WTM/IA/SRO/MPB/185/2021-22

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

CONFIRMATORY ORDER

Under Sections 11, 11B (1) and 11D of the Securities and Exchange Board of India Act, 1992

In Re: Securities and Exchange Board of India (Investment Advisers) Regulations, 2013

In respect of:

S. No.	Name of the Entity	PAN
1	Minance Investment Advisors Private Limited	AALCM4744M
2	Anurag Bhatia	AVEPB6967G
3	Sarbashish Basu	BLHPB3370H
4	Pankaj Mahanty	ASZPP7398H

In the matter of Minance Investment Advisor Pvt. Ltd.

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1. Minance Investment Advisor Pvt. Ltd**.** ("**MIAPL**") was incorporated on December 4, 2017. MIAPL is registered as an Investment Adviser ("**IA**") under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 ("**IA Regulations**") with effect from February 01, 2019 under SEBI Registration No. INA200012434.

2. Securities and Exchange Board of India ("**SEBI**") received a number of complaints against MIAPL on SEBI Complaints Redress System ("**SCORES**"). Due to the number of complaints on SCORES, complaint with various enforcement agencies and based on information available on the website of MIAPL, MCA, Bank records, etc. preliminary examination was conducted in the affairs of MIAPL by SEBI and observed the following:

2.1. MIAPL has the following directors on Board as per MCA filings:

DIN	Name	Appointment Date	Resignation Date
7012878	Anurag Bhatia	04/12/2017	Continuing
7901188	Sarbashish Basu	04/12/2017	21/06/2019
8374291	Pankaj Mahanty	18/06/2019	16/09/2019

2.2. Minance Technologies Private Limited ("MTPL") holds 99.99% in MIAPL and Mr. Anurag Bhatia, who is the Promoter-Director of MIAPL holds approximately 94% in MIAPL through MTPL.

2.3. Through bank statement analysis it was observed that many fund transfers were made from the accounts of MTPL, Minance Resources Private Limited a company incorporated by Mr. Anurag Bhatia ("MRPL") and MIAPL to the individual accounts of Directors of the said three companies. Further, 347 credit transactions aggregating Rs. 2,90,94,828/- were observed in the Kotak Mahindra Bank account (A/c no. 5412123538) of MIAPL during the period December 27, 2017 to September 8, 2020 (excluding credits from MTPL, MRPL and Directors of all three companies and other banks accounts of MIAPL and credits received from Stock Brokers).

2.4. At least Five (5) First Information Reports ("**FIRs**") have been filed against MIAPL and its Promoter – Director, Mr. Anurag Bhatia, across India, *inter alia* alleging criminal breach of trust, cheating, misrepresentation under The Indian Penal Code, 1860, and offences under the Information Technology Act, 2000. Further, cases (at least 6 in nos.) under Section 138 of The Negotiable Instruments Act, 1881 (Dishonor of cheque for insufficiency of funds in the account, etc.) have been filed against MTPL and Mr. Anurag Bhatia in various courts across India (source: https://services.ecourts.gov.in/).

2.5. Articles were published on ET prime website (May 28, 2020 and June 18, 2020), cnbctv18.com (September 6, 2020) and in Dainik Bhaskar (September 6, 2020) which have *inter alia* reported the alleged fraud perpetrated by Mr. Anurag Bhatia and the cheque bouncing cases filed against him. The latter two publications have also reported about the arrest of Mr. Anurag Bhatia by Jaipur police for an alleged Rs. 92 lakh fraud wherein he had promised to sell 500 shares of Paytm to a Jaipur based businessman for Rs. 18,500 each but ended up pocketing the amount without delivering the said shares.

2.6. Further, MIAPL and Mr. Anurag Bhatia did not reply to the SEBI emails and letters seeking information on operational activities of MIAPL and did not cooperate with SEBI.

3. Based on the above observations, preliminary findings and the material available on record, vide interim order dated October 20, 2020, violation of the following regulatory norms and provisions were observed therein:
   3.1. Non-submission of material information to SEBI: Violation of regulation 13(b) of IA Regulations 2013
   3.2. Non-Satisfaction of Capital Adequacy norm at all times: Violation of Regulation 8(1) of IA Regulations

3.3. Absence of compliance officer since June 24, 2019: Violation of Regulation 20 of IA Regulations

3.4. Non-furnishing of Information to Board: Violation of regulation 15(12) of IA Regulations read with clause 8 of Code of Conduct for Investment Adviser read with regulation 15(9) of IA Regulations.

4. In view of the above observations and violations, the following directions were issued against the Noticees MIAPL, Mr. Anurag Bhatia, Mr. Sarbashish Basu and Mr. Pankaj Mahanty;

4.1. *MIAPL and its Directors, Mr. Anurag Bhatia, Mr. Sarbashish Basu and Mr. Pankaj Mahanty, are directed not to access the securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly, until further orders.*

4.2. *MIAPL and its Directors, Mr. Anurag Bhatia, Mr. Sarbashish Basu and Mr. Pankaj Mahanty are directed to cease and desist from undertaking any activity in the securities market including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, in any manner whatsoever till further directions.*

4.3. *If MIAPL and its Directors have any open positions in any exchange traded derivative contracts, as on the date of the order, they can close out/ square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. MIAPL and its Directors are permitted to settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.*

4.4. *MIAPL is directed not to divert any funds collected from investors, kept in bank account(s) and/or in its custody until further orders.*

4.5. *MIAPL is directed not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of such assets held in its name, including money lying in bank accounts except with the prior permission of SEBI.*

4.6. *MIAPL is directed to immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, communications etc., in digital mode or otherwise, including websites, in relation to its investment advisory activity or any other activity in the securities market until further orders subject to paragraph 40.10 of this order.*

4.7. *MIAPL is directed to provide a full inventory of all assets held in its name, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 5 working days from the date of receipt of this order.*

4.8. *All Banks including ICICI Bank, HDFC Bank and Kotak Mahindra wherein MIAPL is holding an account, are directed not to allow any debits / withdrawals from or credits to the said accounts, without the permission of SEBI. The Banks are directed to ensure that these directions are strictly enforced.*

4.9. *The Depositories are directed to ensure that till further directions no debits and credits are made in the demat accounts of MIAPL and its Directors.*

4.10. *MIAPL is directed to immediately publicise through its website prominently that SEBI has passed interim order dated October 20, 2020 reproducing the directions mentioned in paragraph 40 and submit a copy of the relevant web page to SEBI within five working days from the date of the receipt of this order.*

4.11. *The Registrar and Transfer Agents are also directed to ensure that till further directions the securities / units held in the name of MIAPL and its Directors are not transferred or redeemed.*

5. Mr Pankaj Mahanty has filed a memorandum appeal dated February 03, 2021, with Securities Appellant Tribunal (SAT), seeking relief to set aside the interim order dated October 20, 2020 qua Mr. Pankaj Mahanty and provide relief as deemed fit under the fact and circumstances of the appeal. As an interim relief, Mr. Pankaj Mahanty has requested SAT for stay on the effect, implementation and operation of the interim order qua Mr. Pankaj Mahanty, release freeze on the personal demat account,

direction to SEBI to restrain the implementation of the interim order pending the appeal and such other reliefs. While hearing the matter, SAT vide order dated April 06, 2021, has directed to pass appropriate orders within two weeks and place the same before SAT.

