

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 ASAHI INFRASTRUCTURE & PROJECTS LIMITED –

IN RESPECT OF –

	ENTITY	PAN
1.	ASAHI INFRASTRUCTURE AND PROJECTS LIMITED	AAACA8777F
2.	SHRI LAXMINARAYAN JAINARAYAN RATHI	ABDPR9730L
3.	SHRI GAURANG SHAH	BGGPS1405N
4.	SHRI NILESH M. BHAIYYA	ABGPB2291K
5.	SHRI VENKATRAO KARRI	AOBPK0250M
6.	SHRI HEMENDRA KANJIBHAI SHAH	AKGPS2064L
7.	SHRI LAXMINARAYANA PARESH RATHI	AGMPR5511M
8.	SHRI ANAND MOHANLAL CHATURVEDI	ADAPC4826H
9.	SHRI LAXMINARAYAN JATINNARAYAN RATHI	ACIPR1208F
10.	PARIWAR LEASE FINANCE & INVESTMENT COMPANY LTD	NOT AVAILABLE
11.	SMT LAXMINARAYANA SHAKUNTALA RATHI	AAYPR6674B

Background –

- 1.1 In view of certain irregularities observed in the issuance of Global Depository Receipts (“GDRs”) by Asahi Infrastructure & Projects Limited (“Asahi”), 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 Asahi on December 30, 2011 (“Confirmatory Order”). Vide the aforesaid Confirmatory Order, SEBI *permitted conversion of outstanding warrants issued by Asahi, 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. Asahi;
- ii. Shri Laxminarayan Jainarayan Rathi;
- iii. Shri Gaurang Shah;
- iv. Shri Nilesh M. Bhaiyya;
- v. Shri Venkatrao Karri;
- vi. Shri Hemendra Kanjibhai Shah;
- vii. Shri Laxminarayana Paresb Rathi;
- viii. Shri Anand Mohanlal Chaturvedi;
- ix. Shri Laxminarayan Jatinnarayan Rathi;
- x. Pariwar Lease Finance & Investment Company Limited;
- xi. Smt Laxminarayana Shakuntala Rathi.

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 Asahi on April 28, 2009 (“**GDR Issue**”).

2.3 The SCN states –

- i. In *GDR Issue*, 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.
- ii. However, vide letters dated June 1, 2009 and November 2, 2011, Asahi informed SEBI and BSE Limited (“**BSE**”) that the following entities were the initial subscribers of the aforesaid Issue, viz. –
 - a. Greenwich Management Inc.;
 - b. Tradetec Corporation;
- iii. As the authorised signatory for Asahi, Shri Laxminarayan Jainarayan Rathi (Chairman and Managing Director of Asahi during *GDR Issue* in April 2009) signed a *Pledge Agreement* dated April 21, 2009, with European American Investment Bank AG (“**Euram**”). Shri

Laxminarayan Jainarayan Rathi was also the authorised signatory for Asahi's bank account with Euram.

- iv. The *Pledge Agreement* (signed between Asahi and Euram) was an integral part of another agreement viz. *Loan Agreement* dated April 22, 2009, signed between Vintage and Euram. These Agreements enabled Vintage to avail a loan of US \$5.98 Million from Euram for subscribing to the *GDR Issue* of Asahi in April 2009.
- v. In terms of the *Pledge Agreement*, Asahi 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 Asahi 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 (Asahi with Euram)*, Asahi 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, Asahi concealed this crucial information and portrayed that *GDR Issue* was successfully subscribed by few foreign investors thereby resulting in that company not having free funds to the tune of US \$5.98 Million at the time of *GDR Issue*.
- viii. Around 70.01% of total capital raised by Asahi via *GDR Issue* was routed to its foreign subsidiary viz. Asahi FZE.
- ix. Asahi transferred around 44.68% of *GDR Issue* proceeds to entities *prima facie* connected with Shri Arun Panchariya. Further, Asahi did not furnish any explanation regarding the rationale for transactions with various entities such as K Sera Sera Production FC LLC ("**K Sera**"), Ababil Star Trading and Cat Technologies Limited. Asahi FZE made payments totaling US \$2 Million to Vintage, the subscriber of the *GDR Issue* of Asahi. Asahi did not provide any further rationale for the payments.

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. Asahi was alleged to have violated Sections 12A(a)–(c) of the SEBI Act read with Regulations 3(b)–(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations, 2003 and Section 77(2) and 77(4) of the Companies Act, 1956;
- ii. Shri Laxminarayan Jainarayan Rath (Promoter, Chairman and Managing Director of Asahi) 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. Asahi and Shri Laxminarayan Jainarayan Rath 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 20, 2012 and May 3, 2012, as issued by SEBI;
- iv. As per Section 27 of the SEBI Act, Shri Gaurang Shah, Shri Nilesh M. Bhaiyya, Shri Venkatrao Karri, Shri Hemendra Kanjibhai Shah and Shri Laxminarayana Paresh Rath, being Directors of Asahi, were liable to be proceeded against. Shri Hemendra Kanjibhai Shah, Shri Laxminarayana Paresh Rath, being Promoters of Asahi, controlled Asahi 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 Asahi.
- v. Shri Anand Mohanlal Chaturvedi, Shri Laxminarayan Jatinnarayan Rath, Pariwar Lease Finance & Investment Company Limited and Smt Laxminarayana Shakuntala Rath, being Promoters of Asahi, controlled Asahi 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 Promoters of Asahi.

