BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: ORDER/SBM/2018-19/1497)

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

In respect of:

Shri. Rajesh Ranka
(**PAN: ACUPR5573R**)
G-13 Orchid Greens
Girdharnagar, Shahibaug,
Ahmedabad- 380004

In the matter of

SMS Techsoft (India) Ltd.

FACTS OF THE CASE

1. The Whole Time Member of Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), vide Order dated July 28, 2010, passed under the provisions of sections 11, 11(4) and 11B of the SEBI Act, 1992 issued the following direction to Shri Rajesh Ranka (hereinafter referred to as '**Noticee'**) for his role in the price manipulation of the scrip of Softrak Technology Exports Ltd during the period January 1, 2002 to July 31, 2002 wherein, *inter alia*, it was observed that the Noticee had violated the provisions of Section 12 A of the SEBI Act, 1992 r/w Regulations 3, 4(b), 4(c) and 6(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 and Regulations 3 (a), 3(b), 3(c) , 3 (d), 4 (1) and 4 (2) (a) of SEBI (Prohibition of Fraudulent and Unfair Trade practices relating to Securities Market) Regulations, 2003.

2. In this regard, the directions mentioned below were issued to the Noticee by SEBI, vide the aforementioned order, restraining the Noticee from buying, selling or dealing in securities and from associating in the securities market, in any manner whatsoever, for a period of two years from the date of the above mentioned order i.e 2 years w.e.f July 28, 2010:-

   "*Therefore, taking into consideration the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 19 of the SEBI Act, 1992 read with sections 11(4) & 11B of the SEBI Act, 1992 and Regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, do restrain Shri Rajesh Ranka from buying, selling or dealing in securities and from associating in securities market in any manner whatsoever for a period of 2 years"*

3. Subsequently, it was observed by SEBI that the Noticee was involved in the manipulation of the preferential allotment of SMS Techsoft (India) Ltd (hereinafter referred to as '**SMSTL'/'Company'**) during March 2012. It was observed that during the period February - March 2013, several Short Text Messages (SMSs) were sent to the investors, with predominantly buy recommendations that were made in the scrip of the Company. In view of the above reasons, SEBI conducted an examination in the matter and based on the observations/findings contained therein, an interim order dated November 05, 2013 (followed by a corrigendum dated November 18, 2013) was passed under the provisions of sections 11(1), 11(4) and 11B of the SEBI Act against the Noticee and 37 other persons/entities wherein, it was, *inter alia*, observed that the Company, its promoters/directors along with other persons/entities, including the Noticee, had falsely portrayed the preferential allotment of shares made by the Company on March 15, 2012, as a genuine preferential allotment, by adopting fraudulent device and artifice to defraud the shareholders of the Company.

4. It was observed that, on March 15, 2012, the Company made a further issue of 3,00,00,000 equity shares of Rs 10 each at a price of Rs 10 per share by way of preferential allotment to its three promoters viz. Mr Jagadish Vital, Mr Akash Jagadish Vital and Ms Anita Srinivasabhatt Kadanthalai , and also to 28 other persons/entities. It was observed that the Noticee, circulated approximately Rs 1,99,50,000 back and forth between the company and the above mentioned 31 allottees of the preferential allotment and later on, after the allotment of shares in the preferential allotment, the above amount funded by the Noticee was ultimately returned to him by the company. It was observed that the above funds were circulated by the Noticee to other allottees of the preferential allotment when, by virtue of the Order dated July 28, 2010, the Noticee was explicitly prohibited / restrained from buying, selling, dealing or associating in the securities market, in any manner whatsoever, for a period of 2 years. The same has already been discussed at para 2 above.
5. During the course of examination, it was noted by SEBI that the Noticee was employed with SMSTL during the relevant period i.e March 2012. It was further observed that on account of the repeated circulation of the same money among the allottees of the preferential allotment, which had originated from the account of the Noticee, the receipt of the allotment money w.r.t 3,00,00,000 equity shares was fraudulently shown as received by the Company in its books by way of book entry. Therefore, it was observed that, the Noticee, by acting in concert with other allottees of the preferential allotment, illegally devised a scheme of preferential allotment without consideration and the shares were created without genuine infusion of funds, which also resulted in acquisition of 80.59% shares in the Company by the above mentioned preferential allottees . Subsequently, after the expiry of the lock in period w.r.t these shares, the preferential allottees sold the shares in the market and made illegal gains.
6. Pursuant to the interim order dated November 05, 2013, SEBI conducted an investigation in the matter and consequent to the completion of investigation, enforcement proceedings were initiated by SEBI against the Company, its

promoters and also various persons/entities associated with the preferential allotment, which also includes the Noticee for his significant role in the preferential allotment of SMSTL. Subsequently, a final order in the matter was also passed by Whole Time Member SEBI, vide Order dated July 27, 2018, *inter alia*, issuing directions to the persons/entities who were associated with the manipulation of the preferential allotment of the Company, including the Noticee.