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6. Order copy and Hearing notices were served on all the available addresses of the noticees. The details of the service and reply, if any, received are as follows:

S.No	**Noticee**	**Delivery Status**	**Reply Received / Hearing attended**
Service of order vide letter dated 22/10/2020			
1	MIAPL	Returned undelivered	Nil
2	Mr. Anurag Bhatia	28/10/2020	Nil
3	Mr. Sarbashish Basu	28/10/2020	04/11/2020
4	Mr. Pankaj Mahanty	26/10/2020	Nil
Service of order vide letter dated 30/12/2020 at Anurag Bhatia's address in Kolkata			
1	MIAPL	04/01/2021	Reply/submission not received
Service of hearing notice dated 18/01/2021 for hearing on 16/02/2021			
1	MIAPL	19/01/2021	Rescheduled to 02/03/2021 due to administrative exigencies
2	Mr. Anurag Bhatia	19/01/2021	
3	Mr. Sarbashish Basu	22/01/2021	
4	Mr. Pankaj Mahanty	22/01/2021	
Service of hearing notice dated 08/02/2021 for rescheduled hearing on 02/03/2021			

1	MIAPL	15/02/2021 Notice sent to the address of Mr. Anurag Bhatia delivered on 15.02.2021. Further, notice was delivered by way of affixture both at the registered office address and last known address of the company on 15.02.2021.	No reply or submission received
2	Mr. Anurag Bhatia	15/02/2021	No
3	Mr. Sarbashish Basu	15/02/2021	Yes Resubmitted the reply dated November 04, 2020
4	Mr. Pankaj Mahanty	15/02/2021	No
Affixtures for copy of order and Hearing notices			
1	MIAPL	15/02/2021	Two Bangalore address
Hearing notice dated 23/03/2021 for hearing scheduled on 01/04/2021			
1	MIAPL	Notice sent to the address of Mr. Anurag Bhatia delivered on 26.03.2021. However, notice sent to the registered office address of the company and the last known	No

		address of the company returned undelivered	
2	Mr. Anurag Bhatia	26/03/2021	No
3	Mr. Pankaj Mahanty	26/03/2021	Yes (SAT appeal copy submitted as reply on merits)

7. The personal hearing was conducted via video-conferencing in view of Covid-19. Further, opportunity of hearing on March 02, 2021, was given vide notice dated January 18 2021 and February 08, 2021, which was not availed by Mr. Pankaj Mahanty. I note that, Mr Pankaj Mahanty has not made any submission or reply to SEBI in response to the SEBI interim order dated October 20, 2020, seeking any relief nor has availed the hearing opportunity granted on March 02, 2021. However, subsequent to the admission of SAT appeal, he availed the opportunity of hearing granted on April 01, 2021 vide notice dated March 23, 2021. During the hearing Mr Pankaj Mahanty provided the copy of SAT memorandum of appeal to be considered as reply on merit.

8. Mr. Sarbashish Basu and Mr. Pankaj Mahanty in their personal capacity as directors have availed the opportunity of hearing on March 02, 2021 and April 01, 2021 and made submissions. MIAPL, Mr. Anurag Bhatia did not avail the opportunity of hearing.

Submission and replies by the notices:

9. No Submission or reply has been received from the MIAPL and/or Mr. Anurag Bhatia.

Submission by Mr. Sarbashish Basu

10. Mr. Sarbashish Basu was represented by his authorized representative during the personal hearing scheduled on March 02, 2021, and he reiterated the submissions made vide letter dated November 04, 2020. The submissions are as follows:

10.1. Submissions

10.1.1. Mr. Sarbashish Basu knew Mr. Anurag Bhatia as senior from Manipal University. Minance Research LLP was dissolved and MTPL formed where he was employed as Senior Associate, Investor Relations and in January 2018, made Vice President of MTPL.

10.1.2. During the course of employment, he was made Director of MIAPL but was not involved in the management of MIAPL which was exclusively handled by Mr. Anurag Bhatia. MIAPL rendered investment advisory services and did not receive or handle any funds remitted by investors for investment.

10.1.3. Mr. Sarbashish Basu role as employee of MTPL was limited to developing and maintaining good investor and client relations and developing technological capabilities of MTPL. He had no knowledge or oversight of any investment and financial transaction of MIAPL and Mr. Anurag Bhatia has acknowledged the limited nature of his role and his exclusions from any trading nature of activities or financial decisions of MIAPL and MTPL vide email dated October 14, 2019. Mr. Sarbashish Basu has not received any money from Mr. Anurag Bhatia, MIAPL, MTPL or any Minance group companies apart from the salary as employee of MTPL.

10.1.4. High Frequency Trading (HFT) product was launched in 2017 by MTPL. Till December 2018, all payment requested by clients were duly made by MTPL

until one of the clients of HFT product, requested an exceptionally large amount of redemption of investment amounting to Rs.5, 50, 00,000/-, for his family tax purpose. However, there were multiple delays in payment, to which Mr. Anurag Bhatia claimed that there was compliance issue with their Broker namely, Angel Broking and they were refusing to release funds. Mr. Anurag Bhatia assured that these things will be handled. These details are as per recollection of the office talks.

10.1.5. Since the issue of payment of Rs.5,50,00,000/- was not resolved and no information or explanations was received from Mr. Anurag Bhatia despite several request, and left with no other recourse, Mr. Sarbashish Basu tendered resignation on June 21, 2019 and also resigned as employee of MTPL vide email dated June 21, 2019. Various email correspondence in this relations are submitted.

10.1.6. At the time of resignation, a resignation and separation agreement dated June 26, 2019, was executed between Mr. Sarbashish Basu and Mr. Anurag Bhatia, MTPL and MIAPL. As per the clause 3.1 of the agreement, "*Company, Subsidiary and Anurag acknowledge and agree that Basu has not been involved in management-level meetings, has not had decision making authority or influenced the Board of Directors of the Company or Subsidiary or Anurag in any decisions making and has not had the authority or knowledge of investment decisions made by the Company and/or made by the company and/or the subsidiary will respect to its Customer*." Further as per clause 3.2 of the Agreement" *Anurag has complete discretion, control and authority in the management of the company and its subsidiary*". In clause 4.1 of the agreement, Mr. Anurag Bhatia and MTPL have undertaken to indemnify me from any losses, liabilities, fines, penalties that may arise out of or by reason of the fact that I was Director of MIAPL or an employee of MTPL.

