

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER

ORDER

UNDER SECTIONS 11, 11B AND 11(4) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 11(1) OF THE SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003.

IN THE MATTER OF ALLEGED MARKET MANIPULATION USING GDR ISSUES BY AVON CORPORATION LIMITED –

IN RESPECT OF –

	ENTITY	PAN
1.	AVON CORPORATION LIMITED	AACCA0545M
2.	SHRI PANKAJ SARAIYA	AMZPS1044F
3.	SMT RUPAL PANKAJ SARAIYA	AMZPS1068D
4.	SMT SHANTABEN PRATAPSINGH SARAIYA	AALPS5638R
5.	SHRI BHUPENDRA DOSHI	AHZPD5897N
6.	SHRI PRATAPSINGH KAKUBHAI SARAIYA	ALHPS9974P
7.	SHRI RAKESH CHATRABHUJ DHAGAI	AEGPD3475E
8.	SMT SHILPA RAKESH DHAGAI	AEDPD4507Q

Background –

- 1.1 In view of irregularities observed in the issuance of Global Depository Receipts (“GDRs”) by Avon Corporation Limited (“Avon”), Securities and Exchange Board of India (“SEBI”) vide an *Ad Interim Ex-Parte* Order dated September 21, 2011 (“Interim Order”), directed that company –

“... not to issue equity shares or any other instrument convertible into equity shares or alter their capital structure in any manner till further directions.”

- 1.2 The Interim Order was confirmed against Avon on December 30, 2011 (“Confirmatory Order”). Vide the aforesaid Confirmatory Order, SEBI *permitted conversion of outstanding warrants issued by Avon, if any, prior to the Interim Order.*

Show Cause Notice dated December 18, 2014 –

2.1 SEBI completed its investigation in the matter of alleged market manipulation using *GDR Issues* and based on the findings contained in the Investigation Report, a Show Cause Notice (“SCN”) dated December 18, 2014, was issued to the following entities, viz.

- i. Avon;
- ii. Shri Pankaj Saraiya;
- iii. Smt Rupal Pankaj Saraiya;
- iv. Smt Shantaben Pratapsingh Saraiya;
- v. Shri Bhupendra Doshi;
- vi. Shri Pratapsingh Kakubhai Saraiya;
- vii. Shri Rakesh Chatrabhuj Dhagai;
- viii. Smt Shilpa Rakesh Dhagai.

2.2 The abovementioned SCN issued under Sections 11, 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 (“SEBI Act”) read with Regulation 11 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (“PFUTP Regulations, 2003”), specifically pertained to the *GDR Issue* made by Avon on **June 19, 2009** (“*GDR Issue*”).

2.3 The SCN states –

- i. In the *GDR Issue*, Vintage FZE (now known as Alta Vista International FZE) (“Vintage”), an entity under control of Shri Arun Panchariya, was the original subscriber of GDRs.
- ii. However, on June 19, 2009, Avon through BSE Limited (“BSE”), made a public disclosure that the *GDR Issue* was fully subscribed by certain foreign investors. Further, vide a letter dated November 2, 2011, Avon informed SEBI that the following entities were the initial subscribers of the aforesaid Issue, viz. –
 - a. Flamboyant International Limited;
 - b. Trend Setter Enterprises Cops;
 - c. Greenwich Management Inc.;
 - d. Flagstaff Investments Limited;
 - e. Imagination Network Inc.;
 - f. Figura Group Limited.

- iii. As the authorised signatory for Avon, Shri Pankaj Saraiya (Chairman, Managing Director, Chief Executive Officer and Promoter of Avon during *GDR Issue* in June 2009) signed a *Pledge Agreement* dated June 10, 2009, with European American Investment Bank AG ("**Euram**") on June 12, 2009. Shri Pankaj Saraiya was also the authorised signatory for Avon's bank account with Euram.
- iv. The *Pledge Agreement* (signed between Avon and Euram) was an integral part of another agreement viz. *Loan Agreement* dated June 10, 2009, signed between Vintage and Euram on June 12, 2009. The aforesaid Agreements enabled Vintage to avail a loan of US \$10 million from Euram for subscribing to the *GDR Issue* of Avon in June 2009.
- v. In terms of the *Pledge Agreement*, Avon deposited the GDR subscription proceeds received from the original subscriber i.e. Vintage, as security with Euram for the loan availed by that very same subscriber.
- vi. These *Agreements* i.e. *Pledge Agreement & Loan Agreement*, effectively resulted in Avon itself financing the subscription of its *GDR Issue*. Such an arrangement is specifically prohibited under Indian law in terms of Section 77(2) read with Section 77(4) of the Companies Act, 1956 ("**Companies Act**"). Further, this fraudulent arrangement resulting in full subscription of GDRs of the Issuer Company acted as an inducement for other investors to offer to buy the shares of the Company in the Indian securities market.
- vii. As a result of the *Pledge Agreement (Avon with Euram)*, Avon did not have any free capital available from the abovementioned *GDR Issue* since the capital raised through the said Issue was provided as security against the loan taken by Vintage from Euram. However, Avon concealed this crucial information and portrayed that *GDR Issue* was successfully subscribed by few foreign investors thereby resulting in that company having free funds to the tune of US \$10 million at the time of *GDR Issue*.
- viii. Around 66.27% of total capital raised by Avon via *GDR Issue* was subsequently routed to its foreign subsidiary viz. Avon Corporation FZE.
- ix. Avon and Shri Pankaj Saraiya failed to provide correct information *inter alia* in response to the Summons dated January 12, 2012 and April 20, 2012, issued by SEBI.
- x. Avon entered into an agreement with a Dubai based company, viz. Ababil Star General Trading LLC ("**Ababil**") for the purchase of second hand machinery in Dubai. Avon paid US \$1.5 million through Euram Bank Account on August 18, 2009 to Ababil. The amount of US \$1.5 million were paid by Avon to Ababil on the pretext of purchase of machinery from Ababil. However, as per a subsequent submission made by Shri Pankaj Saraiya on

April 13, 2012, Avon never received any machinery from Ababil as Avon did not require the aforesaid machinery.

