

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 K SERA SERA LIMITED –

IN RESPECT OF –

	ENTITY	PAN / DIN
1.	K SERA SERA LIMITED	AAACG5103D
2.	SHRI SHRIKANT MAHESHWARI	AFMPM0281Q
3.	BRIGADIER VINOD AHUJA	AAWPA8792K
4.	SHRI RAJESH PAVITHRAM	AAZPN1547N
5.	SHRI HUSSAIN SATTAF	ANGPS3086F
6.	SHRI AMAR PANGHAL	AAWPP3993Q
7.	SHRI ASHOK GAGWANI	AAFPG0318J
8.	SHRI RAMESH PAMANI	ANCPP1186D
9.	SHRI SANJAY BIPIN LAI	AAEPL6967H
10.	SHRI ASHOK PAMANI	AOQPP2675G
11.	SMT KAMINI PAMANI	ARAPP5304K
12.	MANTRA TRADING COMPANY PRIVATE LIMITED	AAACM0706A
13.	SHRI PARAG SANGHAVI	ATYPS3041A
14.	VAJRA TRADING COMPANY LIMITED	AAACA1329F
15.	SHRI DINESH BHANUSHALI	DIN – 1821051
16.	SHRI RAJIV MALHOTRA	AFNPM5775N

Background –

- 1.1 In view of certain irregularities observed in the issuance of Global Depository Receipts (“GDRs”) by K Sera Sera Limited (“K Sera”), 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 K Sera on December 30, 2011 (“Confirmatory Order”). Vide the aforesaid Confirmatory Order, SEBI *permitted conversion of outstanding warrants issued by K Sera, 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. K Sera;
- ii. Shri Shrikant Maheshwari;
- iii. Brigadier Vinod Ahuja;
- iv. Shri Rajesh Pavithram;
- v. Shri Hussain Sattaf;
- vi. Shri Amar Panghal;
- vii. Shri Ashok Gagwani;
- viii. Shri Ramesh Pamani;
- ix. Shri Sanjay Bipin Lai;
- x. Shri Ashok Pamani;
- xi. Smt Kamini Pamani;
- xii. Mantra Trading Company Private Limited;
- xiii. Shri Parag Sanghavi;
- xiv. Vajra Trading Company Limited;
- xv. Shri Dinesh Bhanushali;
- xvi. Shri Rajiv Malhotra.

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 Issues* made by K Sera in November 2, 2007 (“**GDR Issue I**”) and October 16, 2009 (“**GDR Issue II**”).

2.3 The SCN states –

GDR Issue I – November 2, 2007

- i. In *GDR Issue I*, 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 November 2, 2011, K Sera informed SEBI that the following entities were the original investors of the aforesaid Issue, viz. –
 - a. Rexflec Limited;

- b. Figura Group Limited;
 - c. Tradetec Corporation;
 - d. Knightsbridge Management Inc.;
 - e. Flamboyant International Limited;
 - f. Greenwich Management Inc.
- ii. As the authorised signatories for K Sera, Shri Rajesh Pavithram (Managing Director of K Sera) and Shri Dinesh Bhanushali signed a *Pledge Agreement I* dated October 30, 2007, with European American Investment Bank AG ("**Euram**"). Shri Rajesh Pavithram and Shri Dinesh Bhanushali were also the authorised signatories for the bank account of K Sera with Euram. The Resolution for conferring the aforesaid authority on Shri Rajesh Pavithram was approved by the Board of Directors of K Sera in a meeting held on July 31, 2007.
- iii. The *Pledge Agreement I* (signed between K Sera and Euram) was an integral part of another agreement viz. *Loan Agreement I* dated October 30, 2007, signed between Vintage and Euram. These Agreements enabled Vintage to avail a loan of US \$24.99 million from Euram for subscribing to the GDR issue of K Sera on November 2, 2007.
- iv. In terms of the *Pledge Agreement I*, K Sera 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. *Loan Agreement I* & *Pledge Agreement I* effectively resulted in K Sera 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 K Sera in the Indian securities market.

GDR Issue II – October 16, 2009

- i. In *GDR Issue II*, Vintage was the original subscriber of GDRs. However, vide letter dated November 2, 2011, K Sera informed SEBI that the following entities were the original investors of the aforesaid Issue, viz. –
 - a. Dynamic Holding Investment Corporation;
 - b. Greenwich Management Inc.;

- c. Ababil Star General Trading;
 - d. Figura Group Limited;
 - e. Flagstaff Investments Limited
 - f. Tradetec Corporation;
 - g. Imagination Network Inc.;
 - h. Echelon India Investments Limited;
 - i. Flamboyant International Limited.
- ii. As the authorised signatory for K Sera, Shri Hussain Sattaf (Director of K Sera during GDR Issue in November 2009) signed a *Pledge Agreement II* dated October 6, 2009, with Euram. Shri Hussain Sattaf was also the authorised signatory for K Sera's bank account with Euram. The Resolution for conferring the aforesaid authority on Shri Hussain Sattaf was approved by the Board of Directors of K Sera in a meeting held on October 1, 2009.
 - iii. The *Pledge Agreement II* (signed between K Sera and Euram) was an integral part of another agreement viz. *Loan Agreement II* dated October 6, 2009, signed between Vintage and Euram. These Agreements enabled Vintage to avail a loan of US \$29.98 million from Euram for subscribing to the GDR issue of K Sera on October 16, 2009.
 - iv. In terms of the *Pledge Agreement II*, K Sera 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 II & Loan Agreement II*, effectively resulted in K Sera 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 *Loan Agreement I (with Euram) and Pledge Agreement II (with Euram)*, K Sera 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 Vintage and Vintage from Euram and Euram, respectively. However, K Sera 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 \$24.99 million at the time of *GDR Issue I* and US \$29.98 million at the time of *GDR Issue II*.

- vii. The total capital raised through *GDR Issue I* and *GDR Issue II* was also routed to K Sera foreign subsidiary, viz. K Sera Sera Production FZE (“**K Sera FZE**”). K Sera also made payment to a British Virgin Islands based company, viz. Alkarni Holdings Ltd. Shri Arun Panchariya and his other family members were shareholders of Alkarni Holdings Ltd at the relevant time. In order to examine the utilization of the GDR proceeds, SEBI sought information from K Sera vide Summons dated January 12, 2012, March 14, 2012 and April 20, 2012. However, K Sera kept on furnishing incorrect submissions and also concealed material information from SEBI.

