BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/PM/NK/2020-21/7582]

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 Mrs. Geeta Manoharlal Saraf (PAN: ANMPS6842B)

In the matter of Investigation in the matter of Trading Activities of Certain Entities in the Scrip of Moryo Industries Limited

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FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation into the Trading Activities of Certain Entities in the scrip of Moryo Industries Limited (hereinafter referred to as 'Moryo or MIL' or 'the Company') for the period of January 15, 2013 to August 31, 2014 (hereinafter referred to as 'investigation period'/'period of investigation).

2. SEBI investigation into the matter alleged that Moryo Industries Limited and its non-Independent Directors i.e. Mr. Manoharlal Saraf (Managing Director) and Mrs. Geeta Manoharlal Saraf (Director) (hereinafter referred to as the Noticee / Mrs. Geeta) did not utilize the preferential allotment proceeds as per the objects of the preferential issue as disclosed and rather used the proceeds of the preferential allotment for investments in shares and for providing loans and advances which was not disclosed as objects of the

preferential issue under Regulation 73(1)(a) of ICDR Regulations. In view of the above, Investigation alleged that the Noticee being a Non-independent Director of the company and acting on behalf of the company, did not adhere to the objects of the issue as presented by the Company and the Noticee (acting on behalf of the company) to the shareholders/public in the notice dated September 3, 2012 of the Extra Ordinary General Meeting of the members of the Company held on October 1, 2012 and therefore the same was not true, was misleading and contained information in a distorted manner.

3. In view of the above, Investigation alleged that the Noticee violated the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 [hereinafter referred to as the SEBI (PFUTP) Regulations, 2003]. SEBI, therefore, initiated Adjudication proceedings against the Noticee for the aforesaid violations of the law.

Appointment of Adjudicating Officer

4. The undersigned was appointed as the Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the **'Adjudication Rules'**) to inquire into and adjudge under section 15HA of the SEBI Act, 1992 for the alleged violation of provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of SEBI (PFUTP) Regulations, 2003 by the Noticee.

Show Cause Notice, Reply and Personal Hearing

5. I note that a company is a separate legal entity, it cannot act by itself, but only through its directors who are expected to exercise their powers on behalf of the company with due diligence and within the framework of the law. The fraudulent act of not utilizing the proceeds of the preferential issue towards the object of the issue, by Moryo could not have been done without the knowledge of the Directors of Moryo. Accordingly, SCN was issued to the Noticee to show cause as to why an inquiry should not be held against her in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules,

1995 (hereinafter referred to as “Adjudication Rules”) and penalty be not imposed under Section 15HA of the SEBI Act, 1992 for the aforesaid alleged contravention of the said provisions of law.

6. Accordingly, Show Cause Notice no. EAD/ADJ/PM/AA/OW/12879/1/2018 dated April 27, 2018 (hereinafter referred to as 'SCN') was issued to Noticee (Mrs. Geeta Manoharlal Saraf) under Rule 4 of the said Rules as to why an inquiry should not be held and penalty not be imposed under section 15HA of the SEBI Act- 1992 for the alleged violation of the provisions of law.

7. It was alleged in the SCN that Mr. Manoharlal Saraf is the Managing Director (MD) of the Company (Moryo) and Mrs.Geeta Manoharlal Saraf (Noticee) is the wife of the Managing Director and therefore deemed to be a Non-independent Director in terms of Clause 49 of Listing Agreement even though she was categorized as Independent Director by the Company. Clause 49 of Listing Agreement provides that the expression ‘Independent Director’ shall mean a Non-executive Director of the company who is not related to promoters or persons occupying management positions at the Board (Board of Directors) level or at one level below the Board.