2.4 Accordingly, as per the SCN, the persons/entities named therein were *prima facie* alleged to have violated the following provisions of law –

- i. Avon was alleged to have violated Sections 12A(a)–(c) of the SEBI Act read with Regulations 3(b)–(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations, 2003 and Section 77(2) and 77(4) of the Companies Act;
- ii. Shri Pankaj Saraiya (Chairman, Managing Director, Chief Executive Officer and Promoter of Avon during *GDR Issue* in June 2009) (signatory to the *Pledge Agreement*), was alleged to have violated Sections 12A(a)–(c) of the SEBI Act read with Regulations 3(b)–(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations, 2003;
- iii. Avon and Shri Pankaj Saraiya were alleged to have violated Section 11C(3) of the SEBI Act on account of failing to provide correct information *inter alia* in response to the Summons dated January 12, 2012 and April 20, 2012, issued by SEBI;
- iv. As per Section 27 of the SEBI Act, Smt Rupal Pankaj Saraiya and Smt Shantaben Pratapsingh Saraiya, being Directors and Promoters of Avon, controlled Avon and were responsible for the conduct of its business and therefore, were liable to be proceeded against. Accordingly, they were alleged to have violated Sections 12A(a)–(c) of the SEBI Act read with Regulations 3(b)–(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations, 2003, in their capacity as Directors and Promoters of Avon.
- v. Shri Bhupendra Doshi; Shri Pratapsingh Kakubhai Saraiya; Shri Rakesh Chatrabhuj Dhagai and Smt Shilpa Rakesh Dhagai, being Promoters of Avon, controlled Avon and were responsible for the conduct of its business and therefore, were liable to be proceeded against. Accordingly, they were alleged to have violated Section 12A(a)–(c) of the SEBI Act read with Regulations 3(b)–(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations, 2003, in their capacity as Promoters of Avon.

Provisions of Law alleged to have been contravened as per the SCN –

2.5 Before I proceed further, the relevant legal provisions, the contravention of which have been alleged in the instant proceedings, are reproduced below –

i. SEBI Act –

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly –

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the Rules or the Regulations made thereunder;

Offences by companies.

27. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence 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 offence 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 offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence 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 offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this section, –

- (a) “Company” means any body–corporate and includes a firm or other association of individuals; and
- (b) “Director”, in relation to a firm, means a partner in the firm.

ii. **SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 –**

3. Prohibition of certain dealings in securities.

No person shall directly or indirectly –

- (a) ...
- (b) *use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) *employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) *Engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

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

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

- (c) *advancing or agreeing to advance any money to any person thereby inducing any other person to offer to buy any security in any issue only with the intention of securing the minimum subscription to such issue;*
- (f) *publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;*
- (k) *an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;*
- (r) *Planting false or misleading news which may induce sale or purchase of securities.*

iii. **Companies Act, 1956 –**

Section 77(2): “No public company, and no private company which is a subsidiary of a public company, shall give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or in its holding company”.

Hearing –

3.1 Subsequent to the issuance of the SCN dated December 18, 2014, an opportunity of personal hearing was granted the persons/entities named therein on the following dates –

a. May 17, 2017 –

- i. Entities no. 7–8 of the SCN dated December 18, 2014 i.e. Shri Rakesh Chatrabhuj Dhagai and Smt Shilpa Rakesh Dhagai, appeared for hearing through their authorised representative.
- ii. The following entities i.e. no. 1–6 of the SCN dated December 18, 2014, did not appear for hearing –
 - Avon;
 - Shri Pankaj Saraiya;
 - Smt Rupal Pankaj Saraiya;
 - Smt Shantaben Pratapsingh Saraiya;
 - Shri Bhupendra Doshi;
 - Shri Pratapsingh Kakubhai Saraiya.

b. June 7, 2017 –

- i. The following entities i.e. no. 1–6 of the SCN dated December 18, 2014, did not appear for hearing –
 - Avon;
 - Shri Pankaj Saraiya;
 - Smt Rupal Pankaj Saraiya;
 - Smt Shantaben Pratapsingh Saraiya;
 - Shri Bhupendra Doshi;
 - Shri Pratapsingh Kakubhai Saraiya.

Replies to the SCN and submissions made by the entities named therein pursuant to the hearing –

- i. **Avon** – No reply to the SCN, was received by SEBI.

- ii. **Shri Pankaj Saraiya; Smt Rupal Pankaj Saraiya and Smt Shantaben Pratapsingh Saraiya** – Vide replies dated January 8, 2015 and June 6, 2017, they *inter alia* submitted:

“That Company has been ordered to be wound up by an Order passed by the Hon’ble High Court, Bombay on 22.04.2014 in Company Petition no. 538 of 2013. The Official Liquidator has been appointed as the provisional liquidator of the company with usual powers under the Companies Act.

That the possession of all movable and immovable assets (of the company) has been taken by the official liquidator.

We had informed SEBI earlier. As our matter is with the High Court, Mumbai and Official Liquidator appointed, we cannot bypass Official Liquidator.”

- iii. **Shri Bhupendra Doshi** – Vide a reply dated May 5, 2015, he *inter alia* submitted:

“I am no more a Promoter as company has gone into liquidation as per High Court Order dated 22.4.2014. I do not have any direct or indirect connection with GDR (Issue) as no special approval was taken from me.”

- iv. **Shri Pratapsingh Kakubhai Saraiya** – Vide reply dated January 2, 2015, he *inter alia* submitted:

“I am not playing any role in the company. I am just a relative of Mr. Pankaj Saraiya. I have taken shares based on his information as he needed names in the company. I have just 170 shares only. I neither have any kind of control in company nor am I attached to the company. No approval was taken from me for GDR (Issue).”

- v. **Shri Rakesh Chatrabhuj Dhagai and Smt Shilpa Rakesh Dhagai** – Vide reply dated January 7, 2015, they *inter alia* submitted:

“We are small people and our name is (there) as we are family members and don’t know anything about the GDR (Issues). We are not shareholders as company is closed down due to High Court’s Order.”

Consideration of Issues and Findings –

- 4.1.1 I have considered the SCN dated December 18, 2014 alongwith the relevant extract of the Investigation Report and all the Annexures provided therein; replies received to the aforesaid SCN and submissions made by the entities named therein pursuant to the hearing granted to them; and all other relevant material available on record.

4.1.2 In the light of the above, I shall now proceed to deal with the charges levelled in the SCN against the entities named therein.

4.1.3 The Board of Directors of Avon (observed from the material available on record) is as under –

	NAME	DESIGNATION
1.	SHRI PANKAJ SARAIYA	PROMOTER; CHAIRMAN; MANAGING DIRECTOR AND CHIEF EXECUTIVE OFFICER
2.	SMT RUPAL PANKAJ SARAIYA	PROMOTER AND DIRECTOR
3.	SMT SHANTABEN PRATAPSINGH SARAIYA	PROMOTER AND DIRECTOR
4.	SHRI BHUPENDRA DOSHI	PROMOTER
5.	SHRI PRATAPSINGH KAKUBHAI SARAIYA	PROMOTER
6.	SHRI RAKESH CHATRAKHUJ DHAGAI	PROMOTER
7.	SMT SHILPA RAKESH DHAGAI	PROMOTER

Findings against Avon and Shri Pankaj Saraiya –

5.1.1 The charges alleged in the SCN against Avon and Shri Pankaj Saraiya are as under –

- A. **Violation of Sections 12A(a)–(c) of the SEBI Act read with Regulations 3(b)–(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations, 2003 – Execution of the Pledge Agreement (Avon with Euram) in light of the Loan Agreement (Vintage with Euram).**
- B. **Violation of Section 77(2) read with Section 77(4) of the Companies Act – Only against Avon.**
- C. **Violation of Section 11C(3) of the SEBI Act – Failure to provide information/concealment of material information from SEBI.**

5.1.2 No reply was received from Avon.

5.1.3 In his reply to the SCN, Shri Pankaj Saraiya has *inter alia* submitted: *“(Avon) has been ordered to be wound up by an Order passed by the Hon’ble High Court, Bombay on 22.04.2014 in Company Petition no. 538 of 2013. ... As our matter is with the High Court, Mumbai and Official Liquidator appointed, we cannot bypass Official Liquidator.”*

5.1.4 Before considering the charges alleged against Avon and its Directors and Promoters, it would be appropriate to deal with the preliminary issue concerning the maintainability of the instant proceedings in light of the Order of the Hon’ble Bombay High Court dated April 22, 2014.

