

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 IKF TECHNOLOGIES LIMITED

—

IN RESPECT OF —

	ENTITY	PAN
1.	CLIFFORD CAPITAL PARTNERS AG SA [ERTSWHILE SEAZUN LIMITED]	NOT AVAILABLE
2.	SHRI SUNIL KUMAR GOEL	AJTPG6767G
3.	SHRI MUKESH KUMAR GOYAL	AIIPG8861B
4.	SHRI R. P. SINGH	AQJPS0184L
5.	SHRI PANKAJ GARG	AFXPG6932R
6.	SHRI ANANT P. SAXENA	AAAPS0862L
7.	SHRI PRADEEP DUTTA	AACPD4968Q
8.	GREEN OPEN TECHNOLOGIES PRIVATE LIMITED	AAACG0133F
9.	SHREE ASSETS RECONSTRUCTION LIMITED	AAHCS3657D
10.	PREMIUM LINKERS LIMITED	AAACP1111G
11.	SHRI N. V. SIMHADRI	AAXPN4219P

Background —

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

Show Cause Notice dated October 21, 2014 –

2.1 SEBI completed its investigation in the matter and based on the findings contained therein, a Show Cause Notice (“**SCN**”) dated October 21, 2014, was issued to the following entities, viz.

- i. IKF;
- ii. Seazun Limited (now known as Clifford Capital Partners AG SA) (“**Seazun**”);
- iii. Shri Sunil Kumar Goel;
- iv. Shri Mukesh Kumar Goyal;
- v. Shri R. P. Singh;
- vi. Shri Pankaj Garg;
- vii. Shri Anant P. Saxena;
- viii. Shri Pradeep Dutta;
- ix. Green Open Technologies Private Limited (“**Green Open Technologies**”);
- x. Shree Assets Reconstruction Limited (“**Shree Assets Reconstruction**”);
- xi. Premium Linkers Limited (“**Premium Linkers**”);
- xii. Shri N. V. Simhadri.

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 two GDR Issues made by IKF in March 2007 (“**GDR Issue I**”) and May 2009 (“**GDR Issue II**”).

2.3 The SCN states –

A. **GDR Issue I – March 30, 2007**

- i. In *GDR Issue I*, Seazun, a British Virgin Island based entity, was the original subscriber of GDRs. However, vide letter dated May 10, 2011, IKF informed SEBI that the following entities were the original investors of the aforesaid Issue, viz. –
 - a. Unicorn Asset Management Limited;
 - b. Investec Bank (Switzerland) AG;
 - c. Animar Limited;
 - d. Albert Enterprises Limited.
- ii. As the authorised signatory for IKF, Shri Mukesh Kumar Goyal (Authorised Person during GDR Issue in March 2007 and subsequently appointed as a Director and Chief Executive Officer of IKF) (“**M. K. Goyal**”) signed an *Account Charge Agreement* dated March 27,

2007, with Banco Efisa, a Portugal based bank ("**Banco**"). Shri M. K. Goyal was also the authorised signatory for IKF's bank account with Banco.

- iii. The *Account Charge Agreement* (signed between IKF and Banco) was an integral part of another agreement viz. *Credit Agreement* dated March 27, 2007, signed between Seazun and Banco. These Agreements enabled Seazun to avail a loan of US \$11 million from Banco for subscribing to the GDR issue of IKF on March 30, 2007.
- iv. In terms of the *Account Charge Agreement*, IKF deposited the GDR subscription proceeds received from the subscriber i.e. Seazun, as security with Banco for the loan availed by that very same subscriber.
- v. These *Agreements* i.e. *Account Charge Agreement & Credit Agreement* effectively resulted in IKF 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 buy the shares of IKF in the Indian securities market.
- vi. On September 28, 2007, IKF sent a letter to Banco authorizing a transfer of US \$4.64 million plus interests and fees, from the account of IKF to the account of Seazun towards settlement of the loan taken by Seazun from Banco for subscribing to the GDRs of IKF.

B. GDR Issue II – May 15, 2009

- i. In *GDR Issue II*, Vintage FZE (now known as Alta Vista International FZE) ("**Vintage**"), an entity under control of Shri Arun Panchariya ("**Panchariya**"), was the original subscriber of GDRs. However, vide letter dated May 10, 2011, IKF informed SEBI that the following entities were the original investors of the aforesaid Issue, viz. –
 - a. Echelon India Investments Ltd;
 - b. Imagination Network Inc.;
 - c. Knightbridge Management Inc.;
 - d. Tradetec Corporation;
 - e. Trend Setter Enterprises Cops.
- ii. As the authorised signatory for IKF, Shri Sunil Kumar Goel (Whole Time Director and Promoter of IKF during GDR Issue in May 2009) ("**S. K. Goel**") signed a *Pledge Agreement* dated April 28, 2009, with European American Investment Bank AG ("**Euram**"). Shri S. K. Goel was also the authorised signatory for IKF's bank account with Banco.