10.1.7. Mr. Sarbashish Basu has also filed a police complaint dated September 12, 2020, against Mr. Anurag Bhatia

10.2. Objections

10.2.1. Not liable under Regulation 13(b) of IA Regulations

10.2.1.1. Mr. Sarbashish Basu has submitted that, the registered office was changed in the last week of April 2019. He was not responsible for intimating the change in registered office of the company to SEBI as it happened shortly before the resignation and was not liable for acts and omissions of MIAPL after resignation. Anurag Bhatia was taking care of all this. Also, in good faith vide email dated November 08, 2019, Mr. Sarbashish Basu intimated change in registered office of MIAPL to SEBI, even though was no longer director of MIAPL.

10.2.1.2. Mr. Sarbashish Basu was part-time non-executive director of MIAPL and not responsible for maintaining, filing or distributing the accounts or records of MIAPL. During his term as director, Mr. Diwakar Adari was the compliance officer of MIAPL entrusted with the responsibility of ensuing compliance. Further, Mr. Anurag Bhatia was Managing Director of MIAPL, who was in charge and responsible for business of MIAPL and for ensuring that all legal and regulatory requirements were compiled by MIAPL.

10.2.1.3. Mr. Sarbashish Basu has relied on General Circular No, 1, 2020, issued by Ministry of Corporate Affairs, Government of India dated March 02, 2020, which inter alia mentions that "*The nature of the default is also crucial for arraigning officers of the company for defaults committed under the Act. All instances of filing of information/records with the registry, maintenance of statutory registers or minutes of the meetings, or compliance with the order of statutory authorities, including the NCLT under the Act are not the responsibility of the IDs (Independent Directors) or the NED (Non-Executive Director), unless any specific requirement is provided in the Act or in such orders as the case may be.*

The responsibility of the NEDs, ordinarily arise in such cases, where there are no WTDs and KMPs."

10.2.1.4. With respect to change in constitution of the Board of Director, there was no material change in the constitution during his term as director. Mr. Sarbashish Basu resigned on June 21, 2019, with immediate effect and not responsible for the acts and omission of MIAPL. In good faith informed SEBI that he had moved on from MIAPL vide email dated November 08, 2019. Therefore, not in violations of Regulations 13(b) of IA Regulation.

10.2.2.Not liable under Regulation 8(1) of the IA regulations

10.2.2.1. When Mr. Sarbashish Basu was appointed as Director on December 04, 2017, the fully paid-up capital of MIAPL was Rs. 27,50,000/-. During SEBI registration on February 01, 2019, also the requisite capital as required was maintained. Mr. Sarbashish Basu resigned from MIAPL on June 21, 2019, five months after the SEBI registration, when the financial statement for the year 2018-19, were not yet drawn up and laid before the Board of MIAPL and as such, Mr. Sarbashish Basu was not able to verify whether the net worth of the Company satisfied the capital adequacy requirement as per the IA Regulations. Mr. Sarbashish Basu had no way knowing the status of the net worth of MIAPL, through the Board processes and had no knowledge of the same. Mr. Sarbashish Basu has fulfilled all duties as director of MIAPL in good faith and with diligence

10.2.2.2. As per section 149(12) of the Companies Act, 2013, A non-executive directors shall be held liable, only in respect of the such acts of omission or commission by a company which had occurred with his knowledge, attributable through the Board processes, and with his consent or connivance or where he had not acted diligently.

10.2.2.3. Further as part-time non-executive directors of MIAPL, Mr. Sarbashish Basu was neither in charge of nor was responsible for the conduct of the business of MIAPL. Mr. Sarbashish Basu was not responsible for the acts and omissions of MIAPL after the resignation as directors.

10.2.3.Not liable under Regulation 20 of IA regulations

10.2.3.1. During the term of Mr. Sarbashish Basu as director in MIAPL, Mr. Diwakar Adari was compliance officer of MIAPL since registration as Investment Adviser with SEBI and there was no contravention of Regulations 20 of IA Regulations. Mr. Sarbashish Basu resigned on June 21, 2019, prior to Mr. Diwakar Adari's resignation on June 24, 2019, and not liable for the failure of MIAPL to appoint Compliance Officer.

10.2.4. Not liable under Regulations 15(12) of IA Regulations read with clause 8 of Code of Conduct for IA read with Regulation 15(9) of IA Regulations for non-furnishing information

10.2.4.1. During the term as director of MIAPL, no communication was received from SEBI calling upon MIAPL to make any response or furnish any information.

10.2.4.2. Mr. Sarbashish Basu resigned on June 21, 2019, and as such he is not liable for the information sought by SEBI by way of letter and email, dated September 04, 2020. SEBI letter and email were issued after the resignation as director of MIAPL. Mr. Sarbashish Basu had already intimated to SEBI of the resignation vide email dated November 08, 2019

10.2.5. Not liable to any violations by MIAPL of IA Regulations on the following other grounds:

10.2.5.1. As per section 27 of the SEBI Act, 1992, where the contravention of any of the provisions of this Act or any rule, regulations, direction or order made thereunder has been committed by a company, *every person who at the time the contravention was committed was in-charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly*. *Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention*.

10.2.5.2. Mr. Sarbashish Basu has submitted that as a non-executive director of MIAPL, he was not in-charge of, or responsible to the company for the conduct of the business of the company. He was not involved in the day to day business of the company and therefore had no knowledge of the contraventions committed by MIAPL under the IA regulations. This has been acknowledged by Mr. Anurag Bhatia vide the Resignation and Separation agreement dated June 26, 2019. Mr. Sarbashish Basu has submitted that he has discharged the duties in good faith and with due diligence.

10.2.5.3. Mr. Sarbashish Basu has relied on the Securities Appellant Tribunal judgment dated September 15, 2004, in appeal no. 133 of 2003, in the matter of Rahul H. Shah v. SEBI where it was held that…" *However, the principle set out by the Supreme Court and the spirit of section 27 of the Act would indicate that if a finding is given that the appellants have nothing to do with the day today affairs of the company, they cannot be held guilty of any violations as there is no such thing as vicarious liability under section 11B of SEBI Act read with Regulations 11 of SEBI*

(Prohibition of Fraudulent and /unfair Trade Practices) Regulations, 1995.

10.3. Irreparable harm and balance of convenience

10.3.1. Mr. *Sarbashish* Basu has submitted that, due to the restrain and freeze of demat account it is causing an irreparable harm. He has submitted that, no prejudice would be caused to any person or prospective investor if permitted to operate demat account. Irreparable harm may be caused to potential investor and the development of the securities market only if investor continue to avail the services of MIAPL and investment advisor. There is no such risk if Mr. Sarbashish Basu is permitted to access the securities market and buy, sell or otherwise deal in securities through own personal demat account.