7. In view of the above, it is alleged that Noticee has played a key role in the fraudulent preferential allotment of the Company by associating himself and by dealing in the above mentioned preferential allotment of the company during the period when he was debarred by SEBI, vide Order dated July 28, 2010. In view of the same, it is alleged that Noticee has failed to comply with the directions of SEBI, vide Order dated July 28, 2010 and therefore, adjudication proceedings were initiated by SEBI against the Noticee under the provisions of section 15 HB of the SEBI Act, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

8. The undersigned was appointed as the Adjudicating Officer, vide an order dated September 08, 2016, under section 15-I of the SEBI Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 15HB of the SEBI Act, the alleged non-compliance by the Noticee w.r.t the directions issued to him, vide Order dated July 28, 2010, details of which have already been discussed at paras 1 to 3, above.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

9. Show Cause Notice ref. A&E/EAD-3/SBM-PP/32493/2017 dated December 21, 2017 (hereinafter referred to as '**SCN**') was issued to the Noticee in terms of Rule 4 of the Adjudication Rules requiring the Noticee to show cause as to why an inquiry should not be held against him and why penalty, if any, should not be

imposed on the Noticee under the provisions of section 15HB of the SEBI Act for his alleged failure to comply with the directions of SEBI, which were issued to the Noticee, vide Order dated July 28, 2010. The SCN issued to the Noticee, *inter-alia,* mentioned the following:

i. *Mr. Rajesh Ranka (an employee of the company) transferred Rs. 1,00,00,000 and Rs. 99,50,000 to Maheshchandra Chunilal Shah and Nila Rajeshkumar Shah respectively on March 03, 2012 and on the same day, these 2 persons / entities have transferred the said funds to the Company on account of the preferential allotment*
ii. *Further, on March 05, 2012, the company transferred Rs. 1 crore to one Manjulaben Shah who had in turn transferred these Rs. 1 crore to one of the preferential allottee and that preferential allottee has transferred Rs. 1 crore to the company on the same date on account of the preferential allotment. The said Rs. 1 crore was circulating among the company, Manjulaben Shah and the preferential allottees and was later on returned to Rajesh Ranka as explained in sub point (v) below.*
iii. *The flow of funds among the company, Manjulaben Shah and the preferential allottees, as explained in sub-point (ii) above are repeated again and again which gives a false impression that the preferential allottees have paid the consideration amount to the company towards the preferential allotment money.*
iv. *The above said transfer of Rs. 1 crore among the company, Manjulaben Shah and the company, shows that in total, Rs. 28.03 crore were transferred from the company's bank account no. 673011005933 with ING Vysya Bank to Manjulaben Shah's bank account no. 673010029662 with ING Vysya Bank during the period March 05, 2012 to March 12, 2012 in 29 different transactions. During the same period, Manjulaben C Shah directly transferred Rs. 18.69 crore to 20 preferential allottees (mentioned at S. No. 1, 2, 3, 8 to 15, 18, 19, 21 to 25, 27, 28) and those 20 preferential allottees have transferred Rs. 18.68 crore to the company. Further, Manjulaben Shah also transferred Rs. 9.27 crore directly to the company (supposedly towards the payment of consideration amount by 9 preferential allottees).*
v. *Subsequently, the company transferred back Rs. 1,00,00,000 to entity at S. no. 31 on March 17, 2012 and Rs. 99,50,000 to entity at S. No. 29 on March 20, 2012 as shown in chart below. Thereafter,*

entity at S. No. 31 returned back Rs. 1,00,00,000 to Mr. Rajesh Ranka on March 19, 2012 and entity at S. No. 29 returned back Rs. 99,50,000 to Mr. Rajesh Ranka on March 21, 2012.

vi. *From the above, it is observed that for the payment towards the shares allotted in the preferential allotment, the fund movement originated from Rajesh Ranka and thereafter, Ms. Manjulaben C Shah was used as an intermediary to transfer/rotate funds among the company and other preferential allottees. Further, the outflow of funds towards the preferential allotment had initiated from Rajesh Ranka on March 03, 2012, which was returned back to him on March 19, 2012 and March 21, 2012.*

vii. *It was observed that Noticee / Rajesh Ranka was restrained from buying, selling or dealing in securities and from associating in the securities market, in any manner whatsoever, for a period of 2 years, vide an order dated July 28, 2010, passed by the Whole Time Member, SEBI under Sections 11 & 11B of SEBI Act, in the matter of Softrack Technology Exports Ltd. Therefore, it is alleged that Noticee no. 36 i.e Rajesh Ranka has not complied with the SEBI Directions issued under Section 11(4) and 11B of SEBI Act, 1992 and Regulation 11 of SEBI (PFUTP) Regulations, 2003, while indulging into activities detailed in paras above*."

10. In response to the SCN, vide letter dated January 25, 2018, Noticee, *inter alia*, mentioned the following:-

"*I have not carried any transactions of buying selling or dealing in securities or associating myself in securities market in any manner, I may be absolved from the charges leveled against me……...."*

11. Thereafter, in the interest of natural justice, Noticee was granted an opportunity of personal hearing on August 24, 2018 at SEBI, Western Regional Office, Ahmedabad. The Noticee along with his Authorized Representative (AR), Mr Bhrugesh Brahmabhatt (Advocate), appeared for the hearing on the stipulated date. The AR reiterated the submission made by the Noticee vide his letter dated January 25, 2018. Subsequently, Noticee also made additional submissions in

the matter, vide his letter dated September 5, 2018, details of which are as under: -

(i) *That the we been the small employee of the Respondent Company SMS TECHSOFT (INDIA) LIMITED and had been working under the Gujarat Business Head Late Shri Mahesh Shah at the Gujarat Office of the company and hence, in the terms of the funds arrangements as instructed by the Management, We got shocked to have come to know that funds of Rs,2.00 crore been routed through his Bank Account for the company i.e. Situated at Ahmedabad in the slot of Rs.1.00 crore and again further Rs.99.50 crore respectively during the period March-2012 and he was not aware of the other facts of the deployment of the funds by Late Maheshchandra C. Shah for the share Market deployment or preferential allotment of shares as alleged under the impugned notice as received from SEBI which please note.*

