BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AS/GD/2022-23/20470]

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:

Nikunj Babulal Choradiya (PAN: AGQPC6235M)

In the matter of
GDR Issue of Maars Software International Limited

BACKGROUND OF THE CASE:

1. Hon'ble Securities Appellate Tribunal (SAT), vide Order dated July 15, 2022, in appeal no.63 of 2022, in the matter of Maars Software International Limited has set aside the Adjudication Order dated July 28, 2020 and the matter was remitted to the Adjudicating Officer(AO) to pass fresh order afresh after serving the show cause notice and after giving an opportunity of hearing in accordance with law. The SAT order further stated that the appellant shall appear before the Adjudicating Officer on August 22, 2022 on which date the appellant will serve with the show cause notice and the matter would proceed from there onwards.

2. Pursuant to aforementioned order of Hon'ble SAT, the undersigned was appointed as Adjudicating Officer vide Order dated July 26, 2022 under Section 19 of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act, 1992"), read with Section 15I(1) of the SEBI Act and Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the "SEBI Rules, 1995") to inquire into and adjudge under Section 15A(a) of the SEBI Act, for the violations of section 11C(3) read with 11C(6) of the SEBI Act, 1992 allegedly committed by Shri. Nikunj Babulal Choradiya hereinafter referred to as the "**Noticee**").

FACTS OF THE CASE IN BRIEF

3. SEBI 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/ Company/ Maars**") had come up with its GDR issue on August 10, 2007. It is observed from the Investigation Report (hereinafter referred to as "IR") that Maars issued 73,80,000 GDRs (amounting to US$17.22 million) and issue closed on August 10, 2007. It was alleged that the entire GDR issue was subscribed by only one subscriber Vintage FZE (Now known as Alta Vista International FZE) (hereinafter referred to as 'Vintage') which signed a Loan Agreement dated July 27, 2007 with European American Investment Bank AG (hereinafter referred to as 'Euram Bank') wherein Euram Bank lent Vintage, an amount of US$ 17.93 million for payment to subscribe GDRs of Maars. The loan agreement was signed by one Shri Arun Pancharia (hereinafter referred to as 'AP') on behalf of Vintage, in the capacity of its Managing Director on July 31, 2007. 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 the SEBI Act, 1992. 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 bearing ref. no. A&E/EAD-8/KS/VB/8176/2019 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.

4. The allegations levelled against the Noticee in the SCN are mentioned hereunder:
   a) During the course of investigation, summonses were issued under section 11C(3) read with section 11C(6) of the SEBI Act, 1992 for production of following documents regarding utilisation of GDR proceeds by MSIL.
      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 Pan Asia 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) It was alleged that Managing Director of Maars was also summoned to appear in person at SEBI Head Office with documents sought. It is observed that summonses was acknowledged by the company and an extension of two months was sought. It is noted that despite seeking repeated extensions of deadlines to reply to the summonses, Maars/ Noticee did not provide any information to SEBI. Further, no representative of company appeared in SEBI office for recording of statement as summoned.

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 summonses. 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 the SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. I note that the SCN called upon the Noticee 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 the SEBI Act, 1992 for the alleged violations of section 11C (3) read with 11C(6) of the SEBI Act, 1992.

6. The SCN was issued to the Noticee at the address available on record via SPAD. However, 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.

7. I note that vide letter dated September 20, 2019, Noticee was provided with final opportunity to submit reply to the SCN and to appear for personal hearing. The said 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. Subsequently matter was proceeded ex-parte and after considering the facts and circumstances of the case and the material available on record, vide order dated July 28, 2020, Noticee was

found to be in violation of section 11C(3) of the SEBI Act, 1992 and a penalty of Rs. 10,00,000/- (Rupees Ten Lakhs) was imposed on him.

8. In accordance with directions of Hon'ble SAT order dated July 15, 2022, vide letter dated and e-mail dated August 10, 2022 the Noticee was directed to appear before the undersigned on August 22, 2022 to collect the show cause notice. The said letter and e-mail was duly delivered to Noticee at the communication address of the Noticee. Noticee appeared before the undersigned on August 22, 2022 and was provided with SCN along with annexures. Noticee was further advised to furnish reply to the SCN within two weeks.