10.3.2. Mr. *Sarbashish Basu has resigned from MIAPL as director and from MTPL as employee more than a year ago on June 21, 2019. He has submitted that he has no association or connection with MIAPL, MTPL or any Minance entities. Currently is employed in a private limited company engaged in API banking as senior sales consultant. The scope of duties is limited to sales management of products and services and in no way connected with securities market. The said company does not carry out any business activity related to securities market. No third party or potential investor would suffer any harm or prejudice if Mr. Sarbashish Basu was permitted to access securities market to buy, sell or otherwise deal in securities through own personal demat account, as they would be personal transactions*

10.3.3. Most of the lifesaving earned is locked in various investments which can be accessed through demat account. Mr. Sarbashish Basu has submitted that he is unable to access or manage the personal savings, Therefore, irreparable harm and prejudice has been caused to him and thereby has sought leave to access, operate his demat account, only, for the purpose of accessing my own savings and managing same.

Submission of Mr. Pankaj Mahanty

11. Mr. Pankaj Mahanty attended the personal hearing along with two other representatives on April 01, 2021 and requested to take on record the SAT appeal memorandum dated February 03, 2021, as his submissions on merit with respect to the interim order dated October 20, 2020. In the pleading before Hon SAT,Mr. Pankaj Mahanty has made the following submissions:

11.1. The impugned order was not received by him and he came to know of the same through SEBI website. The order was addressed to his hostel address in Gandhinagar, Gujarat, which he has vacated years back and currently resides in Bangalore.

11.2. Certified copy of the impugned order has not been received after all efforts.

11.3. Mr. Pankaj Mahanty was holding the directorship in MIAPL for short duration i.e. July 31, 2019 to September 16, 2019.

11.4. As the date of joining was fraudulently shown as June 18, 2019, a police complaint dated February 29, 2020, has been filed with Police Authority against Mr. Anurag Bhatia.

11.5. Submissions

11.5.1. Mr. Pankaj Mahanty and another friend Mr. Sarkar, came across Mr. Anurag Bhatia through LinkedIn and approached him as a prospective investor for their startup funding around November 2018, however, no interest was received from Mr. Anurag Bhatia. Later around April 2019, they came across a post of Mr. Anurag Bhatia on LinkedIn showing his interest in funding startup companies working on "Real Estate Tokenization". Hoping as a funding opportunity they emailed Mr. Anurag Bhatia on April 30, 2019, with brief plan, which was accepted by him vide email dated May 01, 2019. Accordingly,

terms and conditions of the investment were being considered for funding M/s Ohaii Technologies.

11.5.2. Vide email date June 06, 2019, Mr. Anurag Bhatia intimated that Mr. Kunal Shah, Founder of CRED and Freecharge is interested in funding M/s Ohaii Technologies provided it is owned wholly or partly by M/s Minance Group of Companies. In pursuance, Mr. Anurag Bhatia offered Mr. Pankaj Mahanty and the friend to join the Board of MIAPL and MTPL respectively. In anticipation of receiving the funding Mr. Pankaj Mahanty joined MIAPL, however, he was not aware of the constitution of the Board of MIAPL or the resignation of previous director.

11.5.3. Once onboard, Mr. Pankaj Mahanty started receiving investor complaints which he forwarded to the company for immediate resolution and was assured by Mr. Anurag Bhatia that all necessary steps would be taken to resolve the complaints and expressed his regret and apology for dragging him into this, especially when the complaints pertained to the period before his joining. Even after Mr. Anurag Bhatia's assurance complaints continued to be received, post which Mr. Pankaj Mahanty resigned as director on September 16, 2019.

11.5.4. During the resignation process, Mr. Anurag Bhatia got to know that his date of joining has been mentioned as June 18, 2019, instead of July 31, 2019. On being confronted by Mr. Pankaj Mahanty, an undated undertaking cum indemnity was executed by Mr. Anurag Bhatia stating that, Mr. Pankaj Mahanty has no role whatsoever in the functioning or day to day affairs of the company, was not an authorized signatory and that the actions of the company are in no way attributable to Mr. Pankaj Mahanty. It also mentioned that the date of appointment was mentioned without Mr. Pankaj Mahanty consent and that the company and Mr. Anurag Bhatia will indemnify Mr. Pankaj Mahanty in case of any action.

11.5.5. Mr. Pankaj Mahanty did receive SEBI letter dated September 11, 2020, to provide certain documents in relation to the scrupulous activities of the

company to which he responded vide email dated September 13, 2020, clarifying that he never had any involvement in the company operations, business or financial transactions of the company. The tenure in the company was brief and provided the undertaking cum indemnity given by Mr. Anurag Bhatia.

11.5.6. Mr. Pankaj Mahanty has submitted that without any fault he was arraigned by Ms. Deepa Ramakrishna in the complaint. In this respect a detailed reply email was forwarded by his friend Mr. Sarkar on February 06, 2020 to the complainant, with copy to SEBI, reiterating their non-involvement in the affairs of the company. Further in the same email correspondence vide email dated October 14, 2019, Mr. Anurag Bhatia had admitted that Mr. Sarkar and Mr. Pankaj Mahanty had no involvement/role in the operations of the company and that the said two persons were directors in the company for a very short period and should not be held responsible for the actions of the company.

11.6. Ground of appeal

11.6.1. The impugned order is contrary to the principle of equity and natural justice. The order was passed without giving opportunity of hearing which is gross violation of natural justice an on this ground the order is liable to be set aside.

11.6.2. No urgency for passing of the ex-parte interim order without notice to him was passed against him.

11.6.3. Not considered the email reply dated September 13, 2020, nor considered the fact that Mr. Pankaj Mahanty was not involved in the day-to-day affairs of the company and was not signatory. He neither participated nor was allowed to be part of the Board of Directors meetings and played no executive, managerial or any other decision-making role in the company. Further he has not received any salary.

11.6.4. Mr. Pankaj Mahanty has only been named in the complainant of Ms. Deepa Ramakrishna but the police has not registered any FIR in the said case.

11.6.5. No allegation is against Mr. Pankaj Mahanty and he joined the company on the hope of receiving funding for his startup M/s Ohaii Technologies and upon knowing the allegations of fraud and illegal conduct of Mr. Anurag Bhatia resigned immediately. Mr. Anurag Bhatia has acted in malafide, fraudulent and dishonest manner and materially misrepresented to induce Mr. Pankaj Mahanty in the company.

11.6.6. Before issuing restriction on him, failed to consider that he resigned after coming to know the irregular affairs of the company

11.6.7. The undertaking cum indemnity and email date October 14, 2019 should have been considered recognized and acknowledged by Anurag Bhatia that Mr. Pankaj Mahanty neither had knowledge of the fraudulent acts nor did he have any decision making role in the company.

11.6.8. Mr. Pankaj Mahanty cannot be made liable for refund as he was not in control of the company during the relevant time and Mr. Anurag Bhatia was the Managing Director cum Chairman of the company and not permitted to deal with day to day activities of the company

11.6.9. The impugned order alleges fund transfer from accounts of MTPL, MRPL and the company to individual accounts of directors of the said three companies, however fails to pinpoint any monies transferred in the personal account of Mr. Pankaj Mahanty.