- iii. The *Pledge Agreement* (signed between IKF and Euram) was an integral part of another agreement viz. *Loan Agreement* dated April 28, 2009, signed between Vintage and Euram. These Agreements enabled Vintage to avail a loan of US \$10.98 million from Euram for subscribing to the GDR issue of IKF on May 15, 2009.
 - iv. In terms of the *Pledge Agreement*, IKF 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.
 - v. These *Agreements* i.e. *Pledge Agreement & Loan Agreement*, effectively resulted in IKF 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.
 - vi. As a result of the *Account Charge Agreement (with Banco) and Pledge Agreement (with Euram)*, IKF did not have any free capital available from the abovementioned *GDR Issues I & II* since the capital raised through these two Issues were provided as security against loans taken by Seazun and Vintage from Banco and Euram, respectively. However, IKF concealed this crucial information and portrayed that GDR Issues I & II were successfully subscribed by few foreign investors thereby resulting in that company having free funds to the tune of US \$11 million at the time of *GDR Issue I* and US \$10.98 million at the time of *GDR Issue II*.
 - vii. Around 68.70% of total capital raised through *GDR Issue II* was also routed to a foreign subsidiary, viz. Biofuel FZE. In order to examine the utilization of the GDR proceeds, SEBI sought information from IKF vide Summons dated January 12, 2012 and April 20, 2012. However, IKF kept on furnishing incorrect submissions and also concealed material information from SEBI.
- C. Accordingly, as per the SCN, the persons/entities named therein were *prima facie* alleged to have violated the following provisions of law –
- i. As a party to the alleged market manipulation using GDR Issues, Seazun was 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;
 - ii. Shri M. K. Goyal, Executive Director and Chief Executive Officer of IKF, being a signatory to the *Account Charge Agreement* in 2007, was 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;

- iii. Shri S. K. Goel, Promoter and Whole Time Director of IKF, being a signatory to the *Pledge Agreement* in 2009, was 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;
- iv. Shri R. P. Singh (Director of IKF), Shri N. V. Simhadri (Director of IKF) and Shri M. K. Goyal were alleged to have *prima facie* violated Section 11(C)(3) of the SEBI Act on account of failing to provide correct information and for concealment of material information in response to the Summons dated January 12, 2012 and April 20, 2012, as issued by SEBI;
- v. As per Section 27 of the SEBI Act, Shri R. P. Singh, Shri Pankaj Garg, Shri A. P. Saxena and Shri Pradeep Dutta, being Directors of IKF, 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 IKF.
- vi. Green Open Technologies, Shree Assets Reconstruction and Premium Linkers, being Promoters of IKF, controlled IKF 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 IKF.

Supplementary SCN dated March 16, 2015 –

- D. In addition to the SCN dated October 21, 2014, a Supplementary SCN dated March 16, 2015, was issued to IKF as under –
 - i. As regards *GDR Issue I*, it was observed that as and when Seazun was making repayments to the loan taken by it, the same amount was made available for withdrawal/utilization by IKF, which was followed by remittance to IKF.
 - ii. It was observed that at no time IKF withdrew any money in excess of the sum of the loan repaid by Seazun and the interest accrued in its account. The same indicated that the withdrawal of the GDR proceeds by IKF was directly dependent on part loan repayment by Seazun.
 - iii. It was seen that on September 28, 2007, US \$5.149 million was released from the collateral deposit in IKF's account and transferred into Seazun's account, by way of

allowing full payoff of the amount owed by Seazun to Banco. The same appeared to have been done in accordance with the directions in IKF's letter dated September 28, 2007, to Banco, whereby IKF had authorised Banco to transfer the amount of US \$4.649 million plus interest and fees towards settlement of the loan availed by Seazun.

- iv. As regards *GDR Issue II*, it was observed that at no point in time could IKF withdraw amounts in excess of the loan part repaid by Vintage. The same indicated that the withdrawal of the GDR proceeds by IKF was directly dependent on loan repayment by Vintage.

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

- E. 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”.*

F. **Replies to the SCN –**

- i. **Seazun** – No reply to the SCN was received by SEBI.
- ii. **Shri S. K. Goel** – Vide replies dated October 16, 2015 and June 6, 2017, he *inter alia* submitted as under:

“... All forms, format of documents, preset resolutions were provided and procedures were instructed by empaneled Lead Manager as requirement of opening an account with Euram and (for issuance of) GDR. A full time Company Secretary was coordinating and vetting documents on behalf of the company. While bringing GDR issue, the Lead Manager plays a pivotal role at every step. The Company hires Lead Manager to provide appropriate documents, check the process, evaluate documents and do all things as per rules and regulations.

I have given my continuous hard efforts to help in the growth of Company and to achieve its present height. I did not (sell) even a single share since the day I am holding it. I have not taken any undue advantage of position and not done anything for which company and its shareholders have to suffer.

Therefore, I refuse all accusation and proclamation of SCN. I have not done any act which adversely impacts the Company, its reputation and its stakeholders. I request you to please release me for SCN.”

- iii. **Shri M. K. Goyal** – Vide reply dated October 19, 2015, he *inter alia* submitted as under:

"I executed the documents as per the instruction of Lead Manager and Banco and other agencies to the issue from time to time. Please refer emails of Lead Manager dated 15th March, 2007 and 17th March, 2007, instructing for documents required for opening an account with Banco with a request to visit their office alongwith all documents (emails already shared with company). Lead Manager has provided set format of resolution and detailed information, whereby it is clearly mentioned that the Board resolution was given for opening of the account.

(For) account opening formalities, I was asked by Lead Manager to sign various forms and letter of the Company, as a prescribed format of Banco, which (was) required to open (an) account with Bank.

Nothing has been done to harm the Company, agencies and investors/associates or to gain advantage out of authority so granted."

- iv. **Shri R. P. Singh** – Vide reply dated October 14, 2015, he *inter alia* submitted as under:

"... I deny all the allegations and observations made in the SCN as I was not involved in routine activities of the company and have acted as Independent Non – Executive Director of IKF from 5th August 2005 to 27th May, 2011. I request that I may be discharged from the SCN."