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 25, 2017 –

- i. The following entities i.e. no. 5 and 6 of the SCN dated December 18, 2014, appeared for hearing –
 - Shri Venkatrao Karri;
 - Shri Hemendra Kanjibhai Shah;
- ii. The following entities i.e. no. 1–4, 7–11 of the SCN dated December 18, 2014, did not appear for hearing –
 - Asahi;
 - Shri Laxminarayan Jainarayan Rathi;
 - Shri Gaurang Shah;
 - Shri Nilesh M. Bhaiyya;
 - Shri Laxminarayana Paresh Rathi;
 - Shri Anand Mohanlal Chaturvedi;
 - Shri Laxminarayan Jatinnarayan Rathi;
 - Pariwar Lease Finance & Investment Company Limited;
 - Smt Laxminarayana Shakuntala Rathi.

b. June 7, 2017 –

- i.
- ii. The following entities i.e. no. 1, 2, 4, 7–9, 11 of the SCN dated December 18, 2014, appeared for hearing –
 - Asahi;
 - Shri Laxminarayan Jainarayan Rathi;
 - Shri Nilesh M. Bhaiyya;
 - Shri Laxminarayana Paresh Rathi;

- Shri Anand Mohanlal Chaturvedi;
- Shri Laxminarayan Jatinnarayan Rathi;
- Smt Laxminarayana Shakuntala Rathi.

- iii. Entity no. 10 of SCN dated December 18, 2014 i.e. Pariwar Lease Finance & Investment Company Limited, did not appear for hearing.
- iv. Entity no. 3 of SCN dated December 18, 2014 i.e. Shri Gaurang Shah, waived off his right to a personal appearance in the hearing.

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

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

- a. ***“No jurisdiction by SEBI in respect of the GDR Issued by us, in the facts and circumstances of the case – The Hon’ble Supreme Court in the case of SEBI vs. Pan Asia Advisors Limited, has laid down that SEBI has jurisdiction to take action against companies issuing GDRs only if such issue has an adverse impact on the Indian securities markets. In other words, unless it is shown by SEBI that the issue of GDRs by a company adversely impacted the Indian securities market, it would have no jurisdiction for taking action in a matter arising out of a GDR Issue. SEBI must establish that the same had adversely impacted the Indian Securities Market. In the present case, while in the captioned SCN issued by SEBI, there is no specific allegation that alleged activities in respect of the GDR Issued by us adversely impacted the Indian securities market as such, it merely makes bald statements to the effect that we had perpetrated fraud and deceit on the investors in India by inducing them to deal in the shares of our company. However, the SCN does not present even an iota of evidence, either by way of data or otherwise, that the investors in the Indian securities market were in fact induced to deal in our shares due to our alleged activities and manipulations. Mere statements, made without any basis or evidence, do not hold any credibility in the eyes of law, especially when the same would result in determination of the question whether one has jurisdiction or otherwise. It is, therefore, submitted that present SCN has completely failed to establish as to how the GDR Issue in dispute adversely impacted the Indian securities market, which is a pre-requisite (as per the aforesaid settled position of law laid down in this regard by the Hon’ble Supreme Court) for SEBI to claim jurisdiction in respect of a GDR Issue. It is thus, respectfully submitted that the present SCN deserves to be quashed and set aside on this ground alone.***
- b. ***No action having been taken by the Ministry of Finance and the Reserve Bank of India under whose administrative control the issue of GDRs fall, as per SEBI’s own Board***

Memorandum dated 19.05.2010 – It is submitted that while SEBI’s jurisdiction in respect of GDRs is limited as per the law laid down by the Supreme Court, it cannot be denied that the provisions relating to issue of GDRs fall within the administrative control of the Ministry of Finance and the RBI. The relevant extract of the Board memorandum is reproduced below –

“... it may be noted that the provisions relating to issue of ADRs/GDRs and matters incidental thereto fall within the administrative control of the Ministry of Finance/RBI.”

- c. **No action having been taken by foreign regulatory authorities in whose jurisdiction the GDRs were issued** – The regulatory authorities of the country in which the GDR is issued also have the jurisdiction to take action in respect of the matters arising therefrom if it finds any discrepancy or violation of law. In the present case, even the foreign regulatory authorities in whose jurisdiction the GDRs were issued by us have not chosen to take action against any party, which leads to the implied conclusion that they also did not find any discrepancy in the GDRs issued by us.
- d. **No violation of Section 77(2) read with Section 77(4) of the Companies Act, 1956, having been committed** – The SCN has completely erred in contending that Asahi committed a violation of Section 77(2) read with Section 77(4) of the Companies Act, 1956. While making this contention, SCN has relied upon our alleged arrangement with Vintage vis – a – vis the aforementioned Loan Agreement dated 21.04.2009 as also the Pledge Agreement dated 21.04.2009.

In so far as observations stated in the said paragraphs are concerned, we wish to submit as under:

- Shri Arun Panchariya being the founder and Director of Vintage was neither known to us nor were we concerned with the management and control of the same being vested with Mr. Arun Panchariya.
- As regards the Pledge Agreement dated 21.04.2009 and the Loan Agreement dated 21.04.2009, it is submitted that since our company was issuing the GDR for the first time, it was not conversant with the compliances, paperwork and formalities required for the same and had completely relied upon the advice and instructions of expert professionals it had engaged in this regard. The company had no reason to doubt the said expert advice being rendered to it by recognised professionals and therefore, it is submitted that no adverse inference can be drawn against us in this regard.
- As regards Mr. Laxminarayan Jainarayan Rathi, the Managing Director of Asahi, being the signatory to the said Pledge Agreement as also being the authorized signatory of the account with EURAM, it is submitted that the same was a result of the reliance placed by Asahi on the professional advice received by it. We categorically state and deny that our company never instructed or authorized any person to enter into aforesaid Pledge Agreement. The same can best be

termed as oversight and therefore, no incriminating inference can be drawn against the Company.