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. K Sera was alleged to have violated Sections 12A(a)–(c) of the SEBI Act read with Regulations 3(b)–(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations, 2003 and Section 77(2) and 77(4) of the Companies Act,
- ii. Shri Rajesh Pavithram and Shri Dinesh Bhanushali (signatories to the *Pledge Agreement I* in 2007) and Shri Hussain Sattaf (signatory to the *Pledge Agreement II* in 2009), 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;
- iii. K Sera, Brigadier Vinod Ahuja and Shri Shrikant Maheshwari were alleged to have violated Section 11C(3) of the SEBI Act on account of failing to provide correct information *inter alia* in response to the Summons dated January 12, 2012, March 14, 2012 and April 20, 2012, as issued by SEBI;
- iv. As per Section 27 of the SEBI Act, Shri Amar Panghal; Shri Ashok Gagwani; Shri Ramesh Pamani; Shri Sanjay Bipin Lai; Shri Ashok Pamani, being Directors of K Sera, 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 of K Sera.
- v. Shri Ashok Pamani, Smt Kamini Pamani; Mantra Trading Company Private Limited; Shri Parag Sanghavi and Vajra Trading Company Limited, being Promoters of K Sera, controlled K Sera 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 K Sera.

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

- A. 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”.

B. 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. 1–2 of SCN dated December 18, 2014, appeared for hearing –
 - K Sera;
 - Shri Shrikant Maheshwari.
- ii. Entity no. 3 of the SCN dated December 18, 2014 i.e. Brigadier Vinod Ahuja, is deceased.
- iii. The following entities i.e. no. 4–16 of SCN dated December 18, 2014, did not appear for hearing –
 - Shri Rajesh Pavithram;
 - Shri Hussain Sattaf;
 - Shri Amar Panghal;
 - Shri Ashok Gagwani;
 - Shri Ramesh Pamani;
 - Shri Sanjay Bipin Lai;
 - Shri Ashok Pamani;
 - Smt Kamini Pamani;
 - Mantra Trading Company Private Limited;
 - Shri Parag Sanghavi;
 - Vajra Trading Company Limited;
 - Shri Dinesh Bhanushali;
 - Shri Rajiv Malhotra.

b. June 7, 2017 –

- i. The following entities i.e. no. 4–16 of SCN dated December 18, 2014, did not appear for hearing –
 - Shri Rajesh Pavithram;
 - Shri Hussain Sattaf;
 - Shri Amar Panghal;
 - Shri Ashok Gagwani;
 - Shri Ramesh Pamani;
 - Shri Sanjay Bipin Lai;
 - Shri Ashok Pamani;
 - Smt Kamini Pamani;
 - Mantra Trading Company Private Limited;
 - Shri Parag Sanghavi;
 - Vajra Trading Company Limited;
 - Shri Dinesh Bhanushali;
 - Shri Rajiv Malhotra.

c. July 4, 2017 –

- i. The following entities i.e. no. 7, 8, 10, 11 of SCN dated December 18, 2014, appeared for hearing –
 - Shri Ashok Gagwani;
 - Shri Ramesh Pamani;
 - Shri Ashok Pamani;
 - Smt Kamini Pamani.

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

- i. **K Sera** – Vide reply dated June 2, 2017, the company *inter alia* submitted as under:
 - a. *“As on date, we have around 30,000 retail shareholders (public) who are very anxious and worried about continuation of present proceedings against the company. We therefore humbly pray before your honour for revocation of directions issued against us on an immediate and urgent basis more particularly in the interest of retail public shareholders of the company.*
 - b. *With regards to the allegation of not providing information by us as mentioned under para 3(vi) of the SCN, we humbly state that we are of the view that our team*

coordinating with the Investigations Department, SEBI must have furnished all the documents. Further we state that we had assigned the responsibility to then Whole Time Director and Chief Financial Officer. However as desired by you we submit the same details are as under:

- i. Bank statement of our Company's account maintained with Euram;*
 - ii. With regards to bank statement of all our foreign subsidiaries; details like name of entities involved, amount used, purpose behind the purchase, expenses, and payments done by its foreign subsidiaries in excess of US \$25000, we regret to state that presently we are unable to locate the same due to shifting of Registered Office of our company and also the key persons handling our foreign subsidiaries could not be contacted during last one week. However, we are putting our best efforts to get the same.*
 - iii. List of Beneficial owner of K Sera.*
- c. The issuance of GDRs by Indian companies is essentially to raise capital from outside India. The issue of GDRs entails listing of the same on stock exchanges outside India. SEBI has not framed any rules or regulations or issued any directive in relation to the compliance requirements for the purpose of GDRs. It is the Issue of Foreign Currency Convertible Bonds and Ordinary shares (through Depository Receipt Mechanism) Scheme, 1993 ("**Scheme**") that governs the process in relation to GDR issues in India. The Scheme does not confer any jurisdiction in relation to issuance of GDRs upon SEBI.*
- d. The issuance of GDR's and the terms and conditions for the same, are stipulated for and governed by:*
- The Scheme;*
 - RBI's Circular on Foreign Investment in India;*
 - Foreign Exchange Management Act, 1999;*
 - Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside of India), Regulations, 2000.*

It is clear from the above that it is only the RBI and/or the Ministry of Finance, Central Government, which have exclusive jurisdiction in respect of the issuance, trading and conversion of GDRs into shares.

*Neither the SEBI Act nor the Securities Contracts (Regulation) Act, 1956 ("**SCRA**") regulate or contain any provision in respect of GDRs.*

Although as per the Depository Receipts Scheme, 2014 which came into force on December 15, 2014, any use of depository receipts which has potential to cause abuse of securities markets in India would be considered to be market abuse as per SEBI Act, 1992, the same was not applicable to GDRs under consideration here.