9. I note that vide letter dated September 05, 2022 Noticee has submitted his reply to the SCN. In accordance with the provisions of Rule 4(3) of the Adjudication Rules and as requested by Noticee, he was provided with opportunity of personal hearing on September 13, 2022 vide email dated September 08, 2022. On the scheduled date of hearing, Noticee appeared and reiterated the contents of reply submitted vide letter dated September 05, 2022.

10. The key submissions made by Noticee vide letter dated September 05, 2022 are as under:

a. That in the month of January 2008, Mr. Arun Panchariya asked me to join in Maars Software International Ltd for some time and asked me to sign some papers of the company for directorship. And further he said that if I join the company as director, it will be possible to get visa done for me and meet the client in UK for Architectural projects.

b. That I agreed to join 'MSIL', and took their help in getting my visa done. Then his brother Shri Ashok Panchariya sent one office employee to obtain my signatures on the documents for submitting to Office of ROC, Chennai in January- 2008.

c. That I was not attending the said 'MSIL company's business, management, administration and financial matters at Chennai since February, 2008 onwards and even thereafter. That I was not in contact with any of the persons / Directors of MSIL and did not attend the Board meetings of 'MSIL' at any point of time since February, *2008. That I was doing my own design work as Individual professional since the year, 2012. That I was not looking after the operations of the said MSIL at any point of time.*

d. *That I requested for my resignation from the company MSIL over phone conversations in the month of July 2012 and Arun Panchariya and Ms. Mona Vora of MSIL assured me that it will be done after 1-2 month's time but no procedure done by them for my resignation from MSIL despite of continuous requests and follow-ups by my emails.*

e. *That I requested to Jayashree to remove my name from the Board of Directors of 'MSIL' as I was getting SCN from SEBI. Copy of email dt.30-09-2012 sent by me to Ms Jayshree is relied upon. There was no reply. It is submitted that I again sent email dt.13-10-2012 to Jayshree and inquire about the process of my resignation from MSIL.*

f. *That I say that Ms. Jayshree replied dt.13-10-2012 on the subject of SCN of SEBI stating that we are sending one letter to SEBI acknowledging your summons and will reply on your behalf as well as on behalf of MSIL and we will take care of the matter and if anything required from me, they will inform me. That I by e-mail Dt.26-10-2012 again requested to Jayashree to remove my name from the Board of Directors of MSIL and make arrangement of other person. Copy of e-mail dt.26-10-2012 sent by me to Ms Jayshree is relied upon. That Ms. Jayshree replied by e-mail on 26-10-2012 to me stating 'Sure Sir'.*

g. *That I again requested Shri Arun Panchariya, Mona Vora and Jayashree in the year 2013 and 2014 to remove my name from 'MSIL' as I was not taking part in operations of the company since the date of joining in January, 2008 and they were fully aware of these facts.*

h. *I say that I was not the director of Maars Software International Ltd in the year 2007 when GDR issue of MSIL company happened.*

i. *I was never served notices from March 2019 to November, 2019 at my permanent address of Ahmedabad, Gujarat and all Notices were sent to Chennai address of MSIL and the company didn't inform me anything and Arun Panchariya and family stopped picking my phones.*

j. I didn't receive any notice either from Mr. Suresh Gupta or by second adjudicating officer Mr Saravanan for conducting the enquiry and investigation and no notice was served at my permanent residential address of Ahmedabad and no personal hearing notice was served upon me till passing of impugned order Dt. 28-07-2020 (during lockdown period imposed by Central Government –due to covid-19 serious pandemic).

k. I say that I had not signed bank opening account application for MSIL on 04-06-2007 but the same is signed by Mr Pravin Jain.

l. That I had not signed Waiver agreement Dt.04-06-2007 for MSIL and not even Board resolution of the company on 04-06-2007 but the same is signed by Mr Pravin Jain and Executive Director.

m. That I had not signed PLEDGE AGREEMENT of July, 2007 for MSIL with European American Investment Bank AG but the same is signed by Mr Pravin Jain as Managing Director.