(ii) *As far as the involvement of the bank account transaction of the Appellant as averred on Page 10 of the impugned order of SEBI and rotation/ circulation of the funds from Rajesh M. Ranka's account is merely a commercial transaction and the same was arranged and deposited by Late Mahesh Shah and hence there is no role of us in preferential allotment of shares as alleged under the impugned order and hence, Rajesh M. Ranka's said bank account was misused by Late Mahesh C. Shah as the funds was further been circulated from his account to the allottees with joint account held in the name of his wife Manjula Mahesh Shah.*

(iii) *It is pertinent to note that the transfer of funds from Rajesh M Ranka's Account to Neela R. Shah to the extent of Rs.99.50 lacs on 03/03/2012 as claimed under the impugned notice, however Smt. Neela R. Shah had expired prior to the transaction and operating of her account and transfer of funds does not arise by Rajesh M. Ranka as the fake account and identity been used by Late Mahesh C. Shah, which can be very well could have been enquired by SEBI and the transactions in the deceased account took place only scam prevailing mind application of Late Mahesh C. Shah and hence we have no role to*

transfer and rotate the funds in the Bank account of Late Nila R. Shah which has no nexus with Rajesh M. Ranka which please note.

(iv) *We have not acted or opened any shares and securities account or trading, dealing, buying, selling of shares and securities market or any financial operation thereof since 2001.*

(v) *Myself been unnecessarily been dragged into the matter by Late Mahesh Shah, the Gujarat Business Head of the said company by misuse of the PDC as issued by me to him towards the short term financial assistance received by me for my wife medical expenses who suffered from cancer resulted into her death which please note.*

(vi) *The SEBI also erred in holding responsible on account of the usage of his Cell Phone No.9825032074 for 24x7 days customer services and redressal however the same was held and owned in the name of V. Jagdish - Managing director of the company the detailed Bill also been produced herewith for your kind perusal.*

(vii) *We further state that the e.mail.id in the name of appellant also been erred by SEBI as the same been the common mail Id used by everyone of the office bearer for the purpose of the communication and the same been utilized for the investor out of the knowledge of us which please note.*

CONSIDERATION OF ISSUES AND FINDINGS

12. I have carefully perused the facts and circumstances of the case, the material on record, the reply of the Noticee and the allegations made against him in the SCN. I have also perused the observations / conclusions drawn by Whole Time Member (**WTM**), SEBI in the Interim Order dated November 05, 2013 and the Final Order dated July 27, 2018 passed in the said matter of SMSTL against the Company, promoters and the related persons/entities who were involved in the preferential allotment of SMSTL. Further, I have also taken note of the findings/observations contained in the investigation report of SEBI. It is alleged that Noticee has dealt /associated in the preferential allotment of the Company

during the period when he was debarred/restrained by SEBI from dealing/associating in the securities market in any manner whatsoever, vide Order dated July 28, 2010. Therefore, it is alleged that the Noticee has failed to comply with the directions of SEBI, vide the aforementioned Order. It is alleged that Noticee was actively involved in the funding of the preferential allotment of SMSTL and had dealt in the shares of SMSTL during the period when he was restrained/debarred by SEBI, vide Order dated July 28, 2010.

13. Before dealing with the aforesaid charges in *seriatim*, the relevant directions issued to the Noticee vide Order dated July 28, 2010, the non-compliance of which have been alleged in this case against the Noticee is mentioned as under:

> *"……..taking into consideration facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 19 of the SEBI Act, 1992 read with Sections 11(4) and 11B of SEBI Act, 1992 and Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, do restrain Shri Rajesh Ranka from buying, selling or dealing in securities and from associating in securities market in any manner whatsoever for a period of 2 years.*"

From the above, it is amply clear that the Noticee was restrained/prohibited from associating/dealing in the securities market, in any manner whatsoever, till July 28, 2012 (i.e two years from the Order dated July 28, 2010).

14. I find that on March 15, 2012, the Company had made further issue of 300,00,000 equity shares of Rs 10 each at a price of Rs 10 through preferential allotment to its three promoters, and also to 28 other persons/entities. It was observed that Noticee was an employee of the Company during the relevant period and he was also the authorized signatory to operate the bank account of the Company (which was maintained with ING Vysya Bank). Therefore, he was connected with the Company as its employee. Further, during the course of

examination by SEBI, it also emerged from the KYC documents of the preferential allottees that majority of the allottees in the preferential allotment of the company were Ahmedabad based persons/entities. It was observed that 27 allottees (out of a total of 31 allottees in the preferential allotment) had a common mobile number, i.e '9825032074' and a common e-mail address, i.e, 'rajranka8@yahoo.com'. As per the KYC forms of the preferential allottees, which was obtained from their broker viz. Monarch Research and Brokerage Pvt Ltd, it was observed that the preferential allottees had authorized the Noticee as their nominee while opening the trading account with the above mentioned stock broker. It is noted that the above mentioned mobile number and email address belonged to the Noticee, which also confirms the key role played by the Noticee in the preferential allotment of SMSTL. Further, the initial funding by the Noticee to the extent of Rs 1,99,50,000/- in the preferential allotment of the Company and by rotating the same funds back and forth among the allottees to show false subscription in the preferential allotment only accentuates the key role played by the Noticee in the said preferential allotment.