- e. *Interim Order has an effect of final order and declared us guilty without any lawful explanation and without giving us a chance to put forth our arguments or hearing our version on the alleged violation of various provisions, rules & regulations.*
- f. *We submit that the responsibility of marketing the GDR issue is and were always with our Lead Manager i.e. Pan Asia Advisors Ltd. ("Pan Asia") and it was their responsibility to get the Issue subscribed. As per information received from Pan Asia regarding the entities who have subscribed to the issue, we have forwarded the said information to the stock exchanges, which did not raise any query at that time. We have been informed about the subscription of GDRs and information about the subscription and subscribers (initial investors) information has been provided by the Depository bank and the Lead Manager to the issue. The list of entities- initial investors was provided to the Company by the Depository Bank and Lead Manager to the issue and we accordingly informed the said detail to the Stock Exchanges. The Company had no role to play in the allotment of GDRs; nor was it aware of the identity of the holders of the GDRs.*
- g. *The Company submits that the Company was not aware about the said alleged Loan and Pledge Agreement. This purported document has been given to the Company for the first time by SEBI. It may be noted that the Company has not given any authorisation to Shri. Rajesh Pavithram and Shri Dinesh Bhanushali (the erstwhile Director of the Company whose signature appears in the said agreement) to sign the said Pledge agreement or to enter into any such arrangement. No such authority has been produced or relied upon by SEBI. The Resolution of the Board of Directors in their meeting held on July 31, 2007 does not contain authorisation to enter into any such arrangement. We were also not aware of the said alleged Pledge Agreement dated October, 16 2009. This purported document has been given to the Company for the first time by SEBI. It may be noted that the Company has not given any authorisation to Shri Hussain Sattaf the erstwhile Director of the Company whose signature appears in the said agreement) to sign the said agreement or to enter into any such arrangement. No such authority has been produced or relied upon by SEBI. The Resolution of the Board of Directors in their meeting held on October 1, 2009 does not contain authorisation to enter into any such arrangement or Pledge Agreement hence, we deny that we have carried out or employed any arrangement with regard to financing the subscription of GDR issue and mislead the investors by making false disclosures and further deny that we have violated Section 77(2) read with 77(4) of The Companies Act and Section 12 A(a) to (c) of SEBI Act, read with Regulations 3(b) to (d) and 4(2) (c), (f), (k) and (r) of PFUTP Regulations.*
- h. *We deny that any capital of the Company was unavailable for its use on account of the said Pledge Agreement dated October 30, 2007 and the Pledge Agreement dated October, 16 2009. Vide our letter dated March 26, 2012, we provided SEBI with a*

detailed statement on the usage of the GDR proceeds along with FIRC copy. It is evident from the said statement that the GDR proceeds were in fact received by the Company and deployed for the purposes set out in the offer documents. Till deployment the said funds have been kept in an Interest bearing fixed deposit in a foreign bank. We repeat, reiterate and submit that our Company have received all the proceeds of the GDRs issued in 2007 and 2009 into our bank accounts in India and have filed the required reports with the RBI. Copies of the same have already been provided to SEBI.

- i. With regard to the adverse findings made in para 3 of the SCN that the Company had malafide intension and had mislead the investigation being carried out by SEBI, at the outset we state that the aforesaid findings are factually incorrect and not backed by the evidences our record. It is pertinent to mention that, at the relevant time, our company had given instructions to the then Whole Time Director late Mr. Brigadier Vinod Ahuja - an ex-army men and also to Mr. Shrikant Maheshwari then Chief Financial Officer of the Company, a qualified chartered Accountant to extend full cooperation and assistance to the Investigation team, SEBI. They were also authorized to appear, plead and argue before the Investigation team SEBI and were also authorized to submit and furnish any document/paper/statement that may be required by the Investigation team SEBI. It is most pertinent to mention that at the relevant time, the Investigation team, SEBI had not raised any grievance on any noncompliance or on non-furnishing of information by our said authorized representatives. Hence, we are really shocked and surprised to face with such allegation made in the SCN against us.*
- j. With regard to the observation that the addresses of the initial investors except Rexflec Ltd. provided by us were found to be invalid by SEBI and the foreign regulators in those jurisdictions, it is submitted that the addresses 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.*
- k. The Hon'ble Supreme Court in the case of SEBI v. Pan Asia Advisors Ltd. 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 to proceed against a company for alleged manipulation or violations committed it in respect of a GDR issue. Therefore, in order to claim its 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.*
- l. In the present case, while in the captioned Notice 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 the we had perpetrated fraud and deceit on the investors in India to by inducing them to deal in the shares of our company. However, the Notice does not present even an iota of evidence, either by way of any 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.

- m. Without prejudice to the above, it is submitted that while SEBI's jurisdiction in respect of matters of GDRs is limited in accordance with the aforesaid law laid by down by the Hon'ble 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. As per SEBI Board's own Memorandum on Voting Rights of GDR/ADR holders' dated 19.05.2010 the provisions relating to issue of GDRs and all matters incidental to the same fall within the administrative control of the Ministry of Finance/RBI.*
- n. In the present case, even the foreign regulatory authorities in whose jurisdiction the GDRs were issued by us have not chosen to take any action against any party, which leads to the implied conclusion that they also did not find any discrepancy in the GDR's issued by us. It is, therefore, submitted that the present Notice issued by SEBI deserves to be quashed and set aside on this ground alone.*
- o. 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.*
- p. 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.*
- q. 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.

- r. 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.*
- s. 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.*
- t. 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.*
- u. 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.*
- v. 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.

- w. 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.
- x. 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.
- y. We would like to draw your attention to observations made by various Hon'ble Courts over a period of time:

- **Nandkishore Prasad vs. State of Bihar (1978) 3 SCC 366**, Hon'ble Supreme Court while considering the appeal against the removal of an employee from service based on the findings of a departmental enquiry viewed that: Before dealing with the contentions canvassed, I may remind ourselves of the principles in point crystallized by judicial decisions. The first of these principles is that disciplinary proceedings before a domestic tribunal are of a quasi-judicial character; therefore, the minimum requirement of the rules of natural justice is that tribunal should arrive at its conclusion on the basis of some evidence, i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charges against him. Suspicion cannot be allowed to take the place of proof even in domestic inquiries. As pointed out by this Court in *Union of India v. H. C. Geol* (AIR 1964 SC 364) 'the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary inquiries held under the statutory rules'. (emphasis supplied).
- In **H. D. Jaisinghani vs. Naraindas N Punjabi** (1976) 1 SCC 354:- wherein Ray, CJ speaking for the Hon'ble Supreme Court has observed: In any case I are left in doubt whether the complainants version with which he had come forward with considerable delay was really truthful. I think that in a case of this nature, involving possible debarring of the advocate concerned the evidence should be

of a character, which should leave no reasonable doubt about guilt. The Disciplinary Committee had not only found the Appellant guilty but had disbarred him permanently. (In Re An advocate AIR 1989 SC 245).