- e. *The SCN has merely made a bald statement that the aforesaid alleged arrangement induced other persons to offer to buy shares in our company. However, no evidence either by way of any data or otherwise has been furnished along with the SCN.*
- f. ***Allegation regarding no free capital being available for issuance of GDRs being unsustainable*** – *One fails to understand that if the capital raised through the said GDRs was freely available, how could the same been routed to our foreign subsidiary. In this regard, it is submitted that in fact amounts were kept in an interest bearing fixed deposit in EURAM which our company earned interest. Therefore, it is incorrect to say that there was no free capital available with the company for issuance of GDRs.*
- g. ***Allegation regarding furnishing misleading information that the GDRs were fully subscribed by the foreign companies other than Vintage*** – *It is submitted that the names of the subscribers to the issue were furnished to the BSE on the basis of the subscription letter dated 29th April 2009 issued by Deutsche Bank which was a Depository to the GDR. We had forwarded the information to the BSE under bona fide belief on the basis of the said subscription letter dated 29th April, 2009 and therefore, the allegation that we had furnished misleading information is totally unsustainable.*
- h. ***Address of Greenwich Management Inc. and Tradetec Corporation having been found invalid*** – *The address of the said entities were only with the Depository to the GDR and not with us and therefore, no adverse inference can be drawn against us on this basis.*
- i. ***Allegation of false information having been caused to be published and disclosed to BSE by us so as to use the artifice and misleading information to induce investors in India to deal with our shares, being unsustainable*** – *It has been established beyond doubt, no misleading information was furnished by us to BSE and that all the said information was furnished by us under the bona fide belief of its truth and accuracy on the basis of the documents received by us in that regard.*

No violation of Sections 12A(a)–(c) 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, committed by Asahi.

- j. *In so far as the alleged violation of Section 12 (A) (a) of the SEBI Act is concerned, it is submitted that we have throughout our conduct of business and as a matter of company policy maintained highest standards of compliance, fairness, integrity and ensured the interests of our investors. From the submissions made by us in the foregoing paragraphs it has been abundantly established that we have never, directly or indirectly, employed any manipulative or deceptive device or contrivance, in relation to the issue, purchase or sale of any shares listed or proposed to be listed on a recognized stock exchange, in contravention of the SEBI Act and rules or regulations*

made thereunder. Therefore, the Notice has completely erred in alleging that we have violated Section 12A (a) of the SEBI Act.

- k. In so far as the alleged violation of Section 12(A)(b) of the SEBI Act is concerned, it is submitted that from the submissions made in the foregoing paragraphs it clearly comes out that we have never, directly or indirectly, employed 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 recognized stock exchange. Therefore, the Notice has completely erred in alleging that we have violated Section 12A (b) of the SEBI Act.*
- l. In so far as the alleged violation of Section 12(A)(c) of the SEBI Act is concerned, it is submitted that from the submissions made in the foregoing paragraphs it clearly comes out that we have never, directly or indirectly, engaged ourselves in any act, practice, course of business which operates as or would operate as a fraud or deceit upon any person, in connection with the issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the SEBI Act and rules or regulations made thereunder. Therefore, the Notice has completely erred in alleging that we have violated Section 12A(c) of the SEBI Act.*
- m. In so far as Regulation 3(b) of the PFTUP Regulations is concerned, it is submitted that from the submissions made by us in the foregoing paragraphs it has been abundantly established that we have never, directly or indirectly, employed any manipulative or deceptive device or contrivance, in relation to the issue, purchase or sale of any shares listed or proposed to be listed on a recognized stock exchange, in contravention of the SEBI Act and rules or regulations made thereunder. Therefore, the Notice has completely erred in alleging that we have violated Section Regulation 3(b) of the PFUTP Regulations.*
- n. In so far as the alleged violation of Regulation 3(c) of the PFUTP Regulations is concerned, it is submitted that from the submissions made in the foregoing paragraphs it clearly comes out that we have never, directly or indirectly, employed 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 recognized stock exchange. Therefore, the Notice has completely erred in alleging that we have violated Regulation 3(c) of the PFUTP Regulations.*
- o. In so far as the alleged violation of Regulation 3(d) of the PFUTP Regulations is concerned, it is submitted that from the submissions made in the foregoing paragraphs it clearly comes out that we have never, directly or indirectly, engaged ourselves in any act, practice, course of business which operates as or would operate as a fraud or deceit upon any person, in connection with the issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the SEBI Act and rules or regulations made thereunder. Therefore, the Notice has completely erred in alleging that we have violated Regulation 3(d) of the PFUTP Regulations.*

- p. *In so far as the alleged violation of Regulation 4(2) (c) of the PFUTP Regulations is concerned, it is submitted that: from the submissions made in the foregoing paragraphs it clearly emerges that we have neither advanced nor agreed to advance any money to any person thereby inducing any other person to offer to buy security in any issue only with intention of securing minimum subscription to such issue; there is no allegation in the Notice that such the alleged money advanced by us was with an intention of securing minimum subscription to an issue; or with an intention to induced the general public in India to deal with our shares; Therefore, the Notice has completely erred in alleging that we have violated Regulation 4(2)(c) of the PFUTP Regulations.*
- q. *In so far as the alleged violation of Regulation 4(2)(f) of the PFUTP Regulations is concerned, it is submitted that from the submissions made in the foregoing submissions), it has been established beyond doubt that we have not published or caused to be published or caused to be reported by any person dealing in securities any information which is not true or which we did not believe to be true prior to or in the course of dealing in securities. It is reiterated that any information furnished by us to the BSE was under the bona fide belief of its truth and accuracy and on the basis of the valid documents.*
- r. *In so far as the alleged violation of Regulation 4(2)(k) of the PFUTP Regulations is concerned, it is submitted that: From the submissions made in the foregoing submissions, it has been established beyond doubt we have never carried out any advertisement that was misleading or that contained information in a distorted manner and which could influence the decision of the investors. Without prejudice to the above, the Notice does contain any allegation as to any such 'advertisement' having been carried by us. Therefore, the Notice has completely erred in alleging that we have violated Regulation 4(2)(k) of the PFUTP Regulations.*
- s. *In so far as the alleged violation of Regulation 4(2)(r) of the PFUTP Regulations is concerned, it is submitted that: it has been established beyond doubt we have never planted any news which could induce sale or purchase of securities.*
- t. ***Allegation in the SCN regarding mala fide intention on our part to hamper and mislead the investigation carried out by SEBI, being unsustainable – Our submissions are as follows –***
- *As regards para 3(i) of the SCN, it is submitted that the information furnished by us in our statement dated 16.04.2012, were given to the best of our knowledge and as per our best understanding of questions posed to us. In so far as the Pledge Agreement was concerned, as aforesaid, the same can at best be termed as an oversight due to the huge volumes of the documentation involved.*
 - *As regards para 3(ii) of the SCN, we deny any knowledge about Pan Asia and Vintage being associated and that Mr. Arun Panchariya was associated with both the said entities.*

- *As regards para 3(iii) of the SCN, we had provided all the information sought for to the best of our understanding vide our letters dated 30.04.2012 and 09.05.2012.*
- *As regards para 3(iv) of the SCN, we submit that the observation that we had transferred 44.68% of the GDR Issue proceeds to entities primarily to the entities connected with Mr. Arun Panchariya as baseless and unfounded and also deny that we had paid Vintage towards compensating for subscription of GDRs. In so far as our business transactions with K. Sera, Ababil and CAT Technologies are concerned, it is submitted that the same were transactions in the ordinary course of business.*
- u. ***Allegation in the SCN regarding violation of Section 11C(3) of the SEBI on account on non-furnishing of adequate information to indicate utilization of the GDR proceeds by our subsidiary, is unsustainable.”***

- ii. **Shri Laxminarayan Jainarayan Rathi** – Vide a reply dated May 21, 2017, he *inter alia* submitted:

“I am the Promoter, Chairman and Managing Director of Asahi. It is submitted that while it is true that I am engage in the day to day affairs of Asahi, however that mere fact cannot be used to draw an adverse inference against me.

I will rely upon the detailed submissions made by Asahi in its main reply dated May 21, 2017, as if they were part and parcel of this reply. From the submissions made by Asahi in its said reply, it has been abundantly established that allegations and violations attributed to it are without any basis and cannot be sustained. In as much as the entire basis for proceeding against me under Section 27 of the SEBI Act was alleged, offences committed by Asahi, once it has been established that the proceedings against Asahi itself are not sustainable, the question of fixing liability on me in this regard does not arise at all...”

- iii. **Shri Gaurang Shah** – Vide a reply dated February 27, 2015, he *inter alia* submitted:

“I was appointed as a Non – Executive Non – Promoter Independent Director on Board of Directors of the Company w.e.f. January 31, 2008. I (submitted) my resignation letter to the company w.e.f. 1st April, 2009. The company acknowledged my resignation vide letter dated 5th April, 2009.

Sir, my appointment, resignation and acceptance by company clearly shows that I was Non– Executive, Non–Promoter and Independent Director on Board of Directors of Asahi for a very brief period of 15 months.

I was not responsible for day to day management of the company nor have any signing authority. I was not a shareholder/promoter of the company and have not earned any income from the company. Hence, I should not be held responsible for any offence incurred

by its Directors/Promoters. The various Courts have pronounced judgments absolving Independent Directors of such violations and misdeed of Promoter/Director of the Company. Sir, further to explain my innocence and to prove that I was not in any way involved/connected with issue of GDR in April 2009, by Asahi, I have to state that before issue of GDR I had resigned and company has accepted my resignation."

- iv. **Shri Nilesh M. Bhaiyya** – Vide a reply dated May 21, 2017, he *inter alia* submitted:

"I am an Independent Director of Asahi and am neither engaged in day to day affairs of the main noticee nor was involved in the issuance of the GDRs in consideration. Therefore, no adverse inference can be drawn against me in respect of issuance of GDR by Asahi merely because I am its Independent Director.

Further, I submit that the conclusion arrived at in Para 8 of the SCN that merely because I was one of the Promoters of Asahi, I controlled (it) and was responsible for the conduct of its business is completely without any basis and the same is categorically denied by me.

I will rely upon the detailed submissions made by Asahi in its main reply dated May 21, 2017, as if they were part and parcel of this reply. From the submissions made by Asahi in its said reply, it has been abundantly established that allegations and violations attributed to it are without any basis and cannot be sustained. In as much as the entire basis for proceeding against me under Section 27 of the SEBI Act was alleged, offences committed by Asahi, once it has been established that the proceedings against Asahi itself are not sustainable, the question of fixing liability on me in this regard does not arise at all..."

- v. **Shri Venkatrao Karri** – Vide a reply dated May 21, 2017, he *inter alia* submitted:

"I am an Independent Director of Asahi and am neither engaged in day to day affairs of the main noticee nor was involved in the issuance of the GDRs in consideration. Therefore, no adverse inference can be drawn against me in respect of issuance of GDR by Asahi merely because I am its Independent Director.

Further, I submit that the conclusion arrived at in Para 8 of the SCN that merely because I was one of the Promoters of Asahi, I controlled (it) and was responsible for the conduct of its business is completely without any basis and the same is categorically denied by me.

I will rely upon the detailed submissions made by Asahi in its main reply dated May 21, 2017, as if they were part and parcel of this reply. From the submissions made by Asahi in its said reply, it has been abundantly established that allegations and violations attributed to it are without any basis and cannot be sustained. In as much as the entire basis for proceeding against me under Section 27 of the SEBI Act was alleged, offences committed by Asahi, once it has been established that the proceedings against Asahi itself are not sustainable, the question of fixing liability on me in this regard does not arise at all..."

- vi. **Shri Hemendra Kanjibhai Shah** – Vide replies dated March 9, 2015 and May 22, 2017, he *inter alia* submitted as under:

“The undersigned was never a part of the Promoter Group in the Company.

The undersigned was never ever involved in the day to day affairs nor was involved in the policy making decisions since he did attend only couple of Board Meetings during the entire terms as Director.

I was appointed as an Independent Non-Executive Director of the Company on 30th April, 2002. Subsequently, on 17th October, 2008, I had tendered my resignation showing my intention to resign as Director with immediate effect. The company had duly accepted my resignation.

Pursuant to the SCN, undersigned learnt that though the undersigned had tendered his resignation on 17th October 2008, however, under fraud and deception the company had prepared new resignation letter dated 23.4.2010, wherein my signature had been forged, thereafter, the said letter submitted before ROC. Comparing the signature done by the undersigned in resignation letter dated 17th October 2008 as well as in passport, apparently the signature in the resignation letter dated 23.4.2010 would differ.

It is pertinent to bring to the notice of the Hon’ble Authority that on receipt of the SCN dated 16th/18th December, 2014, after considering the allegation, the undersign has sent a notice through RPAD to the company registered address on 19th February, 2015, calling upon the company to provide certain explanation, the record of minutes and other requisite documents. However, the acknowledgment receipt serving the aforesaid notice endorsing that the company has left the premises and therefore, the notice was un-served. Therefore, the undersigned did not have complete record to establish a fraud played by the company with the undersigned.

I tis submitted that from a bare perusal of the SCN, would not ascribe any role whatsoever in nature attributed against the undersigned, therefore, the undersigned cannot be made vicariously liable for the alleged acts committed by or on behalf of the company in issuing GDR. It is pertinent that the aforesaid provisions do not spell out that Directors of a company shall be vicariously liable for the offences committed by a company. In the absence of any such provision, the undersigned as a Director shall not be held prima facie guilty of the violations therefore, the SCN is completely without jurisdiction.”

- vii. **Shri Laxminarayana Paresh Rathi** – Vide a reply dated May 21, 2017, he *inter alia* submitted:

“I am one of the Promoters and designated as the Chief Financial Officer of Asahi. It is submitted that while it is true that I was overlooking the financial affairs of Asahi, I was not engaged in the issuance of the GDR in consideration. Therefore, no adverse inference can be drawn against me in respect of issuance of GDR by Asahi merely because I am one of its Promoters.

Further, I submit that the conclusion arrived at in Para 8 of the SCN that merely because I was one of the Promoters of Asahi, I controlled (it) and was responsible for the conduct of its business is completely without any basis and the same is categorically denied by me.

I will rely upon the detailed submissions made by Asahi in its main reply dated May 21, 2017, as if they were part and parcel of this reply. From the submissions made by Asahi in its said reply, it has been abundantly established that allegations and violations attributed to it are without any basis and cannot be sustained. In as much as the entire basis for proceeding against me under Section 27 of the SEBI Act was alleged, offences committed by Asahi, once it has been established that the proceedings against Asahi itself are not sustainable, the question of fixing liability on me in this regard does not arise at all..."

viii. **Shri Anand Mohanlal Chaturvedi** – Vide a reply dated May 19, 2017, he *inter alia* submitted:

"I am registered as Sub-broker for J. G. Shah Financial Consultants Private Limited.

During the course of my business, Mr. Vijay Chaturvedi, one of my clients, transferred 5,00,000 equity shares of Asahi to my account on his behalf to be sold as per his instruction. After verification, it was learnt that 5,00,000 equity shares of Asahi, which were transferred to my DP Account are not transferred from Mr. Vijay Chaturvedi's account by it was transferred from an unknown account.

Mr. Vijay Chaturvedi (directed) me to sell the above referred equity shares but since the said shares were transferred from an unknown account the same were not sold and are still in my demat account. ...

On receipt of your hearing notice dated April 26, 2017, and on verification of the shareholding pattern of the Company for the quarter ended September 2007, available on the BSE website, it came to my knowledge that my name is reflecting under the category of 'Public and holding more than 1% of total number of shares'. In serial number 8 of this statement 5,05,096 equity shares are shown against my name.

During the quarter ended December 2007, the Promoter of Asahi with ulterior motive included my name alongwith other Promoters of the company without my knowledge and consent.

I am not concerned or related to the Company and its Promoters at any point of time nor have dealt in GDR Issues.

ix. **Shri Laxminarayan Jatinnarayan Rathi** – Vide a reply dated May 21, 2017, he *inter alia* submitted:

"I am one of the Promoters of Asahi; however, I am not engaged in day to day affairs of the main noticee and not at all engaged in the issuance of the GDRs in consideration. Therefore, no adverse inference can be drawn against me in respect of issuance of GDR by Asahi merely because I am one of its Promoters.

Further, I submit that the conclusion arrived at in Para 8 of the SCN that merely because I was one of the Promoters of Asahi, I controlled (it) and was responsible for the conduct of its business is completely without any basis and the same is categorically denied by me.

I will rely upon the detailed submissions made by Asahi in its main reply dated May 21, 2017, as if they were part and parcel of this reply. From the submissions made by Asahi in its said reply, it has been abundantly established that allegations and violations attributed to it are without any basis and cannot be sustained. In as much as the entire basis for proceeding against me under Section 27 of the SEBI Act was alleged, offences committed by Asahi, once it has been established that the proceedings against Asahi itself are not sustainable, the question of fixing liability on me in this regard does not arise at all..."

- x. **Pariwar Lease Finance & Investment Company Limited** – No reply (to the SCN) was received by SEBI.
- xi. **Smt Laxminarayana Shakuntala Rathi** – Vide a reply dated May 21, 2017, she *inter alia* submitted:

"I am one of the Promoters of Asahi; however, I am not engaged in day to day affairs of the main noticee and not at all engaged in the issuance of the GDRs in consideration. Therefore, no adverse inference can be drawn against me in respect of issuance of GDR by Asahi merely because I am one of its Promoters.

Further, I submit that the conclusion arrived at in Para 8 of the SCN that merely because I was one of the Promoters of Asahi, I controlled (it) and was responsible for the conduct of its business is completely without any basis and the same is categorically denied by me.

I will rely upon the detailed submissions made by Asahi in its main reply dated May 21, 2017, as if they were part and parcel of this reply. From the submissions made by Asahi in its said reply, it has been abundantly established that allegations and violations attributed to it are without any basis and cannot be sustained. In as much as the entire basis for proceeding against me under Section 27 of the SEBI Act was alleged, offences committed by Asahi, once it has been established that the proceedings against Asahi itself are not sustainable, the question of fixing liability on me in this regard does not arise at all..."

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

	NAME	DESIGNATION
1.	SHRI LAXMINARAYAN JAINARAYAN RATHI	PROMOTER, CHAIRMAN AND MANAGING DIRECTOR
2.	SHRI GAURANG SHAH	INDEPENDENT NON-EXECUTIVE DIRECTOR
3.	SHRI NILESH M. BHAIYYA	INDEPENDENT NON-EXECUTIVE DIRECTOR
4.	SHRI VENKATRAO KARRI	INDEPENDENT NON-EXECUTIVE DIRECTOR
5.	SHRI HEMENDRA KANJIBHAI SHAH	INDEPENDENT NON-EXECUTIVE DIRECTOR
6.	SHRI LAXMINARAYANA PARESH RATHI	PROMOTER AND DIRECTOR
7.	SHRI ANAND MOHANLAL CHATURVEDI	PROMOTER
8.	SHRI LAXMINARAYAN JATINNARAYAN RATHI	PROMOTER
9.	PARIWAR LEASE FINANCE & INVESTMENT COMPANY LIMITED	PROMOTER
10.	SMT LAXMINARAYANA SHAKUNTALA RATHI	PROMOTER

Findings against Asahi and Shri Laxminarayan Jainarayan Rathi –

5.1.1 The charges alleged in the SCN against Asahi and Shri Laxminarayan Jainarayan Rathi 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 (Asahi 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 Asahi.

5.1.2 In its reply, Asahi *inter alia* submitted as under:

- “The Hon’ble Supreme Court in the case of SEBI vs. Pan Asia Advisors Limited, has laid down that SEBI has jurisdiction to take action against companies issuing GDRs only if such issue has an adverse impact on the Indian securities markets. In other words, unless it is shown by SEBI that the issue of GDRs by a company adversely impacted the Indian securities market, it would have no jurisdiction for taking action in a matter arising out of a GDR Issue. SEBI must establish that the same had adversely impacted the Indian Securities Market.
- In the present case, even the foreign regulatory authorities in whose jurisdiction the GDRs were issued by us have not chosen to take action against any party, which leads to the implied conclusion that they also did not find any discrepancy in the GDRs issued by us.
- The SCN has completely erred in contending that Asahi committed a violation of Section 77(2) read with Section 77(4) of the Companies Act, 1956. While making this contention,

SCN has relied upon our alleged arrangement with Vintage vis – a – vis the aforementioned Loan Agreement dated 21.04.2009 as also the Pledge Agreement dated 21.04.2009.

- *One fails to understand that if the capital raised through the said GDRs was freely available, how could the same been routed to our foreign subsidiary. In this regard, it is submitted that in fact amounts were kept in an interest bearing fixed deposit in EURAM which our company earned interest. Therefore, it is incorrect to say that there was no free capital available with the company for issuance of GDRs.*
- *No violation of Sections 12A(a)–(c) 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, committed by Asahi.*
- *The Hon’ble Supreme Court in the case of SEBI vs. Pan Asia Advisors Limited, has laid down that SEBI has jurisdiction to take action against companies issuing GDRs only if such issue has an adverse impact on the Indian securities markets. In other words, unless it is shown by SEBI that the issue of GDRs by a company adversely impacted the Indian securities market, it would have no jurisdiction for taking action in a matter arising out of a GDR Issue. SEBI must establish that the same had adversely impacted the Indian Securities Market.”*

5.1.3 In his reply, Shri Laxminarayan Jainarayan Rathi denied the allegations contained in the SCN and sought leave to rely on the submissions made by Asahi.

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 (Asahi 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 Asahi, 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 Asahi 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 April 22, 2009, with Euram for availing of a loan of US \$5.98 million for subscribing to the *GDR Issue* of Asahi on April 28, 2009.

5.1.7 A *Pledge Agreement* dated April 21, 2009, was also executed between Asahi 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*, Asahi 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* was signed on behalf of Asahi by Shri Laxminarayan Jainarayan Rathi.
- 5.1.10 The *Loan Agreement* (April 22, 2009) and *Pledge Agreement* (April 21, 2009) were both dated in close proximity to each other. Immediately, thereafter, the *GDRs* were issued on April 28, 2009.
- 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 Asahi through the *Pledge Agreement* whereby it deposited an amount of US \$5.98 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 \$5.98 million may only be transferred to Euram Account no. 540030. The aforesaid Account is the bank account of Asahi maintained with Euram for the purpose of depositing proceeds of the *GDR Issue*. Asahi, 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 Asahi's bank account with Euram, it is observed that the authorised signatory for the operation of the bank account was Shri Laxminarayan Jainarayan Rathi (Chairman and Managing Director of Asahi during *GDR Issue* in April 2009).
- 5.1.15 From the certified copy of an extract from the Minutes of the Meeting of the Board of Directors of Asahi held on January 31, 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. Laxminarayan Jainarayan Rathi, 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. Laxminarayan Jainarayan Rathi, 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 Asahi (Issuer Company) added to a guarantee by Asahi 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 Asahi 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 Asahi. Asahi 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, Asahi’s right as an Issuing Company of GDRs was locked up.
- 5.1.18 On June 1, 2009, Asahi 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 Asahi 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 Asahi i.e. 88.94%.
- 5.1.20 Shri Laxminarayan Jainarayan Rathi was the *Authorised Person* on behalf of Asahi for execution of *Pledge Agreement (with Euram)* and other documents in relation to *GDR Issue*. Similarly, Shri Laxminarayan Jainarayan Rathi was the Managing Director of Asahi. It was he who signed the *Pledge Agreement* and other documents in relation to *GDR Issue*. It is evident from the stature of Shri Laxminarayan Jainarayan Rathi that he was hugely important in the hierarchy of Asahi. 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 Asahi 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 Asahi did indeed use the funds deposited in its bank account as security for obligation of Vintage. Considering the aforesaid, it is clearly evident that Asahi authorized Shri Laxminarayan Jainarayan Rathi 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*.
- 5.1.22 The execution of the *Pledge Agreement (Asahi with Euram)* when viewed in the context of the *Loan Agreement (Vintage with Euram)*, effectively allowed Asahi 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 Asahi. The false declaration made by Asahi through BSE regarding the initial subscribers to its *GDR Issue*, led investors in India to believe that Asahi 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 Asahi.
- 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 Asahi largely did not exist, as a result of which, the investors in India were made to believe (falsely) that the GDRs of Asahi 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 Asahi and Shri Laxminarayan Jainarayan Rathi.