- v. **Shri Pankaj Garg** – No reply (to the SCN) was received by SEBI.

- vi. **Shri Anant P Saxena** Vide reply dated October 30, 2015, he *inter alia* submitted as under:

"... I wish to inform you that I have acted as Non–Executive Director in IKF from 30th December 2005 to August 2008 and was not involved in day to day activities of the Company and hence, you are requested to kindly discharge me from the SCN."

- vii. **Shri Pradeep Dutta** – Vide reply dated October 14, 2015, he *inter alia* submitted as under:

"... I deny all allegations and observations made in the SCN as I have acted as Executive Director during the period starting from 25th January 2008 to 24th January 2011 and thereafter continuing as Non–Independent Non–Executive Director of IKF. I request that I may be discharged from the SCN."

- viii. **Green Open Technologies** – Vide replies dated October 16, 2015 and June 6, 2017, it *inter alia* submitted as under:

"... We deny all allegations and observations made in the SCN."

- ix. **Shree Assets Reconstruction** – Vide replies dated October 15, 2015 and June 6, 2017, it *inter alia* submitted as under:

“... We deny all allegations and observations made in the SCN.”

- x. **Premium Linkers** – Vide replies dated October 14, 2015 and June 6, 2017, it *inter alia* submitted as under:

“... We deny all allegations and observations made in the SCN.”

- xi. **Shri N. V. Simhadri** – Vide reply dated October 17, 2015, he *inter alia* submitted as under:

“... I deny all the allegations and observations made in the SCN as I have acted as Independent Non – Executive Director of IKF from 19th October 2010 till date. I become Director of the Company after GDR Issue I & II and I request you to release me from the SCN.”

Hearing –

- 3.1.1 Subsequent to receipt of the abovementioned replies to the SCN, an opportunity of personal hearing was granted on the following dates –

- a. **May 16, 2017 –**

Entities no. 3–12 of the SCN dated December 18, 2014, did not appear for hearing –

- Shri S. K. Goel;
- Shri M. K. Goyal;
- Shri R. P. Singh;
- Shri Pankaj Garg;
- Shri Anant P. Saxena;
- Shri Pradeep Dutta;
- Green Open Technologies;
- Shree Assets Reconstruction;
- Premium Linkers;
- Shri N. V. Simhadri.

- b. **May 26, 2017 –**

Entity no. 2 of the SCN dated December 18, 2014, did not appear for hearing –

- Seazun.

c. **June 7, 2017 –**

Entities no. 3–12 of the SCN dated December 18, 2014, did not appear for hearing –

- Shri S. K. Goel;
- Shri M. K. Goyal;
- Shri R. P. Singh;
- Shri Pankaj Garg;
- Shri Anant P. Saxena;
- Shri Pradeep Dutta;
- Green Open Technologies;
- Shree Assets Reconstruction;
- Premium Linkers;
- Shri N. V. Simhadri.

d. **June 12, 2017 –**

Entity no. 2 of the SCN dated December 18, 2014, did not appear for hearing –

- Seazun.

3.1.2 Vide separate letters each dated June 6, 2017 (received at SEBI on June 9, 2017), the following entities reiterated the submissions contained in their replies to the SCN, viz.

- a. Shri S. K. Goel;
- b. Green Open Technologies;
- c. Shree Assets Reconstruction;
- d. Premium Linkers.

3.1.3 In addition to the above, vide letter dated June 6, 2017 (received at SEBI on June 7, 2017), IKF *inter alia* informed SEBI as under –

“(Shri R. P. Singh, Shri Pankaj Garg, Shri Anant P. Saxena, Shri Pradeep Dutta and Shri N. V. Simhadri,) have approached us to reply on their behalf, so we would like to submit that in connection to your SCN, reply has already been given by us on January 21, 2015.”

Consideration of Issues and Findings –

4.1.1 **Proceedings against IKF** – The SCN dated October 21, 2014 alongwith the Supplementary SCN (issued only to IKF) dated March 16, 2015, were disposed of as against IKF vide an Order dated April 20, 2015, wherein while considering *inter alia* the reply dated January 21, 2015 (made by IKF)

and submissions made during and subsequent to the opportunity of hearing granted to IKF, it was directed –

25.1 “... 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 IKF (**PAN: AAACI8167K**) not to issue 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.

25.2 I note that vide the Interim Order dated September 21, 2011 (later confirmed through the Confirmatory Order on December 30, 2011), IKF 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 IKF has already undergone the prohibition imposed vide the Interim Order for a period of approximately **3 years and 7 months**. In view of this factual situation, it is clarified that the prohibition already undergone by IKF pursuant to the aforementioned SEBI Order shall be reduced while computing the period in respect of the prohibition imposed vide this order.”