n. That I had not signed Form of Appointment of Process Agent, 1st August, 2007 for MSIL with European American Investment Bank AG but the same is signed by Mr Pravin Jain as Managing Director.

o. With reference to Para-10 of Impugned notice, I have not signed bank account opening form for Account No.540016 with Euram Bank to keep the proceeds of GDR's.

p. With reference to Para-11, 12, 13, 14 and 15 of Impugned notice, I say that I am not aware about acquisition, cancellation and sale of GDR's by MSIL and that Vintage became the sole holder of GDR's and thereby becoming the majority shareholder of MAARS. I am also not aware about the transfer of GDR's from account of vintage to different sub accounts i.e. RHODES SOPHIA MAVI, IFCF & KIL. I am also not aware that Arun Panchariya is 100% shareholder of IFCF through it's company Cardinal Partners Ltd. I am not aware about different agreements made between MAARS and other subaccounts companies / entities and cannot give any opinion. I am also not aware about the cancellation of GDR's of MAARS started from 7th Dec.,2007 till 22nd Sept., 2009 and allotment of shares to above sub-accounts and thereafter sales of shares between the same period to different entities.

q. *I am not aware of the purchase of GDR's of MAARS by different classes of investors and there are cancellation of GDR's resulting in lakhs of shares. I am not aware about the connections between different sub-accounts and Mr. Arun Panchariya. I am not aware about the connections among entities and with Arun Panchariya as explained in Para-15 of impugned notice because I was not connected with the said company in the matter of GDRs in the year 2007-08.*

r. *With reference to Para-16 of Impugned notice, it is related to noticee No.1 and 2 who have violated different section of SEBI Act read with regulations of the PFUTP regulations.*

s. *With reference to Para-17 of Impugned notice, I say that I have not made any violation of relevant provisions of PFUTP Regulations and I am not liable for monetary penalty under the provisions of section 15 HA of the SEBI Act.*

t. *With reference to Para-18 of Impugned notice about non-furnishing of information and misleading submission by MAARS. I had not been involved with the company and did not receive any summons/SCN from investigating authority at my permanent address of Ahmedabad after my resignation. It is pertinent to note that all notices/SCN issued in my name might have been forwarded to Chennai office of MAARS. I say that the documents / information sought vide summons / e-mails/ letters from MAARS to be provided by said company (documents a to r mentioned therein) as I was not looking after the operations of MAARS and I resigned from the said company on 15-06-2016.*

u. *With reference to Para-19 of Impugned notice, I had not received Summons – ISD/SR/AS/1302(2) 2012 issued by the investigating authority Avarjeet Singh, for production of documents before the Investigating Authority (under Section 11(3) & 11C (3) of the SEBI Act, 1992 (Act 15 of 1992) in case of "Market Manipulation using GDR issues" and I was not having any access on the records of MSIL, Chennai. Further I had not received summons – ISD/AS/VV/7243/2012 by the investigating authority Avarjeet Singh on 28th march and summons – ISD/SR/AS/ASR/3888/2012 by Ashutosh Singh Rawat dated 13 feb 2012 and summons – ISD/AS/VV/7243/2012 BY Vivek Vijay dated march 28, 2012, and summons - ISD/AS/VV/7243/2012 by the investigating authority Avarjeet Singh on 18th April 2012 and following summons on 20th April 2012 and summons - ISD/DB/VV/16209/2012 BY Vivek Vijay dated July 19, 2012. All the summons might be sent to the company address and the company never informed me about the summons issued in my name.*

v. *I am also not aware about the summons issued in my name and replied by me i.e. letter of MAARS dt.07-02-2012 delivered at SEBI office because it doesn't bear my signature as signature is forged because I do not do dots below the line and I deny the signature in said reply dt.07-02-2012.*

w. *With reference to Para-20 of Impugned notice, I have not violated the provisions of section 11C (3) read with 11C(6) of the SEBI Act. I say that I received summons – IVD/ID7/SG/TVB/001/2012 on 1st august 2012 and summons - IVD/ID7/SG/TVB/21301/2012 on 21st September, 2012 by Suresh Gupta. That on 30-09-2012 I have forwarded the 6 attachments containing notices of SEBI informing Miss Jayshree of 'MSIL' that I am getting these letters, please do something about it. Also please remove my name from the post of MD. I have made further request continuously on the notices of SEBI and also about the progress of putting someone elses name instead of mine as I was not connected with the company in the matter of operations and I was made MD only for name sake for initially 3 years as per document filed with ROC, Chennai. I have not received any remuneration from MAARS or Arun Panchariya at any point of time since the date of appointment.*

x. *With reference to Para-22 of Impugned notice, I say that if MAARS failed to disclose details of outstanding GDR's in it's quarterly disclosers of shareholding patterns to BSE for the period from 01-01-2007 from 21-09-2011 and for such violation, company is liable. And as Arun Panchariya made me the director, he should be liable because I was not looking after the operations of the company at any point of time since February, 2008 till my resignation of 15-06-2016.*

y. *With reference to Para-23 of Impugned notice, it is concerned with company for listing agreement with BSE and I am not aware of any agreement.*

z. *With reference to Para-24 of Impugned notice, I was not looking after the operations of the company and was not connected with the GDR's issue (year, 2007-2008) and therefore, proposed penalty should not be imposed on me under the provisions of section 15HA, section 15A (a) of SEBI Act, section 23E of SC (R)A on the grounds set out hereinabove and also hereinafter.*

aa. *With reference to Para-25 of Impugned notice, I say that show cause notices never received by me at all and therefore, I was unable to submit reply and all documents* *and information is in possession of MAARS at Chennai to which I never had access for such records as on few occasions, I informed 'MSIL 'for compliance of some SCN received by me in the year 2012.*

CONSIDERATION OF ISSUES AND FINDINGS

11. I have taken into consideration the material available on record. The issues that arise for consideration in the present case are as follows:
    - **I. Whether Noticee has violated the provisions of section 11C(3) read with section 11C(6) of SEBI Act, 1992?**
    - **II. Does the violation, if any, attract monetary penalty under section 15A(a) of the SEBI Act, 1992**
    - **III. If the answer to issue no. II is in affirmative, then what should be the quantum of monetary penalty?**

12. Before moving forward, it is pertinent to refer to the text of regulations which reads as under:

<u>SEBI Act, 1992</u>

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.

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

13. I note from material available on record, there were two summons dated January 12, 2012 and April 20, 2012 issued to the Managing Director, MSIL wherein Noticee was advised to furnish information and documents pertaining to GDR issue. Further vide summons dated March 28, 2012 and April 18, 2012, the Managing Director of MSIL was summoned to appear in person before the Investigating Authority along with the details sought by the said respective summonses. (hereinafter referred to as “summonses”)

14. Noticee has *inter alia* contended that he was not the director of MSIL when GDR issue of MSIL happened. In this regard, it is noted that during the investigation process, the details of GDR issue and the use of funds raised by MSIL by way of the said GDR issue was sought so that the same could be examined. By virtue of being the Managing director of MSIL, Noticee was obligated to provide information pertaining to GDR issue and cooperation with investigation process even though he was not the director of MSIL when the GDR issue happened.

15. Noticee has contended that he was not served with the summonses at his permanent address of Ahmedabad, Gujrat and the above referred summonses were sent to the address of the company. In this regard, it is noted that Noticee was served with summonses in his official capacity of Managing Director of MSIL at the registered address of the company. The summonses letter was conspicuously directed to “The Managing Director” of Maars Software International Limited at the registered address of the company It is pertinent to note that said address was mentioned on the letters received from the company in reply to the summonses requesting for extension of time for furnishing information and documents sought.

16. Noticee has contended that he was not involved with the company and not looking after the operations of MSIL. In this respect, it is noted that the above referred summonses were issued to the Managing Director of Maars. As per Form-32 dated February 13, 2008, as available on the website of Ministry of Corporate Affairs, it is observed that Noticee was appointed as Managing Director of MSIL on January 14, 2008 and had resigned w.e.f. July 07, 2016. Further Noticee in his own submissions has admitted that he joined MSIL in the month of January 2008 and resigned on June 2016. Hence it is established that Noticee was MD of MSIL while summonses were issued. Further, in his response he has mentioned that he requested for resignation in the month of July 2012 which shows that prior to this, he was very much a part of the company when the summonses which are the subject matter of the present proceedings were issued.