5.1.25 I, therefore, find that Asahi and Shri Laxminarayan Jainarayan Rathi 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 (Asahi with Euram) & Loan Agreement (Vintage with Euram)*, which allowed Asahi 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 Asahi 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, Asahi and Shri Laxminarayan Jainarayan Rathi are alleged to have misled SEBI regarding the original subscribers of *GDR Issue* of Asahi. 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; March 28, 2012; April 20, 2012 and May 3, 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, Asahi submitted as under:

- *“The address of the said entities were only with the Depository to the GDR and not with us and therefore, no adverse inference can be drawn against us on this basis.*

- *The names of the subscribers to the issue were furnished to the BSE on the basis of the subscription letter dated 29th April 2009 issued by Deutsche Bank which was a Depository to the GDR. We had forwarded the information to the BSE under bona fide belief on the basis of the said subscription letter dated 29th April, 2009 and therefore, the allegation that we had furnished misleading information is totally unsustainable.”*

6.1.3 Shri Laxminarayan Jainarayan Rathi denied the allegations contained in the SCN and sought leave to rely on the submissions made by Asahi.

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

6.1.4 From the *Pledge Agreement*, it is noted that Asahi deposited in its designated account with Euram an amount of US \$5.98 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, Asahi informed SEBI that the following entities were the initial subscribers of its *GDR Issue*, viz. –

- a. Greenwich Management Inc.;
- b. Tradetec Corporation.

6.1.6 The aforesaid information was earlier made public by Asahi through a public disclosure on BSE on November 17, 2009.

6.1.7 Shri Laxminarayan Jainarayan Rathi, submitted the misleading declaration regarding initial subscribers of GDRs to the concerned Stock Exchange, on behalf of Asahi. 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 Asahi. 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 Asahi, the name of Vintage was not mentioned. However, as stated before, Vintage was the initial subscriber to the *GDR Issue* of Asahi by virtue of the *Loan Agreement* and *Pledge Agreement*. Therefore, such false information regarding the initial subscribers to the *GDR Issue* of Asahi was deliberately provided to SEBI and BSE.

6.1.9 In view of the above observations, I find that Asahi and Shri Laxminarayan Jainarayan Rathi provided false information in respect of the initial subscribers to the *GDR Issue* of Asahi.

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 Asahi, vide Summons dated January 12, 2012; March 28, 2012; April 20, 2012 and May 3, 2012.

6.1.12 In its reply dated April 11, 2012 to the Summons issued by SEBI dated January 12, 2012 and in the statement recorded on April 16, 2012 during the course of investigation, Asahi 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.

6.1.13 The abovementioned denial were misleading as Asahi concealed information regarding the *Pledge Agreement* with Euram. Further, the *Loan Agreement* signed between Vintage and Euram was an integral part of the *Pledge Agreement* signed between Asahi and Euram. It was clearly mentioned in the *Pledge Agreement* that *the Pledgor i.e. Asahi, received the Loan Agreement and agrees to its conditions*. Asahi's withdrawal of funds was conditional and was dependent on loan payment by Vintage.

- 6.1.14 Asahi was specifically advised by SEBI's e-mail dated April 20, 2012, to provide details of payments done by Asahi/Asahi FZE to Pan Asia and companies associated with Pan Asia. However, despite being fully aware of the fact that Vintage and Pan Asia were associated with Shri Arun Panchariya (Shri Arun Panchariya signed the *Loan Agreement* on behalf of Vintage with Euram and Escrow Agreement on behalf of Pan Asia with Deutsche Bank Trust Company America and Asahi), Asahi concealed this information from SEBI.
- 6.1.15 With regard to the information regarding Asahi FZE sought by SEBI, Asahi provided partial information to SEBI but failed to provide crucial information regarding the utilisation of funds by Asahi FZE. Following information was not provided by Asahi to SEBI –
- i. Important details with respect to Asahi FZE viz. address, contact person and contact number was not provided by Asahi to SEBI.
 - ii. Rationale behind all the payments done by Asahi FZE which were above US \$25,000.
 - iii. Details of purchases and expenses incurred by Asahi FZE Complete set of books of accounts of Asahi FZE for the year ended March 2010 and 2011.
- 6.1.16 From, the incomplete information received from Asahi, it was observed that Asahi transferred around 44.68% of the *GDR Issue* proceeds to entities connected with Shri Arun Panchariya. Further, Asahi did not furnish any explanation regarding the rationale for transactions with various entities such as K Sera, Ababil Star Trading and Cat Technologies Limited. Asahi FZE made payments totaling US \$2 million to Vintage, the subscriber of the *GDR Issue* of Asahi. Asahi did not provide any further rationale for the payments.
- 6.1.17 As seen from the abovementioned facts, Asahi failed to comply with the aforesaid Summons issued by SEBI as it did not furnish any information and therefore, concealed material information from SEBI.
- 6.1.18 From the above, I find that material information, which was necessary to carry out investigations in the instant proceedings, were not furnished or were concealed by Asahi. As a Director of Asahi, Shri Laxminarayan Jainarayan Rathi was under an obligation to ensure that correct information was provided promptly by Asahi to SEBI. However, Shri Laxminarayan Jainarayan Rathi failed to ensure co-operation by Asahi 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.