4.1.2 I have considered the SCN dated October 21, 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.

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

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

	NAME	DESIGNATION
1.	SHRI SUNIL KUMAR GOEL	PROMOTER AND WHOLE TIME DIRECTOR
2.	SHRI MUKESH KUMAR GOYAL	EXECUTIVE DIRECTOR AND CHIEF EXECUTIVE OFFICER
3.	SHRI R. P. SINGH	DIRECTOR AND CHAIRMAN
4.	SHRI PANKAJ GARG	DIRECTOR
5.	SHRI ANANT P. SAXENA	NON-EXECUTIVE DIRECTOR
6.	SHRI PRADEEP DUTTA	EXECUTIVE DIRECTOR
7.	GREEN OPEN TECHNOLOGIES PRIVATE LIMITED	PROMOTER
8.	SHREE ASSETS RECONSTRUCTION LIMITED	PROMOTER
9.	PREMIUM LINKERS LIMITED	PROMOTER
10.	SHRI N. V. SIMHADRI	INDEPENDENT NON-EXECUTIVE DIRECTOR

4.1.5 At the outset, it is noted that vide an Order dated April 20, 2015 (paragraph 4.1.1), SEBI held that the arrangement resulting from the *Account Charge Agreement & Credit Agreement* and *Pledge*

Agreement & Loan Agreement which allowed IKF to effectively help finance the purchase of its own shares (since it deposited the proceeds of GDR subscription as collateral for the Dollar Term–Loan Facility provided by Banco to Seazun and also the loan provided by Euram to Vintage) was specifically prohibited under Indian laws in view of Section 77(2) of the Companies Act.

Findings against Shri M. K. Goyal and Shri S. K. Goel –

5.1.1 The charges alleged in the SCN against IKF 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 –**
- i. *Execution of the Account Charge Agreement (IKF with Banco) alongwith Credit Agreement (Seazun with Banco) – Shri M. K. Goyal.*
 - ii. *Execution of the Pledge Agreement (IKF with Euram) in light of the Loan Agreement (Vintage with Euram) – Shri S. K. Goel.*

Execution of the *Account Charge Agreement* (IKF with Banco) alongwith *Credit Agreement* (Seazun with Banco) – Shri M. K. Goyal.

5.1.2 As per the SCN, Shri M. K. Goyal, Executive Director and Chief Executive Officer of IKF, being a signatory to the *Account Charge Agreement* in 2007, was 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.

5.1.3 In his reply, Shri M. K. Goyal admitted that he was a signatory to the *Account Charge Agreement (IKF with Banco)* in respect of the *Credit Agreement (Seazun with Banco)* as per the instructions of the Lead Manager i.e. Pan Asia Advisors Limited (“**Pan Asia**”) and Banco.

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

5.1.4 **GDR Issue I** – A *Credit Agreement* dated March 27, 2007, was executed between Seazun and Banco, whereby Seazun availed a loan of US \$11 million from Banco for subscribing to the GDR issue of IKF on March 30, 2007. As per the aforesaid *Credit Agreement*, -

- a. Banco shall make available to Seazun a Dollar Term–Loan Facility of upto US \$14 million for the purpose of subscription to GDRs issued by IKF.

- b. Banco shall not be under any obligation to make the Dollar Term–Loan Facility available to Seazun unless it has notified the borrower (Seazun) that it has received all the documents listed in Schedule 1 of the *Credit Agreement*, which included *inter alia* certified copies of board minutes and resolutions of IKF approving and authorizing the execution, delivery and performance by it of each Security Document (Deposit Charge i.e. Charge over the deposit made by IKF with Banco dated on or around the date of the *Credit Agreement*, and any other guarantee or document creating, evidencing or acknowledging security in respect of any of the obligations and liabilities of Seazun and IKF under the *Credit Agreement*, etc.) to which it is a party on the terms and conditions of those documents and authorizing person(s) to sign or otherwise attest the due execution of those documents and any other documents to be executed by it pursuant to those documents together with a certificate of a duly authorised officer of IKF setting out the names and signatures of the persons authorised to sign such documents on its behalf.

5.1.5 An *Account Charge Agreement* dated March 27, 2007, was executed between IKF and Banco. As per the aforesaid *Account Charge Agreement*, –

- i. IKF shall deposit in its designated account with Banco, an amount not exceeding US \$14 million as security for all the obligations of Seazun under the *Credit Agreement* (which was signed between Banco and Seazun by which Banco agreed to lend Seazun an amount of upto US \$14 million – However, actual loan availed by Seazun and loan disbursed by Banco was US \$11 million), which amount shall in turn be assigned and charged in favour of Banco as a continuing security for the due and punctual payment and discharge of the aforementioned obligations of Seazun, subject to the terms of the *Account Charge Agreement*.
- ii. Upon payment of all or part of the amounts due under the *Credit Agreement*, IKF may withdraw from the Account the equivalent amount.
- iii. Each and every notice or other communication to be given under the Agreement shall be made by letter or fax to:

IKF Technologies Ltd.,

Address: Block EP & GP, Plot No. XI-16, Sector V Salt Lake City, Kolkata 700091, India

Attention: Mr. Mukesh Kumar Goyal.

- iv. The *Account Charge Agreement* was signed on behalf of IKF by Shri M. K. Goyal.

5.1.6 From the Deposit Account Application and other Client Documents in respect of IKF's bank account with Banco, it is observed –

- i. The authorised signatory for the operation of the bank account was Shri M. K. Goyal (subsequently appointed as Chief Executive Officer and Director of IKF).

- ii. Shri M. K. Goyal irrevocably authorised Banco to carry out, as soon as practicable upon receipt, instructions transmitted by Telephone, Telefax and/or email, without waiting for a written confirmation by letter thereof.