17. Being a Managing director of the company, Noticee must be aware and informed of its duties as a director. Here I would like to refer the definition of "Managing Director" as stipulated under 2(26) of Companies act,1956 read with section 166 of Companies act, 2013.

Section 2(26) of Companies act, 1956

26) " managing director " means a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board of directors or, by virtue of its memorandum or articles of association, is entrusted with substantial powers of management which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name called :

***Provided** that the power to do administrative acts of a routine nature when so authorized by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within substantial powers of management :*

***Provided further** that a managing director of a company shall exercise his powers subject to the superintendence, control and direction of its Board of directors ;*

Section 166 of Companies act, 2013

166. Duties of Directors
(1) Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company.

(2) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

(3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

(4) A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

(5) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

(6) A director of a company shall not assign his office and any assignment so made shall be void.

(7) If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

18. Being the Managing Director during the period when the investigation process was going on, the Noticee cannot take shelter by arguing that the summonses which were addressed to the Managing Director was not received by him.

19. In reply to the summons dated January 12, 2022, MSIL vide letter dated February 07, 2012 has requested time to submit the documents and information listed in the aforesaid summons. This letter was signed by the Noticee as the Managing Director of MSIL. I note that Noticee has now disputed the letter dated February 07, 2012 stating that the signature is forged in the said letter. However the Noticee has failed to furnish any evidence to demonstrate that the said letter was forged or any steps taken by him to approach appropriate authorities to file for Impersonation or forgery. In the absence of any cogent evidence, I am unable to accept this submission of Noticee.

20. From the response of the Noticee, I find that he has now made attempts to reply to the information that was sought vide the summonses which were issued to him earlier by denying his association with the GDR process. It is noted from investigation report that it was essential to evaluate the specifics of the GDR issue and the usage of monies raised by MSIL through the said GDR issue. The SEBI's investigation mentions that due to Noticee's failure to submit the information, SEBI was unable to examine the end use of the funds raised by the GDR issue. It is further noted from investigation report that SEBI suspected MSIL of returning the

GDR proceeds back to Arun Panchariya affiliated businesses for a loan repayment that Vintage had taken out. Since Noticee did not co-operate with the investigation and did not submit the information sought by way of the summonses, SEBI was unable to investigate further which hindered a key component of the inquiry into MSIL's GDR issue.

21. I note that **Hon'ble Securities Appellate Tribunal (hereinafter referred to as SAT), in matter of Asian Films Production and Distribution Ltd. vs SEBI** (Appeal No. 203 of 2010 decided on 19th January, 2011), has held that: "*Non-compliance with summons is, indeed, a serious matter and cannot be viewed lightly. The respondent Board is the market regulator and has to regulate the securities market and the law provides that every person associated with the market in any manner should cooperate in the matter of carrying out investigations. In the year 2002, the provisions of the Act were amended and penalty for non-compliance with summons was enhanced considerably to make it more deterrent. Market players who do not cooperate with the regulator in the matter of investigations commit a serious wrong which can have serious repercussions in the market. We do not know what would have come to light if the company had furnished the information sought from it.*"

22. I would like to refer Hon'ble SAT in its Order dated October 22, 2013, in the matter **Rich Capital & Financial Services Limited & Ans vs SEBI**, observed that:

"10. We may pertinently note that the SEBI is basically constituted to promote orderly and healthy growth of securities market apart from protecting investors' interest. For discharging this onerous job, and with a view to achieve the underlined object, SEBI as a regulator is required to conduct investigation and enquiries in the affairs of various parties from time to time. For this purpose, first and the foremost thing is co-operation from the concerned officers of the companies not only to produce the relevant records as and when required by an investigating officer or enquiring authority or by any person authorised by the SEBI in this behalf but to appear in person as and when called upon. Section 11C (2) mandates every manager, managing director, officer or other employees of the

company to preserve and produce such documents which are in their custody or power. Similar is the tone and texture of Section 11C (3).