6.1.19 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...*"

6.1.20 Upon a consideration of the preceding paragraphs, I find that Asahi and Shri Laxminarayan Jainarayan Rathi 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 and Promoters of Asahi – Shri Gaurang Shah; Shri Nilesh M. Bhaiyya; Shri Venkatrao Karri; Shri Hemendra Kanjibhai Shah and Shri Laxminarayana Paresh Rathi.

7.1.1 As per the SCN, Shri Gaurang Shah; Shri Nilesh M. Bhaiyya; Shri Venkatrao Karri; Shri Hemendra Kanjibhai Shah and Shri Laxminarayana Paresh Rathi, have been charged as liable for offenses committed by Asahi under Section 27 of the SEBI Act, 1992, as they were Directors of Asahi at the time of *GDR Issue*. Shri Hemendra Kanjibhai Shah, Shri Laxminarayana Paresh Rathi, being Promoters of Asahi, controlled Asahi and were responsible for the conduct of its business and therefore, were liable to be proceeded against. 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 their replies to the SCN, Shri Nilesh M. Bhaiyya; Shri Venkatrao Karri; Shri Hemendra Kanjibhai Shah and Shri Laxminarayana Paresh Rathi denied the allegations contained in the SCN and sought leave to rely on the submissions made by Asahi.

7.1.3 Shri Gaurang Shah submitted that before the *GDR Issue* of Asahi, he had resigned and company had accepted his resignation.

7.1.4 As regards, Shri Gaurang Shah, I find that he was on the Board of Directors of Asahi till the period immediately prior to the *GDR Issue*. The process in respect of the *GDR Issue* would have commenced prior to his purported resignation on April 1, 2009. I note that Shri Gaurang Shah, Shri Nilesh M. Bhaiyya; Shri Venkatrao Karri; Shri Hemendra Kanjibhai Shah and Shri Laxminarayana Paresh Rathi, being Directors of Asahi, have not signed the *Pledge Agreement* nor were they the authorized signatories on behalf of Asahi for its bank account with Euram. Further, no specific adverse inference has been drawn against the aforementioned entities in the Investigation Report or the SCN, apart from the allegation that as Directors in Asahi, they were 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 Asahi.

However, I note that being Directors of Asahi, the aforementioned entities cannot be said to have been unaware of the activities of Asahi.

Role of other Promoters of Asahi – Shri Anand Mohanlal Chaturvedi; Shri Laxminarayan Jatinnarayan Rathi; Pariwar Lease Finance & Investment Company Limited and Smt Laxminarayana Shakuntala Rathi.

- 8.1.1 As per the SCN, Shri Anand Mohanlal Chaturvedi; Shri Laxminarayan Jatinnarayan Rathi; Pariwar Lease Finance & Investment Company Limited and Smt Laxminarayana Shakuntala Rathi, being Promoters of Asahi, controlled Asahi 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 Asahi.
- 8.1.2 In their replies to the SCN, Shri Anand Mohanlal Chaturvedi; Shri Laxminarayan Jatinnarayan Rathi and Smt Laxminarayana Shakuntala Rathi denied the allegations contained in the SCN and sought leave to rely on the submissions made by Asahi.
- 8.1.3 No reply to the SCN was received from Pariwar Lease Finance & Investment Company Limited.
- 8.1.4 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 Asahi 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 Asahi or were shown as Promoters by Asahi in its quarterly shareholding pattern for the quarter ending March 31, 2009, filed with BSE.
- 8.1.5 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 Anand Mohanlal Chaturvedi; Shri Laxminarayan Jatinnarayan Rathi; Pariwar Lease Finance & Investment Company Limited and Smt Laxminarayana Shakuntala Rathi, indeed controlled Asahi and were responsible for the conduct of its business at the time of the *GDR Issue* in April 2009. Having arrived at this finding, I am of the view that the SCN against the aforementioned Promoters, needs to be disposed of.

Conclusion –

- 8.1.6 As noted above, the *modus operandi* adopted by Asahi 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 Asahi 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.

8.1.7 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."*

8.1.8 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.

8.1.9 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, Asahi 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.

8.1.10 For reasons detailed in the preceding paragraphs, I have no hesitation in concluding that Asahi and Shri Laxminarayan Jainarayan Rathi 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 Asahi violated Section 77(2) read with 77(4) of the Companies Act. In addition, I find that Asahi and Shri Laxminarayan Jainarayan Rathi submitted false information to SEBI in respect of the initial investors to *GDR Issue* of Asahi 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.	ASAHI INFRASTRUCTURE AND PROJECTS LIMITED	AAACA8777F

- ii. I note that vide the Interim Order dated September 21, 2011 (later confirmed through the Confirmatory Order on December 30, 2011), Asahi 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 Asahi 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 Asahi 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 LAXMINARAYAN JAINARAYAN RATHI	ABDPR9730L

- iv. 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 GAURANG SHAH	BGGPS1405N
2.	SHRI NILESH M. BHAIYYA	ABGPB2291K
3.	SHRI VENKATRAO KARRI	AOBPK0250M
4.	SHRI HEMENDRA KANJIBHAI SHAH	AKGPS2064L
5.	SHRI LAXMINARAYANA PARESH RATHI	AGMPR5511M

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

	ENTITY	PAN
1.	SHRI ANAND MOHANLAL CHATURVEDI	ADAPC4826H
2.	SHRI LAXMINARAYAN JATINNARAYAN RATHI	ACIPR1208F
3.	PARIWAR LEASE FINANCE & INVESTMENT COMPANY LTD	NOT AVAILABLE
4.	SMT LAXMINARAYANA SHAKUNTALA RATHI	AAYPR6674B

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