5.1.7 The obligation of Seazun under the *Credit Agreement* was secured by IKF through the *Account Charge Agreement* whereby it deposited an amount of US \$11 million with Banco i.e. GDR subscription proceeds received from the subscriber – Seazun, which amount was assigned and charged in favour of Banco as a continuing security. Further, on examining the debits made from the said bank account of IKF and Seazun, it is found that it was only after part payment by Seazun of the amounts due under the *Credit Agreement* that IKF was able to withdraw funds from its bank account with Banco, in accordance with the terms of the *Account Charge Agreement*. The series of transactions in the account of IKF clearly indicate that IKF was never able to remit any amount from its account in excess of the amounts repaid by Seazun to Banco and the interest amount, which had accrued in its account. The remittances by IKF invariably followed part repayment of loan by Seazun and never preceded it. This is a clear indication that the withdrawal of GDRs proceeds by IKF was entirely dependent on the repayment by Seazun to Banco under the *Credit Agreement*.

5.1.8 This is illustrated in Table A:

TABLE A					
REPAYMENT OF LOAN BY SEAZUN AND CORRESPONDING REMITTANCE OF GDR PROCEEDS BY IKF					
<i>I</i> Date	<i>II</i> Loan repaid by Seazun (\$)	<i>III</i> Interest credited in the account of IKF (\$)	<i>IV</i> Amount remitted by IKF (\$)	<i>V</i> Cumulative of Loan repaid by Seazun and Interest credited in IKF's account as on date (\$)	<i>VI</i> Cumulative amount remitted by IKF as on date (\$)
21-06-2007	500,000	6,241.67		506,241.67	-
22-06-2007			500,000	506,241.67	500,000
25-06-2007	300,000	3,923.33		810,165.00	500,000
26-06-2007			300,000	810,165.00	800,000
02-07-2007		139,456.67		949,621.67	800,000
03-07-2007	670,000	398.28	475,000	1,620,019.95	1,275,000
05-07-2007	100,000	89.17	195,000	1,720,109.12	1,470,000
06-07-2007			200,000	1,720,109.12	1,670,000
11-07-2007	281,000	501.12	330,000	2,001,610.24	2,000,000
08-08-2007	325,000	1,931.94	325,000	2,328,542.18	2,325,000
14-08-2007	500,000	3,418.06	500,000	2,831,960.24	2,825,000
20-08-2007	675,000	5,216.25	500,000	3,512,176.49	3,325,000
21-08-2007			175,000	3,512,176.49	3,500,000
28-08-2007	500,000	4,458.33	500,000	4,016,634.82	4,000,000
04-09-2007	500,000	4,978.47	500,000	4,521,613.29	4,500,000
10-09-2007	300,000	3,254.58	300,000	4,824,867.87	4,800,000
14-09-2007	200,000	2,288.61	200,000	5,027,156.48	5,000,000
17-09-2007	500,000	5,944.44	500,000	5,533,100.92	5,500,000
21-09-2007	500,000	6,241.67	500,000	6,039,342.59	6,000,000
28-09-2007	**5,149,000	69,633.07	500,000	11,257,975.66	6,500,000
Total	11,000,000	257,975.66	6,500,000		
** IKF vide letter dated September 28, 2007, authorized Banco for transfer of US \$4.649 million plus interests and fees, from its account towards settlement of Seazun's outstanding loan on account of the Credit Agreement. Note: Columns II and IV, respectively represent the amount of loan repaid by Seazun and the amount remitted by IKF. For example, on 21.7.2007, Seazun repaid US \$500,000 to Banco. IKF remitted US \$500,000 on 22.6.2007. Similarly, on 8.8.2007, Seazun repaid US \$325,000. On the same day, IKF remitted US \$325,000 from its account. This has been the case with every single remittance into India except for a very brief period from 3.7.2007 to 11.7.2007, when the total amount remitted to India i.e. US \$1.2 million, exceeded the amount repaid by Seazun i.e. US \$1.051 million, by an amount of US \$149,000. However, this amount is more than covered by the interests credited to IKF's account on the deposit kept with Banco, which was more than US \$150,000 till then.					

- 5.1.9 From the certified copy of an extract from the Minutes of the Meeting of the Board of Directors of IKF held on January 31, 2007 (*certified by Shri M. K. Goyal*), which was received from Banco, the following is observed:

***“RESOLVED THAT** a bank account be opened with Banco Efisa S. A. Lisbon ("the Bank") or any branch of Banco Efisa S. A. 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. Mukesh Kumar, Authorised Person be and are 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. Mukesh Kumar, Authorised Person 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 Banco Efisa S. A. or any other branch of Banco Efisa S. A., Lisbon including 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."*

- 5.1.10 Shri M. K. Goyal was the *Authorised Person* on behalf of IKF for execution of *Account Charge Agreement (with Banco)* and other documents in relation to *GDR Issue*. Similarly, Shri M. K. Goyal was the Director and Chief Executive Officer of IKF. It was he who signed the *Account Charge Agreement (with Banco)* and other documents in relation to *GDR Issue*. It is evident from the stature of Shri M. K. Goyal that he was hugely important in the hierarchy of IKF. 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 *Account Charge Agreement*. It is significant to note that all the actions of IKF have been in accordance with the terms of the aforementioned *Agreement*.

- 5.1.11 As stated in the preceding paragraphs, events subsequent to the execution of the *Account Charge Agreement* clearly reveal that IKF did indeed use the funds deposited in its bank account as security for obligation of Seazun. Considering the aforesaid, the only conclusion that can be drawn is that Shri M. K. Goyal (Director and Chief Executive Officer of IKF) was in fact authorized by IKF for signing the *Account Charge Agreement* for operating the bank account as otherwise there was no reason for IKF to act as per the terms of such *Agreement*.