11. In case of failure on the part of the concerned person to furnish such records/information, heavy monetary penalty is prescribed in Section 15A(a) of the SEBI Act, 1992. In fact such an act on the part of a company or its concerned officers is not only contemptuous but also a hindrance in the way of conducting smooth investigation and enquiry by the regulator to arrive at a just and fair conclusion as per the provisions of SEBI Act, 1992. Such an increasing tendency on the part of the companies needs to be curbed at the threshold."

23. In view of the above, I hold that Noticee failed to submit the information sought through the summonses issued by IA thereby hampering the investigation process and has violated Section 11C(3) of the SEBI Act, 1992.

24. In the response to the present proceedings, Noticee has also referred to certain summons dated August 1, 2012 and September 21, 2012 which were received by him subsequent to the summonses which are a subject matter of the present adjudication proceedings. However, since the same is not a part of the allegations indicated in the SCN they are not discussed further here.

25. It is alleged in the SCN that Noticee has also violated section 11C(6) of the SEBI Act. I find that the aforesaid summonses issued to the Noticee clearly stated that if the said Noticee fails to comply with the summons, criminal prosecution may be launched against them under section 11C(6) of the SEBI Act which provides for a punishment 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 5 lakh rupees for each day after the first, during which the failure or refusal continues. Thus provisions of Section 11C(6) of the SEBI Act which provides for criminal prosecution cannot be imposed through the present adjudication proceedings which are initiated under section 15I of the SEBI Act. Therefore, I note that proceedings under section 11C(6) of the SEBI Act is dropped as it is outside the purview of present adjudication proceedings.

Issue II. Does the violations, if any, attract monetary penalty under section 15A(a) of the SEBI Act, 1992?

26. In the light of findings and observations made against the Noticee brought out in the foregoing paragraphs, it is evident that the Noticee had violated the provisions of Section 11C(3) of the SEBI Act, 1992. I note that the failure on the part of the Noticee to comply with the summonses has hampered the investigation. In this connection, I note that it is the responsibility of every person from whom information is sought vide summons to fully co-operate with Investigating Authority and promptly produce all documents, records, information, etc., to the Investigating Authority. The above violations, are serious in nature and make the Noticee liable for monetary penalty under the provisions of Section 15A(a) of the SEBI Act, 1992.

27. As the violation of provisions of section 11C(3) of the SEBI Act, 1992 by the Noticee have been established, I find that Noticee is liable for monetary penalty under section 15A(a) of the SEBI Act, 1992.

28. The contents of the said provisions of law is reproduced herein below:

> ***<u>Penalties and Adjudication</u>***
>
> ***Penalty for failure to furnish information, return, etc.***
>
> *15A. If any person, who is required under this Act or any rules or regulations made thereunder,—*
>
> *(a) to furnish any document, return or report to the Board, fails to furnish the same, or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.*

Issue III. If the answer to issue no. II is in affirmative, then what should be the quantum of monetary penalty?

29. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 which reads as under:-

> ***15J – Factors to be taken into account by the adjudicating officer***
> *While adjudging quantum of penalty under [15-I or section 11 or section 11B, the Board or 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.*
> *[Explanation.—For the removal of doubts, it is clarified that the power […] to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]*

30. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the non-compliance of the summonses is not available. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of violations by the Noticee. The Noticee's disregard of SEBI summonses and non-cooperation with the investigation cannot be overlooked.

ORDER

31. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15-I of the SEBI Act,1992 read with rule 5 of the SEBI Adjudication Rules, I do not see any reason to differ from penalty imposed by erstwhile AO and I hereby reiterate the penalty imposed earlier AO on the

Noticee under Section 15A(a) of the SEBI Act,1992, for violation of Section 11C(3) of the SEBI Act, 1992, as found hereinabove:

Name of the Noticee	**Penalty**
Nikunj Babulal Choradiya (PAN - AGQPC6235M)	₹ 10,00,000/- (Rupees Ten Lakhs only)

In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.

32. 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 website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

33. The Noticee shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

34. In terms of Rule 6 of the SEBI Adjudication Rules, 1995, copy of this order is sent to the Noticee and also to the SEBI.

Place: Mumbai **ASHA SHETTY**

Date: October 19, 2022 **ADJUDICATING OFFICER**