- The Hon'ble Securities Appellate Tribunal on the issue of stating and establishing a charge has in the matter of **M/s. Vintel Securities Private Limited vs. The Adjudicating officer**, Appeal no. 219 of 2009 has clearly stated that: "A serious charge of fraudulent and unfair trade practice has been established against the Appellant without even dealing with the trades executed by it. The Adjudicating officer has no reasons whatsoever in support of his conclusions. He has found the Appellant guilty in para 14 of the impugned order which is as general as it could be without referring to the details of the trades executed by the Appellant and without showing as to how it was acting in tandem with others. This is not the way in which charges are established. It is not enough to say that the Appellant is guilty of the charge. The impugned order must show how the charge stands established. The least that was required was that the adjudicating officer should have dealt with the trades executed by Appellant and demonstrated as to how the scrip in question was manipulated and the role which the Appellant played in that manipulation."
- With regard to the nature of evidence required to sustain the charge, your attention is invited to the Order dated October 22, 2001 of Hon'ble Securities Appellate Tribunal in the case of **Sterlite Industries Limited vs. SEBI** (2001) 34 SCL 485(SAT-Mumbai): Evidence merely probalising and endeavoring to prove the fact on the basis of preponderance of probability is not sufficient to establish such a serious offence of market manipulation. When such a serious offence is investigated and the charge is established, the fall out of the same is multifarious. The impact of such an adverse finding is wide especially in the case of a large public company having large number of investors. The stigma sticks and it also hurts, not the company alone, but its shareholders as well. "Not all the King's horses and all the King's men" can ever salvage the situation. Mere conjunctures and surmises are not adequate to hold a person guilty of such a serious offence.
- Further the Hon'ble SAT in the matter of **Videocon International vs. SEBI** (2002)4 CLJ 402 (SAT) has inter-alia held that "In the absence of reasonably good evidence to support, charge of market manipulation. Which is very serious charge, cannot stick on the Appellant Company merely on surmises and conjunctures."
- In **A. C. Ananthaswamy and Ors. vs. Boraiah (Dead) By LRS.** ((2004) 8 SCC 588), Hon'ble Supreme Court observed that the level of proof required for proving fraud is extremely high. Hon'ble Justice S. H. Kapadia observed: "Fraud is to

be pleaded and proved. To prove fraud, it must be proved that representation made was false to the knowledge of the party making such representation or that the party could have no reasonable belief that it was true. The level of proof required in such cases is extremely higher. An ambiguous statement cannot per se make the represent or guilty of fraud. To prove a case of fraud, it must be proved that the representation made was false to the knowledge of the party making such representation.”

ii. **Shri Shrikant Maheshwari** – Vide reply dated March 12, 2015, he *inter alia* submitted as under:

- a. *“I deny all the allegations made against me in the SCN. I am no longer associated with K Sera. My stint with K Sera was limited from the period 1st February 2012 to 31st October 2012 (only 9 months).*
- b. *I have neither been a shareholder, Promoter or Director of K Sera or its group companies and was in no way associated with them prior to my appointment as the Chief Financial Officer of K Sera. During the period (2007 – 09) I was working with S. R. Baltiboi and Co. and not with K Sera.*
- c. *I was neither responsible for the conduct of the company nor involved or connected in any manner whatsoever with the issue of GDRs or any transaction connected thereto. The Summons were issued on 12th January 2012. I was not working with K Sera.*
- d. *I wish to inform ... that I have no knowledge of any agreement regarding any financing for the purpose of the GDR Issue of K Sera.*
- e. *I would like to state that the SCN has been issued almost 2 years from the date of me leaving K Sera. I have in no way connected with the company and do not possess any documents/information with regard to the matter.”*

iii. **Brigadier Vinod Ahuja** – No reply (to the SCN) was received by SEBI.

iv. **Shri Rajesh Pavithram** – No reply (to the SCN) was received by SEBI.

v. **Shri Hussain Sattaf** – No reply (to the SCN) was received by SEBI.

vi. **Shri Amar Panghal** – No reply (to the SCN) was received by SEBI.

vii. **Shri Ashok Gagwani; Shri Ramesh Pamani; Shri Ashok Pamani and Smt Kamini Pamani** – In their reply dated February 18, 2015 (filed by their authorised legal representative), they *inter alia* submitted as under:

- a. *“Our clients deny the charges and state that they are victims of corporate fraud and embezzlement perpetrated by the Promoters, Directors and/or managerial staff of the Company who were arrayed as Noticee nos. 1–6, 9 and 12–16 of the SCN dated December 18, 2014.*
 - b. *Our clients are NRIs who had not attended any Board Meetings in 2006 and 2007. Therefore, they were never party to nor had they passed any resolution authorizing the issue of GDRs and/or in aid of the same. Indeed the same have been passed by other Directors.*
 - c. *Our clients had no dealings with Vintage and/or Mr. Panchariya and/or Euram or any other related entities/concerns. Our clients’ innocence in the matter is further demonstrated by the fact that they are not parties and/or signatories to the Pledge Agreements, Loan Agreements and/or KYC forms that form part of the record.*
 - d. *Our clients had an acrimonious relationship with the Company’s management that is responsible for the affairs of the company at the relevant time.”*
- viii. **Shri Sanjay Bipin Lai** – No reply (to the SCN) was received by SEBI.
- ix. **Mantra Trading Company Private Limited** – No reply (to the SCN) was received by SEBI.
- x. **Shri Parag Sanghavi** – No reply (to the SCN) was received by SEBI.
- xi. **Vajra Trading Company Limited** – No reply (to the SCN) was received by SEBI.
- xii. **Shri Dinesh Bhanushali** – No reply (to the SCN) was received by SEBI.
- xiii. **Shri Rajiv Malhotra** – Vide reply dated February 28, 2015, he *inter alia* submitted as under:
 - a. *“I deny all the allegations and insinuations that have been made against me in the SCN.*
 - b. *I was not and have never been a Promoter of K Sera.*
 - c. *I was appointed as an Independent, Non – Executive Director on the Board of Directors of K Sera on 16th December, 2006 and I held the position of an Independent Non – Executive Director till 26th May 2008. I resigned from the Board of Directors of K Sera due to my pre – occupation with other assignments at another corporate group and my consultancy services with respect to film distribution.*
 - d. *I never took any part in the decision making of K Sera nor did I ever involve myself in the conduct of business and/or management and/or its day to day affairs in any capacity whatsoever.*

- e. *I did not have any role of any nature whatsoever in the issuance of GDRs issued by K Sera.*
- f. *I humbly say that to the best of my knowledge, information and belief, the said certified true copy of the Resolution passed by the Board of Directors of K Sera on 31st July, 2007, which seems to be signed by me was in a standard format for such resolutions required and prescribed by Euram as part of their account opening procedure. I further say that I was informed that the said standard format board resolution required by Euram for their account opening procedure required the signature of at least 2 Directors of K Sera, of which at least 1 Director was required to be an Independent Director. I humbly say that the management of K Sera requested me to sign the true copy of the said Board Resolution dated 31st July, 2007, since I was an Independent Director on the Board of K Sera.*
- g. *I humbly say that it is a well settled position of law that has been upheld by various courts ... including without limitation the Hon'ble Supreme Court of India, ... that vicarious liability cannot be fastened upon an Independent, Non – Executive Director of the Company for alleged offences committed by such company, merely on account of his holding office or position as an Independent Non – Executive Director in the company.”*

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 K Sera (noted from the material available on record) is as under –