5.1.12 In view of the above, I find no merit in the submissions of Shri M. K. Goyal that he executed the *Account Charge Agreement (with Banco)* only at the instructions of Pan Asia.

Execution of the Pledge Agreement (IKF with Euram) alongwith the Loan Agreement (Vintage with Euram) – Shri S. K. Goel.

5.1.13 As per the SCN, Shri S. K. Goel, Promoter and Whole Time Director of IKF, being a signatory to the *Pledge Agreement* in 2009, was 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.

5.1.14 In his reply, Shri S. K. Goel submitted that he was a signatory to the *Pledge Agreement (IKF with Euram)* in respect of the *Loan Agreement (Vintage with Euram)* as per the instructions of the Lead Manager i.e. Pan Asia.

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

5.1.15 ***GDR Issue II*** – The *Loan Agreement* and *Pledge Agreement* between Euram, Vintage and IKF, were structured to further the fraudulent issuance and subscription of the *GDR Issue*.

5.1.16 Pan Asia, an entity owned and controlled by Shri Arun Panchariya, was appointed by IKF as the Lead Manager for its *GDR Issue*.

5.1.17 Vintage, an entity owned and controlled by Shri Arun Panchariya, entered into a *Loan Agreement* dated April 28, 2009, with Euram for availing of a loan of US \$10.98 million from Euram for subscribing to the *GDR Issue* of IKF on May 15, 2009.

5.1.18 The *Loan Agreement* was signed on behalf of Vintage by Shri Arun Panchariya, who was the Managing Director.

5.1.19 A *Pledge Agreement* dated April 28, 2009, was also executed between IKF and Euram.

5.1.20 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*, IKF agreed to pledge securities and funds existing in the account where GDR “*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.”

c. The *Pledge Agreement* was signed on behalf of IKF by Shri S. K. Goel.

5.1.21 The *Loan Agreement* and *Pledge Agreement* were both dated April 28, 2009. Immediately, thereafter, the *GDRs* were issued on May 15, 2009.

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

5.1.23 The obligation of Vintage under the *Loan Agreement* was secured by IKF through the *Pledge Agreement* whereby it deposited an amount of US \$10.98 million with Euram i.e. *GDR* subscription proceeds received from the subscriber – Vintage, which amount was assigned and charged in favour of Euram as a continuing security.

5.1.24 Further, on examining the debits made from the said bank account of IKF and Vintage, it is found that it was only after part payment by Vintage of the amounts due under the *Loan Agreement* that IKF was able to withdraw funds from its bank account with Euram, in accordance with the terms of the *Pledge Agreement*. The series of transactions in the account of IKF clearly indicate that IKF was never able to remit any amount from its account in excess of the amounts repaid by Vintage to Euram. The remittances by IKF always therefore, followed repayment of loan by Vintage and never preceded it. This is a clear indication that the withdrawal of *GDRs* proceeds by IKF was entirely dependent on the repayment by Vintage to Euram under the *Loan Agreement*. This is illustrated in **Table B** below:

TABLE B – REPAYMENT OF LOAN BY VINTAGE AND CORRESPONDING REMITTANCE OF GDR PROCEEDS BY IKF				
Date	<u>II</u> Loan repaid by Vintage as on date (\$)	<u>III</u> Amount remitted by IKF as on date (\$)	Cumulative amount repaid by Vintage (\$)	Cumulative amount remitted by IKF (\$)
23-07-2009	100,000	100,000	100,000	100,000
12-08-2009	1,675,000	1,675,000	1,775,000	1,775,000
08-09-2009	200,000	200,000	1,975,000	1,975,000
23-09-2009	200,000	200,000	2,175,000	2,175,000
16-11-2009	100,000	100,000	2,275,000	2,275,000
01-02-2010	204,000	200,000	2,479,000	2,475,000
10-03-2010	100,000	100,000	2,579,000	2,575,000
29-03-2010	231,000	231,000	2,810,000	2,806,000
06-04-2010	100,000	100,000	2,910,000	2,906,000
07-10-2010	500,000	500,000	3,410,000	3,406,000
04-11-2010	500,000	500,000	3,910,000	3,906,000
Total	3,910,000	3,906,000		
The important point to note is that part repayment by Vintage has always preceded the remittance made by IKF. Columns II and III, respectively represent the amount of loan repaid by Vintage and the amount remitted by IKF. For example, on July 23, 2009, Vintage repaid US \$100,000 to Euram. IKF remitted US \$100,000 on that same day.				

5.1.25 From the Deposit Account Application and other Client Documents in respect of IKF's bank account with Euram, it is observed that the authorised signatory for the operation of the bank account was Shri S. K. Goel (Whole Time Director and Promoter of IKF during GDR Issue in May 2009).

5.1.26 From the certified copy of an extract from the Minutes of the Meeting of the Board of Directors of IKF held on January 30, 2008, 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. Sunil Kumar Goel, Whole Time Director of the Company, 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. Sunil Kumar Goel, Whole Time Director of the Company, 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."*

5.1.27 As per the *Loan Agreement*, the amount of US \$10.98 million may only be transferred to Euram Account no. 540040. The aforesaid Account is the bank account of IKF maintained with Euram for the purpose of depositing proceeds of the *GDR Issue*. IKF, 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*).

5.1.28 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 IKF (Issuer Company) added to a guarantee by IKF for the loan taken by Vintage for subscription to the *GDR Issue*.