8. In the SCN it was alleged that the Noticee (acting on behalf of the company) did not utilize the proceeds of the preferential issue of the 63,50,000 shares at the price of Rs 25/- (Face Value of the Share Rs. 10/- and Premium of Rs. 15/- per share) per share allotted to 42 persons in accordance with the Special Resolution passed under section 81(1A) of the Companies Act, 1956, in the Extra Ordinary General Meeting of the shareholders/members of the Moryo. It was alleged that Moryo and its non-Independent Directors (Mr. Manoharlal Saraf and Mrs. Geeta Manoharlal Saraf) used the proceeds of the preferential allotment for investments in shares and for providing loans and advances which was not disclosed as objects of the preferential issue under Regulation 73(1)(a) of ICDR Regulations.

9. I note that the SCN, EAD/ADJ/PM/AA/OW/12879/1/2018 dated April 27, 2018 was sent to the Noticee at her address: C-2/104, Yogi Deep Co-Operative Housing Society, Yogi Nagar, Borivali (West), Mumbai – 400091, Maharashtra, available on record with SEBI. I

find from the acknowledgement that the SCN was delivered at the abovementioned address and it appears that Mr. Manoharlal Saraf (husband) has received the SCN on behalf of the Noticee. However, the Noticee did not respond to the abovementioned SCN.

10. Thereafter, an opportunity of personal hearing was granted to the Noticee on April 24, 2019, vide letter dated April 4, 2019. I find that the above hearing notice was also delivered to the Noticee on the aforesaid address. However, the Noticee did not respond to the aforesaid hearing notice. Thereafter, another opportunity of personal hearing was granted to the Noticee on February 17, 2020 vide letter dated February 7, 2020. The above hearing notice was also delivered to the Noticee. However, the Noticee again did not respond to the aforesaid hearing notice.

11. In view of the above, I find that the Noticee was given sufficient opportunity to explain her case before me. However, there was no response from the Noticee to the multiple correspondence and opportunities extended to explain her position in the matter. For the reasons mentioned above, I am of the considered view that the Noticee was provided with adequate opportunities of replying to the SCN and of being heard in the matter and therefore the principle of Natural Justice has been complied with, in respect of the Noticee's matter.

<u>CONSIDERATION OF ISSUES AND FINDINGS</u>

12. I have perused the documents available on record. The issues that arise for consideration in the present case are:

    I. *Whether the Noticee, has violated the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003?*

    II. *Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15HA of SEBI Act, 1992?*

    III. *If so, what would be the monetary penalty, duly considering the factors mentioned in section 15J of SEBI Act, 1992 read with Rule 5(2) of the AO Rules?*

Issue I – ***Whether the Noticee, has violated the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003?***

13. The first issue for consideration is whether the Noticee *has violated the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003?*

14. Before I proceed with the matter, it is pertinent to look at the relevant provisions alleged to have been violated by the Noticee, which are reproduced below:

SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

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 thereunder;*

(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 thereunder.*

4. Prohibition of manipulative, fraudulent and unfair trade practices:

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

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

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

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

(r) planting false or misleading news which may induce sale or purchase of Securities"

15. I note that the Noticee has not replied to the SCN and neither has she availed the multiple opportunities of personal hearing granted to her. I find that the Noticee was provided with sufficient opportunities to explain her case before me, but has not done so. Therefore, in absence of any replies/response from the Noticee, I am of the considered view that the Noticee has accepted the charges levelled in the SCN and have nothing to say in her defence. Therefore, I am constrained to decide the matter based on the materials and documents put on record and made available before me.

16. I note that the Company (Moryo Industries Limited) has raised Rs. 15,87,50,000/- by issue of 63,50,000 equity shares of the Company @ Rs. 25/- per share on preferential basis (Face Value @Rs. 10/- and Premium @Rs. 15/-). I note that the proposed utilisation of the proceeds of the preferential issue as explained/ informed to the shareholders of the Company in the Extra Ordinary General Meeting (EOGM) of the shareholders/members of the Company held on October 1, 2012 was as under :

    a) capital expenditure including acquisition of companies/business

b) funding long term working capital requirements

c) marketing

d) setting up of offices abroad and

e) for other approved corporate purposes.