11.7. Relief requested:

11.7.1. Set aside the order qua Mr. Pankaj Mahanty

11.7.2. Release freeze on the personal demat account held with Zerodha Broking Limited

CONSIDERATION OF ISSUES:

Preliminary issues arising from the submission of the noticees which needs to be addressed are as follows:

12. Mr. Pankaj Mahanty has made the following contentions in the appeal before SAT:

12.1. Mr. Pankaj Mahanty has contended that, order or certified copies of order was not served, no notice or hearing was given to him nor his email dated September 13, 2020, was considered while passing the interim order. In this regard, it is noted that being an ex-parte order, it is an established position that pre-decisional hearing is not a pre-requisite. The PNJ principles will be satisfied if post decisional hearing is given. I note that the registered address of the company had changed and the updated address and the change in the directors, etc. was not available to SEBI, further, there was no cooperation from MIAPL. However, based on the information available in the MCA filings, SEBI records and google search, every possible effort was made to gather information on the company, complaints being received and the activities of MIAPL. Accordingly letters dated September 04, 2020, were sent to MIAPL and Mr. Anurag Bhatia to furnish information to SEBI. However, no replies to the SEBI letters and emails to MIAPL and Mr. Anurag Bhatia were ever received. Subsequently, the September 04, 2020, letter was forwarded vide email dated September 11, 2020, to Mr. Pankaj Mahanty and Mr. Sarbashish Basu. In response to which email dated September 13, 2020, was received from Mr. Pankaj Mahanty, but the same was not on merits as it only contained information on the private arrangement between two parties in terms of indemnity from Mr. Anurag Bhatia and resignation from MIAPL dated September 16, 2019, and no information or submission with respect of the information sought was provided.

I also note that, the interim order dated October 20, 2020, was immediately served upon Mr. Pankaj Mahanty by vide letter dated October 22, 2020, at the address, Room No. D/316, DAIICT Hostel, Gandhinagar, 382009, Gujarat with delivery confirmation on October 26, 2020, as per procedure. Further, the said address is also as per the KYC of stock brokers i.e. Religare Broking Limited, Zerodha

Broking Limited and IIFL Securities and the passport. The KYC form filled and submitted with Zerodha Broking Limited was dated October 18, 2019. With respect to providing the certified copy of the Interim Order, it is noted that SEBI received emails dated January 13, 2021, and January 22, 2021, from one Anoma Law Group LLP, Advocates stating to be acting on behalf of the Mr. Pankaj Mahanty. The emails did not mention the address of the Mr. Pankaj Mahanty at which the certified copy was to be served, therefore, SEBI vide its email dated January 27, 2021, informed Anoma Law Group LLP that the Certified Copy was available as the Southern Regional Office of SEBI, at Chennai, and to inform the mode of collection of the certified copy of the interim order. In addition to the above, SEBI on February 01, 2021, also sent the certified copy of the Interim Order by post directly to the address on record and the same was delivered on February 05, 2021. Thus, the order and the certified copy of the order was duly served to Mr. Pankaj Mahanty as per the procedure.

12.2. With respect to another contention that no pinpoint of any money received by Mr. Pankaj Mahanty from the allegation of fund transfer from accounts of MTPL, MRPL and the company to individual accounts of directors of the said three companies, being made in the order. I note that, funds trail was gathered from the bank account details. This became the reasonable grounds to believe that such amounts could be diversion. However, in order to further ascertain that they are not in the nature of diverted funds, neither the directors nor the Company co-operated with SEBI.

13. I have considered the materials available on record / replies / written submissions, filed by the Noticees, if any. The issues to be considered at this stage are as follows:

Whether in light of the facts and circumstances of the case, the findings of the interim order and the submissions of the Notices, in response thereto, the directions

issued against the Noticees, vide the interim order need to be confirmed, revoked or modified in any manner?

14. Before proceeding to consider the same, I note that Mr. Sarbashish Basu and Mr. Pankaj Mahanty have submitted an indemnity agreement, where, Mr. Anurag Bhatia had stated their non-involvement/role in the internal operations of the company and that they were directors in the company for a very short period and should not be held responsible for the actions of the company. It may be relevant to mention here that even though there might exist an indemnity agreement on any proceeding/actions between the directors, the same is a private agreement/arrangement between themselves. It is an established position that persons who are subjected to statutory obligations and responsibilities cannot contract out the same through private arrangement. Therefore, any private agreement between persons cannot deter SEBI from taking action against a person acting in the capacity as director, for which the accountability and responsibilities are contained in regulatory provisions. Further the factual assertions made therein also needs corroboration of other material for the said assertion of facts. Without that same cannot have any force for rendering finding on the facts. I note in the instant case, the factual assertions such as Mr. Sarbashish Basu was not responsible for the affairs of the company is not supported by other materials such as profile of directors as explained in subsequent paragraphs. Such a private agreement, even if exists cannot supersede the statutes. Therefore, the same cannot form the basis for not taking action against the relevant directors if materials on record otherwise indicate.

14.1. Non-submission of material information to SEBI

Change in Registered address

14.1.1. I observe that MIAPL changed its registered address without intimating to SEBI and the same is also confirmed by Mr. Sarbashish Basu vide email dated November 08, 2019, informing that the address has changed in the last week of April 2019 and company is working from No. 14, Outer Ring Road, J

P Nagar, 4th Phase, Dollar Layout, Bengaluru, 560078. Also during the visit by SEBI to an alternate address found from internet, Minance group companies including MIAPL was working from No. 14, PID NO. 57-166-14, 100 Feet Road, 4th Phase, J.1P. Nagar, Bengaluru – 560078. However, the change in registered address was not intimated to SEBI.

Change in constitution of the Board of Directors

14.1.2. As per the information on records the constitution of the Board of directors changed after registration with SEBI on February 01, 2019. Mr. Sarbashish Basu resigned on June 21, 2019 and Mr. Pankaj Mahanty was appointed on June 18, 2019. However, change in the directors was not intimated to SEBI.

14.2. In view of the above MIAPL has failed to intimate material change to SEBI and therefore in violation to 13(b) of IA Regulations.

14.3. Non maintenance of Capital Adequacy and absence of compliance officer

14.3.1. MIAPL has not provided any information or documents with respect to the maintenance of the capital adequacy by MIAPL on ongoing basis or availability of compliance officer post June 24, 2019, as per the requirement of Regulation 8(1) and Regulation 20 of IA Regulations, respectively. Further, Mr. Sarbashish Basu and Mr. Pankaj Mahanty, in their submissions, have not explicitly denied non-maintenance of the capital adequacy or non-availability of compliance officer post June 24, 2019, in MIAPL. Therefore, based on the available records in terms of the bank statement of MIAPL with Kotak Mahindra Bank and HDFC Bank, MIAPL is in violation Regulation 8(1) and Regulation 20, of IA Regulations.