5.1.29 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 IKF 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 IKF. As detailed in the Table below, IKF 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, IKF's right as an Issuing Company of GDRs was locked up as illustrated below –

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
28.04.2009	28.04.2009	14.05.2009	10,98,84,878.44	25.07.2011

5.1.30 On May 23, 2009, IKF 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 IKF and the proceeds simultaneously pledged with Euram.

5.1.31 Shri S. K. Goel was the *Authorised Person* on behalf of IKF for execution of *Pledge Agreement (with Euram)* and other documents in relation to *GDR Issue*. Similarly, Shri S. K. Goel was the Promoter and Whole Time Director of IKF. It was he who signed the *Pledge Agreement* and other documents in relation to *GDR Issue*. It is evident from the stature of Shri S. K. Goel that he was hugely important in the hierarchy of IKF. 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 IKF have been in accordance with the terms of the aforementioned *Agreement*.

5.1.32 As stated in the preceding paragraphs, events subsequent to the execution of the *Pledge Agreement* clearly reveal that IKF did indeed use the funds deposited in its bank account as security for obligation of Vintage. Considering the aforesaid, the only and inescapable conclusion that can be drawn is that Shri S. K. Goel (Whole Time Director and Promoter of IKF during GDR Issue in May 2009) was in fact authorized by IKF for signing 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*.

5.1.33 In view of the above, I find no merit in the submissions of Shri S. K. Goel that he executed the *Pledge Agreement (with Euram)* only at the instructions of Pan Asia.

Conclusion –

5.1.34 The execution of the *Account Charge Agreement (with Banco) alongwith Credit Agreement (Seazun with Banco)* and *Pledge Agreement (with Euram) alongwith Loan Agreement (Vintage with Euram)*, effectively allowed IKF to help finance the purchase of its own shares (since it deposited the proceeds of GDR subscription as collateral for the loans provided by Banco and Euram, respectively). The aforesaid *Agreements* also enabled Seazun and Vintage (entity controlled and owned by Shri Arun Panchariya), to subscribe to the *GDR Issues* of IKF. The false declaration made by IKF through BSE regarding the initial subscribers to its *GDR Issues*, led investors in India to believe that IKF 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 IKF.

5.1.35 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."*

5.1.36 The very fact that the GDRs were issued pursuant to the alleged fraudulent arrangements resulting from the *Account Charge Agreement (with Banco)* in respect of *GDR Issue I* and the *Pledge Agreement (with Euram)* in respect of *GDR Issue II* and also the fact that the initial subscribers to such *GDR Issues* as declared by IKF largely did not exist, resulted in investors in India being led to believe (falsely) that the GDRs of IKF were highly valued by foreign investors thereby inducing them to trade in the securities of the Issuer Company. The aforesaid therefore, resulted in 'fraud' as defined under the PFUTP Regulations, 2003, being committed by IKF and its Directors, Shri M. K. Goyal and Shri S. K. Goel.

5.1.37 I, therefore, find that Shri M. K. Goyal and Shri S. K. Goel 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 M. K. Goyal, Shri R. P. Singh and Shri N. V. Simhadri are alleged to have failed in providing correct information and 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.

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

6.1.2 From the material available on record, it is observed that around 68.70% of total capital raised by IKF via *GDR Issue II* was routed to its foreign subsidiary viz. Biofuel FZE.

6.1.3 In order to examine the utilization of GDR proceeds, SEBI sought information from IKF, vide Summons dated January 12, 2012 and April 20, 2012.

6.1.4 In its replies dated February 1, 2012; February 10, 2012, to the Summons issued by SEBI dated January 12, 2012, IKF 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.

6.1.5 These statements were totally untrue since Shri M. K. Goyal knew that IKF had entered into an *Account Charge Agreement* with Banco and a *Pledge Agreement* with Euram. Further, in its aforementioned letters, IKF stated that it did not have any *Agreement/Understanding* with Vintage or Panchariya. This statement is also entirely untrue since the *Pledge Agreement* signed between IKF and Euram was an integral part of the *Loan Agreement* signed between Vintage and Euram. Similarly, it was mentioned in the *Pledge Agreement* that the *Pledgor* had received the *Loan Agreement* and agreed to its conditions. In response to a specific query raised by SEBI in the Summons dated January 12, 2012 i.e. whether there were any conditions regarding the withdrawal of funds from the account with Euram, IKF (vide letter dated February 1, 2012) failed to disclose the conditions imposed on that company on account of the *Pledge Agreement*

executed between IKF and Euram. Thus, Shri M. K. Goyal consistently provided false information and concealed material information during the investigation conducted in the instant proceedings.

6.1.6 With regard to the specific information regarding Biofuel FZE, Shri N. V. Simhadri (on behalf of IKF) provided partial information but failed to provide crucial information regarding the utilisation of funds by Biofuel FZE. Following information was not provided by IKF to SEBI –

- i. Bank Account statement of Biofuel FZE.
- ii. Details of nature of business and Audit Reports of Biofuel FZE for March 2010 and March 2011.
- iii. Details like name of entities involved, amount used, and purpose behind the purchases, expenses and payments done by Biofuel FZE.
- iv. Address, contact person and contact number for Biofuel FZE.

6.1.7 Despite several reminders, Shri N. V. Simhadri failed to submit complete information to SEBI.

6.1.8 As seen from the abovementioned facts, Shri M. K. Goyal and Shri N. V. Simhadri failed to comply with the aforesaid Summons issued by SEBI as they failed to furnish information and therefore, concealed material information from SEBI. Further, Shri M. K. Goyal and Shri N. V. Simhadri concealed information regarding the *Pledge Agreement* with Euram.