	NAME	DESIGNATION
1.	SHRI SHRIKANT MAHESHWARI	CHIEF FINANCIAL OFFICER
2.	BRIGADIER VINOD AHUJA	DIRECTOR
3.	SHRI RAJESH PAVITHRAM	MANAGING DIRECTOR
4.	SHRI HUSSAIN SATTAF	DIRECTOR
5.	SHRI AMAR PANGHAL	DIRECTOR
6.	SHRI ASHOK GAGWANI	DIRECTOR
7.	SHRI RAMESH PAMANI	DIRECTOR
8.	SHRI SANJAY BIPIN LAI	DIRECTOR
9.	SHRI RAJIV MALHOTRA	INDEPENDENT NON-EXECUTIVE DIRECTOR
10.	SHRI ASHOK PAMANI	PROMOTER AND DIRECTOR
11.	SMT KAMINI PAMANI	PROMOTER
12.	MANTRA TRADING COMPANY PRIVATE LIMITED	PROMOTER
13.	SHRI PARAG SANGHAVI	PROMOTER
14.	VAJRA TRADING COMPANY LIMITED	PROMOTER

Findings against K Sera; Shri Rajesh Pavithram; Shri Dinesh Bhanushali and Shri Hussain Sattaf –

5.1.1 The charges alleged in the SCN against K Sera; Shri Rajesh Pavithram and Shri Dinesh Bhanushali (signatories to the *Pledge Agreement I* in 2007) and Shri Hussain Sattaf (signatory to the *Pledge Agreement II* in 2009) 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 (K Sera 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 K Sera.

5.1.2 In its reply, K Sera has denied the allegations contained in the SCN *inter alia* submitting:

- “Interim Order has an effect of final order and declared us guilty without any lawful explanation and without giving us a chance to put forth our arguments or hearing our version on the alleged violation of various provisions, rules & regulations.
- We submit that the responsibility of marketing the GDR issue is and were always with our Lead Manager i.e. Pan Asia and it was their responsibility to get the Issue subscribed. As per information received from Pan Asia regarding the entities who have subscribed to the issue, we have forwarded the said information to the stock exchanges, which did not raise any query at that time. We have been informed about the subscription of GDRs and information about the subscription and subscribers (initial investors) information has been provided by the Depository bank and the Lead Manager to the issue. The list of entities- initial investors was provided to the Company by the Depository Bank and Lead Manager to the issue

and we accordingly informed the said detail to the Stock Exchanges. The Company had no role to play in the allotment of GDRs; nor was it aware of the identity of the holders of the GDRs.

- *The Company was not aware about the said alleged Loan and Pledge Agreement. This purported document has been given to the Company for the first time by SEBI. It may be noted that the Company has not given any authorisation to Shri. Rajesh Pavithram and Shri Dinesh Bhanushali (the erstwhile Director of the Company whose signature appears in the said agreement) to sign the said Pledge agreement or to enter into any such arrangement. No such authority has been produced or relied upon by SEBI. The Resolution of the Board of Directors in their meeting held on July 31, 2007 does not contain authorisation to enter into any such arrangement. We were also not aware of the said alleged Pledge Agreement dated October, 16 2009. This purported document has been given to the Company for the first time by SEBI. It may be noted that the Company has not given any authorisation to Shri Hussain Sattaf the erstwhile Director of the Company whose signature appears in the said agreement) to sign the said agreement or to enter into any such arrangement. No such authority has been produced or relied upon by SEBI. The Resolution of the Board of Directors in their meeting held on October 1, 2009 does not contain authorisation to enter into any such arrangement or Pledge Agreement hence, we deny that we have carried out or employed any arrangement with regard to financing the subscription of GDR issue and mislead the investors by making false disclosures and further deny that we have violated Section 77(2) read with 77(4) of The Companies Act and Section 12 A(a) to (c) of SEBI Act, read with Regulations 3(b) to (d) and 4(2) (c), (f), (k) and (r) of PFUTP Regulations.*
- *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 No reply to the SCN was received from Shri Rajesh Pavithram; Shri Dinesh Bhanushali and Shri Hussain Sattaf.

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 (K Sera 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 K Sera, were structured to further the fraudulent issuance and subscription of the *GDR Issue*.

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

GDR Issue I –

5.1.6 Vintage, an entity owned and controlled by Shri Arun Panchariya, entered into a *Loan Agreement I* dated October 30, 2007, with Euram for availing of a loan of US \$24.99 million for subscribing to the *GDR Issue* of K Sera on November 2, 2007.

5.1.7 A *Pledge Agreement I* dated October 30, 2007, was also executed between K Sera and Euram.

5.1.8 As per the aforesaid *Pledge Agreement I*, –

- a. The Preamble of the *Pledge Agreement I* make reference to the *Loan Agreement I* 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 I*, K Sera agreed to pledge securities and funds existing in the account where GDR proceeds from *GDR Issue I* have been deposited.
- c. The *Pledge Agreement I* 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 *Loan Agreement I* and *Pledge Agreement I* were both dated October 30, 2007. Immediately, thereafter, the *GDRs* were issued on November 2, 2007.

5.1.10 The *Pledge Agreement I* was signed on behalf of K Sera by Shri Rajesh Pavithram (Managing Director of K Sera) and Shri Dinesh Bhanushali.

- 5.1.11 The obligation of Vintage under the *Loan Agreement I* was secured by K Sera through the *Pledge Agreement I* whereby it deposited an amount of US \$24.99 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. K Sera, 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*).
- 5.1.12 From the Know Your Client (“KYC”) document in respect of K Sera's bank account with Euram, it is observed that the authorised signatories for the operation of the bank account were Shri Rajesh Pavithram (Managing Director of K Sera) and Shri Dinesh Bhanushali. The Resolution for conferring the aforesaid authority on Shri Rajesh Pavithram and Shri Dinesh Bhanushali was approved by the Board of Directors of K Sera in a meeting held on July 31, 2007.
- 5.1.13 From the certified copy of an extract from the Minutes of the Meeting of the Board of Directors of K Sera held on July 31, 2007, which was received from Euram, the following is observed:

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

RESOLVED FURTHER THAT Shri Rajesh Pavithram (Managing Director of K Sera) and Shri Dinesh Bhanushali, 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 Shri Rajesh Pavithram (Managing Director of K Sera) and Shri Dinesh Bhanushali be and are hereby severally authorised to draw cheque 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.”

GDR Issue II –

5.1.14 A *Loan Agreement II* dated October 6, 2009, was executed between Vintage and Euram, whereby Vintage availed a loan of US \$29.98 million from Euram for subscribing to the *GDR Issue II* of K Sera on October 16, 2009.

5.1.15 A *Pledge Agreement II* dated October 6, 2009, was also executed between K Sera and Euram.

5.1.16 As per the aforesaid *Pledge Agreement II*, –

- a. The Preamble of the *Pledge Agreement II* makes reference to the *Loan Agreement II* 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 II*, K Sera agreed to pledge securities and funds existing in the account where GDR proceeds from *GDR Issue II* have been deposited.
- c. The *Pledge Agreement II* 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.*"

5.1.17 The *Pledge Agreement II* was signed on behalf of K Sera by Shri Hussain Sattaf (Director of K Sera).

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

5.1.19 The obligation of Vintage under the *Loan Agreement* was secured by K Sera through the *Pledge Agreement* whereby it deposited an amount of US \$29.98 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.

