether Noticees are in violation of provisions of Section 12A(a),(b),(c) of the SEBI Act, 1992 read with Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (PFUTP) Regulations?
Issue No. II	If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HA of SEBI Act,1992? And
Issue No. III	If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

Issue No. I **Whether Noticees are in violation of provisions of Section 12A(a),(b),(c) of the SEBI Act, 1992 read with Regulation 3(a),(b),(c),(d) & 4(1) of the SEBI (PFUTP) Regulations?**

36. Before proceeding with the merits of the case, I take note of the preliminary submission of the Noticee that there has been an unexplained inordinate delay in initiation of proceedings, and this delay has caused prejudice to the Noticee. In this regard, I note that in the present case, SEBI investigated issue of GDRs in the overseas markets by the Indian companies on receipt of a complaint, in the year 2009, regarding misuse of GDR route by few companies. Since, the GDRs are issued abroad and related transactions were carried out outside India, SEBI

had to call information from the various entities situated abroad in large number of fraudulent GDR issues. SEBI collected information and documents from various sources including approaching the foreign regulators for assistance in procuring information and documents from the concerned entities situated outside India from many jurisdictions. The foreign regulators in turn took time to collect this information from the concerned entities and then to furnish to SEBI. Thus, the process of collection of information in these matters was complex, tedious and time consuming. Further, in another GDR matter, one of the entities, namely, Pan Asia Advisors Ltd. contested the jurisdiction of SEBI over the GDRs which was ultimately decided by Hon'ble Supreme Court in SEBI Vs. Pan Asia Advisors Ltd. & Anr. (2015) 14 SCC 71 on July 06, 2015.

37. Investigation was initiated in respect of 59 GDR issues made by 51 Indian Companies during the period 2002 to 2014. The investigation in the extant matter was completed in the year 2017, and there after a SCN dated February 12, 2018 was issued to the Noticee. The service of the said SCN also took additional time, especially as notice had to be affixed on the last known address of the Noticee. Once the said SCN was served, personal hearing was granted to the Noticee, which Noticee failed to avail. Subsequently, an Adjudication order was passed on November 29, 2019. The Noticee filed an appeal before Hon'ble SAT with a delay of 319 days, which was condoned. Subsequently, the matter was remitted to SEBI by the Hon'ble SAT, vide order dated May 19, 2021 for passing of fresh order. Following the same, as directed by the Hon'ble SAT, an opportunity for personal hearing was granted to the Noticee. As noted earlier, on the date of hearing, i.e. June 15, 2021, the AR requested for certain documents, and these were provided. The Noticee filed a reply dated December 10, 2021 and another hearing was held on December 21, 2021. From the above facts and circumstances of the case, I am of the view that the time taken in the matter is reasonable, and explained by the course of proceedings as described above. Thus, it cannot be said that there was inordinate and unnecessary delay in the matter as contended by the Noticee. I also note that there is no provision in the

SEBI Act, 1992 which provides limitation period for taking action for the violation of the provisions of the Act or the Regulations made thereunder.

38. The Noticee has also submitted that the SCN is vague and that the allegation against her is generic and not supported by any documentary evidence. In this regard, I note that the SCN issued to the Noticee clearly indicates the specific nature of violations that have been alleged in terms of different provisions of the PFUTP Regulations, 2003. The SCN also details the provisions under which the penalty, if found necessary, would be imposed. Further, all the relevant documents in support of the allegations made were provided to the Noticee as annexure to the SCN, by inspection dated November 24, 2021 and vide email dated November 30, 2021. In view of the above, I find that the SCN along with aforesaid documents provides all necessary documents in support of the allegations made therein. Hence, the aforesaid contention of the Noticee is not acceptable.

39. I note that on January 06, 2007, Sanraa informed BSE that, at its EGM held on January 02, 2007, that the issuance of ADR/GDR/FCCB and other instruments not exceeding USD 27.5 million was considered and approved. Further, vide corporate announcement dated January 31, 2008, Sanraa informed BSE that its Board of Directors, in its meeting dated January 31, 2008, decided to form a board committee called the "GDR committee", for issue of GDRs. Thereafter, vide corporate announcement dated May 2, 2008, Sanraa informed BSE on the outcome of the meeting of the GDR committee held on May 2, 2008, stating that it has considered and approved allotment of 10 million GDR's of USD 2.75 each, amounting to a total of USD 27.5 million, representing 20 million equity shares of Rs. 10/-each, at a price of Rs. 55/-per share (including 45/-as premium per share) to The Bank of New York (the depository) on behalf of the GDR holders.

40. I note that during investigation, Sanraa informed SEBI that aforesaid GDR issue was subscribed by 5 entities. However, it was found during investigation that the GDR issue was actually subscribed by a single entity, i.e. Clifford. The

subscription amount was paid by Clifford, by obtaining dollar term loan facility (amounting to USD 27,500,000) from Banco, by entering into a Credit Agreement. The dollar term loan facility in turn, was secured by pledging of the GDR proceeds by Sanraa to Banco, by way of the Account Charge Agreement. Through the Account Charge Agreement, Sanraa had guaranteed by way of first fixed charge in favour of Banco the rights, title, interest and benefit in and to the account as well as the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof, so as to secure the obligations of Clifford emanating from the Credit Agreement.

41. As noted in earlier paras, the Account Charge Agreement was signed by the Chairman of Sanraa, authorized to do so by the Board of Directors of Sanraa through a resolution passed in its meeting held on January 31, 2008. The Board of Directors of Sanraa had inter alia passed the following resolution in the said meeting:

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

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

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

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

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

43. I note that the Noticee has admitted that she was involved to the extent of approval of the board resolution. However, she has submitted that the same was in the ordinary course of business. I note that the Noticee has contended that she merely attended the meeting dated January 31, 2008 wherein the above mentioned resolution was passed by the Board of Sanraa and that there was nothing in the resolution that those present at the meeting would notice anything illegal.

44. In this regard I note that in a similar matter of GDR issuance, Hon'ble Supreme Court of India vide its judgment and order dated September 21, 2021 passed in Civil Appeal No. 380 of 2020 – SEBI Vs. Adi Cooper and other connected civil appeals, while setting aside the order dated November 05, 2019 passed by Hon'ble SAT in the Adi Cooper matter, held as under:

> *"................The Securities Appellate Tribunal was impressed by the fact that although the respondent was party to the resolution, being a whole-time director and member of the Board of Directors of the Company, had*

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

In light of the above, we have no hesitation in taking the view that the Appellate Tribunal was unduly impressed by only one fact; but ought to have construed the resolution in the manner done by the SEBI and in particular, the inaction of the Board of not disclosing the arrangement to the shareholders or the investors of the securities market through BSE. As a result, we set aside the impugned judgment and order and instead uphold the view taken by the SEBI vide its decision dated 28.02.2019.........................."

45. In the instant case also, the resolution authorizing opening of bank account for GDR issue and permitting funds deposited in the said bank account to be used as security in connection with loans, if any, is similarly worded as the resolution involved in the case of Adi Cooper (supra). The disclosures regarding aforesaid loan agreement and pledge agreement were not made by the Sanraa to the stock exchanges.

46. Further, in the present case, I note that the Noticee participated in the Board Meeting dated January 31, 2008 wherein the resolution was passed. The Board Resolution states that it "*authorized to use the funds so deposited in the aforesaid*

bank account as security in connection with loans if any". The argument that authorization to give the monies lying in the Bank account of Sanraa as security was in connection with the loan taken by Sanraa only, is not acceptable as the said resolution clearly allowed the company to pledge the funds in the bank account as security against loan given to a third party, i.e. Clifford. Thus, the GDR proceeds were pledged for raising the loan by Clifford which was then used by Clifford to subscribe to the GDR issue. The aforesaid resolution thus enabled the fraudulent scheme for GDR issuance and subscription to take place, and the Board of Directors, including the Noticee, approved the resolution and did not raise any objection to it. The Noticee, by approving the resolution aided in carrying out the fraudulent GDR issue.

47. The Noticee has stated that she does not recall signing the board resolution. The Noticee has further stated that she did not have access to the bank account statements, nor did she have any knowledge of the fraud. In this regard, I note that the Noticee has not denied attending the Board Meeting dated January 31, 2008, a fact confirmed from the disclosures made by company in its Annual Report. From the Annual Report, it is also noted that she was part of the Audit Committee. The Noticee was also a whole time executive director of the Company. The Annual Report of Sanraa for 2007-08 names Noticee the Whole Time Director -Director Finance. The Noticee attended all the meetings of the Board. In her position as Director Finance, as member of the Audit Committee, as whole time executive director, and having signed the Board Resolution as evident from the Annual Report, Noticee's submission of lack of knowledge about the GDR issue and how it was subscribed cannot be accepted.

48. In this context, I note that in another GDR case, namely, Mohandas Shenoy Adige Vs. SEBI (Appeal No. 511 of 2020, Order dated July 28, 2021), the Hon'ble SAT noted that the Appellant was a director in the company for several years and was the member of the audit committee which handled/reviewed the financial matters of the Company during the period when the GDR proceeds vanished from the accounts of the Company. In view of the same, the Tribunal held that

"*Taking into consideration all these facts, in our view it would be naive to conclude that the appellant Mohandas was only an independent director and had innocently consented to the Board decision authorising Mr. P.V.R. Murthy to deal with the GDR including loan if any*." In the instant matter, I find that the Noticee was not an independent director but Whole Time Director-Director Finance, she was also a member of the audit committee and thus the observations of the aforesaid case applies to the present case as well.

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

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

50. Noticee has cited the judgment of the Hon'ble Supreme Court in the matter of SMS Pharmaceuticals Vs. Neeta Balla (Supra) to contend that the role of a director in a company is a question of fact depending on the peculiar facts in each

case. From the facts detailed above pertaining to the role played by the Noticee in Sanraa as executive director and Director- Finance, as well as member of audit committee, it is clear that Noticee's by virtue of her role, was involved in and aware of the GDR issue. Noticee has stated that it was not within the Noticee's remit to question, challenge and investigate every single position of fact provided in the company's systems and that too from the Chairman. In this regard, the Noticee has cited the judgment of the Hon'ble Supreme Court in the matter of Chintalapati Raju vs. SEBI [(2018) 7 SCC 443] for the purpose that it relied on the 1901 judgment of the House of Lords in Dovey and the Metropolitan Bank of England and Wales Vs. John Cory and judgment of Supreme Court in the matter of Prafull Anubhai Shah v. SEBI to contend that she did not have any knowledge or awareness, to be accused of fraud. I note that the facts in the instant case are distinct from the cases referred as Noticee was an executive director, Director - Finance as well as member of audit committee and not merely director/ independent director in the company.

51. The Audit Committee, inter alia, is required to review financial statements before submissions to the board, and also has the authority to investigate into relating matters. Hence, it was well within the ambit of the Noticee's prescribed duties and functions to, at the very least, raise questions as executive director of the company. Director - Finance and also as a member of the audit committee, on events like pledging of the GDR issue proceeds for securing the loan granted by Banco to Clifford and subsequent writing off of the GDR proceeds when Clifford defaulted on its loan obligations.

52. I also note that in her submissions, the Noticee has stated that she is not part of Sanraa from March 2011 onwards. I note that the board meeting wherein the above mentioned resolution for the use of the GDR proceeds as security was authorized, was held on January 31, 2008. The GDRs were issued on May 2, 2008. Further, Sanraa requested transfer of USD 27.244 million (including interest) towards closure of the loan taken by Clifford on February 05, 2009.

Thus, during all this time, the Noticee was part of the company and was neither on leave nor had resigned.

53. Noticee has stated that she was not part of any fraudulent scheme, nor did she have any intent to defraud, which, as per her submissions, is an essential element to prove an allegation of fraud. The Noticee has also cited judgments submitting that, for proving charges of fraud under PFUTP Regulations, the evidence adduced must be compelling which can be inferred by logical process of reasoning from the totality of facts and circumstances surrounding the allegations. In this regard, I note that on May 3, 2008 Sanraa made corporate announcement informing BSE on the outcome of the meeting of the GDR committee held on May 2, 2008, that it has considered and approved allotment of 10 million GDR’s of USD 2.75 each, amounting to USD 27.5 million representing 20 million equity shares of Rs. 10/-each at price of Rs. 55/-per share (including 45/-as premium per share) to The Bank of New York (the depository) on behalf of the GDR holders. This announcement informed investors that the said GDR issue was genuinely subscribed and funds were raised by the company. However, the subscription was through arrangement of obtaining loan and creating a charge on GDR proceeds, which resulted in and facilitated subscription of GDR issue of the company by Clifford only. The Company while informing about GDR subscription did not make any disclosure about the Credit Agreement and Account Charge Agreement. Thus, by the said partial disclosure to BSE on May 3, 2008, the investors in India were misled into believing that the issuer company i.e. Sanraa was attracting foreign investors through GDRs when in fact the GDRs were fraudulently subscribed through loan against GDR proceeds by Clifford. The non-disclosure of material information regarding loan arrangement with Banco thus induced investors to value the scrip based on misleading information, and base their trading or investment decisions on such misleading information.