15. Therefore, in the facts and circumstances brought out during the course of investigations, I find that the Company issued 300,00,000 equity shares by way of preferential allotment and allotted the shares to 31 allottees without receipt of any consideration for the shares allotted in the said preferential allotment. I note that the consideration for the shares allotted to the respective allottees in the preferential allotment were not paid by the allottees and the Company had shown receipt of the allotment money against the shares by way of 'fictitious book entry' as the funds which were initially received from the Noticee (i.e Rs 1,99,50,000/-) were rotated back and forth among various allottees of the preferential allotment. Hence, the preferential allotment of the Company was found to be irregular, illegal and fraudulent. During the course of the proceedings, it was submitted by the company and also by the other allottees of the preferential allotment that Mr Mahendra Chunilal Shah (one of the allottees in the preferential allotment) had orchestrated the manipulation in the

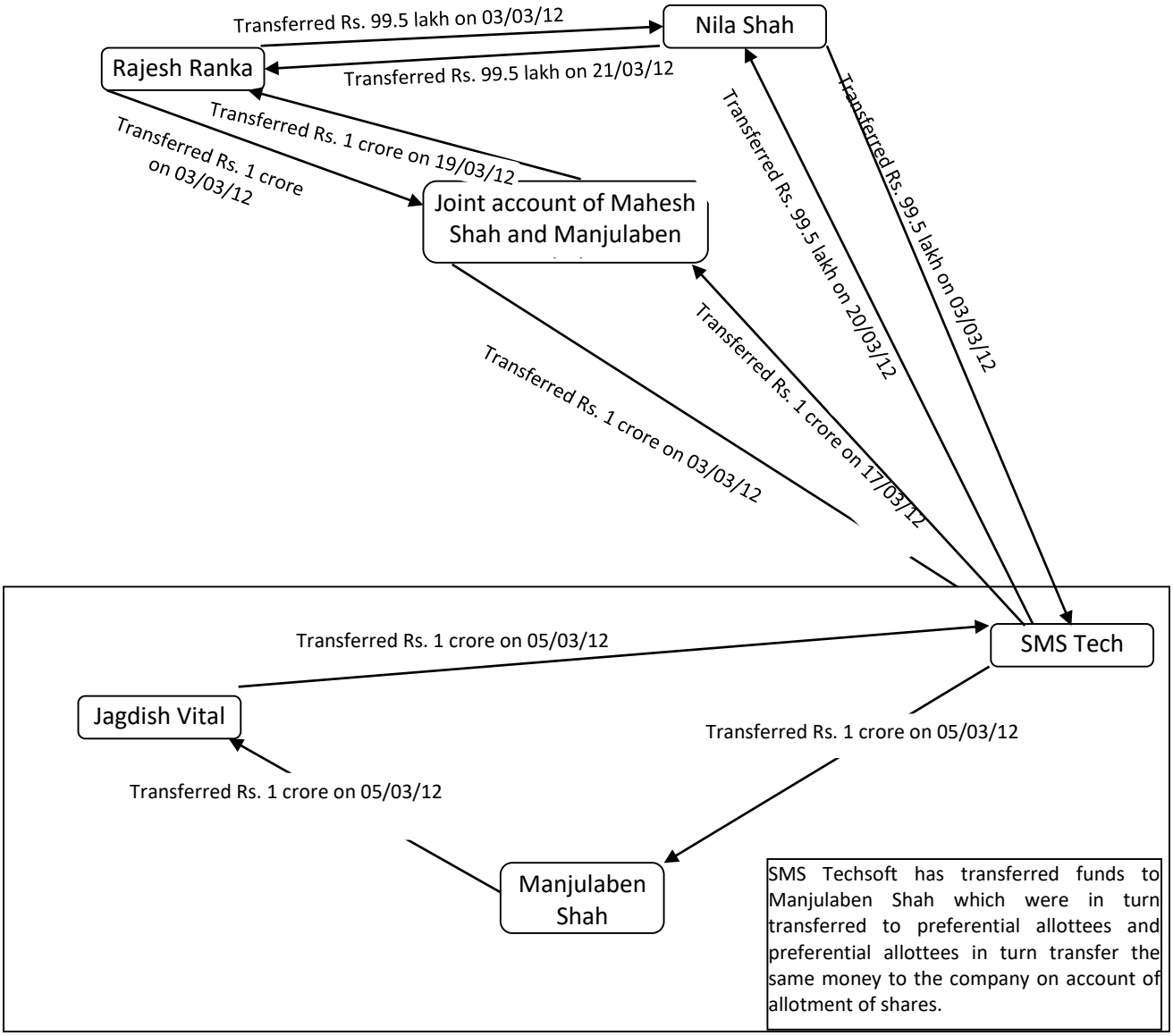
preferential allotment of SMSTL. Further, during the course of proceedings, it was informed by the Company that Mr Mahendra Chunilal Shah had expired on October 2, 2013 and in this regard, the Company also produced a copy of the Death Certificate issued by the concerned authorities confirming the death of Mr Mahendra Chunilal Shah on October 2, 2013.

16. In the context of the irregularities observed in the preferential allotment of SMSTL, it is pertinent to draw reference to the relevant observations/findings brought out in the investigation report of SEBI (which was also annexed along with the SCN issued to the Noticee). The observations made in the investigation report mentioned the role of the Noticee in the fraudulent preferential allotment, details of which are as under :

Analysis of the flow of funds between the Company and the Preferential Allottees in the preferential allotment of the Company

a) A diagrammatic representation (after examining the bank statements of the Company and also of other related entities/allottees in the preferential allotment) of the flow of funds between the Company, Noticee, Manjulaben C Shah and the preferential allottees is shown as under, which explains the irregularities in the preferential allotment of SMSTL and the role played by the Noticee in this regard :-

Chart 1 - Fund flow between the Company, Preferential Allottees and other entities



b) As can be observed from the above chart, the Noticee (who is an employee of the Company) transferred Rs. 1,00,00,000 and Rs. 99,50,000 to the persons/entities viz. Shri Maheshchandra Chunilal Shah and Ms Nila Rajesh Kumar Shah (both preferential allottees) on March 03, 2012 and on the same

date, these 2 persons have transferred the funds to the Company on account of the preferential allotment.

c) Further, on March 05, 2012, the company transferred Rs. 1 crore to one Manjulaben Shah who in turn transferred the said amount to one of the preferential allottee and that preferential allottee had transferred the amount of Rs. 1 crore to the Company on same date towards the preferential allotment. It is noted that the above amount of Rs. 1 crore was circulated between the Company, Manjulaben Shah and the preferential allottees and the above said amount was later on returned to the Noticee.

d) The flow of funds between the Company, Manjulaben Shah and the preferential allottees, which is mentioned at (c) above was repeated again and again, which gave a false impression that the preferential allottees had paid the consideration amount to the Company towards the shares allotted to them in the preferential allotment.

e) By transferring/rotating the above mentioned Rs. 1 crore again and again between the Company, Manjulaben Shah and the Company, it was observed that, in total, an amount of Rs. 28.03 crore were transferred from the Company's bank account no. 673011005933 with ING Vysya Bank to Manjulaben Shah's bank account no. 673010029662 with ING Vysya Bank during the period March 05, 2012 to March 12, 2012 in 29 different transactions. During the same period, Manjulaben C Shah directly transferred Rs. 18.69 crore to 20 preferential allottees (mentioned at S. No. 1, 2, 3, 8 to 15, 18, 19, 21 to 25, 27, 28 of Table V of the investigation report) and these 20 preferential allottees, in turn, transferred Rs. 18.68 crore to the Company towards their allotment money in the preferential allotment. Further, Manjulaben Shah also transferred Rs. 9.27 crore directly to the company (towards the consideration amount of other 9 preferential allottees).

f) In the end, the Company transferred back Rs. 1,00,00,000 to the account of Mr Maheshchandra Chunilal Shah on March 17, 2012 and Rs. 99,50,000 to Ms Nila Shah on March 20, 2012 as mentioned in the chart above. As already

stated, both Mr Mahesh Chandra Chunilal Shah and Ms Nila Shah were allottees in the preferential allotment of SMSTL. Further, it was observed that Mr Mahesh Chandra Chunilal Shah transferred back Rs. 1,00,00,000 to the account of the Noticee on March 19, 2012 and Ms Nila Shah transferred Rs 99,50,000 to the account of Mr. Rajesh Ranka (i.e Noticee) on March 21, 2012.

g) From the above chart, it can further be seen that on March 03, 2012, the Noticee transferred Rs 99,50,000/- to Ms Nila R Shah who was allotted 9,95,000 shares of SMSTL in the preferential allotment. On the same day i.e on March 3, 2012, Ms Nila Shah transferred the amount of Rs 99,50,000 to the Company . Then, on March 20, 2012, the Company has transferred back the said amount of Rs 99,50,000 to Ms Nila Shah and on March 21, 2012, Nila Shah has transferred the amount of Rs 99,50,000 to the Noticee.

h) Hence, from the flow of funds explained above, it can be seen that in respect of the payment of allotment money towards the shares allotted in preferential allotment, the fund movement w.r.t the preferential allotment originated from the account of the Noticee and thereafter, Ms. Manjulaben C Shah was used as an intermediary to transfer/rotate funds between the company and other preferential allottees. The transaction mentioned at (g) above clearly explains the fraudulent act on the part of the Company, which was clearly abetted by the Noticee. It is noted that the entire funds w.r.t the preferential allotment of SMSTL (i.e 1,99,50,000/-) originated from the Noticee's account and the same money were fraudulently rotated back and forth among other allottees in the said preferential allotment and finally the funds (i.e Rs 1,99,50,000/-) were paid back to the Noticee on March 19, 2012 and March 21, 2012 respectively.

i) Clearly, from the above analysis, it is noted that the Company had allotted 3,00,00,000 shares to 31 preferential allottees (including 3 promoters) without any genuine infusion of funds from the allottees and the money was shown as fraudulently received in the books of the Company by means of ' fictitious

book entry'. Thus, the Noticee along with the promoters of SMSTL and the other allottees of the preferential allotment has clearly orchestrated the said fraud played on the gullible investors of the company.

17. In this context, it is also relevant to draw reference to the observations made by WTM - SEBI vide Interim and Final Orders dated November 05, 2013 & July 27, 2018 respectively, details of which are reproduced as under :