5.1.20 As per the *Loan Agreement*, the amount of US \$29.98 million may only be transferred to Euram Account no. 540019. The aforesaid Account is the bank account of K Sera maintained with Euram for the purpose of depositing proceeds of the *GDR Issue*. K Sera, 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*).

5.1.21 From the Know Your Client (“KYC”) document in respect of K Sera’s bank account with Euram, it is observed that the authorised signatory for the operation of the bank account was Shri Hussain Sattaf (Director of K Sera during GDR Issue in November 2009). The Resolution for conferring the aforesaid authority on Shri Hussain Sattaf was approved by the Board of Directors of K Sera in a meeting held on October 1, 2009.

5.1.22 From the certified copy of an extract from the Minutes of the Meeting of the Board of Directors of K Sera held on October 1, 2009, 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. Hussain Sattaf, 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. Hussain Sattaf, Director, be and are hereby severally authorised to draw cheque 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.”

Conclusion –

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

5.1.24 The *Loan Agreements* and *Pledge Agreements* 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 K Sera 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 K Sera. As detailed in the Table below, K Sera did not

have any free capital available immediately since the withdrawal of GDR proceeds was conditional and dependent on the loan repayment by Vintage. As a result, K Sera'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
8.10.2009	6.10.2009	15.10.2009	2,99,84,094	5.10.2010

5.1.25 On November 2, 2007 and October 16, 2009, K Sera informed BSE that the *GDR Issue I and II* was fully subscribed. In turn, BSE published the information to retail investors and subsequently, authorised the trading of GDRs in the Indian securities market. As a result, Indian investors were misled in believing that the GDRs were subscribed by foreign investors, whereas in reality, GDRs were subscribed by Vintage in connivance with K Sera and the proceeds simultaneously pledged with Euram.

5.1.26 Shri Rajesh Pavithram alongwith Shri Dinesh Bhanushali and Shri Hussain Sattaf were the *Authorised Person* on behalf of K Sera for execution of *Pledge Agreements (with Euram)* and other documents in relation to *GDR Issue I and II*. Similarly, Shri Rajesh Pavithram and Shri Hussain Sattaf were Directors of K Sera. Shri Rajesh Pavithram alongwith Shri Dinesh Bhanushali and Shri Hussain Sattaf signed the *Pledge Agreements* and other documents in relation to *GDR Issue*. It is evident from the stature of Shri Rajesh Pavithram and Shri Hussain Sattaf that they was hugely important in the hierarchy of K Sera. For the company to know anything, it could well be said that it had to be known to them and also Shri Dinesh Bhanushali, who was the signatories to the *Pledge Agreements*. It is significant to note that all the actions of K Sera have been in accordance with the terms of the aforementioned *Agreement*.

5.1.27 Events subsequent to the execution of the *Pledge Agreement* clearly reveal that K Sera did indeed use the funds deposited in its bank account as security for obligation of Vintage. Considering the aforesaid, it is clearly evident that K Sera authorized Shri Rajesh Pavithram alongwith Shri Dinesh Bhanushali and Shri Hussain Sattaf to sign the *Pledge Agreements* for operating the bank account as otherwise there was no reason for it to act as per the terms of such *Agreements*.

5.1.28 The execution of the *Pledge Agreement (K Sera with Euram)* when viewed in the context of the *Loan Agreement (Vintage with Euram)*, effectively allowed K Sera 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 K Sera. The false disclosure made by K Sera through BSE regarding the initial subscribers to its *GDR*

Issue, led investors in India to believe that K Sera 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 K Sera.

5.1.29 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."*

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

5.1.31 I, therefore, find that K Sera, Shri Rajesh Pavithram alongwith Shri Dinesh Bhanushali and Shri Hussain Sattaf 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.

5.1.32 I also find that the arrangement resulting from the *Pledge Agreement I and II (K Sera with Euram) & Loan Agreement I and II (Vintage with Euram)*, which allowed K Sera 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 K Sera 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, K Sera, Brigadier Vinod Ahuja and Shri Shrikant Maheshwari are alleged to have misled SEBI regarding the original subscribers of *GDR Issue* of K Sera. K Sera, Brigadier Vinod Ahuja and Shri Shrikant Maheshwari were also alleged to have failed in providing information and for concealment of material information in response to the Summons dated January 12, 2012; March 14, 2012; April 20, 2012 and May 29, 2012, issued under Section 11C(3) of the SEBI Act.

6.1.2 In its reply, K Sera *inter alia* submitted:

“We were not involved in the allotment of GDRs; the same was done by the placing Agent and the Overseas Depository Bank. Therefore, we could not have had the details of the addresses of the initial subscribers or verified the same. At the time of allotment, only Pan Asia and the Overseas Depository Bank were aware of the identity of the subscribers to the GDR issues.

With regards to the allegation of not providing information by us as mentioned under para 3(vi) of the SCN, we humbly state that we are of the view that our team coordinating with the Investigations Department, SEBI must have furnished all the documents. Further we state that we had assigned the responsibility to then Whole Time Director and Chief Financial Officer. However as desired by you we submit the same details are as under:

- i. Bank statement of our Company's account maintained with Euram;*
- ii. With regards to bank statement of all our foreign subsidiaries; details like name of entities involved, amount used, purpose behind the purchase, expenses, and payments done by its foreign subsidiaries in excess of US \$25000, we regret to state that presently we are unable to locate the same due to shifting of Registered Office of our company and also the key persons handling our foreign subsidiaries could not be contacted during last one week. However, we are putting our best efforts to get the same.*
- iii. List of Beneficial owner of K Sera.”*

6.1.3 In his reply, Shri Shrikant Maheshwari denied the allegations contained in the SCN and submitted: *“My stint with K Sera was limited from the period 1st February 2012 to 31st October 2012 (only 9 months). The Summons was issued on 12th January 2012. I was not working with K Sera. I wish to inform ... that I have no knowledge of any agreement regarding any financing for the purpose of the GDR Issue of K Sera. I would like to state that the SCN has been issued almost 2 years from the date of me leaving K Sera. I have in no way connected with the company and do not possess any documents/information with regard to the matter.”*

6.1.4 During the pendency of the instant proceedings, Shri Brigadier Vinod Ahuja died. Accordingly, the proceedings against him stand abated.

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

6.1.5 From the *Pledge Agreement I*, it is noted that K Sera deposited in its designated account with Euram an amount of US \$24.99 million as security in respect of all the obligations of Vintage under the *Loan Agreement I*.

6.1.6 From the *Pledge Agreement II*, it is noted that K Sera deposited in its designated account with Euram an amount of US \$29.98 million as security in respect of all the obligations of Vintage under the *Loan Agreement II*.

6.1.7 Vide a letter dated November 2, 2011, K Sera informed SEBI that the following entities were the initial subscribers of its *GDR Issues*, viz. –

GDR Issue I – November 2, 2007, viz. –

- a. Rexflec Limited;
- b. Figura Group Limited;
- c. Tradetec Corporation;
- d. Knightsbridge Management Inc.;
- e. Flamboyant International Limited;
- f. Greenwich Management Inc.

GDR Issue II – October 16, 2009, viz. –

- a. Dynamic Holding Investment Corporation;
- b. Greenwich Management Inc.;
- c. Ababil Star General Trading;
- d. Figura Group Limited;
- e. Flagstaff Investments Limited
- f. Tradetec Corporation;
- g. Imagination Network Inc.;
- h. Echelon India Investments Limited;
- i. Flamboyant International Limited.

- 6.1.8 The aforesaid information was earlier made public by K Sera through public disclosures on BSE on November 2, 2007 and October 16, 2009.
- 6.1.9 K Sera submitted the misleading declaration regarding initial subscribers of GDRs to the concerned Stock Exchange and SEBI. As noted from the material available on record, some of the initial 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 K Sera. All attempts made by SEBI to contact these subscribers (except Rexflec Limited) 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 (except Rexflec Limited) did not exist.
- 6.1.10 It is pertinent to note that in the aforesaid lists provided by K Sera, the name of Vintage was not mentioned. However, as stated before, Vintage was the initial subscriber to the *GDR Issue I & II* of K Sera by virtue of the *Loan Agreements* and *Pledge Agreements*. Therefore, such false information regarding the initial subscribers to the *GDR Issue* of K Sera was deliberately provided to SEBI and BSE.
- 6.1.11 I therefore, find that K Sera provided false information in respect of the initial subscribers to the *GDR Issue* of K Sera.
- 6.1.12 The following observations from the *SAT Order in the matter of Pan Asia* are also noted –

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.”

- 6.1.13 The total capital raised through GDR Issue I and GDR Issue II was also routed to K Sera foreign subsidiary, viz. K Sera FZE.
- 6.1.14 In order to examine the utilization of the GDR proceeds, SEBI sought information from K Sera vide Summons dated January 12, 2012 and April 20, 2012. Summons was also issued to the Managing Director of K Sera on March 14, 2012; April 20, 2012 and May 29, 2012.
- 6.1.15 In its reply dated March 26, 2012 to the Summons issued by SEBI dated January 12, 2012, during the course of investigation, K Sera 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.
- 6.1.16 K Sera failed to provide bank statements prior to 2008 and for the period from July 1, 2008–October 15, 2009.
- 6.1.17 The abovementioned denial was misleading as K Sera concealed information regarding the *Pledge Agreements I and II* with Euram. Further, the *Loan Agreement I and II* signed between Vintage and Euram was an integral part of the *Pledge Agreement I and II* signed between K Sera and Euram. It was clearly mentioned in the *Pledge Agreement I and II* that *the Pledgor i.e. K Sera, received the Loan Agreement I and II and agrees to its conditions*. K Sera’ withdrawal of funds was conditional and was dependent on loan payment by Vintage.
- 6.1.18 K Sera was specifically advised by SEBI’s e–mail dated April 20, 2012, to provide details of payments done by K Sera FZE of above US \$25,000.
- 6.1.19 With regard to the information regarding K Sera FZE sought by SEBI, the following information was not provided by K Sera –
- i. Complete Bank Account Statements of K Sera with Euram.
 - ii. Bank Account Statements of all the foreign subsidiaries of K Sera.
 - iii. Details of nature of business and Audit reports of all of its foreign subsidiaries.
 - iv. Details like name of entities involved, amount used, and purpose behind the purchases, expenses and payments done by its foreign subsidiaries in excess of US \$25,000.
 - v. Identity of major beneficial owner of K Sera

- vi. Information regarding its transactions with any other company against whom SEBI passed the Interim Order

6.1.20 From the aforementioned facts, I find that material information, which was necessary to carry out investigations in the instant proceedings, were not furnished and were concealed by K Sera. K Sera was required to provide correct information was provided to SEBI. However, K Sera failed to co-operate with the Investigating Officer, which in turn 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.

6.1.21 Upon a consideration of the preceding paragraphs, I find that K Sera violated the provisions of Section 11C(3) of the SEBI Act through its failure to provide correct information and through concealment of material information from SEBI.

6.1.22 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...*"

6.1.23 As regards Shri Shrikant Maheshwari, it is noted from his submissions that "*(he) was employed with K Sera from the period 1st February 2012 to 31st October 2012 (only 9 months). The Summons was issued on 12th January 2012.*" In view of the aforesaid, I find that the benefit of doubt may be extended to him in respect of the charge alleged against him in the SCN dated December 18, 2014.

Role of other Directors and Promoter of K Sera – Shri Amar Panghal; Shri Ashok Gagwani; Shri Ramesh Pamani; Shri Sanjay Bipin Lai, Shri Ashok Pamani and Shri Rajiv Malhotra.

7.1.1 As per the SCN, Shri Amar Panghal; Shri Ashok Gagwani; Shri Ramesh Pamani; Shri Sanjay Bipin Lai, Shri Ashok Pamani (also a Promoter of K Sera) and Shri Rajiv Malhotra have been charged as liable for offenses committed by K Sera under Section 27 of the SEBI Act, 1992, as they were Directors of K Sera at the time of *GDR Issue*. Accordingly, they have been charged for violation of Section 12A(a)–(c) of the SEBI Act read with Regulations 3(c), 3(d), 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 Ashok Gagwani; Shri Ramesh Pamani, Shri Ashok Pamani and Shri Rajiv Malhotra, have denied all the allegations contained in the SCN.

- 7.1.3 No reply to the SCN was received by SEBI from Shri Amar Panghal and Shri Sanjay Bipin Lai.
- 7.1.4 I note that Shri Amar Panghal; Shri Ashok Gagwani; Shri Ramesh Pamani; Shri Sanjay Bipin Lai, Shri Ashok Pamani (also a Promoter of K Sera) and Shri Rajiv Malhotra, have not signed the *Pledge Agreement* nor were they the authorized signatories on behalf of K Sera for its bank account with Euram. I note that no specific adverse inference has been drawn against the aforementioned entity in the Investigation Report or the SCN, apart from the allegation that as a Director in K Sera, 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 Issues* of K Sera. However, I note that being Directors of K Sera, the aforementioned entities cannot be said to have been unaware of the activities of K Sera.