17. I find that from the material available on record that the Company has not utilised the proceeds of the preferential issue as mentioned in the notice of the EOGM. However, it has utilised the said proceeds for purchasing shares of other companies and extending loans and advances to other companies and entities as under:

Sl. No.	Name of entity receiving funds	Amount transferred (Rs)	Purpose of Transfer (as furnished by Moryo)
1	Geojit BNP Paribas Financial Services Limited	7,14,75,936	Shares & Securities Purchased
2	Raj Agarwal	15,00,000	Loans & Advances Given
3	Insight Multitrading Private Limited	27,50,000	Loans & Advances Given
4	Fragrant Multitrading Private Limited	26,85,000	Loans & Advances Given
5	Royale Impex	90,00,000	Loans & Advances Given
6	Insulwell India	43,00,000	Loans & Advances Given
7	Kayaguru Wellness Private Limited	2,81,62,000	Repayment of Loan/ Loans & Advances Given
8	Trans Ocean Agency	15,00,000	Loans & Advances Given
9	Mass Associates	10,00,000	Loans & Advances Given
10	Raj Infra Developers	35,00,000	Loans & Advances Given
11	Rupak Developers Private Limited	25,34,000	Loans & Advances Given
12	Anup Bhagwandas Agrawal	30,00,000	Loans & Advances Given
13	Mohan Vijay Agrawal	40,00,000	Loans & Advances Given
14	Harish Vijay Agrawal	30,00,000	Loans & Advances Given
15	Yashaswi Developers Private Limited	25,00,000	Loans & Advances Given
16	Suryodaya Developers	18,00,000	Loans & Advances Given

17	Sanjay V Parmar	25,00,000	Loans & Advances Given
18	Kayaguru Insurance Broker Private Limited	1,18,00,000	Loans & Advances Given
19	Pushp Hari Foundation	20,00,000	Loans & Advances Given
	TOTAL	15,90,06,936	

18. I note that Mr. Manoharlal Saraf was the Managing Director at the relevant point of time in Moryo. I also note from the material /documents available on record that in the Annual Report for the FY 2012-13, the Noticee, has been designated as Independent Non-Executive Director and in the Annual Report for FY 2013-14, she has been designated as Non-Executive Director. I also note that Noticee is the wife of the Managing Director of the Company. Therefore, despite her designation as an Independent Director for the FY 2012-13, I am inclined to consider her as a Non-independent Director in terms of clause 49.I.(A)(iii)(b) of the erstwhile Listing Agreement, which provided that 'the expression 'independent director' shall mean a non-executive director of the company who is not related to promoters or persons occupying management positions at the board level or at one level below the board'

19. I also note that Moryo being a separate legal entity cannot act on its own but only through its directors who are expected to exercise their powers on behalf of the company with due diligence and within the framework of law. The aforesaid fraudulent act by Moryo could not have been done without the knowledge of the directors of Moryo. Mr. Manoharlal Saraf was the Managing Director of Moryo and the Noticee (wife of the Managing Director & deemed Non-independent Director) was the Non-executive Director. I also note from material/documents available on record that Mr. Manoharlal Saraf and the Noticee were signatories to the financial statements declared by the Company in its Annual Report for 2012-13 and 2013-14. I also note from material/documents that the Noticee was the Chairman of the Audit Committee of the Company for the FY 2012-13 and 2013-14 and that she had attended all the meetings of the Audit Committee held during FY 2012-13 and 2013-14.

20. I find that the Company has made investments in shares and given loans & advances, which were not disclosed as the objects of the preferential issue in the notice of the EOGM. Thus, the objects of the issue as presented to shareholders/public in the notice dated September 3, 2012 of the Extra Ordinary General Meeting of the members of the Company held on October 1, 2012 was not true and have mislead the investors. I also note that in absence of response of the Noticee to the SCN and the hearing notices, I find that the Noticee was responsible for the acts and affairs of Moryo, with respect to the activities which are the subject matter of SCN.

21. I note that the Noticee failed to furnish any reply to the SCN and also did not avail the multiple opportunities of personal hearing before me despite service of the SCN and hearing notices. In this regard, I would like to refer to the order of Hon'ble Securities Appellate Tribunal ("**SAT**") in the matter of *Classic Credit Ltd. vs. SEBI*, (Appeal No. 68/2003, order dated December 08, 2006), wherein it, *inter-alia*, held – *"the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice was admitted by them"*.

22. Similarly, the Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others vs. SEBI* (Appeal No. 68 of 2013, order dated February 11, 2014), has also inter alia, observed that: "...*As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."*

23. I also note from material / documents available on record, the Whole Time Member (WTM), SEBI vide order dated March 19, 2019 in the similar facts and circumstances concluded that Moryo Industries Limited made investments in shares and given loans & advances, which were not disclosed as objects of the preferential issue in the notice of EOGM. Thus, the objects of the issue as presented to shareholders/public in notice of Extra Ordinary General Meeting of the members of the Company held on October 01,

2012 was not true and might have mislead the investors thereby violating Regulations 3 (a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of SEBI (PFUTP) Regulations, 2003.

24. I note that having concluded as above, the WTM further observed that the Noticee vide interim order dated December 04, 2014, was directed not to access 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, whatsoever and that the Noticee has already undergone prohibition for a period of more than 4 years and three months, and that the same is sufficient for the violations committed by it.

25. In the light of the above facts, I am of the considered view that the Noticee has violated the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

ISSUE II: ***Does the violations, if any, on the part of the Noticee attract monetary penalty under section 15HA of SEBI Act,1992?***

26. The aforesaid violations on the part of Noticee makes the Noticee liable for penalty under Sections 15 HA of the SEBI Act 1992 and section 23E of SC(R) Act, 1956 which reads as follows:

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

27. As regards the Noticee it is clear that she is liable for imposition of penalty as is drawn from the Hon'ble Supreme Court of India Order in the matter of **SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)** has also held "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

ISSUE III*: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 read with Rule 5(2) of the AO Rules?*

28. Factors to be taken into account by the adjudicating officer while adjudging quantum of penalty:

> ***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.*
>
> *[Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]*

29. I find that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, accrued/made by the Noticee and the losses, if any, caused/suffered by the investors due to such manipulative trades of the Noticee. From the documents available on record, it is noted that the Noticee (acting on behalf of the company) has given loans and advances to number of entities on number of instances and therefore the failure on the part of the Noticee is considered to be repetitive in nature. I find it imperative here to refer to the observations made by the Hon'ble SAT in the matter **of Akriti Global Traders Limited Vs. SEBI (Appeal No. 78 of 2014) decided on September 30, 2014** :-

"…penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay.

ORDER

30. For the aforesaid reasons and after taking into consideration the nature and gravity of charges established, the facts and circumstances of the case and the mitigating factors as enumerated above, I, in exercise of the powers conferred upon me under section 15I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, hereby impose a monetary penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakh Only) on the Noticee i.e. Mrs. Geeta Manoharlal Saraf, under section 15HA of SEBI Act, 1992 for the violation of the provisions of Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. I am of the considered opinion that the above penalty will be commensurate with the violations committed by the Noticee.

31. The Noticee shall remit / pay the said total amount of penalty within 45 days from May 3, 2020 in either of the following way:

    a. By using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html; OR
    b. By way of Demand Draft in favour of *"SEBI - Penalties Remittable to Government of India",* payable at Mumbai; OR

32. The Noticee shall forward the said Demand Draft in the format as given in table below shall be sent to "The Division Chief, Enforcement Department -DRA-IV, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, BandraKurla Complex, Bandra (East), Mumbai - 400 051." and also to e-mail id :- tad@sebi.gov.in

Case Name	
Name of Payee	
Date of payment	
Amount Paid	

Transaction No	
Bank Details in which payment is made	
Payment is made for (like penalties/ disgorgement/ recovery/Settlement amount and legal charges along with order details)	
Penalty	

33. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: April 29, 2020 **Prasanta Mahapatra**

Place: Mumbai **Adjudicating Officer**