6.1.9 I find that material information, which was necessary to carry out investigations in the instant proceedings, were not furnished or were concealed by Shri M. K. Goyal and Shri N. V. Simhadri. As Directors of IKF, Shri M. K. Goyal and Shri N. V. Simhadri were under an obligation to ensure that correct information was provided promptly by IKF to SEBI. However, Shri M. K. Goyal and Shri N. V. Simhadri failed to ensure co-operation by IKF 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.

6.1.10 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...*"

- 6.1.11 Upon a consideration of the preceding paragraphs, I find that Shri M. K. Goyal and Shri N. V. Simhadri 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.
- 6.1.12 As regards Shri R. P. Singh, I do not find from the material on record that he was a signatory to the letters dated February 1, 2012 and February 10, 2012, nor had he appeared in connection with the Summons dated April 20, 2012. I am, therefore, of the view that sufficient facts have not been brought out to show his involvement in the concealment of material information from and for failure to provide correct information to SEBI.

Role of other Promoters and Directors of IKF – Shri R. P. Singh, Shri Pankaj Garg, Shri Anant P. Saxena and Shri Pradeep Dutta.

- 7.1.1 As per the SCN, Shri R. P. Singh, Shri Pankaj Garg, Shri Anant P. Saxena and Shri Pradeep Dutta, being Directors and Promoters of IKF, controlled IKF 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 IKF.
- 7.1.2 In their replies to the SCN, Shri R. P. Singh denied any involvement in *GDR Issue I* and *GDR Issue II* of IKF. Shri Anant P. Saxena denied any involvement in *GDR Issue I* of IKF. Shri Pradeep Dutta denied any involvement in *GDR Issue II* of IKF. However, the opportunity of hearing was not availed by them.
- 7.1.3 No reply was received from Shri Pankaj Garg. Further, the opportunity of hearing was not availed by him.
- 7.1.4 I note that Shri R. P. Singh, Shri Pankaj Garg, Shri Anant P. Saxena and Shri Pradeep Dutta, being Directors and Promoters of IKF, have neither signed the *Account Charge Agreement* or the *Pledge Agreement* nor were they the authorized signatories on behalf of IKF for its bank account with Banco or Euram. I also note that sufficient proof has not been made available to show their direct involvement in the fraud perpetrated through *GDR Issue I* and *GDR Issue II* of IKF. However, I note that being Directors and Promoters of IKF, the aforementioned entities cannot be said to have been unaware of the activities of IKF.

Role of other Promoters of IKF – Green Open Technologies, Shree Assets Reconstruction and Premium Linkers.

- 7.1.5 Green Open Technologies, Shree Assets Reconstruction and Premium Linkers, being Promoters of IKF, controlled IKF 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 IKF.
- 7.1.6 In their replies to the SCN, the aforementioned entities have denied any involvement in the *GDR Issue I* and *GDR Issue II* of IKF.
- 7.1.7 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 I* and *GDR Issue II*. It is observed that the scrip of IKF was earlier under examination by SEBI for fraud perpetrated by its Promoters and Directors. Considering the magnitude of the alleged market manipulation through *GDR Issue I* and *GDR Issue II*, SEBI was justified in issuing an SCN against the aforementioned entities who were shown as Promoters by IKF in its quarterly shareholding pattern for the quarter ending June 30, 2009, filed with BSE.
- 7.1.8 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 IKF and were responsible for the conduct of its business at the time of the *GDR Issue* in May 2009. Having arrived at this finding, I am of the view that the SCN against the aforementioned Promoters needs to be disposed of.

Conclusion –

- 8.1.1 As noted above, the *modus operandi* adopted by IKF 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 IKF 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.
- 8.1.2 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 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.”

8.1.3 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.

8.1.4 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, IKF with the aid of its Directors, etc. conceived the fraudulent arrangement with Seazun and Vintage with regard to the subscription of *GDR Issue 1 and 2*, respectively, and failed to provide correct information and also concealed information from SEBI.

8.1.5 For reasons detailed in the preceding paragraphs, I have no hesitation in concluding that Shri Mukesh Kumar Goyal and Shri Sunil Kumar Goel 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 Mukesh Kumar Goyal, Shri Pradeep Dutta and Shri N. V. Simhadri failed to provide correct information and also concealed material information from SEBI in violation of Section 11C(3) of the SEBI Act. All the aforementioned entities have 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 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 **ten years** from the date of this Order, –

	ENTITY	PAN
1.	CLIFFORD CAPITAL PARTNERS AG SA [ERTSWHILE SEAZUN LIMITED]	NOT AVAILABLE
2.	SHRI SUNIL KUMAR GOEL	AJTPG6767G
3.	SHRI MUKESH KUMAR GOYAL	AIIPG8861B

- ii. 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 N. V. SIMHADRI	AAXPN4219P

- iii. 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 PRADEEP DUTTA	AACPD4968Q
2.	SHRI R. P. SINGH	AQJPS0184L
3.	SHRI PANKAJ GARG	AFXPG6932R
4.	SHRI ANANT P. SAXENA	AAAPS0862L

- iv. I hereby also dispose of the SCN dated October 21, 2014, against the following entities, without any further directions, viz.

	ENTITY	PAN
1.	GREEN OPEN TECHNOLOGIES PRIVATE LIMITED	AAACG0133F
2.	SHREE ASSETS RECONSTRUCTION LIMITED	AAHCS3657D
3.	PREMIUM LINKERS LIMITED	AAACP1111G

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