5.1.5 The chronology of events in the instant proceedings is provided below –

	DATE	EVENT
1.	21.09.2011	<i>Interim Order passed by SEBI against Avon.</i>
2.	30.12.2011	<i>Confirmatory Order passed by SEBI against Avon.</i>
3.	22.04.2014	<i>Vide its Order, the Bombay High Court in Hansa Chandrakant Majithia vs. Avon, Company Petition No. 538 of 2013, observed: “8. ... the Official Liquidator is appointed as provisional liquidator of the Company. He shall forthwith take charge of the books of account, assets and properties of the Company and shall make a compliance report to this Court on or before 16th June 2014.”</i>
4.	18.12.2014	<i>SCN issued against Avon and its Directors and Promoters.</i>
5.	29.01.2015	<i>Vide its Order, the Bombay High Court while disposing of the matter of Hansa Chandrakant Majithia vs. Avon, Company Petition No. 538 of 2013, observed: “4. ... The Company has not filed its affidavit in reply and has also not come forward to oppose the Petition either at the stage of admission or at this stage i.e. the stage of hearing and final disposal of the Petition. I am therefore satisfied that the Company is unable to pay its debts and deserves to be wound up. The Company Petition is therefore allowed in terms of prayer clauses (a) and (b) which are reproduced hereunder: a. That the Company i.e. Avon Corporation Ltd. be ordered to be wound up by and under the order and directions of the Hon'ble Court under the provisions of the Companies Act, 1956; b. That the Official Liquidator of this Hon'ble Court or some other fit and proper persons be appointed as Liquidator of Avon Corporation Ltd. with all powers under Section 457 of the Companies Act 1956 to take charge of the assets, business affairs, properties, bank accounts, books of account, vouchers, documents etc. of the company with all powers under the Companies Act, 1956. The Official Liquidator is directed to forthwith act on an ordinary copy of this Order duly authenticated by the Associate of this Court without waiting for any further notification.”</i>

Maintainability of proceedings against Avon –

5.1.6 In order to determine the maintainability of the instant proceedings against Avon, reference may be made to Section 446(1) of the Companies Act, which is reproduced below –

“Section 446.

1. *When a winding up order has been made or the official liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company except by leave of the Tribunal and subject to such terms as the Tribunal may impose. ...*

5.1.7 As observed from the chronology of events, the proceedings against Avon were initiated with the issuance of the Interim Order passed on September 21, 2011. Thereafter, the SCN dated

December 18, 2014, was issued to Avon and its Directors and Promoters for violation *inter alia* of the provisions of the SEBI Act and PFUTP Regulations, 2003. Prior to the issuance of the SCN, the Bombay High Court vide an Order dated April 22, 2014, appointed an Official Liquidator as the provisional liquidator of Avon ‘to take charge of the books of account, assets and properties of the Company and shall make a compliance report to (the) Court.’

- 5.1.8 The Madras High Court in its judgment dated February 23, 1971, in the matter of *Burmah–Shell Oil Storage vs. Associated Industrial*, observed as under –

“Through Section 446 of the Companies Act, Legislature has comprehended two situations: the first is commencement of a suit or other legal proceeding and the second is proceeding with a suit or other legal proceeding if such suit or proceeding was pending at the date of the winding-up order. In the latter case, the proceeding must be a proceeding pending at the date of the winding-up order. Only in such a case, the leave of the court for further proceeding with the proceeding would arise. But in the case of a proceeding to be commenced, there is no question of a proceeding being proceeded with. If a proceeding is commenced without the leave of the court and subsequent to the commencement, leave is asked for the continuation of that proceeding, it would not be a proceeding pending at the date of the winding-up order within the meaning of Section 446 of the Companies Act, and obviously no leave can be granted under Section 446 for that purpose. This conclusion is irresistible, having regard to the use of the expression ‘pending at the date of the winding-up order’. It should be presumed that the legislature deliberately introduced these words in enacting Section 446. Construing the plain language adopted by the legislature, it follows that if a proceeding is commenced without obtaining the leave of the court previously, no leave could be granted for proceeding with that proceeding, as it was not a proceeding pending at the date of the winding-up order. If it were to be held that even if a proceeding is instituted without the leave of the court, it could be permitted to be proceeded with by granting leave, then the expression ‘if pending at the date of the winding-up order’ would be without any meaning and rendered purposeless. That could not have been the intention of the legislature in making this change in the law. The obvious intention of the legislature is that leave could be granted to commence a proceeding only if leave is sought for before the commencement of the proceeding and that leave could be granted to proceed with a proceeding only if the proceeding was pending at the date of the winding-up order. That is the only rational way of interpreting the language employed in Section 446 (of the Companies Act).”

- 5.1.9 Further, the Bombay High in the matter of *Deutsche Bank v. S.P. Kala* [(1990) 67 Com Cases] held: “A careful examination of these provisions of law makes it clear that once a winding-up order is made or the official liquidator is appointed as provisional liquidator, no proceedings can continue or be instituted against the company without the permission of the court. It is further clear that jurisdiction to entertain or dispose of any suit or proceedings by or against the company is vested

in the company court without any kind of restriction ... The expression 'any suit or proceeding by or against the company' is wide enough to bring within its sweep any kind of suits."

- 5.1.10 The Hon'ble Supreme Court in *Bansidhar Shankarlal vs. Mohd. Ibrahim*, September 25, 1970, observed: "...We do not think that there is anything in the Act which makes the leave a condition precedent to the institution of a proceeding in execution of a decree against the company and that failure to obtain leave before institution of the proceeding entails dismissal of the proceeding. The suit or proceeding instituted without leave of the court may, in our judgment, be regarded as ineffective until leave is obtained, but once leave is obtained the proceeding will be deemed instituted on the date granting leave."
- 5.1.11 Having regard to the aforementioned pronouncements of the Hon'ble Madras High Court, Bombay High Court and Supreme Court of India, I find that the instant proceedings fall under the scope of the phrase 'other legal proceedings' under Section 446(1) of the Companies Act as against Avon. Further, from the material available on record, I find no evidence to suggest that leave of the Court was taken by SEBI for continuation of the instant proceedings against Avon.
- 5.1.12 Upon a consideration of the above, I, therefore, find that the instant proceedings initiated against Avon vide SCN dated December 18, 2014, cannot be preceded with. The instant proceedings are accordingly disposed of, as against Avon.