Role of Promoters of K Sera – Smt Kamini Pamani; Mantra Trading Company Private Limited; Shri Parag Sanghavi and Vajra Trading Company Limited.

- 8.1.1 Smt Kamini Pamani; Mantra Trading Company Private Limited; Shri Parag Sanghavi and Vajra Trading Company Limited, being Promoters of K Sera, controlled K Sera 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 K Sera.
- 8.1.2 In her reply to the SCN, Smt Kamini Pamani denied any involvement in the *GDR Issue* of K Sera.
- 8.1.3 No reply to the SCN was received from Mantra Trading Company Private Limited; Shri Parag Sanghavi and Vajra Trading 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 K Sera 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 K Sera or were shown as Promoters by K Sera in its quarterly shareholding pattern for the quarter ending December 31, 2007, 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 Smt Kamini Pamani; Mantra Trading Company Private Limited; Shri Parag Sanghavi and Vajra Trading Company Limited, indeed controlled K Sera and were responsible for the conduct of its business at the time of the *GDR Issue* in November 2007. Having

arrived at this finding, I am of the view that the SCN against the aforementioned Promoters, needs to be disposed of.

Conclusion –

9.1.1 As noted above, the *modus operandi* adopted by K Sera 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 K Sera and its Directors, etc. are of very grave nature and are prejudicial to the interests of investors in the securities market. If violations of this nature and magnitude are not dealt with seriously with a firm hand then investors will lose faith in the Indian Securities Market and even good companies will find it extremely difficult to raise capital in future. In view of the same, I am of the view that stringent measures are warranted in the instant case for dealing with such violations. The directions must be commensurate with the gravity of the violations so that it would act as an effective deterrent.

9.1.2 In this regard, I also note the following –

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

- d. Thereafter, vide **SAT Order in the matter of Pan Asia**, the Hon'ble SAT while dismissing the appeal filed by the Appellants *inter alia* observed as under –

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

the issuer companies have acquired high reputation in terms of investment potential and hence the foreign investors have fully subscribed to the GDRs, when in fact, the GDRs were subscribed by AP through Vintage which was wholly owned by AP. In other words, PAN Asia as a Lead Manager and AP as Managing Director of PAN Asia attempted to mislead the investors in India that the GDRs have been subscribed by foreign investors when in fact the GDRs were subscribed by AP through Vintage. Any attempt to mislead the investors in India constitutes fraud on the investors under the PFUTP Regulations.

...

27. *It is equally important to note that immediately after subscribing to the GDRs, Vintage (controlled by AP) sold some of the GDRs to FIIs/sub accounts such as IFCF & KII which were also controlled by AP. IFCF & KII admittedly converted GDRs into underlying equity shares of the issuer companies from the domestic custodian bank in India and sold the said shares on the Stock Exchanges in India. It is also recorded in the impugned order that the shares sold by IFCF and KII were bought by entities such as Alka, Oudh, Basmati & SV with which AP was connected. Thus, at every stage of the GDR Issue i.e. from the stage of issuing GDRs, subscribing to the GDRs, transferring the GDRs to 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."*

- 9.1.3 I note that the provisions of Sections 12A(a)–(c) of the SEBI Act read with Regulations 3(b)–(d) of the PFUTP Regulations, 2003, *inter alia* prohibit buying, selling or dealing in securities in a fraudulent manner; employment of any manipulative/deceptive device, scheme or artifice to defraud in connection with dealing in securities; engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with dealing in securities. Further, Regulations 4(2)(c), 4(2)(f), 4(2)(k), 4(2)(r) of the PFUTP Regulations, 2003, *inter alia* prohibit fraudulent and unfair trade practices in securities through various acts, omissions stated therein. In my view, any fraudulent or deceptive device, scheme, act, omission, etc. which has the potential to *inter alia* induce sale/purchase of securities of any company; influence investment decisions of investors in such company; or result in wrongful gain, etc. would be covered within the prohibition under the aforementioned provisions of law.
- 9.1.4 SEBI has been entrusted with the important mandate of protecting the interests of investors and safeguarding the integrity of the securities market. In this regard, necessary powers have been conferred upon it under the securities laws. It is, therefore, necessary that SEBI exercise these powers firmly and effectively to insulate the market and its investors from the fraudulent actions of any of the participants in the securities market, thereby fulfilling its legal mandate. A basic premise that underlines the integrity of securities market is that persons connected with securities market conform to standards of transparency, good governance and ethical behaviour prescribed in securities laws and do not resort to fraudulent activities. In this case, K Sera with the aid of its Directors, etc. has conceived the fraudulent arrangement with Vintage with regard to the subscription of *GDR Issue* and submitted incorrect/concealed information to SEBI.
- 9.1.5 For reasons detailed in the preceding paragraphs, I have no hesitation in concluding that Sera; Shri Rajesh Pavithram; Shri Hussain Sattaf and Shri Dinesh Bhanushali 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 K Sera violated Section 77(2) read with 77(4) of the Companies Act. In addition, I find that K Sera; Brigadier Vinod Ahuja and Shri Shrikant Maheshwari submitted false information to SEBI in respect of the initial investors to *GDR Issue* of K Sera 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 –

10.1.1 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.	K SERA SERA LIMITED	AAACG5103D

- ii. I note that vide the Interim Order dated September 21, 2011 (later confirmed through the Confirmatory Order on December 30, 2011), K Sera 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 K Sera 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 K Sera 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 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.	SHRI RAJESH PAVITHRAM	AAZPN1547N
2.	SHRI HUSSAIN SATTAF	ANGPS3086F
3.	SHRI DINESH BHANUSHALI	DIN – 1821051

- 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 AMAR PANGHAL	AAWPP3993Q
2.	SHRI ASHOK GAGWANI	AAFPG0318J
3.	SHRI RAMESH PAMANI	ANCPP1186D
4.	SHRI SANJAY BIPIN LAI	AAEPL6967H
5.	SHRI ASHOK PAMANI	AOQPP2675G
6.	SMT KAMINI PAMANI	ARAPP5304K
7.	SHRI RAJIV MALHOTRA	AFNPM5775N
8.	SHRI SHRIKANT MAHESHWARI	AFMPM0281Q

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

	ENTITY	PAN
1.	MANTRA TRADING COMPANY PRIVATE LIMITED	AAACM0706A
2.	SHRI PARAG SANGHAVI	ATYPS3041A
3.	VAJRA TRADING COMPANY LIMITED	AAACA1329F

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

	ENTITY	PAN
1.	BRIGADIER VINOD AHUJA	AAWPA8792K

10.1.2 This Order shall come into force with immediate effect.

10.1.3 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