Interim Order dated November 05, 2013

a. *It was observed that that majority of the allottees in the preferential allotment are Ahmedabad based entities. From the respective KYC documents, it was noted that 27 out of the 28 allottees (from serial number 4-31, except Dharmendra Rikhavchand Shah i.e. allottee at serial number 7) had a common mobile number, i.e.,* '9825032074' *and a common e-mail address, i.e.,* 'rajranka8@yahoo.com[1]*. The said mobile number and email address belong to Shri Rajesh Mangilal Ranka (PAN: ACUPR5573R) having address of* 'G-13, Orchid Greens, Near Girdharnagar Cros, Opp. Agarwal Hotel, Girdhar Nagar, Shahib Shahibaug, Ahmedabad*, who was restrained from buying, selling or dealing in securities market in any manner whatsoever for a period of 2 years vide SEBI order No. WTM/PS/28/IVD/ID-06/JULY/10 dated July 28, 2010. The other allottee, i.e., Dharmendra Rikhavchand Shah had transferred 25 lac shares of the company to another allottee, namely, i.e., Maheshchandra Chunilal Shah. Thus, it was observed that the said 28 allottees and Sri Rajesh Mangilal Ranka (all these 28 entities and Sri Rajesh Mangilal Ranka are hereinafter collectively referred to as* "the Ranka Group") *were connected with each other*
b. *Serial number 17 and 28 received funds from Shri Rajesh Ranka.*
c. *Entities at serial number 1 to 7, from 9 to 18 and from 20 to 23 have made Shri Rajesh Ranka as their nominee while opening trading account with the broker (Monarch Research & Brokerage Pvt. Ltd.)*
d. *Shri Rajesh Ranka, an employee of SMS Tech, is the authorized signatory for its bank account with ING Vysya Bank. He is, thus, connected with the company as its employee. Shri Rajesh Ranka had funded the preferential allotment to all the allottees, including the three promoters.*

e. *Most of the 28 allottees (i.e., allottees other than promoters) had opened their respective accounts with ING Vysya Bank in the 1st week of March 2012, i.e., just before the preferential allotment. These allottees did not have financial capabilities commensurate with the amount purportedly paid towards the preferential allotment.*

f. *On March 03, 2012, Shri Rajesh Ranka had transferred Rs. 1,00,00,000/- from his bank account number '139003201012322' with Nav Nirman Co-operative Bank to the bank account number '139003201016137 jointly held by Shri Maheshchandra Chunilal Shah and his wife Ms. Manjulaben Maheshchandra Chunilal Shah (hereinafter referred to as "Manjulaben") with Nav Nirman Co-operative Bank. On the same day, Shri Maheshchandra Chunilal Shah transferred the same amount to the bank account number '673011005933 of the company with ING Vysya Bank against which he was allotted 10,50,000 preferential shares.*

g. *On March 05, 2012, the company transferred back the same amount of Rs.1,00,00,000/- to Manjulaben (bank account number '*673010029662*' with ING Vysya Bank). Manjulaben thereafter transferred the same or approximately same fund again and again to 19 allottees (i.e. the three promoters and the entities from serial number 1 to 16 mentioned in the Table No. 3 above) from March 05, 2012 to March 13, 2012, i.e., just before the preferential allotment of shares on March 15, 2012.*

h. *On receipt of the funds from Manjulaben, as stated above, the respective allottee transferred the same to the company. Each time the allottee made payment for his/her allotment to SMS Tech, the same fund was transferred back by it to Manjulaben. Manjulaben again transferred the fund to another allottee who in turn transferred the said amount to the company. In this pattern, Rs. 1,00,00,000/- received by Manjulaben from Shri Rajesh Ranka through the company was circulated amongst Manjulaben, these 19 allotees and SMS Tech repeatedly.*

i. *On March 17, 2012, i.e., after the allotment of the equity shares, SMS Tech transferred Rs. 1,00,00,000/- to the bank account number '139003201016137' jointly held by Shri Maheshchandra Chunilal Shah and his wife Ms. Manjulaben with Nav Nirman Cooperative Bank. On March 19, 2012, Rs. 1,00,00,000/- was transferred from the said joint account to the account of Shri Rajesh Ranka.*

j. *On March 03, 2012, Shri Rajesh Ranka had transferred Rs. 99,50,000/- to Ms. Nila R. Shah who was allotted 9,95,000 shares by SMS Tech in its purported preferential allotment. On the same day Ms. Nila R. Shah transferred this money to the company. On March 20, 2012, the company transferred back the said amount of Rs. 99,50,000/- to Ms. Nila R .Shah. On March 21, 2012, Ms. Nila R. Shah transferred this money back to Shri Rajesh Ranka.*

k. *I further note that Shri Rajesh Ranka, circulated approximately Rs. 1,00,00,000/- back and forth between the company, 27 allottees connected with him and 3 promoters of the company through Manjulaben. He had also circulated Rs. 99,50,000/- through Ms. Nila Shah, another entity connected with him to the company for its purported preferential allotment. These amounts funded by Sri Rajesh Ranka for the purpose of the purported preferential allotment were ultimately returned to him by the company. These funds were circulated when, by virtue of the order dated July 28, 2010, Shri Rajesh Ranka was restrained from buying, selling or dealing in securities market in any manner whatsoever for a period of 2 years. I, prima facie, find that on account of the repeated circulation of same money between different allottees, the receipt of allotment money for 3,00,00,000 equity shares had been shown merely as book entry. In fact, even the amount of Rs 1,99,50,000 that was circulated to show a book entry of receipt of allotment monies was returned by the company to Shri Rajesh Ranka on March 17/21 2012 i.e. shortly after preferential allotment.*

l. *<u>These facts and circumstances indicate that Shri Rajesh Ranka acting hand-in-glove and in a concert with SMS Tech, its 3 promoters and 28 other allottess orchestrated a fraudulent, manipulative and deceptive device, plan or artifice of creating shares without payment of consideration to the company.</u> I, therefore, prima facie find that the preferential allotment of SMS Tech, apart from being in contravention of the provisions of the regulation 77(1) of, is irregular, illegal and fraudulent*

18. In the Final Order dated July 27, 2018, the following observations were made

" *I note that Shri Rajesh Ranka with active participation of Mr Jagadish Vital, Mr Mahesh C Shah, circulated funds back and forth between the company and 31 preferential allottes and thereafter, the amounts funded by Shri Rajesh Ranka for the purpose of the purported preferential allotment were ultimately returned to him by the company on March 19/21, 2012 i.e shortly after the preferential allotment.*

Thus, I find that on account of the repeated circulation of the same money between different allottees, the receipt of allotment money for 3,00,00,000 equity shares had been shown merely as book entry. Thus, I am of the view that SMS Tech issued 3,00,00,000 new equity shares for value of Rs 30,00,00,000/- in the names of the above mentioned 31 allottees without receipt of any consideration for the shares allotted in the said purported preferential allotment. Thus, the Noticees, acting in concert, illegally devised a scheme of preferential allotment without any consideration, which resulted in acquisition of 80.59% shares in the company by the preferential allottees and sale of those allotted shares after lock in to reap illegal gains"

"Thus, the investigation revealed that for the payment of shares to be allotted in preferential allotment, the fund movement started from Mr. Rajesh Ranka and thereafter, Ms. Manjulaben C Shah was used as an intermediary to transfer funds between SMS Tech and preferential allottees in a repeating loop. Further, the outflow of funds from Mr. Rajesh Ranka on March 03, 2012 was returned back to him on March 19, 2012 and March 21, 2012".

"The Managing Director of SMS Tech vide letter dated December 07, 2016 had accepted/stated that at the request of company, Mr. Rajesh Ranka arranged funds of Rs. 1,00,00,000 in the account of Mahesh Shah who in turn transferred funds to the Company. The fund received from Mahesh Shah' was rotated time and again and every time shares were allotted to various persons as introduced to the company by said Mahesh Shah. Once again, on Mr. Mahesh Shah's request, Mr. Rajesh Ranka arranged funds and transferred funds to the bank account of Ms. Nila Shah who in turn transferred funds to the Company. The Company allotted shares there against and rotated funds to various persons by allotting shares to them who were introduced by Mr. Mahesh Shah. For the purpose of such financial transaction, Mr. Rajesh Ranka opened separate account and the cheque book of same was to be given to Mr. Mahesh Shah for said purpose. The managing director of SMS Tech further stated that after the shares were allotted, and the company being no longer in need of funds, due to failure of proposed project, returned the funds to Mahesh Shah and Nila Shah. They in turn refunded the loan taken from Rajesh Ranka."

"Further, I note that apart from evidence in the form of the bank statements of the Company and bank statements of Mr. Mahesh Shah, Manjulaben C Shah and Mr. Rajesh Ranka, I also note that SMS Tech had accepted that for the payment of shares to be allotted in preferential allotment, the fund movement started from Mr. Rajesh Ranka and thereafter, Ms. Manjulaben C Shah / Mr. Mahesh Shah-was used as an intermediary to transfer funds between SMS Tech and preferential allottees in a repeat loop. Further, the outflow of funds from Mr. Rajesh Ranka on March 03, 2012 was returned back to him on March 19, 2012 and March 21, 2012. The flow of funds between SMS Tech, Manjulaben Shah and preferential allottees shows that actual consideration was not paid by the preferential allottees to the company at all, since the entire consideration money originating from Rajesh Ranka ultimately reached back to him."

" On the aspect of arranging the funds of Rs. 1.99 crore for the purpose of showing this amount as consideration for the preferential allottees, SMS Tech vide its letter dated December 12, 2016 stated that for the fund needs of the Company, the same was primarily arranged by Mr. Rajesh Ranka, which was given to Mr. Mahesh Shah and Ms. Nila Shah and by rotating the funds several times from the Bank Account of Manjulaben Shah wife of Mr. Mahesh Shah, consideration for preferential allotment was seen to be made to various persons. In his letter dated December 07, 2016, Jagdish Vital submitted that for the purpose of such financial transaction, Mr. Rajesh Ranka opened separate account and the cheque book of same was to be given to Mr. Mahesh Shah for said purpose. During the hearing conducted subsequent to the passing of the ad-interim ex parte order, on January 13, 2014, Mr. Rajesh Ranka had submitted that he had arranged loan of Rs.1,99,50,000 for Mr. Maheshchandra Shah from Jhaveri Trading and Investment Pvt. Ltd. for a few days. However, vide letter August 20, 2014, Rajesh Ranka stated that Mr. Maheshchandra Shah had the cheque book of Rajesh Ranka Nav Nirman Co-operative bank account and Mr. Maheshchandra Shah informed him that an amount worth Rs.1,99,50,000/- has been deposited in his bank account. I find that there are contradictory versions by Rajesh Ranka. However, I note that once the company has returned the preferential offer consideration of Rs. 1 Crore to Mr. Maheshchandra Shah on March 17, 2012,

this was further transferred Mr. Rajesh Ranka on March 19, 2012 which was further transferred to Jhaveri Trading and Investment Pvt. Ltd. on March 19, 2012. Thus, it is clear Mr. Rajesh Ranka has acted as the active intermediary in the whole transactions."

"Thus, I find that Mr. V. Jagadish, Mr. Mahesh Shah, Manjulaben Shah and Mr. Rajesh Ranka are the entities having major role in raising the funds and rotating the same for preferential allotments without consideration".

"I note that Shri Rajesh Ranka with active participation of Mr. Jagadish Vital, Mr. Mahesh Shah, circulated funds back and forth between the company and 31 preferential allotees and thereafter, the amounts funded by Shri Rajesh Ranka for the purpose of the purported preferential allotment were ultimately returned to him by the company on March 19/21, 2012 i.e. shortly after preferential allotment. Thus, I find that on account of the repeated circulation of same money between different allottees, the receipt of allotment money for 3,00,00,000 equity shares had been shown merely as book entry. Thus, I am of the view that the SMS Tech issued 3,00,00,000 new equity shares for value of Rs. 30,00,00,000/- in the names of the above mentioned 31 allottees without receipt of any consideration for the shares allotted in the said purported preferential allotment".

19. The sequence of events, pattern of transactions and the observations of WTM contained in the Interim & Final Orders, as mentioned above, clearly shows that Noticee has played a significant role in the manipulation of the preferential allotment of SMSTL. The Noticee, by colluding with the promoters and other allottees of the preferential allotment of the Company, adopted fraudulent device and artifice to defraud the genuine shareholders of the Company. I find that the funds towards the preferential allotment of SMSTL originated from the account of the Noticee on March 3, 2012 (i.e Rs 1,99,50,000/-) and this money was later on, fraudulently circulated back and forth, among the other persons/allottees of the preferential allotment and later on, the said amount of Rs 1,99,50,000/- was repaid to the Noticee. Thus, the consideration towards the shares allotted in the preferential allotment of SMSTL was fraudulently shown as received and shares

were allotted to the persons/entities in the preferential allotment without any actual infusion of funds. Clearly, from the above, the Noticee has dealt/associated in the securities market, when he was explicitly prohibited from dealing/associating in the securities market, in any manner whatsoever, vide SEBI Order dated July 28, 2010.

20. From the observations made above, I find that the Noticee acting hand-in-glove and in a concert with the Company, its three promoters and also the other allottees in the preferential allotment orchestrated a fraudulent, manipulative and deceptive device, plan and artifice, whereby shares were created/allotted to persons in the preferential allotment without payment of consideration to the company. I cannot lose sight of the fact that despite the SEBI directions issued to the Noticee, vide Order dated July 28, 2010, explicitly restraining/prohibiting the Noticee from dealing /associating in the securities market for a period of two years i.e till July 28, 2012, the Noticee blatantly ignored these directions and actively participated in the fraudulent preferential allotment of the Company during the relevant period. It is on record that Noticee had funded an amount of Rs 1,99,50,000/- on March 3, 2012 (i.e during the time when he was prohibited from dealings in securities market vide the aforementioned SEBI Order) and assisted the Company in the entire gamut of the fraudulent preferential allotment of the Company. The Noticee was duty bound to comply with the directions of SEBI. However, Noticee blatantly violated the directions issued to him by SEBI vide Order dated July 28, 2010 and associated himself in the preferential allotment of SMSTL. In view of the above, I am convinced that Noticee has failed to comply with the directions issued to him vide SEBI Order dated July 28, 2010 and therefore, violated the statutory requirements of law.

21. The Hon'ble Supreme Court of India in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006]} 5 SCC 361} held that "*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial ……. Hence, we are of the view that once the*

contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary".

22. In view of the above observations, I am convinced that it is a fit case to impose monetary penalty on the Noticee viz. Shri Rajesh Ranka under the provisions of Section 15 HB of the SEBI Act, which reads as under:

Penalty for contravention where no separate penalty has been provided.

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

23. In this regard, the provisions of Section 15J of the SEBI Act require that while adjudging the quantum of penalty, 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.

24. I note that the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by investors as a result of the default committed by the Noticee. I am of the opinion that entities violating the directions issued by SEBI seriously compromise the regulatory framework and are detrimental to the interest of the investors in the securities market. The interest of the investors and the orderly development of the securities market requires that perpetrators of such activities should be suitably penalized. Such stark defiance displayed by the Noticee towards regulatory directions cannot be viewed lightly. The non-compliance of the Noticee with the SEBI directions have jeopardized the interests of the gullible investors. The Noticee has also played a key role in the fraudulent preferential allotment of SMSTL. The imposition of penalty is the need

of the hour for such willful defiance displayed by the Noticee towards the directions issued by SEBI.

ORDER

25. After taking into consideration the facts and circumstances of the case, material on record , the violation committed by the Noticee of the directions issued by SEBI vide Order dated July 28, 2010, the seriousness and gravity of the irregularities committed by the Noticee in the preferential allotment of SMSTL and the submissions made by the Noticee, I, in exercise of the powers conferred upon me under Section 15 I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose penalty of Rs 10,00,000/- (Rupees Ten Lakh only) on the Noticee viz. Shri Rajesh Ranka under the provisions of Section 15HB of the SEBI Act for his failure to comply with the directions of SEBI , which was issued to him vide Order dated July 28, 2010 under the provisions of sections 11,11(4) and 11 B of the SEBI Act, 1992.

26. The Noticee shall remit / pay the said amount of penalty within 45 days of the 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 e-payment facility into Bank Account , the details of which are given below-

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

27. The Noticee shall forward the said Demand Draft or the details/ confirmation of penalty so paid through e-payment (in the format given in the table below) to "The Division Chief, Enforcement Department (**EFD DRA-II**), Securities and

Exchange Board of India, SEBI Bhavan, Plot No C-4A,"G" Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051" .

1. Case Name:	
2. Name of the Payee:	
3. Date of payment:	
4. Amount Paid:	
5.Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for: (like penalties /disgorgement/recovery/Settlement amount and legal charges along with order details)	

28. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this Order is sent to the Noticee viz. Shri Rajesh Ranka and also to the Securities and Exchange Board of India.

Place: Mumbai **SURESH B MENON**

Date: October 30, 2018 **ADJUDICATING OFFICER**