Maintainability of proceedings against the Directors and Promoters of Avon –

- 5.1.13 In the instant proceedings, Shri Pankaj Saraiya submitted that the violations alleged against the Directors and Promoters of Avon in the SCN dated December 18, 2014, cannot be considered on account of the winding up proceedings.
- 5.1.14 However, it is a settled position of law that nobody can escape the liability for fraudulent and manipulative activities.
- 5.1.15 Further, in the matter of *Sanjay Kumar Sinha vs. SEBI (Company Petition No. 4 of 2006)*, the Hon'ble Allahabad High Court vide an Order dated September 17, 2007, observed as under:

"This is petition under Section 633(2) read with Section 446 of the Companies Act by the Directors of the Company in liquidation being Nexus Farms Ltd. The prayer sought by this Company Petition is to quash the criminal proceedings being Case No. 41 of 2005, Securities and Exchange Board of India Versus Nexus Farms Ltd. And 4 others, filed under Sections 190 and 200 of the Code of Criminal Procedure, 1973 read with Sections 24 (1) and 27 of the Securities and Exchange Board of India Act, 1992 (in short referred to as the SEBI Act) pending in the Court of Additional Sessions Judge, Tees Hazari Courts, Delhi.

The petitioners were Directors of the Company. On account of certain internal problems the company went into liquidation and the Official Liquidator, Allahabad High Court was appointed as the provisional liquidator, under the Companies Act by order dated 2nd May, 2001. In the meantime, SEBI called upon the company to submit the relevant information and the returns as required under the SEBI Act. Subsequently the SEBI issued notice dated 7th/8th December, 2000 under Section 11(B) of the SEBI Act calling upon the company to refund the money collected by it under the various schemes from the investors, within a period of one month otherwise coercive action under provisions of SEBI Act would be initiated. The company failed to comply with the terms of the notice and accordingly SEBI filed criminal complaint in the initial court of the Additional Chief Metropolitan Magistrate, Tees Hazari, Delhi and it was registered as Case No. 1321 of 2002. Later on the said case was transferred to the court of Additional Session Judge. Tees Hazari, Delhi and was registered as Case No. 41 of 2005, where the case is still pending. The present Writ Petition has been filed for quashing of the said criminal proceedings. ...

The question is whether the petitioners would be entitled to claim protection under Section 446 and 633 of the Companies Act.

In the present case the offence being under an Act other than Companies Act and the proceedings being criminal proceedings the relief claimed for by this petition cannot be granted as Section 446 and 633 of the Companies Act would have no application.”

- 5.1.16 The instant proceedings against the Directors and Promoters of Avon were initiated vide the SCN dated December 18, 2014 i.e. subsequent to the Hon’ble Bombay High Court’s Order dated April 22, 2014. The violation alleged in the SCN against the aforementioned entities pertained to the provisions of the SEBI Act and the PFUTP Regulations, 2003. As per Section 663(3) of the Companies Act, *no relief can be granted without service of notice to the Registrar or such person as the Court may think necessary*. Placing reliance on the aforementioned pronouncements of the Hon’ble Supreme Court and Allahabad High Court to the extent that the violations alleged in the instant proceedings pertain to the provisions of the SEBI Act and the PFUTP Regulations, 2003, I find that the instant proceedings are maintainable as against the Directors and Promoters of Avon and accordingly, the instant proceedings will continue as against the Directors and Promoters of Avon.

Violation of Sections 12A(a)–(c) of the SEBI Act read with Regulations 3(b)–(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations, 2003 – Execution of the Pledge Agreement (Avon with Euram) in light of the Loan Agreement (Vintage with Euram).

Upon a consideration of the material available on record, I note as under –

- 5.1.17 The *Loan Agreement* and *Pledge Agreement* between Euram, Vintage and Avon, were structured to further the fraudulent issuance and subscription of the *GDR Issue*.

- 5.1.18 Pan Asia Advisors Limited ("**Pan Asia**"), an entity owned and controlled by Shri Arun Panchariya, was appointed by Avon as the Lead Manager for its *GDR Issue*.
- 5.1.19 Vintage, an entity owned and controlled by Shri Arun Panchariya, entered into a *Loan Agreement* dated June 10, 2009, with Euram for availing of a loan of US \$10 million for subscribing to the *GDR Issue* of Avon on June 19, 2009.
- 5.1.20 The *Loan Agreement* was signed on behalf of Vintage by Shri Arun Panchariya, who was the Managing Director.
- 5.1.21 A *Pledge Agreement* dated June 10, 2009, was also executed between Avon and Euram.
- 5.1.22 As per the aforesaid *Pledge Agreement*, –
- a. The Preamble of the *Pledge Agreement* makes reference to the *Loan Agreement* signed between Vintage and Euram. It further mentions that "*The Pledgor has received a copy of the Loan Agreement ... and acknowledges and agrees to its terms and conditions*".
 - b. In accordance with the *Pledge Agreement*, Avon agreed to pledge securities and funds existing in the account where GDR proceeds from *GDR Issue* have been deposited.
 - c. The *Pledge Agreement* states: "*In the case that the Borrower fails to make payment on any due amount, or defaults in accordance with the Loan Agreement, the Pledgor herewith grants its express consent and the Bank is entitled to apply the funds in the Pledged Accounts to settle the Obligations.*"
- 5.1.23 The *Loan Agreement* and *Pledge Agreement* were both dated June 10, 2009. Immediately, thereafter, the GDRs were issued on June 19, 2009.
- 5.1.24 The *Pledge Agreement* was an integral part of the *Loan Agreement*.
- 5.1.25 The obligation of Vintage under the *Loan Agreement* was secured by Avon through the *Pledge Agreement* whereby it deposited an amount of US \$10 million with Euram i.e. *GDR Issue* subscription proceeds received from the subscriber–Vintage, which amount was assigned and charged in favour of Euram as a continuing security.
- 5.1.26 As per the *Loan Agreement*, the amount of US \$10 million may only be transferred to Euram Account no. 540084. The aforesaid Account is the bank account of Avon maintained with Euram for the purpose of depositing proceeds of the *GDR Issue*. Avon, therefore, pledged the proceeds received through issuance of GDRs to secure rights of Euram against the loan given by Euram to Vintage as borrower of funds for subscription of *GDR Issue* (as mentioned in the *Loan Agreement*).

5.1.27 From the Know Your Client (“KYC”) document in respect of Avon’s bank account with Euram, it is observed that the authorised signatory for the operation of the said bank account was Shri Pankaj Saraiya (Promoter; Chairman, Managing Director and Chief Executive Officer of Avon during the *GDR Issue* in June 2009).