14.4. **Non Furnishing of Information**

14.4.1. MIAPL or Mr. Anurag Bhatia on company's behalf, have not furnished the information sought by the Board. Further no replies or submissions have been

received till date from them. Therefore, MIAPL is in violation of regulation 15 (9) and 15(12) read with clause 8 of Code of conduct of IA Regulations.

15. The prima facie materials, as examined in the interim order and based on the facts and circumstances and material available on record, I observe that, the violations against MIAPL in the interim order, stands confirmed.

16. I, note here that the company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. Further in terms of section 179 (1) of the Companies Act, "*The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do*". Therefore, the Board of Directors collectively being responsible for the conduct of the business of a company are liable for any non-compliance of law and such liability shall be upon the individual directors also. Here, I would like to refer to the observations of Hon'ble Supreme Court of India in the matter of N Narayanan vs. Adjudicating Officer, SEBI, decided on April 26, 2013, as follows: "Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence.

17. Here it may also be relevant to mention that Section 27 (1) of SEBI Act mentions that, *Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of contravention and shall be liable to be proceeded against and punished accordingly:*

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the contravention was

committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

(2) Notwithstanding anything contained in sub-section (1), where contravention under this Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

18. I note that as per the records available, there were three directors of MIAPL and their roles, responsibilities and tenure are detailed as under:

18.1. Mr. Anurag Bhatia's tenure as per MCA filing is from December 04, 2017, and still continuing. Also as per the profile submitted at the time of seeking registration from SEBI it is mentioned that "*He has been associated with the Company since its inception as promoter. He is responsible for the overall working of the Company and instrumental in making strategic decisions for the Company*". Further, vide email dated October, 14, 2019, Mr. Anurag Bhatia has also admitted the same and also addressed himself as the CEO (Chief Executive Officer). It is also noted that, Mr. Anurag Bhatia is the only director continuing in MIAPL since registration with SEBI on February 01, 2019, till date. Therefore, based on this role, Mr. Anurag Bhatia, at the time of the contravention was in charge of, and was responsible to the company for the conduct of the business of the company, and therefore is covered under section 27(1) of the SEBI Act.

18.2. As per MCA filing Mr. Sarbashish Basu tenure in MIAPL is from December 04, 2017 to June 21, 2019. Further as per the profile and role as director submitted during SEBI registration it was mentioned that, *"He has been associated with the company since its inception and is instrumental in making strategic decisions for the Company. He is also responsible for the overall marketing and Investor*

Relations for the company". Mr. Sarbashish Basu has contended that he was non-executive director of MIAPL and was neither in charge of nor responsible for the conduct of the business of MIAPL. However, his roles and responsibilities provided during the registration with SEBI principally are of executive director in the company, which was not contested while registration. Therefore, based on the role and responsibilities, Mr. Sarbashish Bas also at the time of the contravention was in charge of, and was responsible to the company for the conduct of the business of the company and therefore is a director covered under section 27(1) of the SEBI Act.

18.3. Mr. Pankaj Mahanty was director in MIAPL from June 18, 2019 to September 16, 2019, as per the information available from MCA Filings. However, with respect to the appointment date, Mr. Pankaj Mahanty has contended that he consented to be director on July 29, 2019, and came on board from July 31, 2019. I note that the copy of the appointment letter was not produced by Mr. Pankaj Mahanty. Further, I also note in this regard that the consent letter which is required to be filed by the director as per DIR-12 has not been produced before this proceedings. Such a consent letter would have clearly indicated whether Pankaj Mahanty joined on July 31, 2019 or June 18, 2019. In the absence of this document and given the entry in the MCA records, the preponderance of probability indicates that there is not sufficient proof to hold that Pankaj Mahanty has joined only on July 31, 2019. In this regard the mere statement of Mr Anurag in the indemnity cannot be accepted without any corroborative documents such as DIR – 2. Therefore, Mr. Pankaj Mahanty's tenure is considered from June 18, 2019 to September 16, 2019. Mr. Anurag Bhatia and Mr. Sarbashish Basu are already in charge of MIAPL based on the role and responsibilities defined and submitted to SEBI. The available materials do not indicate that he has been in charge of the company during his short tenure. Therefore, Mr. Pankaj Mahanty is director covered under section 27(2) of the SEBI Act.

19. In view of the foregoing and based on the role, responsibilities and tenure, the individual liability of the Directors regarding the violation with respect to MIAPL, is addressed as under:

Liability of Mr. Anurag Bhatia

20. As determined above, Mr. Anurag Bhatia is director covered u/s 27(1) of SEBI Act and the only promoter-director and CEO, continuing in MIAPL since SEBI registration on February 01, 2019, to till date, even after the other directors' resignation. Further, no submission or reply has been made with respect to the interim order, therefore, Mr. Anurag Bhatia, is liable for all the violations in the interim order as confirmed against MIAPL above.

Liability of Mr. Sarbashish Basu and Mr. Pankaj Mahanty

20.1. I note that, Mr. Sarbashish Basu and Mr. Pankaj Mahanty have contended that their tenure in MIAPL was very short for around 3 months and they were not responsible or involved in the operational or financial activities of MIAPL. It may be noted that, the directors of SEBI registered intermediary occupy a responsible position. Given the responsibility of directors in some cases the tenure of directors may become relevant. However, irrespective of the period served in a company, the directors cannot shun their responsibility towards the company, from the necessary due diligence, independent judgment and are required to exercise skill and care to all such acts and conducts as necessary in the affairs of the company. In view of the above violation by MIAPL attributable to the tenure of the directors is dealt as under:

Change in registered address and change in constitution of Board of Directors

20.2. I note that there was a compliance officer during Mr Sarbashish Basu's tenure in MIAPL and the responsibilities are cast upon him for the regulatory compliances. Even though Mr Sarbashish Basu may not personally required to communicate the change of address to SEBI, but as the director he is required to take due

diligence efforts to cause MIAPL to inform SEBI of this material change within his knowledge. Further, the registration document with SEBI mentions Mr. Sarbashish Basu as the point of contact and for communication with SEBI. Even though through the email dated November 08, 2019, he confirmed the address change since April 2019, however, Mr Sarbashish Basu has not submitted in this proceedings any evidence of any due diligent steps taken by him in this regard to cause the company to inform SEBI of the change of address, during his tenure as director of MIAPL. Therefore, Mr. Sarbashish Basu is held liable for this violation. However, I note that belatedly he informed SEBI and I consider this as a mitigating factor.

20.3. With respect to the change in directorship, as Mr. Sarbashish Basu was an outgoing director, therefore he is not held liable for intimation of the change to SEBI.

Non satisfaction of Capital adequacy

20.4. It is noted that MIAPL was registered with SEBI on February 1, 2019, when it satisfied the capital adequacy requirement. Mr. Sarbashish Basu has submitted that he resigned on June 21, 2019, till then the financial statement for the year 2018-19, were not yet drawn and put up before the Board of MIAPL for consideration. Mr. Pankaj Mahanty submitted that he was for a very short period and not involved any operational activity of MIAPL and has not attended any Board Meeting. Since, there is no evidence of any Board meeting, therefore it was submitted that directors were not aware of the financial conditions of the company through this means.