54. I note that the noticee has denied being involved in the day to day management of the company. The Noticee has stated that she resigned from Sanraa on June 1, 2012. Her resignation was accepted by the board of Sanraa on August 28, 2012. The Noticee has also denied any knowledge about the subject GDR issue and related events. I note that the Noticee had issued a CEO/CFO certificate 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 Sanraa for FY 2008-09. Further, from the Annual Reports of Sanraa for FY 2007-08, 2008-09 and 2009-10 The Noticee was a member of the Audit Committee of Sanraa during financial year 2007-2008 and attended 6 meetings (out of 6) as well as in 2008-2009 and attended 5 meetings (out of 5) of the audit committee. Audit Committee of Sanraa consisted of two independent directors and one executive director, i.e., the Noticee. I observe that the Noticee has been shown as 'Executive Director' of Sanraa. I also find from the Annual Report of Sanraa for FY 2007-08, 2008-09 and 2009-10 that the noticee has attended all the board meetings in the said financial years. Hence, the claim of the noticee that she was not involved in the day to day affairs of Sanraa and is not aware of the subject GDR issue is not acceptable.

55. I also note that the Noticee has submitted that vicarious liability has to be statutorily provided and that the SEBI Act does not provide for the same. In this regard I note that the present proceedings have been initiated against the Noticee for her own acts and omissions, which allowed the perpetration of the fraud involves in the GDR issue of Sanraa, and thus the question of any vicarious liability does not arise.

56. I note that in order dated November 29, 2019 passed by SEBI in the matter of Sanraa, the Company was found to have violated Sections 12A (a),(b) and (c) of SEBI Act, 1992 read with regulations 3(a), (b), (c), (d) and 4(1), 4(2) (f), (k) and (r) of PFUTP Regulations, in its GDR issue. As discussed in the foregoing paras, I find that the Noticee aided in the fraudulent scheme which resulted in facilitating

the subscription of GDR issue of Sanraa including issuing misleading disclosures to the stock exchange. Thus, I find that the Noticee has violated the provisions of Section 12A (a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

Issue No. II If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15HB of SEBI Act,1992? And

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

57. As it is established that the Noticee violated Section 12A (a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations; as brought out in the foregoing paragraphs, the Noticee is liable for monetary penalty under Section 15HA of SEBI Act,1992 which states as follows:

SEBI Act, 1992

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 twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

58. While determining the quantum of penalty under Section 15HA of SEBI Act,1992, the following factors stipulated in Section 15J of the SEBI Act have to be given due regard:

SEBI Act, 1992

<u>Factors to be taken into account by the adjudicating officer</u>

15J. *While adjudging quantum of penalty under Section 15-I, 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.

59. I note that the GDRs were issued in the year 2008, and during investigation profit/loss made by the Noticee has not been quantified in the said matter. I note that the role of Noticee in the fraudulent scheme was of aiding in carrying out the scheme. I take note of the size of fraudulent GDR issue of US$ 27.5 million (approximately equal to Rs. 111 crore as per USD/INR rate of 40.65 on May 02, 2008). Sanraa transferred US$ 27.244 million to Clifford to settle the loan taken by him for subscription of GDRs. Further, I have also considered the fact that vide Order of WTM-SEBI dated February 25, 2022, the Noticee has already been debarred for a period of five years (including period of restraint already undergone by the Noticee in terms of the order dated January 02, 2019) from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner. I also take note of the penalty levied on Sanraa and others of Rs.16.2 crores vide AO order of November 29, 2019. Hence, taking into consideration the aforesaid, facts and circumstances of the case and role of Noticee, I am of the view that a penalty of Rs.10 lakh shall be commensurate with the violations committed by the Noticee.

ORDER

60. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in section 15J of the SEBI Act and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose penalty of Rs. 10,00,000/- (Rupees. Ten Lakhs only) on the Noticee Mrs. Uma Karthikeyan under Section 15HA of the SEBI Act for violations of sections 12A(a), (b),(c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d), and 4(1) of the PFUTP Regulations.

61. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

ENFORCEMENT → Orders → Orders of AO → PAY NOW

62. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticees shall provide the following details while forwarding DD/ payment information:
    a) Name and PAN of the entity (Noticee)
    b) Name of the case / matter
    c) Purpose of Payment – Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

63. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: April 21, 2022
PLACE: MUMBAI

MANINDER CHEEMA
ADJUDICATING OFFICER