5.1.28 From the certified copy of an extract from the Minutes of the Meeting of the Board of Directors of Avon held on April 21, 2009, which was received from Euram, the following is mentioned:

“RESOLVED THAT a bank account be opened with EURAM Bank ("the Bank") or any branch of EURAM Bank including Offshore Branch outside India for the purpose of receiving subscription money in respect of Global Depository Receipt issue of the Company.

RESOLVED FURTHER THAT Mr. Pankaj Saraiya, Managing Director, be and is hereby authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and any other paper(s) from time to time as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.

RESOLVED FURTHER THAT Mr. Pankaj Saraiya, Managing Director, be and are hereby severally authorised to draw cheques and other documents and to give instructions from time to time as may be necessary to the said EURAM Bank or any other branch of EURAM Bank, including the Offshore Branch, for the purpose of operation of and dealing with the said account and carry out other relevant and necessary transactions and generally to take all such steps and to do such things as may be required from time to time on behalf of the Company.

RESOLVED FURTHER THAT the Bank be and is hereby authorised to use the funds so deposited in the aforesaid bank account as security in connection with loans, if any, as well as to enter into any Escrow Agreement or similar arrangements if and when so required.”

5.1.29 By virtue of the coalesce manner of the *Loan Agreement and Pledge Agreement*, the resultant position was found to be a common ownership of the bank account by Euram (Borrower), Vintage (Subscriber) and Avon (Issuer Company) added to a guarantee by Avon for the loan taken by Vintage for subscription to the *GDR Issue*.

5.1.30 The *Loan Agreement* and *Pledge Agreement* drew strength from each other and were intricately connected. As stated in the preceding paragraphs, events subsequent to the execution of the *Pledge Agreement* clearly reveal that Avon used the *GDR Issue* proceeds deposited in its bank account as security for the obligation of Vintage under the *Loan Agreement*. Further, the disbursement of loan by Euram occurred immediately subsequent to the execution of *Pledge Agreement* by Avon. As detailed in the Table below, Avon did not have any free capital available immediately since the withdrawal of GDR proceeds was conditional and dependent on the loan repayment by Vintage. As a result, Avon’s right as an Issuing Company of GDRs was locked up.

DATE OF LOAN AGREEMENT (ON EXECUTION)	DATE OF PLEDGE AGREEMENT (ON EXECUTION)	DATE OF DISBURSEMENT OF FUNDS	LOAN AMOUNT (IN US \$)	DATE OF REPAYMENT OF LOAN
12.06.2009	12.06.2009	19.06.2009	1,00,00,000	27.04.2010

- 5.1.31 On June 19, 2009, Avon informed BSE that the *GDR Issue* was fully subscribed by foreign investors when in fact the entire GDRs were invested by Vintage. In turn, BSE published the information to retail investors and subsequently, authorised the trading of GDRs in the Indian securities market. As a result, Indian investors were misled in believing that the GDRs were subscribed by foreign investors, whereas in reality, GDRs were subscribed by Vintage in connivance with Avon and the proceeds simultaneously pledged with Euram.
- 5.1.32 After the issuance of GDRs, Vintage became the sole holder of the said GDRs and thereby it became majority shareholder of Avon i.e. 74.34%.
- 5.1.33 Shri Pankaj Saraiya was the *Authorised Person* on behalf of Avon for execution of *Pledge Agreement (with Euram)* and other documents in relation to *GDR Issue*. Similarly, Shri Pankaj Saraiya was the Promoter, Chairman, Managing Director and Chief Executive Officer of Avon. It was he who signed the *Pledge Agreement* and other documents in relation to *GDR Issue*. It is evident from the stature of Shri Pankaj Saraiya that he was hugely important in the hierarchy of Avon. For the company to know anything, it could well be said that it had to be known to him, who was the signatory to the *Pledge Agreement*. It is significant to note that all the actions of Avon have been in accordance with the terms of the aforementioned *Agreement*.
- 5.1.34 As stated in the preceding paragraphs, events subsequent to the execution of the *Pledge Agreement* clearly reveal that Avon did indeed use the funds deposited in its bank account as security for obligation of Vintage. Considering the aforesaid, it is clearly evident that Avon authorized Shri Pankaj Saraiya to sign the *Pledge Agreement* for operating the bank account as otherwise there was no reason for it to act as per the terms of such *Agreement*.
- 5.1.35 The execution of the *Pledge Agreement (Avon with Euram)* when viewed in the context of the *Loan Agreement (Vintage with Euram)*, effectively allowed Avon to help finance the purchase of its own shares (since it deposited the proceeds of GDR subscription as collateral for the loan provided by Euram to Vintage). The aforesaid *Agreements* also enabled Vintage, an entity controlled and owned by Shri Arun Panchariya, to fully subscribe to the *GDR Issue* of Avon. The false disclosure made by Avon through BSE regarding the initial subscribers to its *GDR Issue*, led investors in India to believe that Avon had acquired a good reputation in terms of investment potential in the global market. Needless to say, the investment decision of Indian investors at that juncture would have been influenced by the fraudulent representation regarding successful subscription of *GDR Issue* of Avon.

5.1.36 In its Order dated October 25, 2016 in *Appeal No. 126 of 2013 (Pan Asia Advisors Limited vs. SEBI)* (***"SAT Order in the matter of Pan Asia"***), the Hon'ble SAT while interpreting the expression 'fraud' under the PFUTP Regulations, 2003, observed:

13. *"From the aforesaid definition (of 'fraud') it is absolutely clear that if a person by his act either directly or indirectly causes the investors in the securities market in India to believe in something which is not true and thereby induces the investors in India to deal in securities, then that person is said to have committed fraud on the investors in India. In such a case, action can be taken under the PFUTP Regulations against the person committing the fraud, irrespective of the fact any investor has actually become a victim of such fraud or not. In other words, under the PFUTP Regulations, SEBI is empowered to take action against any person if his act constitutes fraud on the securities market, even though no investor has actually become a victim of such fraud. In fact, object of framing PFUTP Regulations is to prevent fraud being committed on the investors dealing in the securities market and not to take action only after the investors have become victims of such fraud."*

5.1.37 The very fact that the GDRs were issued pursuant to the alleged fraudulent arrangement resulting from the *Loan Agreement* and the *Pledge Agreement* and also the fact that the initial subscribers as declared by Avon largely did not exist, as a result of which, the investors in India were made to believe (falsely) that the GDRs of Avon were highly valued by foreign investors thereby inducing them to trade in the securities of the Issuer Company, resulted in 'fraud' as defined under the PFUTP Regulations, 2003, being committed by Shri Pankaj Saraiya.

5.1.38 I, therefore, find that Shri Pankaj Saraiya violated the provisions of Sections 12A(a)–(c) of the SEBI Act read with Regulations 3(b), 3(c), 3(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations, 2003.

Violation of Section 11C(3) of the SEBI Act – *Failure to provide information and concealment of material information from SEBI.*

6.1.1 As per the SCN, Shri Pankaj Saraiya is alleged to have misled SEBI regarding the original subscribers of *GDR Issue* of Avon. Further, Shri Pankaj Saraiya is alleged to have failed in providing information/concealed material information in response to the Summons dated January 12, 2012 and April 20, 2012, issued under Section 11C(3) of the SEBI Act and in the statement recorded on April 13, 2012.

Upon a consideration of the material available on record, I note as under –

6.1.2 Vide a letter dated November 2, 2011, Avon informed SEBI that the following entities were the initial subscribers of its *GDR Issue* on June 19, 2009, viz. –

- a. Flamboyant International Limited;
- b. Trend Setter Enterprises Cops;
- c. Greenwich Management Inc.;
- d. Flagstaff Investments Limited;
- e. Imagination Network Inc.;
- f. Figura Group Limited.

6.1.3 The aforesaid information was earlier made public by Avon through a public disclosure on BSE on June 19, 2009.

6.1.4 As noted from the preceding paragraphs, Vintage was the sole subscriber to the *GDR Issue* and its name was not mentioned as the initial subscriber. Therefore, such false information regarding the initial subscribers to the *GDR Issue* of Avon was deliberately provided to mislead SEBI and BSE. The addresses of the initial subscribers provided by Avon were found to be invalid by SEBI as well as by the Financial Market Regulators regulating the jurisdiction where the said initial subscribers were located.

6.1.5 In view of the above observations, I find that Shri Pankaj Saraiya had indeed provided false information in respect of the initial subscribers to the *GDR Issue* of Avon.

6.1.6 Reliance is also placed on the following observations reproduced from the *SAT Order in the matter of Pan Asia* –

24. *“It is equally interesting to note from the investigation carried out by SEBI that the alleged initial subscribers to the GDRs were non-existent entities because, e-mails and summons issued to those entities were return back undelivered. Moreover, the respective securities market regulators of the Countries in which the alleged initial subscribers were supposed to be situated have informed SEBI that the addresses of the initial subscribers are either non-existent or do not belong to those entities. ...*
- ... Even in case of other Issuer Companies, the WTM of SEBI has recorded a finding in para 15 of the impugned order that those entities do not exist at the given address and the names of those entities do not exist in the official directory of the Countries in which the said entities were supposed to be situated. In these circumstances, findings recorded in the impugned order that the names of initial subscribers exist only in fiction and that the*

Appellants have artificially sought to create an impression that the GDRs were initially subscribed by foreign investors other than Vintage cannot be faulted.”

- 6.1.7 From the material available on record, it is observed that around 66.27% of total capital raised by Avon via *GDR Issue* was routed to its foreign subsidiary viz. Avon Corporation FZE.
- 6.1.8 In order to examine the utilization of GDR proceeds, SEBI sought information from Avon, vide Summons dated January 12, 2012 and April 20, 2012.
- 6.1.9 In its reply dated February 7, 2012 to the Summons issued by SEBI dated January 12, 2012 and in the statement of Shri Pankaj Saraiya recorded on April 13, 2012, during the course of investigation, Avon denied the following –
- i. Having any agreement with Euram for any other services except for Escrow Agreement.
 - ii. Having any agreement with any entity regarding financing for the purpose of subscription by initial investors of GDRs.
 - iii. Having any agreement with Vintage.
 - iv. That there were any conditions imposed on it for withdrawal of funds from its account held with Euram.
- 6.1.10 With regard to the information regarding Avon Corporation FZE sought by SEBI's Summons dated April 20, 2012, Avon provided partial information but failed to provide crucial information regarding the utilisation of funds by Avon Corporation FZE. Following information was not provided by Avon to SEBI –
- i. Bank Account statement of Avon FZE.
 - ii. Rationale behind all the payments done by Avon Corporation FZE which were above US \$25,000.
- 6.1.11 From, the incomplete information received by SEBI, it was observed that Avon entered into an agreement with a Dubai based company, viz. Ababil Star General Trading LLC ("**Ababil**") for the purchase of second hand machinery in Dubai. Ababil was connected with Shri Arun Panchariya as it was also one of the initial investor of *GDR Issue* of K Sera Sera Limited. Avon paid US \$1.5 million through Euram Bank Account on August 18, 2009 to Ababil. The US \$1.5 million was paid by Avon to Ababil under the pretext of purchase of machinery from Ababil. However, as per submission made by Shri Pankaj Saraiya on April 13, 2012, Avon never received any machinery from Ababil as Avon did not require the aforesaid machinery. Avon did not provide any further rationale for the payments.

- 6.1.12 As seen from the abovementioned facts, Avon failed to comply with the aforesaid Summons issued by SEBI as it did not furnish any information and therefore, concealed material information from SEBI. Avon also concealed information regarding the *Pledge Agreement* with Euram.
- 6.1.13 I find that material information, which was necessary to carry out investigations in the instant proceedings, were not furnished or were concealed by Avon. As its Chairman and Managing Director, Shri Pankaj Saraiya was under an obligation to ensure that correct information was provided promptly by Avon to SEBI. However, Shri Pankaj Saraiya failed to ensure co-operation by Avon with the Investigating Officer and hampered investigations in the instant proceedings. Failure to furnish correct information was to stall and prevent SEBI from unearthing crucial information *inter alia* including the *modus operandi* adopted by common participants in other similar *GDR Issues* involving Shri Arun Panchariya and Pan Asia.
- 6.1.14 Reliance is placed on the Order dated July 14, 2016, of the Hon'ble Securities Appellate Tribunal in *Appeal no. 22 of 2016 (Concord Realty Private Limited vs. SEBI)*, wherein it observed: "*Once it is established that there is failure to furnish requisite particulars called for and there is failure to appear before the concerned officer of SEBI as per the summons issued to the appellant, it obviously means that there is violation of section 11C(3) and section 11C(5) of SEBI Act...*"
- 6.1.15 Upon a consideration of the preceding paragraphs, I find that Shri Pankaj Saraiya violated the provisions of Section 11C(3) of the SEBI Act through his failure to provide correct information and concealment of material information from SEBI.

Role of other Promoters and Directors of Avon – Smt Rupal Pankaj Saraiya and Smt Shantaben Pratapsingh Saraiya.

- 7.1.1 As per the SCN, Smt Rupal Pankaj Saraiya and Smt Shantaben Pratapsingh Saraiya, being Directors and Promoters of Avon, controlled Avon and were responsible for the conduct of its business and therefore, were liable to be proceeded against. Accordingly, they were alleged to have violated Sections 12A(a)–(c) of the SEBI Act read with Regulations 3(b)–(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations, 2003, in their capacity as Directors and Promoters of Avon.
- 7.1.2 In their replies, Smt Rupal Pankaj Saraiya and Smt Shantaben Pratapsingh Saraiya contended: "*(Avon) has been ordered to be wound up by an Order passed by the Hon'ble High Court, Bombay on 22.04.2014 in Company Petition no. 538 of 2013. ... As our matter is with the High Court, Mumbai and Official Liquidator appointed, we cannot bypass Official Liquidator.*" However, the opportunity of hearing was not availed by them.