I note from the submissions and the documents provided by Mr Sarbashish Basu, in terms of the email correspondences between Mr Sarbashish Basu, Mr. Anurag Bhatia, and complainant (investor), it is observed that, complaints for payment dues were being raised. It is also submitted in the police complaint filed by Mr.

Sarbashish Basu dated September 12, 2020 that, he came to know of the financial irregularities and mismanagement in running of the Minance group of companies around June 2019. The same is corroborated from the email dated June 21, 2019, from Sarbashish Basu to all directors (except Mr. Pankaj Mahanty) of Minance group, that, there were unsound activities in the companies since 5-6 months which has come to light then. Through the trails of emails and the police complaint filed by Mr Sarbashish Basu, it is obvious that he was aware of the deteriorating financial condition which questions capital adequacy of the company, but, has not provided any evidence of raising relevant queries as a due diligent measure. I note here that, being director of a company of registered intermediary, directors have prime facie responsibilities to ensure compliance with the regulatory provisions which is a condition of registration with SEBI. Mr. Sarbashish Basu being one the two signatory directors during the registration process of MIAPL with SEBI, was very well aware of the requirement of maintaining capital adequacy as per regulation 8(1) at all times, however, even after knowing the financial conditions has not produced evidence of taking any steps. Therefore being director falling under the purview of section 27(1) of SEBI Act, Mr. Sarbashish Basu is liable for the capital adequacy compliance during his tenure.

20.5. I note here that, based on the facts, records, role and tenure, responsibility of Mr. Pankaj Mahanty need to be tested on the principle embodied in section 27(2) of the SEBI Act. As per the records, his tenure in MIAPL was around 3 months from June 18, 2019 to September 21, 2016. The reasons why and the circumstances under which he joined MIAPL has been brought on record with SEBI through his submission before Hon'ble SAT and hearing dated April 01, 2021. Based on the submissions, it is noted that, Mr. Pankaj Mahanty joined MIAPL on the hope of receiving funding for his start-up M/s Ohaii Technologies, however, upon knowing the allegations of fraud and illegal conduct of Mr Anurag Bhatia he resigned immediately on September 21, 2019. Mr Pankaj Mahanty has submitted that, Mr

Anurag Bhatia acted in malafide, fraudulent and dishonest manner and materially misrepresented to induce Mr Pankaj Mahanty in MIAPL. Further, Mr Pankaj Mahanty being covered under section 27(2) of SEBI act is liable when due diligent steps were not taken to prevent the commission of a violation. It is noted from submission in terms of the email complaints of Mr. Ramakrishna, that, he has been repeatedly raising concern with Mr. Anurag Bhatia and asking for speedy resolution of the complaints. Since the complaints redressal prolonged and the same was not obliged by Mr. Anurag Bhatia, immediately resigned from MIAPL and also filed a police complaint dated February 20, 2020, against Mr. Anurag Bhatia. With these facts, it is noted that after taking due diligent steps, he has resigned from the company immediately. Therefore, he cannot be held prima facie liable on the principle of section 27(2) of SEBI Act. It is also relevant that though at the stage of examination he did not co-operate, he has assured co-operation at present. It is also observed that no money transfer is observed from the accounts of MTPL, Minance Resources Pvt. Ltd., a company incorporated by Mr. Anurag Bhatia ("MRPL") and MIAPL.

20.6. I also note here that, Mr. Pankaj Mahanty has mentioned that in the interim order, he has been charged for capital inadequacy and for being named in the police complainant of Ms. Deepa Ramakrishna. However, the police has not registered FIR of the complainant. I note here that, actions by SEBI are not based on whether police complaint/FIR is lodged or not, but the same may form basis for further examination, and the findings are made on the basis of prima facie violation of regulatory provisions. The fact that such compliant exists apart from triggering examinations by SEBI, in general, also highlights a need for the relevant persons in charge of the company to conduct an examination into the state of affairs of the company which could reveal regulatory lapses by the Company and could act as an opportunity for the company to remedy the same apart from redressing the complaint. In any case Mr. Pankaj Mahanty, after taking due diligent steps has resigned from the company.

Non availability of Compliance Officer

20.7. As far as the violation of non-appointment of compliance officer is concerned, I note, Mr. Sarbashish Basu resigned on June 21, 2019, before the resignation of the compliance officer on June 24, 2019. Therefore, on this score no responsibility can be cast upon Mr Sarbashish Basu. The interim order also does not cast a liability on this score.

Non-furnishing of the information to SEBI

20.8. With respect to non-furnishing of information to SEBI, it is noted that, Mr. Anurag Bhatia was the only director of MIAPL continuing post resignation of Mr. Sarbashish Basu and Mr. Pankaj Mahanty on June 21, 2019, and September 16, 2019, respectively. The letters seeking information were sent to MIAPL and Mr. Anurag Bhatia on September 04, 2020, for which no reply or submission was received and there was no cooperation from MIAPL and Mr. Anurag Bhatia. Since Mr. Sarbashish Basu and Mr. Pankaj Mahanty were not directors of MIAPL at that time, given the nature of information sought they have not been prima facie held liable for this violation.

Additional issues requiring consideration

21. Mr. Pankaj Mahanty has also submitted that, he cannot be made liable for refund as he was not in control of the company during the relevant time and Mr. Anurag Bhatia was the Managing Director cum Chairman of the company. It may be noted that directions to refund are warranted based on the facts, evidences and circumstance of the case and to safeguard the interest of the investors, if, deemed necessary. I note that, at the current stage of the proceedings in the interim order no show cause notice for refund but directions has been mentioned. Therefore, the reply of Mr. Pankaj Mahanty that he is not liable to make a refund is not relevant at this stage.

22. Relief requested by Mr. Sarbashish Basu and Mr. Pankaj Mahanty

22.1. Mr. Sarbashish Basu has mentioned that he resigned from MIAPL as director and from MTPL as employee more than a year ago on June 21, 2019 and has no association or connection with MIAPL, MTPL or any Minance entities. Currently he is employed in a private limited company. No irreparable harm may be caused to third party or potential investor would suffer any harm or prejudice if Mr. Sarbashish Basu was permitted to access securities market to buy, sell or otherwise deal in securities through own personal demat account, as they would be personal transactions.

22.2. Mr. Pankaj Mahanty has mentioned that amount invested in the personal demat account is his hard earned money and the only money available for his day to day expenses. He has stated that no harm or loss would be caused to securities market or any investor, if interim relief is granted to him, but, would cause irreparable harm and injury would be caused to him. Therefore, he has requested to release the freeze on the personal demat account held with Zerodha Broking Limited and also to revoke the interim order in his respect.

23. It is noted that the interim order is passed based on the existence of a prima facie case, urgency and balance of convenience. Once the *prime facie* existence of violation of securities law is established, the assessment of urgency is to be made at the prima facie stage.

24. It may be noted the securities market is dynamic in nature and SEBI in order to protect the interest of investors has to enforce a large body of securities laws which include the relevant statutes such as SEBI Act, SCRA, Depositories Act and relevant provisions of Companies Act, 2013 and various Regulations framed by SEBI. The factors leading to the determination of urgency are manifold in a dynamic securities market. While elaboration of all the factors in such a dynamic market which needs to

comply with a vast array of securities laws, may not be feasible, a few of illustrative principles which help the determination of urgency is not out of place.

25. The factors of urgency may differ from one category of violation to another category. It may also depend on whether an entity is evading the jurisdiction of SEBI by way of non-cooperation. It may also depend on non-traceability of the registered intermediary at its registered address while being present online. It may also depend on whether by virtue of the conduct of an entity, the possible final directions could become infructuous. Equally, whether the violation is on-going is also an important factors for determination of urgency. There may be cases where a person who has been prima facie found to have committed a violation, could commit other violation. If detection prior to the exploitation stage is made, the principle of urgency would require immediately stopping the stage of exploiting the violation. There may be cases where the investors are disclosed that funds are collected for specific objects but detected prior to the diversion to unrelated objects. There could also be case where there is a statutory limitation on certain activities under SEBI trying to make investment in violation of statutory limitations. Urgency requires stopping of activities in time.

26. In essence, in a securities market environment, the triggers for urgency are multifarious and would defy any standard parameters. Curbing them may come in the way of effective regulatory functions while carrying out the statutory objectives of SEBI.

27. It may also be noted on the determination of urgency, the existence balance of convenience also needs to be assessed before passing an ex-parte order, i.e. whether the interest of the investors or orderly development of the securities market, outweighs the affected interest of the person against whom the ex-parte orders are passed.

28. It may be noted, in a case, the factors triggering the urgency may be manifold. Equally the factors for determination of balance of convenience also be manifold in a case. Such factors may be competing with the factors which contribute to the existence of “no-urgency”. Each factor may have varying degrees of force for determination of argument of “urgency”. The cumulative assessment of such factors would guide whether urgency or balance of convenience exists in a particular case.

29. The interim order records that numerous fund transfers were noted from the accounts of MTPL, MRPL and MIAPL to the individual account of Directors of the said three companies. SEBI preliminary examination found that such amounts of money has been sent to all directors except Mr Pankaj Mahanty. This became the reasonable grounds to believe that such amounts could be diversion. However, in order to further ascertain that they are not in the nature of diverted funds, neither the directors nor the Company co-operated with SEBI.

30. Pursuant to completion of examination if it is established that such funds belong to the clients, an appropriate direction against the directors to pay the diverted funds can be passed by SEBI. In view of such fund transfers and non-cooperation, it becomes essential that the securities in the hands of the directors to be frozen so that final remedies if any against the director does not become infructuous. Therefore, an urgent direction in the form securities freeze as mentioned in para 40.1 of the order was passed.

31. Further the interim order has found prima facie violation of securities laws against the company and the directors. Therefore, there is impending threat and urgency that they should be prevented from further committing breach of securities laws in securities market. The imminent threat is further compounded by the evading the jurisdiction of SEBI by non-cooperation. As the securities market provides for various avenues of investment. Making of such investment by buying securities and liquidation of the same by selling securities need to be undertaken in compliance of

various securities laws relating to the dealing in securities. Since there is prima facie violation of securities laws and evading the jurisdiction of SEBI by not co-operating, urgency further requires, the investors to be insulated from the undesirable effects of further breach of securities laws by the company and directors. Therefore, the respective directions in the interim order were made.

32. The threat of such exposure of lay investors to imminent breach of securities law outweigh the immediate interest of the Noticees. It is noted that such threat is in respect of floating multitude of investors vis a vis the individual persons against whom immediate freeze on the securities market activity are contemplated.

33. Further the orderly development of the securities market demands faith of investors in the timely action to prevent imminent breach of securities laws. The investor who may become victim of infringement of securities laws tend to lose confidence in the securities market. Investor confidence is the bedrock of the orderly development of the securities market. Therefore, on this ground as well the balance of convenience is not in favour of the Noticees at the time of passing of interim order, therefore, the respective directions in the interim order were passed.

34. Post the hearing, it is noted that in respect of Mr. Sarbashish Basu, apart from prima facie violations of securities laws, there are instances of fund transfer/diversion in respect of Mr. Sarbashish Basu. Therefore, there is impending threat and urgency that he should be prevented from further committing breach of securities laws in securities market. There is also an immediate need for the securities in the hands of the director to be frozen so that final remedies if any against the director does not become infructuous to continue to exist. Therefore, the directions against Mr. Sarbashish Basu need no modification at this stage.

35. Regarding MIAPL and Mr. Anurag Bhatia, there are instances of fund transfer/diversion. Both of them continue to evade the jurisdiction of SEBI by way of

non-cooperation. As noted earlier the orderly development of the securities market demands faith of investors in the timely action to prevent imminent breach of securities laws. Therefore, the immediate need for the securities in the hands of the directors to be frozen so that final remedies if any against the director does not become infructuous to continue to exist in respect of them. Further the impending threat and urgency that they should be prevented from further committing breach of securities laws in securities market also continue to exist. Therefore, the directions against MIAPL and Mr. Anurag Bhatia need no modification at this stage.

36. Mr. Pankaj Mahanty is prima facie found to be not in violations of provisions mentioned in the interim order post consideration of materials submitted by him. Further, it is also relevant that though at the stage of examination he did not co-operate, he has assured co-operation at present. It is also noted that no money transfer is observed from the accounts of MTPL, MRPL and MIAPL at current stage of examination. Therefore, there is no need to continue all the directions against him.

37. I note that there continues to be no-cooperation from MIAPL and Mr. Anurag Bhatia and therefore, the information sought from the company is still not provided by MIAPL and Mr. Anurag Bhatia, which may bring out the entirety of violations and respective roles of the persons involved in the violations. Therefore, the prima facie findings in the extant order shall not come in the way of continuation of fact finding by SEBI.

Order

38. In view of the foregoing paragraphs, pending further examination, I, in exercise of the powers conferred upon me under Sections 11, 11B and 11 read with Section 19 of the SEBI Act, 1992, thereof, hereby:-

(a) Confirm all the directions issued vide interim order dated October 20, 2020, against Minance Investment Advisors Private Limited and the Director, Mr. Anurag Bhatia.

(b) Confirm the directions at para 40.1, 40.2, 40.9 and 40.11, of interim order dated October 20, 2020, qua Mr. Sarbashish Basu.

(c) Revoke the directions qua Mr. Pankaj Mahanty.

39. A copy of the Order shall be sent to the Noticees, all Stock Exchanges, Depositories and Registrar and Transfer Agents for compliance.

-sd-

Date: April 20, 2021 **MADHABI PURI BUCH**

Place: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA