

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 MAARS SOFTWARE INTERNATIONAL LIMITED –

IN RESPECT OF –

	ENTITY	PAN
1.	MAARS SOFTWARE INTERNATIONAL LIMITED	AAACM4527H
2.	SHRI PRAVIN CHAMPALAL JAIN	ABDPJ4945R
3.	SHRI HARSHAWARDHAN S RATHORE	BUCPS3345B
4.	SHRI NIKUNJ BABULAL CHORADIYA	AGQPC6235M
5.	SHRI SHIVPRASAD AGARWAL	NOT AVAILABLE
6.	SHRI T. VARADHARAJAN	AABPV9743Q
7.	SHRI C. KRISHNAN	AOOPK2839P
8.	FORSEE FINANCIAL CONSULTANCY SERVICES	AABPV9743Q
9.	SHRI I K ROBINSON EDWIN	NOT AVAILABLE
10.	SHRI K N VELAYUDAM	AABPV9743Q
11.	SHRI K RADHAI	AOOPK2839P
12.	SHRI K S GOMATHI	NOT AVAILABLE
13.	SHRI KUMAR NAVALAPAKKAM RAMANUJAM	AACPK6142P
14.	SHRI N CHELLAMMAL	AIMPC3251B
15.	SHRI N LOKABIRAMAN	AABPL6381J
16.	SHRI N SRINIVASAN	ADQPN5086L
17.	SHRI R. RAJAGOPALAN	NOT AVAILABLE
18.	SHRI R. VASUMATHI	NOT AVAILABLE
19.	SHRI S. VISWESWARAN	NOT AVAILABLE
20.	SHRI T. PADMASANI	ATBPP8210H
21.	SHRI U. A. SADAGUPACHARI	NOT AVAILABLE
22.	SMT V. VIJAYALAKSHMI	AGBPV5026E

Background –

- 1.1 In view of certain irregularities observed in the issuance of Global Depository Receipts (“GDRs”) by Maars Software International Limited (“Maars”), 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 Maars on December 30, 2011 (“**Confirmatory Order**”).
Vide the aforesaid Confirmatory Order, SEBI *permitted conversion of outstanding warrants issued by Maars, if any, prior to the Interim Order.*

Show Cause Notice dated December 18, 2014 –

- 2.1 SEBI completed its investigation in the matter and based on the findings contained therein, a Show Cause Notice (“**SCN**”) dated December 18, 2014, was issued to the following entities, viz.

- i. Maars;
- ii. Shri Pravin Champalal Jain;
- iii. Shri Harshawardhan S Rathore;
- iv. Shri Nikunj Babulal Choradiya;
- v. Shri Shivprasad Agarwal;
- vi. Shri T. Varadharajan;
- vii. Shri C. Krishnan;
- viii. Forsee Financial Consultancy Services;
- ix. Shri I. K. Robinson Edwin;
- x. Shri K. N. Velayudam;
- xi. Smt K. Radhai;
- xii. K. S. Gomathi;
- xiii. Shri Kumar Navalapakkam Ramanujam;
- xiv. Smt N. Chellammal;
- xv. Shri N. Lokabiraman;
- xvi. Shri N. Srinivasan;
- xvii. Shri R. Rajagopalan;
- xviii. Shri R. Vasumathi;
- xix. Shri S. Visweswaran;
- xx. Shri T. Padmasani;
- xxi. Shri U. A. Sadagupachari;
- xxii. Smt V. Vijayalakshmi;

- 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 Maars on August 10, 2007 (“**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, vide letters dated August 16, 2007 and November 2, 2011, Maars informed SEBI and BSE Limited (“**BSE**”) that the following entities were the initial subscribers of the aforesaid Issue, viz. –
 - a. Rexflec Limited;
 - b. Imagination Network Inc.;
 - c. Figura Group Limited;
 - d. Tradetec Corporation;
 - e. Trend Setter Enterprises Cops.
- iii. As the authorised signatory for Maars, Shri Pravin Champalal Jain (Managing Director of Maars during *GDR Issue* in August 2007) signed a *Pledge Agreement* dated July 31, 2007, with European American Investment Bank AG (“**Euram**”). Shri Pravin Champalal Jain was also the authorised signatory for Maars’s bank account with Euram.
- iv. The *Pledge Agreement* (signed between Maars and Euram) was an integral part of another agreement viz. *Loan Agreement* dated July 31, 2007, signed between Vintage and Euram. These Agreements enabled Vintage to avail a loan of US \$17.93 million from Euram for subscribing to the GDR issue of Maars in August 2007.
- v. In terms of the *Pledge Agreement*, Maars deposited the GDR subscription proceeds received from the 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 Maars itself financing the subscription of its GDR issue and such an arrangement is specifically prohibited under Indian law in terms of Section 77(2) read with Section 77(4) of the 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 such Company in the Indian securities market.

- vii. As a result of the *Pledge Agreement (Maars with Euram)*, Maars 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, Maars 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 \$17.93 million at the time of *GDR Issue*.

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. Maars 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 also Sections 77(2) and 77(4) of the Companies Act, 1956;
- ii. Shri Pravin Champalal Jain (Managing Director of Maars), being a signatory to the *Pledge Agreement* in 2007, 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. Maars, Shri Harshawardhan S. Rathore and Shri Nikunj Babulal Choradiya were alleged to have violated Section 11(C)(3) of the SEBI Act on account of failing to provide correct information *inter alia* in response to the Summons dated January 12, 2012; March 28, 2012; April 18, 2012 and April 20, 2012, as issued by SEBI;
- iv. As per Section 27 of the SEBI Act, Shri Shivprasad Agarwal and Shri T. Varadharajan, being Directors of Maars, were liable to be proceeded against. Accordingly, they were alleged to have *prima facie* 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 of Maars.
- v. Shri C. Krishnan, Forsee Financial Consultancy Services, Shri I. K. Robinson Edwin, Shri K. N. Velayudam, Smt K. Radhai, Shri K. S. Gomathi, Shri Kumar Navalapakkam Ramanujam, Smt N. Chellammal, Shri N. Lokabiraman, Shri N. Srinivasan, Shri R. Rajagopalan, Shri R. Vasumathi, Shri S. Visweswaran, Shri T. Padmasani, Shri U. A. Sadagupachari and Smt V. Vijayalakshmi, being Promoters of Maars, controlled Maars and were responsible for the conduct of its business and therefore, were liable to be proceeded against. Accordingly, they were alleged to have *prima facie* 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 Promoters of Maars.

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”.

A. Hearing –

3.1.1 Subsequent to issuance of SCN, an opportunity of personal hearing was granted on the following dates –

a. May 18, 2017 –

- i. The following entities i.e. no. 1, 6, 11 of the SCN dated December 18, 2014, appeared for hearing –
 - Maars;
 - Shri T. Varadharajan;
 - Smt K. Radhai.
- ii. The following entities i.e. no. 10, 13–16, 21–22 of the SCN dated December 18, 2014, tendered their replies through entity no. 6 and waived off their right to a personal appearance in the hearing –
 - Shri K. N. Velayudam;
 - Shri Kumar Navalapakkam Ramanujam;
 - Smt N. Chellammal;
 - Shri N. Lokabiraman;
 - Shri N. Srinivasan;
 - Shri U. A. Sadagupachari;
 - Smt V. Vijayalakshmi.
- iii. Entity no. 20 of the SCN dated December 18, 2014 i.e. Shri T. Padmasani, is deceased.
- iv. The following entities i.e. no. 3–5, 7–9, 12, 17–19 of the SCN dated December 18, 2014, did not appear for hearing –
 - Shri Harshawardhan S Rathore;
 - Shri Nikunj Babulal Choradiya;
 - Shri Shivprasad Agarwal;
 - Shri C. Krishnan;

- Forsee Financial Consultancy Services;
- Shri I. K. Robinson Edwin;
- K. S. Gomathi;
- Shri R. Rajagopalan;
- Shri R. Vasumathi;
- Shri S. Visweswaran.

b. June 7, 2017 –

- i. The following entities i.e. no. 3–5, 7–9, 12, 17–19 of the SCN dated December 18, 2014, did not appear for hearing –
 - Shri Harshawardhan S Rathore;
 - Shri Nikunj Babulal Choradiya;
 - Shri Shivprasad Agarwal;
 - Shri C. Krishnan;
 - Forsee Financial Consultancy Services;
 - Shri I. K. Robinson Edwin;
 - K. S. Gomathi;
 - Shri R. Rajagopalan;
 - Shri R. Vasumathi;
 - Shri S. Visweswaran.

c. July 5, 2017 –

- i. Entity no. 2 of SCN dated December 18, 2014 i.e. Shri Pravin Champalal Jain, did not appear for hearing.

d. July 17, 2017 –

- i. Entity no. 2 of SCN dated December 18, 2014 i.e. Shri Pravin Champalal Jain, did not appear for hearing.

B. Replies to the SCN and submissions pursuant to Hearing –

- i. **Maars** – Vide reply dated May 27, 2017, the company *inter alia* submitted as under:

“The Company denies each and every one of the allegations, charges and findings made against it in the SCN ... On the subject matter of the present proceedings, we state that it pertains to the GDRs issued in August 2007 by the Company and investigation was conducted by SEBI during the year 2011. It is pertinent to mention that none of the present Directors were the Directors during the relevant period. In view thereof, none of the present Directors are in a position to furnish their comments about the said GDR issue and the

findings in SCN w.r.t. furnishing of details/documents/information in the course of investigation by SEBI... In the present facts and circumstances of our case, your honour will appreciate that the alleged adverse findings as contained in the SCN are not sustainable on the company and therefore, proceedings initiated against the company deserves to be quashed/dropped and the present SCN be disposed of without issuing any further directions against the company.”

- ii. **Shri Pravin Champalal Jain** – No reply (to the SCN) was received by SEBI.
- iii. **Shri Harshawardhan S. Rathore** – No reply (to the SCN) was received by SEBI.
- iv. **Shri Nikunj Babulal Choradiya** – No reply (to the SCN) was received by SEBI.
- v. **Shri Shivprasad Agarwal** – No reply (to the SCN) was received by SEBI.
- vi. **Shri T. Varadharajan** - Vide replies dated January 31, 2015 and May 27, 2017, he *inter alia* submitted as under:

“... I was one of the Promoters of Maars, which was incorporated in 1995. The Company had been doing steady business and was making good business until 2001 – 2002. Thereafter, due to sudden turnaround in the business of the company and Global IT industry, the company started facing losses and there were liabilities to the bankers and finance companies.

In 2007, during one of his visits, Mr. Pravin Jain, as the Managing Director, informed me that the Directors had decided to go for a GDR Issue and he wanted to certify the resolution authorizing him to execute the documents as may be necessary for the GDR Issue. As explained above, my role was limited to protecting the interest of the company in cases at Chennai and I had signed the resolution authorizing Mr. Pravin Jain who was admittedly on board to go in for a GDR Issue. Apart from certifying the resolution authorizing Mr. Pravin Jain to execute documents relating to GDR on behalf of the company, I had nothing to do with the issue at all. I had no knowledge of the various points raised in the SCN.

In 2013, owing to my old age (68 years old) and the fact that I was not able to handle the cases against the company, I had submitted my resignation by email on 15th April 2013 and also delivered the same in person to the registered office of the company at Chennai. ... I was requested to continue for some more time since there was no other person in Chennai, which I turned down. Subsequently, I had requested them to file necessary statutory documents. It is pertinent to mention that I have not received any salary from the company since 2002.

... It is pertinent to note that since 2006, I did not have the authority to operate the bank account(s) of the Company and this itself demonstrates that I was no longer involved in the

company in an executive capacity. It is reiterated that I was never involved in any decision making process of the Company after the year 2004.”

- vii. **Shri C. Krishnan** – No reply (to the SCN) was received by SEBI.
- viii. **Forsee Financial Consultancy Services** – No reply (to the SCN) was received by SEBI.
- ix. **Shri I. K. Robinson Edwin** – No reply (to the SCN) was received by SEBI.
- x. **Shri K. N. Velayudam** – Vide reply dated January 16, 2015, he *inter alia* submitted as under:

“... I totally deny the allegations in the SCN. I am 72 years old. I resigned from Maars in 2002. I am holding 5000 shares of the company and I am still holding the said shares. Except for being a small shareholder, I have not been involved with the company at any point in time beyond 2002.”
- xi. **Smt K. Radhai** – Vide reply dated January 15, 2015, she *inter alia* submitted as under:

“...I totally deny the allegations in the SCN. I am and have always been a home maker. I purchased 2500 shares of the company way back in the year 1995 and I am still holding the said shares. Except for being a small shareholder, I have not been involved with the company in any manner whatsoever.”
- xii. **Shri K. S. Gomathi** – No reply (to the SCN) was received by SEBI.
- xiii. **Shri Kumar Navalapakkam Ramanujam** – Vide replies dated January 15, 2015 and April 25, 2017, he *inter alia* submitted as under:

“... I totally deny the allegations in the SCN. I am 67 years old. I resigned from Maars in 2002. I am holding 5000 shares of the company and I am still holding the said shares. Except for being a small shareholder, I have not been involved with the company in any manner whatsoever after my resignation in 2002.”
- xiv. **Smt N. Chellammal** – Vide replies dated January 15, 2015 and April 27, 2017, she *inter alia* submitted as under:

“...I totally deny the allegations in the SCN. I am 68 years old and have always been a home maker. I am holding 10000 shares of the company and I am still holding the said shares. Except for being a small shareholder, I have not been involved with the company in any manner whatsoever.”

- xv. **Shri N. Lokabiraman** – No reply (to the SCN) was received by SEBI.
- xvi. **Shri N. Srinivasan** – Vide replies dated January 15, 2015 and April 25, 2017, he *inter alia* submitted as under:
- “I am 47 years old. I have been employed with Emphasis Limited, Chennai from 2005 to September 2014. I am holding 5000 shares of the company and I am still holding the said shares. Except for being a small shareholder, I have not been involved with the company in any manner whatsoever.”*
- xvii. **Shri N. Lokabiraman** – No reply (to the SCN) was received by SEBI.
- xviii. **Shri R. Rajagopalan** – No reply (to the SCN) was received by SEBI.
- xix. **Shri R. Vasumathi** – No reply (to the SCN) was received by SEBI.
- xx. **Shri S. Visweswaran** – No reply (to the SCN) was received by SEBI.
- xxi. **Shri T. Padmasani** – No reply (to the SCN) was received by SEBI.
- xxii. **Shri U. A. Sadagupachari** – Vide replies dated January 15, 2015 and April 25, 2017, he *inter alia* submitted as under:
- “... I totally deny the allegations in the SCN. I am 80 years old. I resigned from Maars in 2002. I purchased 2500 shares of the company way back in the year 1995 and I am still holding the said shares. Except for being a small shareholder, I have not been involved with the company in any manner whatsoever.”*
- xxiii. **Smt V. Vijayalakshmi** – Vide replies dated January 15, 2015 and April 7, 2017, she *inter alia* submitted as under:
- ““...I totally deny the allegations in the SCN. I am 60 years old and have always been a home maker. I am holding 20000 shares of the company and I am still holding the said shares. Except for being a small shareholder, I have not been involved with the company in any manner whatsoever.”*

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 Maars (observed from the material available on record) is as under –

	NAME	DESIGNATION
1.	SHRI PRAVIN CHAMPALAL JAIN	MANAGING DIRECTOR
2.	SHRI HARSHAWARDHAN S RATHORE	INDEPENDENT NON-EXECUTIVE DIRECTOR
3.	SHRI NIKUNJ BABULAL CHORADIYA	MANAGING DIRECTOR
4.	SHRI SHIVPRASAD AGARWAL	INDEPENDENT NON-EXECUTIVE DIRECTOR
5.	SHRI T. VARADHARAJAN	PROMOTER AND EXECUTIVE DIRECTOR
6.	SHRI C. KRISHNAN	PROMOTER
7.	FORSEE FINANCIAL CONSULTANCY SERVICES	PROMOTER
8.	SHRI I. K. ROBINSON EDWIN	PROMOTER
9.	SHRI K. N. VELAYUDAM	PROMOTER
10.	SHRI K. RADHAI	PROMOTER
11.	K. S. GOMATHI	PROMOTER
12.	SHRI KUMAR NAVALAPAKKAM RAMANUJAM	PROMOTER
13.	SHRI N. CHELLAMMAL	PROMOTER
14.	SHRI N. LOKABIRAMAN	PROMOTER
15.	SHRI N. SRINIVASAN	PROMOTER
16.	SHRI R. RAJAGOPALAN	PROMOTER
17.	SHRI R. VASUMATHI	PROMOTER
18.	SHRI S. VISWESWARAN	PROMOTER
19.	SHRI T. PADMASANI	PROMOTER
20.	SHRI U. A. SADAGUPACHARI	PROMOTER
21.	SMT V. VIJAYALAKSHMI	PROMOTER

Findings against Maars and Shri Pravin Champalal Jain –

- 5.1.1 The charges alleged in the SCN against Maars and Shri Pravin Champalal Jain 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 (Maars 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 Maars.**

5.1.2 In its reply, Maars *inter alia* submitted that the findings contained in the SCN are not sustainable.

5.1.3 No reply to the SCN was received from Shri Pravin Champalal Jain.

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 (Maars with Euram) in light of the Loan Agreement (Vintage with Euram).*

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

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

5.1.5 Pan Asia Advisors Limited (“**Pan Asia**”), an entity owned and controlled by Shri Arun Panchariya, was appointed by Maars as the Lead Manager for its *GDR Issue*.

5.1.6 Vintage, an entity owned and controlled by Shri Arun Panchariya, entered into a *Loan Agreement* dated July 31, 2007, with Euram for availing of a loan of US \$17.93 million for subscribing to the *GDR Issue* of Maars on August 10, 2007.

5.1.7 A *Pledge Agreement* dated July 31, 2007, was also executed between Maars and Euram.

5.1.8 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*, Maars 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.*”

5.1.9 The *Pledge Agreement II* was signed on behalf of Maars by Shri Pravin Champalal Jain.

5.1.10 The *Loan Agreement* and *Pledge Agreement* were both dated July 31, 2007. Immediately, thereafter, the *GDRs* were issued on August 10, 2007.

5.1.11 The *Pledge Agreement* was an integral part of the *Loan Agreement*.

- 5.1.12 The obligation of Vintage under the *Loan Agreement* was secured by Maars through the *Pledge Agreement* whereby it deposited an amount of US \$17.93 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.
- 5.1.13 As per the *Loan Agreement*, the amount of US \$17.93 million may only be transferred to Euram Account no. 540016. The aforesaid Account is the bank account of Maars maintained with Euram for the purpose of depositing proceeds of the *GDR Issue*. Maars, 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*).
- 5.1.14 From the Know Your Client (“KYC”) document in respect of Maars’s bank account with Euram, it is observed that the authorised signatory for the operation of the bank account was Shri Pravin Champalal Jain (Managing Director of Maars during *GDR Issue* in August 2007).
- 5.1.15 From the certified copy of an extract from the Minutes of the Meeting of the Board of Directors of Maars held on March 31, 2007, which was received from Euram, the following is observed:
- “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. Pravin Jain, Managing Director, be and is hereby severally 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. Pravin Jain, 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.”*
- 5.1.16 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 Maars (Issuer Company) added to a guarantee by Maars for the loan taken by Vintage for subscription to the *GDR Issue*.

5.1.17 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 Maars 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 Maars. As detailed in the Table below, Maars did not have any free capital available immediately since the withdrawal of GDR proceeds was conditional and dependent on the loan payment by Vintage. As a result, Maars'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
31.07.2007	1.07.2007	11.10.2007	1,79,33,400	16.09.2008

5.1.18 On August 16, 2007, Maars informed BSE that the *GDR Issue* was fully subscribed. 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 Maars and the proceeds simultaneously pledged with Euram.

5.1.19 After the issuance of GDRs, Vintage became the sole holder of the said GDRs and thereby it became majority shareholder of Maars i.e. 95.32%.

5.1.20 Shri Pravin Champalal Jain was the *Authorised Person* on behalf of Maars for execution of *Pledge Agreement (with Euram)* and other documents in relation to *GDR Issue*. Similarly, Shri Pravin Champalal Jain was the Managing Director of Maars. It was he who signed the *Pledge Agreement* and other documents in relation to *GDR Issue*. It is evident from the stature of Shri Pravin Champalal Jain that he was hugely important in the hierarchy of Maars. 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 Maars have been in accordance with the terms of the aforementioned *Agreement*.

5.1.21 As stated in the preceding paragraphs, events subsequent to the execution of the *Pledge Agreement* clearly reveal that Maars did indeed use the funds deposited in its bank account as security for obligation of Vintage. Considering the aforesaid, it is clearly evident that Maars authorized Shri Pravin Champalal Jain 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*.

5.1.22 The execution of the *Pledge Agreement (Maars with Euram)* when viewed in the context of the *Loan Agreement (Vintage with Euram)*, effectively allowed Maars 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 Maars. The false declaration made by Maars through BSE regarding the initial subscribers to its *GDR Issue*, led investors in India to believe that Maars 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 Maars.

5.1.23 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."*

5.1.24 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 Maars largely did not exist, as a result of which, the investors in India were made to believe (falsely) that the GDRs of Maars 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 Maars and Shri Pravin Champalal Jain.

5.1.25 I, therefore, find that Maars and Shri Pravin Champalal Jain 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.

5.1.26 I also find that the arrangement resulting from the *Pledge Agreement (Maars with Euram) & Loan Agreement (Vintage with Euram)*, which allowed Maars to effectively 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) was specifically prohibited under Indian laws in view of Section 77(2) of the Companies Act. I therefore, find that Maars violated Section 77(2) read with Section 77(4) of the Companies Act 1956.

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, Maars and Shri Harshvardhan Singh Rathore are alleged to have misled SEBI regarding the original subscribers of *GDR Issue* of Maars. Further, Shri Nikunj Babulal Choradiya was alleged to have failed in providing correct information and for concealment of 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 queries raised vide various SEBI letters during the investigation conducted in the instant proceedings.

6.1.2 In its reply, Maars submitted that the findings contained in the SCN are not sustainable.

6.1.3 No reply to the SCN was received from Shri Harshvardhan Singh Rathore and Shri Nikunj Babulal Choradiya.

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

6.1.4 From the *Pledge Agreement*, it is noted that Maars deposited in its designated account with Euram an amount of US \$17.93 million as security in respect of all the obligations of Vintage under the *Loan Agreement*.

6.1.5 Vide a letter dated November 2, 2011, Maars informed SEBI that the following entities were the initial subscribers of its *GDR Issue*, viz. –

- a. Rexflec Limited;
- b. Imagination Network Inc.;
- c. Figura Group Limited;
- d. Tradetec Corporation;
- e. Trend Setter Enterprises Cops.

6.1.6 The aforesaid information was earlier made public by Maars through a public announcement on BSE on August 16, 2007.

- 6.1.7 Shri Harshvardhan Singh Rathore, Executive Director of Maars in 2007, submitted the misleading declaration regarding initial subscribers of GDRs to the concerned Stock Exchange, on behalf of Maars. As noted from the material available on record, all the above subscribers were also stated to be investors in several other GDR issues of Indian companies which were managed by Pan Asia, also the Lead Manager for *GDR Issue* of Maars. All attempts made by SEBI to contact these subscribers were unsuccessful. Further, even efforts made by respective financial market regulators regulating the region where these subscribers were located, were not successful. Replies received by SEBI from the said regulators indicated that the address provided by these subscribers did not exist.
- 6.1.8 It is pertinent to note that in the aforesaid list provided by Maars, the name of Vintage was not mentioned. However, as stated before, Vintage was the initial subscriber to the *GDR Issue* of Maars by virtue of the *Loan Agreement* and *Pledge Agreement*. Therefore, such false information regarding the initial subscribers to the *GDR Issue* of Maars was deliberately provided to SEBI and BSE.
- 6.1.9 In view of the above observations, I find that Maars and Shri Harshvardhan Singh Rathore provided false information in respect of the initial subscribers to the *GDR Issue* of Maars.
- 6.1.10 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.”*
- 6.1.11 In order to examine the utilization of GDR proceeds, SEBI sought information from Maars, vide Summons dated January 12, 2012; March 28, 2012; April 18, 2012 and April 20, 2012. A final reminder was also sent to Maars on July 19, 2012 for submission of documents by July 25, 2012.

However, Maars failed to comply with the aforesaid Summons issued by SEBI as it did not furnish any information and therefore, concealed material information from SEBI.

6.1.12 From the above, I find that material information, which was necessary to carry out investigations in the instant proceedings, were not furnished and were concealed by Maars. As a Director of Maars to whom the Summons were issued, Shri Nikunj Babulal Choradiya was under an obligation to ensure that correct information was provided promptly by Maars to SEBI. However, Shri Nikunj Babulal Choradiya failed to ensure co-operation by Maars 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.

6.1.13 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...*"

6.1.14 Upon a consideration of the preceding paragraphs, I find that Maars, Shri Harshvardhan Singh Rathore and Shri Nikunj Babulal Choradiya violated the provisions of Section 11C(3) of the SEBI Act through their failure to provide correct information and through concealment of material information from SEBI.

Role of other Directors of Maars – Shri Shivprasad Agarwal and Shri T. Varadharajan.

7.1.1 As per the SCN, Shri Shivprasad Agarwal and Shri T. Varadharajan have been charged as liable for offenses committed by Maars under Section 27 of the SEBI Act, 1992, as they were Directors of Maars at the time of *GDR Issue*. Accordingly, they have been charged for 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.

7.1.2 In his reply to the SCN, Shri T. Varadharajan submitted: "*In 2007, during one of his visits, Mr. Pravin Jain, as the Managing Director, informed me that the Directors had decided to go for a GDR Issue and he wanted to certify the resolution authorizing him to execute the documents as may be necessary for the GDR Issue. As explained above, my role was limited to protecting the interest of the company in cases at Chennai and I had signed the resolution authorizing Mr. Pravin Jain who was admittedly on board to go in for a GDR Issue. Apart from certifying the resolution authorizing Mr. Pravin Jain to execute documents relating to GDR on behalf of the company, I had nothing to do with the issue at all. I had no knowledge of the various points raised in the SCN.*"

7.1.3 No reply to the SCN was received from Shri Shivprasad Agarwal.

7.1.4 I note that Shri Shivprasad Agarwal and Shri T. Varadharajan, being Directors of Maars, have not signed the *Pledge Agreement* nor were they the authorized signatories on behalf of Maars for its bank account with Euram. I note that Shri T. Varadharajan admittedly certified the resolution authorizing Shri Pravin Champalal Jain to execute documents as may be necessary for the *GDR Issue*. However, no specific adverse inference has been drawn against the aforementioned entity in the Investigation Report or the SCN, apart from the allegation that as a Director in Maars, he was liable to be proceeded against. 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 Maars. However, I note that being Directors of Maars, the aforementioned entities cannot be said to have been unaware of the activities of Maars.

Role of Promoters of Maars – Shri C. Krishnan, Forsee Financial Consultancy Services, Shri I. K. Robinson Edwin, Shri K. N. Velayudam, Smt K. Radhai, Shri K. S. Gomathi, Shri Kumar Navalapakkam Ramanujam, Smt N. Chellammal, Shri N. Lokabiraman, Shri N. Srinivasan, Shri R. Rajagopalan, Shri R. Vasumathi, Shri S. Visweswaran, Shri T. Padmasani, Shri U. A. Sadagupachari and Smt V. Vijayalakshmi.

8.1.1 Shri C. Krishnan, Forsee Financial Consultancy Services, Shri I. K. Robinson Edwin, Shri K. N. Velayudam, Smt K. Radhai, Shri K. S. Gomathi, Shri Kumar Navalapakkam Ramanujam, Smt N. Chellammal, Shri N. Lokabiraman, Shri N. Srinivasan, Shri R. Rajagopalan, Shri R. Vasumathi, Shri S. Visweswaran, Shri T. Padmasani, Shri U. A. Sadagupachari and Smt V. Vijayalakshmi, being Promoters of Maars, controlled Maars 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 Maars.

8.1.2 In their replies to the SCN, Shri K. N. Velayudam, Smt K. Radhai, Shri Kumar Navalapakkam Ramanujam, Smt N. Chellammal, Shri N. Srinivasan, Shri U. A. Sadagupachari and Smt V. Vijayalakshmi denied any involvement in the *GDR Issue* of Maars.

8.1.3 No reply to the SCN was received from Shri C. Krishnan, Forsee Financial Consultancy Services, Shri I. K. Robinson Edwin, Shri K. S. Gomathi, Shri N. Lokabiraman, Shri R. Vasumathi, Shri S. Visweswaran and Shri T. Padmasani.

8.1.4 During the pendency of the instant proceedings, SEBI was informed that Shri T. Padmasani has died. Accordingly, the instant proceedings against him stand abated.

- 8.1.5 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 Maars 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 Maars or were shown as Promoters by Maars in its quarterly shareholding pattern for the quarter ending September 30, 2007, filed with BSE.
- 8.1.6 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 Shri C. Krishnan, Forsee Financial Consultancy Services, Shri I. K. Robinson Edwin, Shri K. N. Velayudam, Smt K. Radhai, Shri K. S. Gomathi, Shri Kumar Navalapakkam Ramanujam, Smt N. Chellammal, Shri N. Lokabiraman, Shri N. Srinivasan, Shri R. Rajagopalan, Shri R. Vasumathi, Shri S. Visweswaran, Shri U. A. Sadagupachari and Smt V. Vijayalakshmi, indeed controlled Maars and were responsible for the conduct of its business at the time of the *GDR Issue* in August 2007. Having arrived at this finding, I am of the view that the SCN against the aforementioned Promoters, needs to be disposed of.

Conclusion –

- 8.1.7 As noted above, the *modus operandi* adopted by Maars 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 Maars 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.
- 8.1.8 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 FII/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."*

- 8.1.9 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.
- 8.1.10 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, Maars 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.
- 8.1.11 For reasons detailed in the preceding paragraphs, I have no hesitation in concluding that Maars and Shri Pravin Champalal Jain 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. I also find that Maars violated Section 77(2) read with 77(4) of the Companies Act. In addition, I find that Maars, Shri Harshvardhan Singh Rathore and Shri Nikunj Babulal Choradiya submitted false information to SEBI in respect of the initial investors to *GDR Issue* of Maars and failed to provide correct information and also concealed material information

from SEBI in violation of Section 11C(3) of the SEBI Act. The aforementioned entities 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 –

9.1.1 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 issuing equity shares or any other instrument convertible into equity shares or any other security for a period of **ten years** from the date of this Order.

	ENTITY	PAN
1.	MAARS SOFTWARE INTERNATIONAL LIMITED	AAACM4527H

- ii. I note that vide the Interim Order dated September 21, 2011 (later confirmed through the Confirmatory Order on December 30, 2011), Maars was directed not to issue equity shares or any other instrument convertible into equity shares or alter their capital structure in any manner till further directions. In this context, I note that Maars has already undergone the prohibition imposed vide the Interim Order for a period of approximately **6 years**. In view of this factual situation, it is clarified that the prohibition already undergone by Maars pursuant to the aforementioned SEBI Order shall be reduced while computing the period in respect of the prohibition imposed vide this order.

- iii. 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 PRAVIN CHAMPALAL JAIN	ABDPJ4945R

- iv. The following entities are 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 **one year** from the date of this Order, –

	ENTITY	PAN
1.	SHRI HARSHAWARDHAN S RATHORE	BUCPS3345B
2.	SHRI NIKUNJ BABULAL CHORADIYA	AGQPC6235M

- v. 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.	SHRI SHIVPRASAD AGARWAL	NOT AVAILABLE
2.	SHRI T. VARADHARAJAN	AABPV9743Q

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

	ENTITY	PAN
1.	SHRI SHIVPRASAD AGARWAL	NOT AVAILABLE
2.	SHRI C. KRISHNAN	AOOPK2839P
3.	FORSEE FINANCIAL CONSULTANCY SERVICES	AABPV9743Q
4.	SHRI I K ROBINSON EDWIN	NOT AVAILABLE
5.	SHRI K N VELAYUDAM	AABPV9743Q
6.	SHRI K RADHAI	AOOPK2839P
7.	SHRI K S GOMATHI	NOT AVAILABLE
8.	SHRI KUMAR NAVALAPAKKAM RAMANUJAM	AACPK6142P
9.	SHRI N CHELLAMMAL	AIMPC3251B
10.	SHRI N LOKABIRAMAN	AABPL6381J
11.	SHRI N SRINIVASAN	ADQPN5086L
12.	SHRI R. RAJAGOPALAN	NOT AVAILABLE
13.	SHRI R. VASUMATHI	NOT AVAILABLE
14.	SHRI S. VISWESWARAN	NOT AVAILABLE
15.	SHRI U. A. SADAGUPACHARI	NOT AVAILABLE
16.	SMT V. VIJAYALAKSHMI	AGBPV5026E

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

	ENTITY	PAN
1.	SHRI T. PADMASANI	ATBPP8210H

9.1.2 This Order shall come into force with immediate effect.

9.1.3 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