- 7.1.3 The findings on the maintainability of the instant proceedings against Smt Rupal Pankaj Saraiya and Smt Shantaben Pratapsingh Saraiya have been recorded at paragraph 5.13–5.15 of this Order.
- 7.1.4 I note that Smt Rupal Pankaj Saraiya and Smt Shantaben Pratapsingh Saraiya, being Directors and Promoters of Avon, have not signed the *Pledge Agreement* nor were they the authorized signatories on behalf of Avon for its bank account with Euram. I also note that sufficient proof has not been made available to show their direct involvement in the fraud perpetrated through the *GDR Issue* of Avon. However, I note that being Directors and Promoters of Avon, the aforementioned entities cannot be said to have been unaware of the activities of Avon.

Role of other Promoters of Avon – Shri Bhupendra Doshi; Shri Pratapsingh Kakubhai Saraiya; Shri Rakesh Chatrabhuj Dhagai and Smt Shilpa Rakesh Dhagai.

- 8.1.1 Shri Bhupendra Doshi; Shri Pratapsingh Kakubhai Saraiya; Shri Rakesh Chatrabhuj Dhagai and Smt Shilpa Rakesh Dhagai, being Promoters of Avon, controlled Avon and were responsible for the conduct of its business and therefore, were liable to be proceeded against. Accordingly, they were alleged to have violated Section 12A(a)–(c) of the SEBI Act read with Regulations 3(b)–(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations, 2003, in their capacity as Promoters of Avon.
- 8.1.2 In their replies to the SCN, the aforementioned entities denied any involvement in the *GDR Issue* of Avon.
- 8.1.3 From the material available on record, I have noted the preliminary findings made by SEBI in respect of the matter relating to market manipulation using *GDR Issue*. It is observed that the scrip of Avon was earlier under examination by SEBI for fraud perpetrated by its Promoters and Directors. Considering the magnitude of the alleged market manipulation through the *GDR Issue*, SEBI was justified in issuing an SCN against the aforementioned entities who were either the Directors of Avon or were shown as Promoters by Avon in its quarterly shareholding pattern for the quarter ending June 30, 2009, filed with BSE.
- 8.1.4 However, at this stage of final disposal of the proceedings, I find that sufficient facts have not been brought out by SEBI to show that the aforesaid entities indeed controlled Avon and were responsible for the conduct of its business at the time of the *GDR Issue* in June 2009. Having arrived at this finding, I am of the view that the SCN against the aforementioned Promoters, needs to be disposed of.

Conclusion –

9.1.1 As noted above, the *modus operandi* adopted by Avon and its Directors, etc. in conceiving the fraudulent arrangement of *GDR Issue* to defraud investors has been fraught with *mala fides* at every stage of its execution. The consequences resulting from violations committed by Avon and its Directors, etc. are of very grave nature and are prejudicial to the interests of investors in the securities market. If violations of this nature and magnitude are not dealt with seriously with a firm hand then investors will lose faith in the Indian Securities Market and even good companies will find it extremely difficult to raise capital in future. In view of the same, I am of the view that stringent measures are warranted in the instant case for dealing with such violations. The directions must be commensurate with the gravity of the violations so that it would act as an effective deterrent.

9.1.2 In this regard, I also note the following –

- a. Vide a SEBI Order dated June 20, 2013, Pan Asia and Shri Arun Panchariya were, as *persons connected to the Indian Securities Market* debarred from rendering services in connection with instruments that are defined as ‘*securities*’ under Section 2(h) of the Securities Contracts (Regulation) Act, 1956 (“**SCRA**”) for a period of 10 years and further were prohibited from accessing the capital market directly or indirectly for a period of 10 years.
- b. On an appeal by Pan Asia and Shri Arun Panchariya (collectively referred to as “**Appellants**”) against the aforementioned SEBI Order dated June 20, 2013, the Hon’ble SAT vide an Order dated September 30, 2013, allowed the appeal and set aside the aforesaid Order on the ground that SEBI had no jurisdiction to initiate proceedings against the Appellants in relation to the role played by them as Lead Managers to the GDRs issued by several Indian Companies outside India.
- c. On appeal against the Hon’ble SAT Order dated filed by SEBI September 30, 2013, the Hon’ble Supreme Court vide a judgment dated July 6, 2015, in the matter of *SEBI vs. Pan Asia Advisors Limited and Another (Civil Appeal No. 10560/2013)*, set aside the decision of the Hon’ble SAT and held that SEBI had jurisdiction to initiate proceedings against the Appellants if the Appellants as Lead Managers to the GDRs had violated the provisions of SEBI Act and the Regulations framed thereunder and remanded the matter for fresh decision on merits in respect of the appeal filed by the Appellants against the SEBI Order dated June 20, 2013.
- d. Thereafter, vide **SAT Order in the matter of Pan Asia**, the Hon’ble SAT while dismissing the appeal filed by the Appellants *inter alia* observed as under –

18. *“Question then to be considered is, whether SEBI is justified in holding that the Appellants have committed fraud on the investors in India. Admittedly, PAN Asia was appointed as a Lead Manager to the GDR Issue and as a Lead Manager it was the duty of PAN Asia to make reasonable endeavours to procure investors outside India and inform the ESCROW agent in writing of any deposit made by the investors in the ESCROW account. It is not in dispute that prior to the issuance of GDRs of Asahi, AP as a Managing Director and Authorized Signatory of Vintage had entered into a Loan Agreement dated 21.04.2009 with Euram Bank and had obtained loan of US \$10 million to take down the GDRs of Asahi. Thus, AP on the one hand as Managing Director of PAN Asia got the GDRs of Asahi issued for subscription by foreign investors and on the other hand as Managing Director of Vintage took loan to take down entire GDRs of Asahi.*
19. *Apart from taking loan of US \$10 million from Euram Bank under the Loan Agreement dated 21.04.2009, a Pledge Agreement dated on 21.04.2009 was executed between Asahi and Euram Bank, wherein Asahi agreed to abide by the terms and conditions of the Loan Agreement dated 21.04.2009 between Euram and Vintage and further agreed to pledge all its right, title and interest in and to the securities deposited in the pledged securities account and Pledged Time Deposit account so as to secure the present and future obligation of Vintage to the Euram Bank to the Extent of US \$10 million or any other amount that may thereafter become payable by Vintage to Euram Bank.*
20. *In the reply to the show cause notice issued by SEBI, AP had categorically stated that Vintage intended to make profit through a takedown of the GDRs issued by the Indian Companies and at the same time ensure successful placement of the GDRs with the investors outside India. It is further stated by AP that for the aforesaid purpose Vintage took loan from Euram Bank and upon closure of the GDR Issue, Vintage paid the take down amount to the issuer companies by transferring the loan proceeds from Euram Bank to the ESCROW accounts of the issuer companies which was then transferred to the accounts of issuer companies.*
21. *Thus, instead of ensuring that the foreign investors subscribe to the GDRs of Asahi, AP as Managing Director of PAN Asia planned to subscribe to the GDRs of Asahi through Vintage and in fact as Managing Director of Vintage took loan of 10 million US \$ from Euram Bank for subscribing to the GDRs of Asahi and made Asahi to pledge to the Euram Bank the GDR subscription amount of US \$10 million as security for the loan taken by Vintage. Similar modus operandi was adopted in case of other issuer companies. Thus, the investors in India were made to believe that in the global market the issuer companies have acquired high reputation in terms of investment potential and hence the foreign investors have fully subscribed to the GDRs, when in fact, the GDRs were subscribed by AP through Vintage which was wholly owned by AP. In other words, PAN Asia as a Lead Manager and AP as Managing Director of PAN Asia attempted to mislead the investors in India that the GDRs have been subscribed by*

foreign investors when in fact the GDRs were subscribed by AP through Vintage. Any attempt to mislead the investors in India constitutes fraud on the investors under the PFUTP Regulations.

...

27. *It is equally important to note that immediately after subscribing to the GDRs, Vintage (controlled by AP) sold some of the GDRs to FIIs/sub accounts such as IFCF & KII which were also controlled by AP. IFCF & KII admittedly converted GDRs into underlying equity shares of the issuer companies from the domestic custodian bank in India and sold the said shares on the Stock Exchanges in India. It is also recorded in the impugned order that the shares sold by IFCF and KII were bought by entities such as Alka, Oudh, Basmati & SV with which AP was connected. Thus, at every stage of the GDR Issue i.e. from the stage of issuing GDRs, subscribing to the GDRs, transferring the GDRs to FI/sub accounts for conversion of GDRs into equity shares and acquiring the said shares through the Stock Exchanges in India, Managing Director of PAN Asia was involved. In other words, apart from making it artificially appear that GDRs have been subscribed by foreign investors when in fact the GDRs were subscribed by AP through Vintage, AP ensured that the GDRs were sold by Vintage to the entities controlled by AP and further ensured that the equity shares generated on conversion of GDRs were acquired by the entities with which AP was connected. Even though all GDRs were not converted and sold, it is apparent that the modus operandi adopted by the Appellants was not only to create an artificial impression that the GDRs have been subscribed by foreign investors, but also to create an impression that after the GDR Issue, investors in India have started subscribing to the shares of issuer companies when in fact the shares were sold and acquired by the entities controlled by AP. In these circumstances inference drawn by SEBI that at every stage of the GDR Issue, the acts committed by the Appellants constituted fraud on the investors in India cannot be faulted.*
28. *... there can be no dispute that the GDR subscription amounts running into several million US \$ were not available to the issuer companies till the loan taken by Vintage for subscribing to GDRs were repaid to Euram Bank. Admittedly, the loans were repaid by Vintage after a long period of time. Therefore, in the facts of present case, findings recorded by SEBI that in reality there was no fund movement after the GDRs were subscribed, cannot be faulted."*

- 9.1.3 I note that the provisions of Sections 12A(a)–(c) of the SEBI Act read with Regulations 3(b)–(d) of the PFUTP Regulations, 2003, *inter alia* prohibit buying, selling or dealing in securities in a fraudulent manner; employment of any manipulative/deceptive device, scheme or artifice to defraud in connection with dealing in securities; engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with dealing in securities. Further, Regulations 4(2)(c), 4(2)(f), 4(2)(k), 4(2)(r) of the PFUTP Regulations, 2003, *inter alia* prohibit fraudulent and unfair trade practices in securities through

various acts, omissions stated therein. In my view, any fraudulent or deceptive device, scheme, act, omission, etc. which has the potential to *inter alia* induce sale/purchase of securities of any company; influence investment decisions of investors in such company; or result in wrongful gain, etc. would be covered within the prohibition under the aforementioned provisions of law.

9.1.4 SEBI has been entrusted with the important mandate of protecting the interests of investors and safeguarding the integrity of the securities market. In this regard, necessary powers have been conferred upon it under the securities laws. It is, therefore, necessary that SEBI exercise these powers firmly and effectively to insulate the market and its investors from the fraudulent actions of any of the participants in the securities market, thereby fulfilling its legal mandate. A basic premise that underlines the integrity of securities market is that persons connected with securities market conform to standards of transparency, good governance and ethical behaviour prescribed in securities laws and do not resort to fraudulent activities. In this case, Avon with the aid of its Directors, etc. has conceived the fraudulent arrangement with Vintage with regard to the subscription of *GDR Issue* and submitted incorrect/concealed information to SEBI.

9.1.5 For reasons detailed in the preceding paragraphs, I have no hesitation in concluding that Shri Pankaj Saraiya violated the provisions of Sections 12A(a)–(c) of the SEBI Act read with Regulations 3(b), 3(c), 3(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations, 2003. In addition, I find that Shri Pankaj Saraiya submitted false information to SEBI in respect of the initial investors to *GDR Issue* of Avon and failed to provide correct information and also concealed material information from SEBI in violation of Section 11C(3) of the SEBI Act. Shri Pankaj Saraiya has clearly acted in a manner which is fraudulent and deceptive and hence, clearly detrimental to the interests of investors in the Indian securities market.

Order –

10.1 In view of the foregoing, I, therefore, in exercise of the powers conferred upon me by virtue of Section 19 read with Section 11, 11(4) and 11B of the SEBI Act and Regulation 11(1) of the PFUTP Regulations, 2003, hereby direct as under –

- i. The following entity is prohibited from accessing the capital market directly or indirectly, and dealing in securities or instruments with Indian securities as underlying, in any manner whatsoever, for a period of **ten years** from the date of this Order, –

	ENTITY	PAN
1.	SHRI PANKAJ SARAIYA	AMZPS1044F

- ii. The following entities are hereby warned to ensure that all their future dealings in the securities market be done strictly in accordance with law, –

	ENTITY	PAN
1.	SMT RUPAL PANKAJ SARAIYA	AMZPS1068D
2.	SMT SHANTABEN PRATAPSINGH SARAIYA	AALPS5638R

- iii. The SCN dated December 18, 2014, is disposed of against the following entities, without any further directions, viz. –

	ENTITY	PAN
1.	SHRI BHUPENDRA DOSHI	AHZPD5897N
2.	SHRI PRATAPSINGH KAKUBHAI SARAIYA	ALHPS9974P
3.	SHRI RAKESH CHATRABHUJ DHAGAI	AEGPD3475E
4.	SMT SHILPA RAKESH DHAGAI	AEDPD4507Q

- iv. The proceedings emanating from the SCN dated December 18, 2014, against the following entity stands abated, viz. –

	ENTITY	PAN
1.	AVON CORPORATION LIMITED	AACCA0545M

10.2 This Order shall come into force with immediate effect.

10.3 This Order shall be served on all recognized stock exchanges and depositories to ensure necessary compliance.

Place: Mumbai
Date: September 5, 2017

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA