

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

ORDER

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

IN THE MATTER OF ALLEGED MARKET MANIPULATION USING GDR ISSUES BY ASAHI INFRASTRUCTURE & PROJECTS LIMITED; AVON CORPORATION LIMITED; CAT TECHNOLOGIES LIMITED; IKF TECHNOLOGIES LIMITED; K SERA SERA LIMITED AND MAARS SOFTWARE INTERNATIONAL LIMITED –

IN RESPECT OF –

	ENTITY	PERMANENT ACCOUNT NUMBER
1.	VINTAGE FZE (NOW KNOWN AS ALTA VISTA INTERNATIONAL FZE)	NOT AVAILABLE
2.	ALKARNI HOLDINGS LIMITED	NOT AVAILABLE
3.	SHRI ASHOK PANCHARIYA	AEVPP6124P
4.	SHRI SATISH PANCHARIYA	ADRPP1806H
5.	CARDINAL CAPITAL PARTNERS LIMITED	NOT AVAILABLE
6.	CREDO CAPITAL PLC.	AABCI9518D
7.	EUROPEAN AMERICAN INVESTMENT BANK AG [FOREIGN INSTITUTIONAL INVESTOR]	NOT AVAILABLE
8.	INDIA FOCUS CARDINAL FUND [SUB-ACCOUNT]	AACCK8021E
9.	KII LIMITED [SUB-ACCOUNT]	AACCK8021E

Background –

1.1 In view of certain irregularities observed in the issuance of Global Depository Receipts (“GDRs”) by Asahi Infrastructure & Projects Limited (“**Asahi**”); Avon Corporation Limited (“**Avon**”); CAT Technologies Limited (“**CAT Technologies**”); IKF Technologies Limited (“**IKF**”); K Sera Sera Limited (“**K Sera**”) and Maars Software International Limited (“**Maars**”) [Collectively referred to as “**Issuer Companies**”], Securities and Exchange Board of India (“**SEBI**”) vide an *Ad Interim Ex-Parte* Order dated September 21, 2011 (“**Interim Order**”), directed –

- I. European American Investment Bank AG registered as a Foreign Institutional Investor (“**Euram-FII**”);
- II. India Focus Cardinal Fund, Sub-Account (“**IFCF**”) and
- III. KII Limited, Sub-Account (“**KII**”).

“...not deal in securities or instrument with Indian securities as underlying, in any manner whatsoever, until further orders.”

1.2 The Interim Order was confirmed against –

- I. IFCF on December 30, 2011 (“**Confirmatory Order–IFCF**”);
- II. Euram–FII on January 25, 2012 (“**Confirmatory Order Euram–FII**”) and
- III. KII on January 23, 2013 (“**Confirmatory Order–KII**”).

Show Cause Notice dated September 19, 2014 –

2.1 SEBI completed its investigation in the matter and based on the findings contained therein, a Show Cause Notice (“**SCN**”) dated September 19, 2014, was issued to the following entities, viz.

- i. Vintage FZE (now known as Alta Vista International FZE) (“**Vintage**”);
- ii. Alkarni Holding Limited (“**Alkarni Holding**”);
- iii. Shri Ashok Panchariya;
- iv. Shri Satish Panchariya;
- v. Cardinal Capital Partners Limited (“**Cardinal Capital**”);
- vi. Credo Capital Plc. (“**Credo**”);
- vii. Euram–FII;
- viii. IFCF and
- ix. KII.

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**”), pertained to the *GDR Issues* made by made by Asahi; Avon; CAT Technologies; IKF; K Sera and Maars.

2.3 The SCN states –

A. Asahi: GDR Issue – April 28, 2009

- i. In *GDR Issue*, Vintage FZE (now known as Alta Vista International FZE) (“**Vintage**”), an entity under control of Shri Arun Panchariya (“**Panchariya**”), was the original subscriber of GDRs.
- ii. However, vide letters dated June 1, 2009 and November 2, 2011, Asahi informed SEBI and BSE Limited (“**BSE**”) that the following entities were the initial subscribers of the aforesaid Issue, viz. –

- a. Greenwich Management Inc.;
 - b. Tradetec Corporation;
- iii. As the authorised signatory for Asahi, Shri Laxminarayan Jainarayan Rathi (Chairman and Managing Director of Asahi during *GDR Issue* in April 2009) signed a *Pledge Agreement* dated April 21, 2009, with European American Investment Bank AG ("**Euram-Bank**"). Shri Laxminarayan Jainarayan Rathi was also the authorised signatory for Asahi's bank account with Euram-Bank.
- iv. The *Pledge Agreement* (signed between Asahi and Euram-Bank) was an integral part of another agreement viz. *Loan Agreement* dated April 22, 2009, signed between Vintage and Euram-Bank. These Agreements enabled Vintage to avail a loan of US \$5.98 Million from Euram-Bank for subscribing to the *GDR Issue* of Asahi in April 2009.
- v. Around 70.01% of total capital raised by Asahi via *GDR issue* was routed to its foreign subsidiary viz. Asahi FZE.
- vi. Asahi transferred around 44.68% of *GDR issue* proceeds to entities *prima facie* connected with Shri Arun Panchariya. Asahi FZE made payments totaling US \$2 Million to Vintage, the subscriber of the *GDR issue* of Asahi.

B. Avon: GDR Issue – June 19, 2009

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

- iii. As the authorised signatory for Avon, Shri Pankaj Saraiya (Chairman, Managing Director, Chief Executive Officer and Promoter of Avon during *GDR Issue* in June 2009) signed a *Pledge Agreement* dated June 10, 2009, with Euram–Bank on June 12, 2009. Shri Pankaj Saraiya was also the authorised signatory for Avon’s bank account with Euram–Bank.
- iv. The *Pledge Agreement* (signed between Avon and Euram–Bank) was an integral part of another agreement viz. *Loan Agreement* dated June 10, 2009, signed between Vintage and Euram–Bank on June 12, 2009. The aforesaid Agreements enabled Vintage to avail a loan of US \$10 million from Euram–Bank for subscribing to the *GDR Issue* of Avon in June 2009.
- i. Around 66.27% of total capital raised by Avon via *GDR Issue* was routed to its foreign subsidiary viz. Avon Corporation FZE.
- ii. Avon entered into an agreement with a Dubai based company, viz. Ababil Star General Trading LLC (“**Ababil**”) for the purchase of second hand machinery in Dubai. Avon paid US \$1.5 million through Euram Bank Account on August 18, 2009 to Ababil. The US \$1.5 million were paid by Avon to Ababil on the pretext of purchase of machinery from Ababil. However, Avon never received any machinery from Ababil as Avon did not require the aforesaid machinery.

C. CAT Technologies: GDR Issue I – July 27, 2007

- i. In *GDR Issue I*, Vintage, an entity under control of Shri Arun Panchariya, was the original subscriber of GDRs. However, CAT Technologies informed SEBI that the following entities were the original investors of the aforesaid Issue, viz. –
 - a. Rexflec Limited;
 - b. Tradetec Corporation;
 - c. Trendsetter Enterprises Corp
 - d. Futura Group Limited;
 - e. Imagination Network Inc.
- ii. As the authorised signatory for CAT Technologies, Shri Dhiraj Kumar Jaiswal (Managing Director of CAT Technologies) signed a *Pledge Agreement I* dated July 20, 2007, with Euram–Bank. Shri Dhiraj Kumar Jaiswal was also the authorised signatory for CAT Technologies’ bank account with EURAM.
- iii. The *Pledge Agreement I* (signed between CAT Technologies and EURAM) was an integral part of another agreement viz. *Loan Agreement I* dated July 23, 2007, signed between

Vintage and EURAM. These Agreements enabled Vintage to avail a loan of US \$6.45 million from EURAM for subscribing to the GDR issue of CAT Technologies on July 27, 2007.

- iv. In terms of the *Pledge Agreement I*, CAT Technologies 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.

D. CAT Technologies: GDR Issue II – November 6, 2009

- i. In *GDR Issue II*, Vintage was the original subscriber of GDRs. However, vide letter dated ..., CAT Technologies informed SEBI that the following entities were the original investors of the aforesaid Issue, viz. –
 - a. Futura Group Limited;
 - b. Tradetec Corporation;
 - c. Trendsetter Enterprises Corp.
- ii. As the authorised signatory for CAT Technologies, Shri Dhiraj Kumar Jaiswal (Managing Director of CAT Technologies during GDR Issue in November 2009) signed a *Pledge Agreement II* dated October 27, 2009, with EURAM.
- iii. The *Pledge Agreement II* (signed between CAT Technologies and Euram–Bank) was an integral part of another agreement viz. *Loan Agreement II* dated October 27, 2009, signed between Vintage and Euram–Bank. These Agreements enabled Vintage to avail a loan of US \$10 million from Euram–Bank for subscribing to the GDR issue of CAT Technologies on November 6, 2009.
- iv. In terms of the *Pledge Agreement II*, CAT Technologies deposited the GDR subscription proceeds received from the subscriber i.e. Vintage, as security with Euram–Bank for the loan availed by that very same subscriber.
- v. The total capital raised through *GDR Issue I* and *GDR Issue II* was also routed to CAT Technologies foreign subsidiary, viz. CAT Technologies FZE. CAT Technologies funded its Promoters, viz. Shri Laxmipershad Jaiswal, Shri Dinesh Kumar Jaiswal and Espirit Technologies Private Limited, for purchase of its shares worth ₹91.96 Lakhs in March 2009.

E. IKF: GDR Issue II – May 15, 2009

- i. In *GDR Issue II*, Vintage was the original subscriber of GDRs. However, vide letter dated May 10, 2011, IKF informed SEBI that the following entities were the original investors of the aforesaid Issue, viz. –
 - a. Echelon India Investments Ltd;
 - b. Imagination Network Inc.;
 - c. Knightbridge Management Inc.;
 - d. Tradetec Corporation;
 - e. Trend Setter Enterprises Cops.
- ii. As the authorised signatory for IKF, Shri Sunil Kumar Goel (Whole Time Director and Promoter of IKF during GDR Issue in May 2009) signed a *Pledge Agreement* dated April 28, 2009, with Euram–Bank. Shri Sunil Kumar Goel was also the authorised signatory for IKF's bank account with Banco.
- iii. The *Pledge Agreement* (signed between IKF and Euram–Bank) was an integral part of another agreement viz. *Loan Agreement* dated April 28, 2009, signed between Vintage and Euram–Bank. These Agreements enabled Vintage to avail a loan of US \$10.98 million from Euram–Bank for subscribing to the GDR issue of IKF on May 15, 2009.
- iv. Around 68.70% of total capital raised through *GDR Issue II* was also routed to a foreign subsidiary, viz. Biofuel FZE.

F. K Sera: GDR Issue I – November 2, 2007

- i. In *GDR Issue I*, 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. Rexflec Limited;
 - b. Figura Group Limited;
 - c. Tradetec Corporation;
 - d. Knightsbridge Management Inc.;
 - e. Flamboyant International Limited;
 - f. Greenwich Management Inc.;
 - g. Imagination Network 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 Euram–Bank. Shri Rajesh Pavithram and Shri Dinesh Bhanushali were also the authorised signatories for the bank account of K Sera with Euram–Bank. 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. The aforesaid Resolution bears the signatures of Shri Amar Panghal and Shri Rajiv Malhotra.
- iii. The *Pledge Agreement I* (signed between K Sera and Euram–Bank) was an integral part of another agreement viz. *Loan Agreement I* dated October 30, 2007, signed between Vintage and Euram–Bank. These Agreements enabled Vintage to avail a loan of US \$24.99 million from Euram–Bank for subscribing to the GDR issue of K Sera on November 2, 2007.

G. K Sera: 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–Bank. Shri Hussain Sattaf was also the authorised signatory for K Sera’s bank account with Euram–Bank. 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. The aforesaid Resolution bears the signatures of Shri Hussain Sattaf and Shri Sanjay Bipin Lai.
- iii. The *Pledge Agreement II* (signed between K Sera and Euram–Bank) was an integral part of another agreement viz. *Loan Agreement II* dated October 6, 2009, signed between Vintage

and Euram–Bank. These Agreements enabled Vintage to avail a loan of US \$29.98 million from Euram–Bank for subscribing to the GDR issue of K Sera on October 16, 2009.

- iv. 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.

H. **Maars: GDR Issue – August 2007**

- i. In the *GDR Issue*, Vintage was the original subscriber of GDRs.
- ii. However, vide letters dated August 16, 2007 and November 2, 2011, Maars informed SEBI and BSE that the following entities were the initial subscribers of the aforesaid Issue, viz.
—
 - a. Rexflec Limited;
 - b. Imagination Network Inc.;
 - c. Figura Group Limited;
 - d. Tradetec Corporation;
 - e. Trend Setter Enterprises Cops.
- iii. As the authorised signatory for Maars, Shri Pravin Champalal Jain (Managing Director of Maars during *GDR Issue* in August 2007) signed a *Pledge Agreement* dated July 31, 2007, with Euram–Bank. Shri Pravin Champalal Jain was also the authorised signatory for Maars’s bank account with Euram–Bank.
- iv. The *Pledge Agreement* (signed between Maars and Euram–Bank) was an integral part of another agreement viz. *Loan Agreement* dated July 31, 2007, signed between Vintage and Euram–Bank. These Agreements enabled Vintage to avail a loan of US \$17.93 million from Euram–Bank for subscribing to the GDR issue of Maars in August 2007.

2.4 The SCN also states –

- i. Vide letter dated February 20, 2012, Pan Asia (now known as Global Finance and Capital Limited), the Lead Manager of the GDR issue of the Issuer Companies stated that Shri Arun Panchariya was its Managing Director and was holding 100% shares during the time of issuance of GDRs by the Issuer Companies.
- ii. Shri Arun Panchariya controlled Vintage and was also its Authorised Signatory.
- iii. As the Authorised Signatory and while in control of Vintage, Shri Arun Panchariya signed *Loan Agreements* with Euram-Bank.
- iv. Each *Loan Agreement* was an integral part of another Bi-partite Agreement, namely, *Pledge Agreement*, signed between Issuer Companies and Euram-Bank. The *Loan Agreement* (signed between Vintage and Euram-Bank) and *Pledge Agreement* (signed between Issuer Companies and Euram-Bank) enabled Vintage to obtain loans from Euram-Bank to subscribe to GDR Issues of the Issuer Companies.
- v. The Issuer Companies, in turn, pledged the subscription proceeds received from the lone subscriber i.e. Vintage, for the loan availed by Vintage from Euram-Bank for the subscription of the GDR Issue of the same Issuer Company.
- vi. Therefore, *prima facie*, there was no real movement of funds involved during the GDR issuance process except for a few book entries which resulted in a surge in the capital of the Issuer Companies. Therefore, the result of the Pledge Agreements and Loan Agreements signed among Issuer Companies, Euram-Bank and Vintage was that even after successful completion of the GDR issues by Issuer Companies, there was no free capital available with the Issuer Companies immediately pursuant to the issuance of GDRs. This was because the capital raised by GDRs was provided as security against loan taken by Vintage from Euram-Bank. However, this crucial information was not available to the investors in India.
- vii. Vintage thus effectively became the sole subscriber of the GDR issuances of the Issuer Companies. By means of these agreements, Vintage, became the largest holder of capital of these Issuer Companies as the GDRs accounted for a major portion of the capital of these companies. The above explained *Loan and Pledge Agreements* entered into by Issuer Companies with Euram-Bank and Vintage was specifically prohibited under the Indian law.
- viii. Thus, Vintage *prima facie* colluded with the Issuer Companies in the fraudulent arrangement regarding subscription of GDRs of the said Companies, which acted as an inducement for other persons to offer to buy the shares of the Issuer Companies in India.

- ix. Alkarni Holding was the sole shareholder of Vintage at the time of GDR issuance, as observed from the letter dated March 27, 2012, received from Financial Market Authority of Austria. Shri Ashok Panchariya was Director of Vintage and Alkarni Holding, while Shri Satish Panchariya was Director of Alkarni Holding (as observed from the letters dated December 28, 2010 addressed to Euram-Bank and Register of Directors of Alkarni as obtained from Euram-Bank).
- x. The GDRs came into existence only due to the fraudulent arrangement employed by Vintage. Thereafter, Vintage transferred a substantial portion of these GDRs to related entities viz. IFCF and KII, with an ulterior motive to offload these GDRs in Indian Markets by converting these GDRs into shares and selling these shares to Indian investors.
- xi. IFCF and KII received the GDRs of Issuer Companies from Vintage and thereafter converted those GDRs into underlying shares, which were then sold in the Indian securities markets. The aforesaid transactions (conversion of GDRs into shares and sale of resultant shares in Indian Stock Markets) resulted in the monetization of GDRs of Issuer Companies, which were effectively received by Vintage free of cost due to *Loan Agreements* and *Pledge Agreements*.
- xii. Both IFCF and KII were related to Shri Arun Panchariya and Vintage.
- xiii. The counter parties to a major portion of such sales by IFCF and KII were again entities connected to Shri Arun Panchariya, viz. Shri Ashok Panchariya, Basmati Securities Private Limited, SV Enterprise/Sarfaraz Khan, Shri Madanlal Girdharilal Bugaliya, Indra Varun Trade Impex Private Limited, Delight Financial Advisors Limited, Shri Vinod Amrutlaal Naai, Newgen International Private Limited, Excel Paints Private Limited, Cherry Cosmetics Private Limited, Edelweiss Estates Private Limited (hereinafter collectively referred to as “**CP Group**”). It is observed that around 40% (IFCF sale of shares of Maars) to 100% (IFCF sale of shares of CAT) of the shares sold by IFCF and KII were purchased by this CP Group and thereafter sold to other investors.
- xiv. Even before Vintage started to repay the loan taken for a particular GDR issue, IFCF and KII had converted large amount of GDRs of the Issuer Companies into their underlying shares and thereafter sold these shares in the Indian securities market.
- xv. As Vintage, IFCF and KII were under the control of Shri Arun Panchariya, part of the repayment of loan by Vintage was done by converting the fraudulently acquired GDRs and selling them to Indian investors.

- xvi. As a consequence of the aforesaid fraudulent arrangement, the Indian investors upon buying shares converted from GDRs unknowingly assisted the Issuer Companies to release the GDR subscription proceeds from encumbrance/pledge. Therefore, instead of capital being raised from foreign investors through issuance of the GDRs, the Indian investors ultimately paid for part of GDRs after the said GDRs were converted into underlying shares, which were then sold in the Indian securities market to the investors. This, in turn defeated the purpose of issuance the GDRs, which is to raise finance from foreign investors.
 - xvii. SEBI sought information from IFCF on the trades done by it. However, IFCF submitted false information to SEBI.
 - xviii. IFCF was registered as a Sub–Account of Euram–FII. In terms of Regulation 13A(1) of the SEBI (Foreign Institutional Investors) Regulations, 1995 (“**FII Regulations**”), a Foreign Institutional Investor shall be responsible for all acts of commission and omission of all its Sub-Account, viz. IFCF.
 - xix. KII was registered as a Sub–Account of Credo. In terms of Regulation 13A(1) of the FII Regulations, a Foreign Institutional Investor shall be responsible for all acts of commission and omission of all its Sub-Account, viz. KII.
 - xx. Cardinal Capital acted as Investment manager of IFCF. Cardinal Capital also held 100% shareholding of IFCF. In July 2011, Cardinal Capital also became the FII of IFCF.
 - xxi. In the instant case, the Issuer Companies are listed on the BSE and the issuances of GDRs of the Issuer Companies are from the authorised share capital of such companies. Since, the two–way fungibility of GDRs allows for conversion of GDRs into shares in Indian market and *vice versa*, any structuring, arrangement or manipulation related to GDRs has a direct bearing on the price of the shares of the companies whose GDRs have been issued affecting not only the securities market in general but more specifically the shareholders of the Issuer Companies.
- 2.5 Accordingly, as per the SCN, the persons/entities named therein were *prima facie* alleged to have violated the following provisions of law –
- i. Vintage *prima facie* colluded with the Issuer Companies in violating Section 77(2) read with Section 77(4) of the Companies Act. *Prima facie*, this fraudulent arrangement regarding subscription of GDRs of the Issuer Companies acted as an inducement for other persons to offer to buy the shares of the Issuer Companies in India. Vintage is alleged to have violated Sections 12A(a)–(c) of the SEBI Act read with Regulations 3(c)–(d) and 4(2)(a), 4(2)(c), 4(2)(f) and 4(2)(k) of the PFUTP Regulations, 2003.

- ii. Vintage was under the control of Alkarni Holding. Accordingly, Alkarni Holding is *prima facie* liable for the aforesaid alleged violations by Vintage. Alkarni Holding is alleged to have violated Sections 12A(a)–(c) of the SEBI Act read with Regulations 3(c)–(d) and 4(2)(a), 4(2)(c), 4(2)(f) and 4(2)(k) of the PFUTP Regulations, 2003.
- iii. Under Section 27 of the SEBI Act, where an offence under the SEBI Act has been committed by the 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. Accordingly, it is observed that Shri Ashok Panchariya (Director of Vintage and Alkarni Holding) and Shri Satish Panchariya (Director of Alkarni Holding) are liable to be proceeded against for alleged violation of Sections 12A(a)–(c) of the SEBI Act read with Regulations 3(c)–(d) and 4(2)(a), 4(2)(c), 4(2)(f) and 4(2)(k) of the PFUTP Regulations, 2003.
- iv. IFCF and KII are alleged to have violated of Regulations 3(a)–(d); 4(1) and 4(2)(a), 4(2)(c) and 4(2)(e) of the PFUTP Regulations, 2003.
- v. IFCF is alleged to have violated Section 11C(3) of the SEBI Act.
- vi. IFCF was registered as a Sub–Account of Euram–FII. Euram–FII is therefore liable to proceeded against for the violations committed by IFCF. Euram–FII has therefore *prima facie* violated Regulation 13A(1) of the FII Regulations read with Clause 1, 2, 8 and 10 of the Code of Conduct specified under Regulation 7A of the FII Regulations. Euram–FII has also *prima facie* violated Sections 12A(a)–(c) of the SEBI Act read with Regulations 3(a)–(d); 4(1) and 4(2)(a), 4(2)(c) and 4(2)(e) of the PFUTP Regulations, 2003.
- vii. KII was registered as a Sub–Account of Credo. Credo is therefore liable to proceeded against for the violations committed by KII. Credo has therefore *prima facie* violated Regulation 13A(1) of the FII Regulations read with Clause 1, 2, 8 and 10 of the Code of Conduct specified under Regulation 7A of the FII Regulations. Credo has also *prima facie* violated Sections 12A(a)–(c) of the SEBI Act read with Regulations 3(a)–(d); 4(1) and 4(2)(a), 4(2)(c) and 4(2)(e) of the PFUTP Regulations, 2003.
- viii. Cardinal Capital acted as Investment manager of IFCF. Cardinal Capital also held 100% shareholding of IFCF. In July 2011, Cardinal Capital also became the FII of IFCF. Cardinal Capital is liable to be proceeded against for the violations committed by IFCF. Cardinal Capital has *prima facie* violated Sections 12A(a)–(c) of the SEBI Act read with Regulations

3(a)–(d); 4(1) and 4(2)(a), 4(2)(c) and 4(2)(e) of the PFUTP Regulations, 2003. Cardinal Capital has also *prima facie* violated Regulation 13A(1) of the FII Regulations read with Clause 1, 2, 8 and 10 of the Code of Conduct specified under Regulation 7A of the FII Regulations.

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

I. 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”.*

iv. **SEBI (Foreign Institutional Investors) Regulations, 1995 –**

7A. *A foreign institutional investor holding a certificate shall, at all times, abide by the Code of Conduct as specified in Third Schedule.*

13A. (1) *A foreign institutional investor shall be responsible and liable for all acts of commission and omission of all its sub-accounts and other deeds and things done by such sub-accounts in their capacity as sub-accounts under these regulations.*

Third Schedule – Code of Conduct (Regulation 7A)

1. *A Foreign Institutional Investor and its key personnel shall observe high standards of integrity, fairness and professionalism in all dealings in the Indian securities market with intermediaries, regulatory and other government authorities.*

2. *A Foreign Institutional Investor shall, at all times, render high standards of service, exercise due diligence and independent professional judgment.*

8. *A Foreign Institutional Investor shall ensure that it does not engage in fraudulent and manipulative transactions in the securities listed in any stock exchange in India.*

10. *A Foreign Institutional Investor shall not be a party to or instrumental for – a) creation of false market in securities listed or proposed to be listed in any stock exchange in India; b) price rigging or manipulation of prices of securities listed or proposed to be listed in any stock exchange in India; c) passing of price sensitive information to any person or intermediary in the securities market.*

A. Hearing –

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

a. May 26, 2017 –

i. The following entities i.e. no. 1–4 and 6–7 and 9 of SCN dated September 19, 2014, did not appear for hearing –

- Vintage;
- Alkarni Holding;
- Shri Ashok Panchariya;
- Shri Satish Panchariya;
- Credo;
- Euram–FII;
- KII.

ii. The following entities i.e. no. 5 and 8 of SCN dated September 19, 2014, appeared for the hearing –

- Cardinal Capital;
- IFCE.

b. June 12, 2017 –

i. The following entities i.e. no. 7 and 9 of SCN dated September 19, 2014, appeared for the hearing –

- Euram–FII.

c. July 5, 2017 –

i. The following entities i.e. no. 1–4 of SCN dated September 19, 2014, did not appear for hearing –

- Vintage;
- Alkarni Holding;
- Shri Ashok Panchariya;
- Shri Satish Panchariya.

ii. The following entities i.e. no. 6 and 9 of SCN dated September 19, 2014, appeared for the hearing –

- Credo;
- KII.

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

- i. **Vintage** – No reply (to the SCN) was received by SEBI.
- ii. **Alkarni Holding** – No reply (to the SCN) was received by SEBI.
- iii. **Shri Ashok Panchariya** – Vide reply dated June 15, 2017, he *inter alia* submitted as under:
 - a. *“I was a Director of Alkarni Holding only during the period beginning from 6th January, 2010 till 15th November, 2011. Therefore, it is crystal clear that I was not a Director in Alkarni Holding during the relevant period impugned by SEBI in the SCN.*
 - b. *I was not involved in day to day business of the Company. I have never attended any Board Meetings during my tenure.*
 - c. *To the best of my knowledge, till 4th November, 2010, Vintage was 100% owned by Shri Arun Panchariya. Alkarni Holding acquired Vintage on 4th November, 2010 i.e. a year after the GDR issues of all 6 companies were successfully closed.*
 - d. *Even though I was a Director in Vintage, neither was I involved in day to day business of Vintage nor was I aware about the alleged signed Pledge and Loan Agreements. Without prejudice to the above, I submit that even if it assumed that Vintage had committed the contraventions and violation as alleged in the SCN, no proceedings could have been initiated against me. As per Section 27 of the SEBI Act itself, which has been invoked against me in the SCN, before inter alia proceeding against the Director of a company, it must be proved that the offence committed by that company had been committed with the consent or connivance of, or is attributable to any neglect on part of that Director. The SCN, however, has merely chosen to proceed against me on the basis that I was the Director of Vintage without even alleging, let alone proving that the offences alleged against Vintage were committed with my consent or connivance, or was attributable to any neglect on my part. Accordingly, the pre-requisites required to invoke the said Section 27 are not fulfilled in the present case and the SCN against me deserves to be quashed and set aside on this ground alone.*
 - e. *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.

- f. 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.*
- g. 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.*
- h. 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.*
- i. 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.*
- j. 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.

- k. 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.*
- l. 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.*
- m. 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."*

iv. **Shri Satish Panchariya** – Vide reply dated June 15, 2017, he *inter alia* submitted as under:

- a. "I was associated in a capacity of Advisory Director (of Alkarni Holding) beginning from 6th January, 2010 till 15th November, 2011. Therefore, it is crystal clear that I was not a Director in Alkarni Holding during the relevant period impugned by SEBI in the SCN.*
- b. I was not involved in day to day business of the Company. I have never attended any Board Meetings during my tenure.*

- c. *To the best of my knowledge, till 4th November, 2010, Vintage was 100% owned by Shri Arun Panchariya. Alkarni Holding acquired Vintage on 4th November, 2010 i.e. a year after the GDR issues of all 6 companies were successfully closed.*
- d. *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.*
- e. *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.*
- f. *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.*
- g. *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.*
- h. *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.

- i. 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.*
- j. 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.*
- k. 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.*
- l. 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."*

- v. **Cardinal Capital** – Vide reply dated August 25, 2015, the entity *inter alia* submitted: *It became the FII for IFCF on July 20, 2011 and it did not act as Investment Manager for IFCF before that. Further, it did not have any connection with IFCF prior to the aforesaid period.*
- vi. **Credo and KII** – Vide replies dated January 23, 2015 and July 12, 2017, the entities *inter alia* submitted as under:
 - a. *“KII had no actual or constructive knowledge of the market manipulation scheme devised by Shri Arun Panchariya.*
It is humbly submitted that neither KII nor Credo was aware of any market manipulation scheme nor were there any reasonable grounds at any time during the period between January 1, 2009 and May 31, 2010 (“Relevant Period”) for KII to suspect that such a scheme existed.
 - b. *KII’s contractual relationship was with Credo Investments Holdings Limited (CIHL) which in turn had a relationship with Vintage. KII’s relationship with Vintage was an arms-length commercial relationship. A complete KYC compliance check was undertaken by Credo on Vintage and Panchariya.*
 - c. *Vintage’s rationale for trading was not in any way suspicious or unusual to Credo/KII. The GDR arbitrage strategy was a common and legitimate strategy during that period and remains so as it was seeking to exploit the price differences between GDRs on foreign markets and shares in the local market.*
 - d. *Not only was there a legitimate rationale for the loan structure, but it was also similar to other types of structures commonly used in the market. The structure allowed KII as broker to facilitate the client business without taking any market risk, and instead taking a fee for the service. It is akin to trading on a matched principal basis (i.e. one party trading as principal with a client at the same time as hedging the exact same trade in the market with a counterparty). This is both common and legitimate in financial markets.*
 - e. *It is submitted that during the relevant time neither Credo nor KII had any knowledge whatsoever about the arrangements and/or relationship between Panchariya and Euram or the loan and pledge arrangements between Vintage and Euram. To the contrary, the contract note clearly shows the seller as Euram and not as the Vintage account at Euram. Vintage had confirmed that it was not the owner of the GDRs and therefore, there was no reason for KII to suspect that Euram was not the owner of the GDRs.*
 - f. *KII/Credo were not under the control of Shri Arun Panchariya and/or the CP Group and were not in connivance with Shri Arun Panchariya and or the CP Group in relation to the trading in the GDRs/the underlying shares.*

- g. It is submitted that the Credo Group is a reputed wealth management group with a global presence and with companies in the Credo Group (as it was constituted during the Relevant Period) being authorised to carry on business in the United Kingdom, South Africa, Switzerland, the BVI and Bermuda. Credo is a company Incorporated in England and Wales and is also authorised and regulated by the Financial Conduct Authority (UFCA") of the United Kingdom to provide wealth management services.*
- h. Panchariya has no corporate interest in or familial link with KII or any company in the Credo Group. The only connection between Panchariya and Credo I KII was via Vintage which was a client of Credo's of which Panchariya was the sole director and shareholder. The only connection was accordingly an arms-length one of a broker and client.*
- i. Further, it is submitted that neither KII nor Credo had any relationship with any of the GDR issuers or Panchariya or any of the entities I companies controlled by I connected to Panchariya, viz. Ashok Panchariya, Basmati Securities Pvt. Ltd., SV Enterprises, Sarfaraz Khan, Madanlal Girdharilal Bugaliya, Indra Varun Trade Impex Pvt. Ltd, Delight Financial Advisors Ltd, Vinod Amrutlaal Naai, Newgen International Pvt. Ltd, Excel Paints Pvt. Ltd, Cherry Cosmetics Pvt. Ltd, Edelweiss Estates Pvt. Ltd. and neither KII nor Credo had grounds to suspect a connect on between the different entities within the chain (i.e. GDR issuers, GDR sellers, Indian brokers, AP Group (i.e., the purchasers of the shares) or Euram.*
- j. KII purchased the least number of GDRs in the Issuer Companies as compared to the other FIIs named in the SCN. KII held underlying shares in the Issuer Companies after the cancellation of the GDRs, for time periods which were longer than the time periods for which Mavi held the shares. KII's trading in the GDRs is on an equal or better footing than Mavi. We submit, that SEBI's finding that the tact that the AP Group were constantly buying and selling in the above-mentioned companies during the time when Mavi was trading in the said shares, which led to the matching of orders as being coincidental, is also applicable and relevant to KII.*
- k. It is humbly submitted that Credo I KII have at all times co-operated with the SEBI investigation and have been completely transparent and forthcoming with disclosure of information.*
- l. The burden of proof required to be discharged for a serious offence of market manipulation has not been discharged by SEBI.*
- m. It is humbly submitted that SEBI has failed to demonstrate through cogent evidence that KII had links with the counterparties or had advance knowledge of the trades of the counterparties, let alone colluded with the AP Group. Therefore, in the absence of any evidence adduced by SEBI to establish that KII was aware of the counterparty to which/whom the shares were sold or that the Brokers interfered with the price and*

order matching mechanism of the exchange, it is submitted that the charge of market manipulation is not sustainable against KII.”

vii. **Euram–FII:** Vide reply dated June 20, 2017, the company *inter alia* submitted as under:

a. *“As a threshold matter, SEBI's application of Regulation 13 (A) (1) to this case is entirely misconceived and is basis an incorrect interpretation of the relevant regulation. We submit that Euram cannot be held liable for any breach by IFCF of the PFUTP Regulations or for that matter, the SEBI Act. Moreover, Regulation 13(A) (1) certainly does not provide SEBI with any such power to do so, and nor do the FII Regulations contain any mechanism where a violation of another regulation or law can be investigated into by an investigating officer appointed by SEBI under the FII Regulations and the FII can be proceeded against by SEBI under the FII Regulations for acts or omissions of another person under such laws or regulations. Such an interpretation would provide SEBI with the power to penalize an FII for a third party's breach of other laws, which it certainly does not have, nor has the legislature intended for SEBI to have such power. It is respectfully submitted that Regulation 13A(1) of the FII Regulations has to be read reasonably and in the context of the overall machinery of the FII Regulations.*

b. *As a preliminary matter, Euram could not have violated (emphasis added) Regulation 13A(1) of the FII Regulations read with Clause 1, 2, 8 and 10 of the Code of Conduct specified under Regulation 7A of the FII Regulations.*

We have already made submissions in respect of the true meaning and import of Regulation 13(A)(1). It at its best holds an FII liable under the FII Regulations for any breach by a sub-account of the provisions of the FII Regulations. There can however never be a violation of Regulation 13A(1) of the FII Regulation by the FII itself and it can never be read together Clauses 1, 2, 8 and 10 of the Code of Conduct specified under Regulation 7A of the FII Regulations. In this regard, we submit as under:

The question of Violation' of Regulation 13A(1) of the FII Regulations can never arise,
It is submitted that there can never be a violation of Regulation 13A(1) of the FII Regulations. A plain reading of Regulation 13 A(1) of the FII Regulations make it clear that it under certain circumstances holds an FII liable for the acts, deeds done by the sub-account under the FII Regulations. It is however clear that it's the sub-account that violates the Regulations and not the FII, and by virtue of Regulation 13(A)(1) an FII may be liable for such deeds. This cannot however be construed to mean that the FII by itself can violate Regulation 13A(1) of the FII Regulations, since there is no duty or obligation contained in Regulation 13(A)(1). Accordingly, there is absolutely no possibility of Euram having violated Regulation 13A(1) of the FII Regulations.

Reading Regulation 7A of the FII Regulations with Regulation 13A(1) of the FII Regulations creates an absurdity.

It is respectfully submitted that Regulation 13A(1) of the FII Regulations can never be read with Regulation 7 A of the FII Regulations. This is because on one hand, Regulation 13A(1) makes an FII liable or responsible for the acts, deed or things done by the sub-account, whereas on the other hand, Regulation 7A does not contain any corresponding act, deed or thing that can be done by the sub-account. In fact, Regulation 7A casts a duty on an FII to abide by the Code of Conduct. Therefore, reading Regulation 7 A of the FII Regulations with Regulation 13A(1) of the FII Regulations creates an absurdity.

The allegation that Euram violated Clauses 1. 2. 8 and 10 of the Code of Conduct is unsustainable.

In case the second allegation is interpreted to mean an independent violation by Euram of Clauses 1, 2, 8 and 10 of the Code of Conduct specified under Regulation 7A of the FII Regulations, then it is important that there must at least be a finding against it in the Report in respect of these clauses. Notably, there is not even a single finding against Euram in this regard in the Report or a mention in SCN as to how Euram has violated or breached these Clauses. Even though the SCN states that certain clauses of the Code of Conduct have been violated, it so much as fails to allege how they have been violated and no reasoning whatsoever has been provided. In the absence of any specific fact or act or omission that Euram may have committed or omitted to do, and which SEBI may find to be in violation of the provisions of these Clauses, it is not possible for Euram to explain why it should not be held to be liable, other than to state that Euram has fully met its obligations under the code of conduct, and at no point has it violated any provisions of the FII Regulations.

- c. *As far as Sections 12A (a)-(c) of the SEBI Act read with Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(c), 4(2)(e) of the PFUTP Regulations are concerned, they deal with fraudulent or manipulative conduct or creation of a false market or engaging in an unfair trade practice. In each case, these are serious charges that have independent elements and require a detailed investigation, substantiation by evidence and specific finding before a charge can be made out. In the present case, there is absolutely no finding or record against Euram for having itself engaged in any fraudulent or manipulative conduct or for that matter, deployed an unfair trade practice. The SCN only vaguely and almost abruptly seeks an explanation from Euram as to why it should not be proceeded against under these provisions it provides no explanation or grounds or for that matter the specific acts that Euram has committed which may have been found to be in violation of these provisions. It is left to Euram to understand why it may have been charged and for what acts or omissions. It is an accepted principle that were a charge is levelled, the investigation must itself contain findings and basis*

for such charge. In the absence of any findings, a mere charge cannot sustain on its own.

Elements of charges have not been met.

Each charge levelled against Euram has separate and distinct elements to it which must be satisfied before a person can be said to have violated the relevant provision.

(i) There must be an act, expression, omission or concealment;

(ii) Such act, expression, omission or concealment must have been committed by a person or another with his connivance or by his agent;

(iii) The act, expression, omission or concealment must be in the context of dealing in securities; and

(iv) it must have induced another person or his agent to deal in the securities.

In Euram's case, while it is alleged to have engaged in fraudulent conduct, no facts relating to such conduct or the manner in which those facts establish that Euram committed fraud has been provided. In the absence of any facts or explanation, it is difficult to imagine how Euram can be considered to have committed such serious violations.

Evidentiary threshold.

The nature of the allegations and violations is such that for them to sustain, SEBI must satisfy the evidentially threshold relevant to Sections 12A (a)-(c) of the SEBI Act and Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(c), 4(2)(e) of the PFUTP. It isn't sufficient for SEBI to merely level an allegation. It is its duty to fully explain the facts, backed by relevant evidence and provide a cogent explanation as to how a person is considered to have violated such provisions in the facts and circumstances, supported by evidence. The SCN fails miserably in this regard. SEBI provides no explanation, no findings as to intent, involvement or for that matter, any benefit derived by Euram. SEBI has not just failed to meet the higher degree of proof that is required of it in such cases, it has even failed to meet the basic requirements of intent and it seems proceeded on the basis of conjectures and surmises, which in the context of the allegations is not enough. SEBI cannot rely upon probability or circumstantial evidence to establish a serious charge of fraud.⁷ It also can't make wild allegations of manipulation or fraudulent action unsupported with convincing evidence. The charges are such that they must be supported by evidence on record, which in this case doesn't exist and hence the charges are unsustainable.

Lack of monetary or other benefit.

It is a matter of record that none of the proceeds of any sale or transaction in securities by either IFCF or persons connected with AP in India were paid to or shared with Euram as an FII or otherwise as a bank. It is also not SEBI's case that the issuer companies paid any proceeds of the GDR issue to Euram as they did to entities controlled by AP. In the absence of any benefit or gain, Euram's involvement in any

wrongdoing becomes even more farfetched. In commercial wrongs, a gain or a benefit from the wrong is almost always the reason or cause for such wrong. In this case, there is no allegation or finding by SEBI of any gain or benefit from any of the alleged wrongs committed by Euram. This is another indicator of Euram's innocence and lack of involvement in any scheme perpetrated by AP and persons connected with him.

- d. Euram has never dealt in Indian securities for its own benefit or account either before or after SEBFs ex-parte ad interim Order.*
- e. Euram has at all times complied with Indian laws and fully cooperated with SEBI. Such cooperation and assistance has continued even after it surrendered its FII registration in November, 2011.*
- f. Euram's role as a bank and lender has been investigated in detail by the relevant regulators in Austria and it has been cleared of all charges. As of the date, it continues to operate as a bank in Austria.*
- g. While it has no connection with the SCN or the scope of SEBI's enquiry, Euram's role in the joint venture with AP has also been investigated by the authorities in Dubai, and Euram has been cleared of all charges. Euram has since wound down EBAL. It has at no time done any activity related to the Indian securities market through EBAL.*
- h. Euram is as much a victim of the scheme and wrongdoing as unsuspecting Indian investors. Euram entered into, what it at the-time considered, commercial dealings with AP in good faith. At no time did it have any knowledge of or any intent to commit any wrong. It has undergone unnecessary scrutiny and has had to suffer monetary loss for acts it did not commit.*
- i. Euram had no control over any acts or omissions of AP or persons connected with him, nor has it benefited in any manner from such acts or omissions. In response to the specific request of the Hon'ble Member relating to ownership of Euram, as the attached certificate indicates, at no time did AP hold any shares in Euram."*

viii. **IFCF** – Vide reply dated May 15, 2017, the company *inter alia* submitted as under:

- a. "IFCF is currently under liquidation and the CIS Manager license of Cardinal Capital has been suspended by the Financial Services Commission of Mauritius ("FSC"). The Liquidator is as such the legal representative of the IFCF."*

SEBI also received an e-mail dated April 28, 2017, from Aejeaz Nazir Associates and Co. stating as under –

- b. *"I would like to bring to your attention that I have been appointed as liquidator of the company by the Supreme Court of Mauritius on 22/11/2016. This liquidation process was ordered by the local regulator i.e. the Financial Services Commission."*

Consideration of Issues and Findings –

- 4.1.1 I have considered the SCN dated September 19, 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.

Findings against Vintage, Alkarni Holding alongwith Shri Ashok Panchariya and Shri Satish Panchariya; IFCF, Euram–FII and Cardinal Capital; KII and Credo –

- 5.1.1 The charges alleged in the SCN against Vintage; Alkarni Holding alongwith Shri Ashok Panchariya and Shri Satish Panchariya, are as under –
- Violation of Sections 12A(a)–(c) of the SEBI Act read with Regulations 3(c)–(d) and 4(2)(a), 4(2)(c), 4(2)(f) and 4(2)(k) of the PFUTP Regulations, 2003.
- 5.1.2 The charges alleged in the SCN against IFCF and KII, are as under –
- Violation of Regulations 3(a)–(d); 4(1) and 4(2)(a), 4(2)(c) and 4(2)(e) of the PFUTP Regulations, 2003.
- 5.1.3 The charges alleged in the SCN against Euram–FII; Cardinal Capital and Credo, are as under –
- Violation of Sections 12A(a)–(c) of the SEBI Act read with Regulations 3(a)–(d); 4(1) and 4(2)(a), 4(2)(c) and 4(2)(e) of the PFUTP Regulations, 2003.
 - Violation of Regulation 13A(1) of the FII Regulations read with Clause 1, 2, 8 and 10 of the Code of Conduct specified under Regulation 7A of the FII Regulations.
- 5.1.4 No reply to the SCN was received from Vintage and Alkarni Holding.
- 5.1.5 In his reply, Shri Ashok Panchariya denied the allegations contained in the SCN *inter alia* submitting: *"I was a Director of Alkarni Holding only during the period beginning from 6th January,*

2010 till 15th November, 2011. Therefore, it is crystal clear that I was not a Director in Alkarni Holding during the relevant period impugned by SEBI in the SCN. I was not involved in day to day business of the Company. I have never attended any Board Meetings during my tenure. To the best of my knowledge, till 4th November, 2010, Vintage was 100% owned by Shri Arun Panchariya. Alkarni Holding acquired Vintage on 4th November, 2010 i.e. a year after the GDR issues of all 6 companies were successfully closed. Even though I was a Director in Vintage, neither was I involved in day to day business of Vintage nor was I aware about the alleged signed Pledge and Loan Agreements.”

5.1.6 In his reply, Shri Satish Panchariya denied the allegations contained in the SCN *inter alia* submitting: “I was associated in a capacity of Advisory Director (of Alkarni Holding) beginning from 6th January, 2010 till 15th November, 2011. Therefore, it is crystal clear that I was not a Director in Alkarni Holding during the relevant period impugned by SEBI in the SCN. I was not involved in day to day business of the Company. I have never attended any Board Meetings during my tenure. To the best of my knowledge, till 4th November, 2010, Vintage was 100% owned by Shri Arun Panchariya. Alkarni Holding acquired Vintage on 4th November, 2010 i.e. a year after the GDR issues of all 6 companies were successfully closed.”

5.1.7 In their replies, KII and Credo *inter alia* submitted: “KII had no actual or constructive knowledge of the market manipulation scheme devised by Shri Arun Panchariya. KII/Credo were not under the control of Shri Arun Panchariya and/or the CP Group and were not in connivance with Shri Arun Panchariya and or the CP Group in relation to the trading in the GDRs/the underlying shares. KII’s trading in the GDRs is on an equal or better footing than Mavi. The burden of proof required to be discharged for a serious offence of market manipulation has not been discharged by SEBI.”

5.1.8 In its reply, Euram–FII denied the allegations contained in the SCN *inter alia* submitting: “Euram cannot be held liable for any breach by IFCF of the PFUTP Regulations or for that matter, the SEBI Act. Moreover, Regulation 13(A) (1) certainly does not provide SEBI with any such power to do so, and nor do the FII Regulations contain any mechanism where a violation of another regulation or law can be investigated into by an investigating officer appointed by SEBI under the FII Regulations and the FII can be proceeded against by SEBI under the FII Regulations for acts or omissions of another person under such laws or regulations.”

5.1.9 In its reply, Cardinal Capital denied all the allegations alleged in the SCN.

5.1.10 As regards, IFCF, SEBI *inter alia* received a letter from Aejaaz Nazir Associates and Co. stating: “I have been appointed as liquidator of the company by the Supreme Court of Mauritius on 22/11/2016. This liquidation process was ordered by the local regulator i.e. the Financial Services Commission.”

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

GDR Issues of the 6 Issuer Companies –

5.1.11 The *Loan Agreements* and *Pledge Agreements* between Euram–Bank, Vintage and Asahi, Avon, CAT Technologies, IKF, Maars and K Sera, were structured to further the fraudulent issuance and subscription of the *GDR Issues* of the aforesaid Issuer Companies during the year 2007 and 2009.

5.1.12 Pan Asia was appointed by the Issuer Companies as the Lead Manager for their *GDR Issues*. Vide letter dated February 20, 2012, Pan Asia stated that Shri Arun Panchariya was the Managing Director of Pan Asia (Lead Manager of the GDR issue of the Issuer Companies) and was holding 100% shares during the time of issuance of GDRs by the Issuer Companies.

5.1.13 Since the same *modus operandi* was adopted in respect of the *GDR Issues* of all the Issuer Companies, for convenience, facts relating to the GDRs of Asahi are considered.

5.1.14 Vintage entered into a *Loan Agreement* dated April 22, 2009, with Euram–Bank for availing of a loan of US \$5.98 million for subscribing to the *GDR Issue* of Asahi on April 28, 2009.

5.1.15 A *Pledge Agreement* dated April 21, 2009, was also executed between Asahi and Euram–Bank.

5.1.16 As per the aforesaid *Pledge Agreement*, –

- a. The Preamble of the *Pledge Agreement* makes reference to the *Loan Agreement* signed between Vintage and Euram–Bank. It further mentions that "*The Pledgor has received a copy of the Loan Agreement ... and acknowledges and agrees to its terms and conditions*".
- b. In accordance with the *Pledge Agreement*, Asahi agreed to pledge securities and funds existing in the account where GDR proceeds from *GDR Issue* have been deposited.
- c. The *Pledge Agreement* states: "*In the case that the Borrower fails to make payment on any due amount, or defaults in accordance with the Loan Agreement, the Pledgor herewith grants its express consent and the Bank is entitled to apply the funds in the Pledged Accounts to settle the Obligations.*"

5.1.17 The *Pledge Agreement* was signed on behalf of Asahi by Shri Laxminarayan Jainarayan Rathi.

- 5.1.18 The *Loan Agreement* (April 22, 2009) and *Pledge Agreement* (April 21, 2009) were both dated in close proximity to each other. Immediately, thereafter, the *GDRs* were issued on April 28, 2009.
- 5.1.19 The *Pledge Agreement* was an integral part of the *Loan Agreement*.
- 5.1.20 The obligation of Vintage under the *Loan Agreement* was secured by Asahi through the *Pledge Agreement* whereby it deposited an amount of US \$5.98 million with Euram–Bank i.e. *GDR Issue* subscription proceeds received from the subscriber–Vintage, which amount was assigned and charged in favour of Euram–Bank as a continuing security.
- 5.1.21 As per the *Loan Agreement*, the amount of US \$5.98 million may only be transferred to Euram–Bank Account no. 540030. The aforesaid Account is the bank account of Asahi maintained with Euram–Bank for the purpose of depositing proceeds of the *GDR Issue*. Asahi, therefore, pledged the proceeds received through issuance of *GDRs* to secure rights of Euram–Bank against the loan given by Euram to Vintage as borrower of funds for subscription of *GDR Issue* (as mentioned in the *Loan Agreement*).
- 5.1.22 From the Know Your Client (“*KYC*”) document in respect of Asahi's bank account with Euram–Bank, it is observed that the authorised signatory for the operation of the bank account was Shri Laxminarayan Jainarayan Rathi (Chairman and Managing Director of Asahi during *GDR Issue* in April 2009).
- 5.1.23 From the certified copy of an extract from the Minutes of the Meeting of the Board of Directors of Asahi held on January 31, 2008, which was received from Euram–Bank, the following is observed:

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

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

RESOLVED FURTHER THAT Mr. Laxminarayan Jainarayan Rathi, Managing Director, be and are hereby severally authorised to draw cheques and other documents and to give instructions from time to time as may be necessary to the said EURAM Bank or any other branch of EURAM Bank, including the Offshore Branch, for the purpose of operation of and dealing with the said

account and carry out other relevant and necessary transactions and generally to take all such steps and to do such things as may be required from time to time on behalf of the Company.

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

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

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

5.1.26 On June 1, 2009, Asahi informed BSE that the *GDR Issue* was fully subscribed by foreign investors when in fact the entire GDRs were invested by Vintage. In turn, BSE published the information to retail investors and subsequently, authorised the trading of GDRs in the Indian securities market. As a result, Indian investors were misled in believing that the GDRs were subscribed by foreign investors, whereas in reality, GDRs were subscribed by Vintage in connivance with Asahi and the proceeds simultaneously pledged with Euram–Bank.

5.1.27 After the issuance of GDRs, Vintage became the sole holder of the said GDRs and thereby it became majority shareholder of Asahi i.e. 88.94%.

5.1.28 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.”*

5.1.29 As seen from the aforementioned paragraphs, Shri Arun Panchariya controlled Vintage, the original subscriber to the GDR Issues and was also its Authorised Signatory. As the Authorised Signatory and while in control of Vintage, Shri Arun Panchariya signed *Loan Agreements* with Euram-Bank. Each *Loan Agreement* was an integral part of another Bi-partite Agreement, namely, *Pledge Agreement*, signed between Issuer Companies and Euram-Bank. The *Loan Agreement* (signed between Vintage and Euram-Bank) and *Pledge Agreement* (signed between Issuer Companies and Euram-Bank) enabled Vintage to obtain loans from Euram-Bank to subscribe to GDR Issues of the Issuer Companies. The Issuer Companies, in turn, pledged the subscription proceeds received from the lone subscriber i.e. Vintage, for the loan availed by Vintage from Euram-Bank for the subscription of the GDR Issue of the same Issuer Company. Therefore, there was no real movement of funds involved during the GDR issuance process except for a few book entries which resulted in a surge in the capital of the Issuer Companies. Therefore, the result of the *Pledge Agreements* and *Loan Agreements* signed among Issuer Companies, Euram-Bank and Vintage was that even after successful completion of the GDR issues by Issuer Companies, there was no free capital available with the Issuer Companies immediately pursuant to the issuance of GDRs. This was because the capital raised by GDRs was provided as security against loan taken by Vintage from Euram-Bank. However, this crucial information was not available to the investors in India. Vintage thus, effectively became the sole subscriber of the GDR issuances of the Issuer Companies. By means of these agreements, Vintage, became the largest holder of capital of these Issuer Companies as the GDRs accounted for a major portion of the capital of these companies. The above explained *Loan and Pledge Agreements* entered into by Issuer Companies with Euram-Bank and Vintage was specifically prohibited under the Indian law. In view of the aforesaid, I find that Vintage colluded with the Issuer Companies in the fraudulent arrangement regarding subscription of GDRs of the said Companies, which acted as an inducement for other persons to offer to buy the shares of the Issuer Companies in India thereby resulted in 'fraud' as defined under the PFUTP Regulations, 2003. As its Director, Shri Ashok Panchariya was hugely important in the hierarchy of Vintage and therefore, can also be held liable for the 'fraud' committed by Vintage.

5.1.30 From the letter dated March 27, 2012, received from Financial Market Authority of Austria, it is observed that the same mentioned Alkarni Holding as the sole shareholder of Vintage. Further, the aforesaid letter mentioned that Alkarni Holding had Shri Arun Panchariya and his family members as shareholders. In this context, it is noted from the submissions made by Shri Ashok Panchariya and Shri Satish Panchariya that Vintage, which was 100% owned by Shri Arun Panchariya was acquired by Alkarni Holding on November 4, 2010 i.e. a year after the GDR issues of all 6 companies were successfully closed. It is further noted that Shri Ashok Panchariya and Shri Satish Panchariya were Directors of Alkarni Holding for the period from January 6, 2010 till November 15, 2011. I note that no specific adverse inference has been drawn against the

aforementioned entities in the Investigation Report or the SCN, apart from the allegation that since Alkarni Holding was the sole shareholder of Vintage and had Shri Ashok Panchariya and Shri Satish Panchariya as its Directors, they were liable to be proceeded against. I also note that sufficient proof has not been made available to show their direct involvement in respect of Alkarni Holding in the fraud perpetrated through the *GDR Issues*.

5.1.31 Vintage acquired the GDRs of the Issuer Companies and thereafter, transferred a substantial portion of such GDRs to related entities viz. IFCF and KII, with an ulterior motive to offload these GDRs in Indian Markets by converting these GDRs into shares and selling these shares to Indian investors. As stated in the preceding paragraphs, the loans for acquiring GDRs of the Issuer Companies was provided to Vintage by Euram-Bank and the collateral/security for the aforesaid loans was provided by the Issuer Companies through the pledging of GDR proceeds. In the event of any default by in respect of the loan availed from Euram-Bank, the Issuer Companies who have had to part away with the proceeds from the GDR subscription. Thus, effectively, Shri Arun Panchariya (through Vintage) was holding the GDRs of the Issuer Companies without incurring any cost. By way of converting the GDRs and selling the resultant equity shares in India, Shri Arun Panchariya (through Vintage) was able to monetize the structured GDRs and make money.

5.1.32 IFCF and KII received the GDRs of Issuer Companies from Vintage and thereafter converted those GDRs into underlying shares, which were then sold in the Indian securities markets. The aforesaid transactions (conversion of GDRs into shares and sale of resultant shares in Indian Stock Markets) resulted in the monetization of GDRs of Issuer Companies, which were effectively received by Vintage free of cost due to *Loan Agreements* and *Pledge Agreements*.

5.1.33 Both IFCF and KII were related to Shri Arun Panchariya and Vintage in the following manner:

- IFCF is a Sub-Account registered with SEBI which was under the control of Shri Arun Panchariya; Shri Arun Panchariya was Director and 100% shareholder of Cardinal Capital, which in turn held 100% shareholding of IFCF (as observed from the letter dated April 2, 2012, received from IFCF).
- Cardinal Capital also acted as Investment Manager of IFCF and Shri Arun Panchariya was Chief Investment Officer of Cardinal Capital (as observed from email dated July 12, 2010, received from IFCF). Shri Arun Panchariya was also Director of the IFCF until October 28, 2010, during the period of Investigation by SEBI (as observed from IFCF's letter dated April 2, 2012).
- Financial Market Authority (Austria), vide its letter dated March 27, 2012, informed SEBI that the major investor in Class A shares of IFCF was Vintage.
- KII is a subsidiary of Credo Investments Holding Limited ("**Credo Investments**").

- Credo Investments entered into Agreements with Vintage for obtaining loans, which were in turn lent to KII. These Agreements were signed on behalf of Vintage by Shri Arun Panchariya.
- As agreed upon in the aforesaid Agreements, the loan taken by KII from Vintage through Credo Investments was used by KII to purchase GDRs of the Issuer Companies from Vintage and thereafter, these GDRs were converted into shares and sold in the Indian securities markets.
- According to the said Agreements, the market risks of these transactions were borne by Vintage. Thus, the dealings of KII in the GDRs of the Issuer Companies were under substantial influence of Vintage who used KII to convert and dump the shares obtained from the conversion of the GDRs on the Indian investors.

5.1.34 During the period from January 1, 2009 to September 21, 2011 (date of SEBI's Interim Order), out of the total GDRs of Issuer Companies subscribed by Vintage, GDRs worth Rs. 1,20,17,33,280 were sold in Indian Markets by Shri Arun Panchariya through IFCF and KII, after conversion into shares. Due to the fact that Vintage, IFCF and KII were all under the control of Shri Arun Panchariya, the end result was that till September 21, 2011, Indian Investors had paid the aforesaid amount to Shri Arun Panchariya for GDRs which owed their existence to the fraudulent arrangement between Shri Arun Panchariya and the Issuer Companies and were not a result of any genuine capital raising exercise by the Issuer Company. A summary of the GDRs sold by Vintage to IFCF and KII and the subsequent sale of such GDRs post cancellation by IFCF and KII in Issuer Companies is detailed below –

ISSUER	DATE OF GDR ISSUE	NO. OF GDRS SUBSCRIBED BY VINTAGE (ISSUE SIZE)	NO. OF GDRS SOLD BY VINTAGE TO IFCF & KII	TOTAL NO. OF GDRS CANCELLED BY IFCF & KII	TOTAL NO. OF SHARES RECEIVED BY IFCF AND KII AFTER CANCELLATION OF GDRS	TOTAL NO. OF SHARES SOLD BY IFCF AND KII IN INDIAN MARKETS	TOTAL VALUE OF SHARES SOLD BY IFCF & KII IN INDIAN MARKETS (RS)
ASAHI	29.05.09	29,91,000	16,51,000	14,81,000	14,81,00,000	6,79,81,646	12,24,68,583
AVON	19-06-09	16,00,000	16,00,000	16,00,000	4,80,00,000	4,78,00,000	30,41,38,288
CAT	27-07-07	43,04,348	1,95,000	1,95,000	11,70,000	2,45,200	28,63,902
	11-06-09	15,95,333	13,685	13,685	4,10,550		
IKF	15-05-09	54,13,048	31,84,000	10,34,000	3,10,20,000	1,96,07,456	8,67,92,834
K SERA	26-08-07	47,61,900	32,56,900	33,41,900	3,34,19,000	5,16,74,180	66,37,57,325
	16-10-09	44,75,238	13,85,000	12,35,500	3,70,65,000		
MAARS	8-10-07	73,80,000	20,75,000	15,77,800	1,57,78,000	61,31,239	2,17,12,348
TOTAL							1,20,17,33,280

5.1.35 The counter parties to a major portion of such sales by IFCF and KII were again entities connected to Shri Arun Panchariya, i.e. the CP Group viz. Shri Ashok Panchariya, Basmati Securities Private Limited, SV Enterprise/Sarfaraz Khan, Shri Madanlal Girdharilal Bugaliya, Indra Varun Trade Impex Private Limited, Delight Financial Advisors Limited, Shri Vinod Amrutlaal Naai, Newgen International Private Limited, Excel Paints Private Limited, Cherry Cosmetics Private Limited, Edelweiss Estates Private Limited. It was observed that around 40% (IFCF sale of shares of Maars) to 100% (IFCF sale of shares of CAT) of the shares sold by IFCF and KII were purchased by this CP Group and thereafter, sold to other investors.

5.1.36 Even before Vintage started to repay the loan taken for a particular GDR issue, IFCF and KII had converted large amount of GDRs of the Issuer Companies into their underlying shares and thereafter sold these shares in the Indian securities market as illustrated below –

SCRIP	DATE OF ISSUANCE OF GDRS	AMOUNT OF LOAN TAKEN BY VINTAGE FOR SUBSCRIPTION OF GDRS (US \$)	DATE OF FIRST INSTALLMENT OF REPAYMENT OF LOAN BY VINTAGE	AMOUNT (IN US \$) OF FIRST INSTALLMENT OF LOAN REPAYMENT BY VINTAGE	NUMBER OF SHARES SOLD IN INDIA (AFTER CONVERSION FROM GDRS) BY IFCF/KII PRIOR TO DATE OF PAYMENT OF FIRST INSTALLMENT OF LOAN BY VINTAGE TO EURAM BANK	SELL VALUE OF SHARES SOLD IN INDIA BY IFCF/KII BEFORE FIRST INSTALLMENT OF REPAYMENT OF LOAN BY VINTAGE
ASAHI	29-APR-09	5,982,000	16-DEC-09	100,000	1,49,53,354	1,61,36,948
AVON	19-JUN-09	10,000,000	18-AUG-09	1,500,000	31,40,000	3,31,65,300
CAT	06-NOV-09	10,003,000	03-DEC-09	3,000,000	2,45,000	28,60,272
IKF	15-MAY-09	10,988,000	23-AUG-09	100,000	6,07,456	25,63,464
K SERA	16-OCT-09	29,984,000	25-NOV-09	300,000	11,40,000	1,61,77,223

5.1.37 The trading of the CP Group *inter alia* with the Sub-Accounts clearly contributed to the immense rise in the liquidity of the scrip and was *inter alia* to create liquidity in the market to attract gullible investors in India to trade in the scrip so that Sub-Accounts can off load shares in India.

5.1.38 The increase in the turnover of Issuer Companies due to the trading by CP Group and Sub-Accounts is detailed below –

Name of the Scrip	Period Examined	Average daily turnover in Rs. on days when CP Group or Sub-Accounts have not traded in the scrips	Average daily turnover in Rs. on days when CP Group and Sub-Accounts have traded in the scrips	No. of times turnover increased due to trading by Sub-Accounts and CP Group
Asahi	Jan 01, 2009 to Sep 21, 2011	93,472	33,98,620	36.36
Avon	Jan 01, 2009 to Nov 04, 2010	3,92,881	58,92,707	15.00
CAT	Jan 01, 2009 to Sep 21, 2011	1,50,480	25,18,404	16.74
IKF	Jan 01, 2009 to Sep 21, 2011	17,04,879	59,09,749	3.47
K Sera BSE	Jan 01, 2009 to Sep 21, 2011	11,05,544	1,48,06,870	13.39
K Sera NSE	Jan 01, 2009 to Sep 21, 2011	12,39,966	1,32,44,345	10.68
Maars	Dec 11, 2007 to July 07, 2011	2,91,676	31,38,751	10.76

5.1.39 It is observed that substantial amount of concentration in the scrips of Issuer Companies was provided by the Sub-Accounts and the CP Group. Further, the CP Group and Sub-Accounts acted as net-sellers in five out of seven cases further indicating that their intention was to off-load the shares arising out of conversion of the GDRs to the Indian investors.

5.1.40 The large amount of trading by the Sub-Accounts and the CP Group was among themselves which is brought out in the following table –

Scrip Name	Period of examination of trading	CP Group & Sub-Accounts Gross Trade Volume	No. of shares traded by IFCF, KII and the CP Group members among themselves	% of CP Group and Sub-Accounts trading among themselves to total trading by them
Asahi	1.01.2009 - 21.09.2011	350808068	84692044	24.14
Avon	1.01.2009 - 4.11.2010	289617214	139846772	48.29
CAT	1.01.2009 - 21.09.2011	158596165	92164408	58.11
IKF	1.01.2009 - 21.09.2011	292580321	89718030	30.66
K Sera BSE	1.01.2009 - 21.09.2011	418143188	92109310	22.03
K Sera NSE	1.01.2009 - 21.09.2011	333314699	67919350	20.38
Maars BSE	11.12.2007 - 7.07.2011	123136983	21060268	17.10

5.1.41 It is reiterated that the *Loan Agreements* and *Pledge Agreements* between Euram–Bank, Vintage and Asahi, Avon, CAT Technologies, IKF, Maars and K Sera, were structured to further the fraudulent issuance and subscription of the *GDR Issues* of the aforesaid Issuer Companies during the year 2007 and 2009. The existing shareholders and prospective investors were aware of the ‘*positive*’ news that the Issuer Companies had raised foreign capital through GDRs but were completely unaware of the activities of entities connected to Shri Arun Panchariya i.e. Vintage, IFCF and KII, in such GDR Issues. The Sub-Accounts, viz. IFCF and KII converted the GDRs held by them into shares and sold the same in the Indian securities market where the counter parties to a major portion of such sales were connected entities i.e. CP Group. The objective of such trading between the Sub-Accounts and the CP Group *inter alia* was to create an impression of there being liquidity in the market i.e. investors in India had started subscribing to the shares of Issuer Companies when in fact the shares were sold and acquired by the entities controlled by Shri Arun Panchariya. As a result, the investors in India were lulled into thinking that stocks of the Issuing Companies had been highly valued by foreign investors, which in turn also acted as an inducement for other persons to buy the shares of the Issuer Companies in the Indian securities market. The Indian investors were therefore also adversely affected by trading done amongst CP Group and Sub-Accounts, creating liquidity in the market and their subsequent offloading of shares. In view of the aforesaid, I find that the aforesaid actions of IFCF and KII also resulted in ‘*fraud*’ as defined under the PFUTP Regulations, 2003.

5.1.42 In view of the findings contained in the preceding paragraphs, I find that Vintage and its Director violated the provisions of Sections 12A(a)–(c) of the SEBI Act read with Regulations 3(c)–(d) and 4(2)(a), 4(2)(c), 4(2)(f) and 4(2)(k) of the PFUTP Regulations, 2003. I also find that IFCF and KII violated of Regulations 3(a)–(d); 4(1) and 4(2)(a), 4(2)(c) and 4(2)(e) of the PFUTP Regulations, 2003.

Findings against Euram–FII; Cardinal Capital and Credo –

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

5.1.43 IFCF was registered as a Sub–Account of Euram–FII and Cardinal Capital while KII was registered as a Sub–Account of Credo.

5.1.44 In its reply, I note that Cardinal Capital *inter alia* submitted: *It became the FII for IFCF on July 20, 2011 and it did not act as Investment Manager for IFCF before that. Further, it did not have any connection with IFCF prior to the aforesaid period.* However, from the material available on record, I note that vide letter dated April 2, 2012 (reply to Summons dated March 21, 2012), IFCF informed SEBI with regard to the details of ownership structure of IFCF and Cardinal Capital for the period

January 1, 2009 to May 31, 2010, that Cardinal Capital held 100% shareholding of IFCF and further, Shri Arun Panchariya held 100% shareholding of Cardinal Capital.

5.1.45 I note that no specific adverse inference has been drawn against the aforementioned entities in the Investigation Report or the SCN, apart from the allegation that they facilitated their Sub–Accounts to deal in the shares of the Issuer Companies in a fraudulent manner (in respect of Credo) and acted as Investment Manager and FII (in respect of Cardinal Capital). The SCN further alleges that the aforementioned entities, viz. Cardinal Capital and Credo, were liable to be proceeded against *inter alia* in their capacity as FIIs since they were responsible for all acts of commission and omission of all their respective Sub–Accounts. I note that sufficient proof has not been made available to show their direct involvement in the fraud perpetrated through the *GDR Issues*. Having arrived at this finding, I am of the view that the SCN against the aforementioned entities, viz. Cardinal Capital and Credo, needs to be disposed of.

5.1.46 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 Issues*. It is observed that the role of FIIs and their respective Sub–Accounts was earlier under examination by SEBI for fraud perpetrated in respect of *GDR Issues* of the Issuer Companies. Considering the magnitude of the alleged market manipulation through the *GDR Issues*, SEBI was justified in issuing the Interim Order against Euram–FII, who was the FII for IFCF and also was related to Euram–Bank, an entity which was observed to be involved in all the *GDR Issues*. However, at this stage of final disposal of the proceedings, considering the fact that no specific adverse inference has been drawn against Euram–FII in the Investigation Report or the SCN, apart from the allegation that it facilitated its Sub–Account to deal in the shares of the Issuer Companies in a fraudulent manner. The SCN further alleges that Euram–FII was liable to be proceeded against only in its capacity as FII since it was responsible for all acts of commission and omission of its Sub–Account. I note that sufficient proof has not been made available to show Euram–FII’s direct involvement in the fraud perpetrated through the *GDR Issues*. Further, from the material on record, I note that Euram–FII and Euram–Bank have fully co-operated with the investigations conducted by SEBI in the instant proceedings. I am therefore, of the view that the SCN against Euram–FII also needs to be disposed of.

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, IFCF was alleged to have provided false information *inter alia* in response to the SEBI e–mail dated June 15, 2010; Summons dated November 28, 2011 and March 21, 2012, issued under Section 11C(3) of the SEBI Act.

6.1.2 In response to SEBI e-mail dated June 15, 2010, seeking information on trades done by IFCF in the GDRs of Indian companies, IFCF vide email dated July 12, 2010, signed by Mr. Arun Panchariya *inter alia* submitted:

- All the investors in IFCF were exclusively non-Indian;
- IFCF was not aware of the identity of the counterparties to the GDRs purchased by it.
- IFCF did not have any direct or indirect relationships with the companies in question.

6.1.3 The aforementioned information provided by IFCF were *prima facie* false due to the following reasons –

- The major investors in IFCF were Shri Arun Panchariya and his family members through Alkarni Holding (as observed from the Account Opening Documents of Vintage with Euram-Bank, Shri Arun Panchariya is an Indian).
- IFCF purchased the GDRs from Vintage in all the dealings in GDRs of Issuer Companies and both IFCF and Vintage were controlled by Shri Arun Panchariya. Thus, IFCF was aware of the counterparty to the GDRs it had purchased but deliberately made a false submission regarding it to SEBI.
- The connection of Issuer Companies with Shri Arun Panchariya is evident due to the Loan Agreements and Pledge Agreements of which Shri Arun Panchariya is one of the signatories. Therefore, the submission by IFCF, signed by Shri Arun Panchariya, of no direct or indirect relationship of IFCF with Issuer Companies was misleading.

6.1.4 Vide Summons dated November 28, 2011 and March 21, 2012, SEBI *inter alia* advised IFCF to furnish details of beneficial owners of all its investors. IFCF failed to provide the said information. Further, even though GDRs were transferred from Vintage to IFCF and both Vintage and IFCF were controlled by Shri Arun Panchariya, IFCF vide letter dated April 2, 2012, denied any connection or agreement with Vintage and denied entering into any agreement contractually or otherwise with any entity for purchase, sale and conversion of GDRs of the Issuer Companies.

6.1.5 Upon a consideration of the aforementioned paragraphs, I find that material information, which was necessary to carry out investigations in the instant proceedings was not furnished to SEBI by IFCF. IFCF was under an obligation to ensure that correct information was provided promptly to SEBI. However, IFCF failed to co-operate with the Investigating Officer and hampered investigations in the instant proceedings. Failure to furnish correct information was to stall and prevent SEBI from unearthing crucial information *inter alia* including the *modus operandi* adopted by common participants in other similar *GDR Issues* involving Shri Arun Panchariya and Pan Asia.

- 6.1.6 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...*"
- 6.1.7 Upon a consideration of the preceding paragraphs, I find that IFCF 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.

Conclusion –

- 7.1.1 As noted above, the *modus operandi* adopted by Vintage and Alkarni Holding and its Directors; IFCF and KII alongwith Euram – FII; Cardinal Capital and Credo in the fraudulent arrangement of *GDR Issues* to defraud investors has been fraught with *mala fides* at every stage of its execution. The consequences resulting from violations committed by the aforementioned entities 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.
- 7.1.2 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.”

- 7.1.3 I note that the provisions of Sections 12A(a)–(c) of the SEBI Act read with 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, 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.
- 7.1.4 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, Asahi with the aid of its Directors, etc. has conceived the fraudulent arrangement with Vintage with regard to the subscription of *GDR Issue* and submitted incorrect/concealed information to SEBI.
- 7.1.5 For reasons detailed in the preceding paragraphs, I have no hesitation in concluding that Vintage and its Director, violated the provisions of Sections 12A(a)–(c) of the SEBI Act read with Regulations 3(c)–(d) and 4(2)(a), 4(2)(c), 4(2)(f) and 4(2)(k) of the PFUTP Regulations, 2003. I also find that IFCF and KII violated of Regulations 3(a)–(d); 4(1) and 4(2)(a), 4(2)(c) and 4(2)(e) of the PFUTP Regulations, 2003. In addition, I find that IFCF 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 –

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

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

	ENTITY	PAN
1.	VINTAGE FZE (NOW KNOWN AS ALTA VISTA INTERNATIONAL FZE)	NOT AVAILABLE
2.	SHRI ASHOK PANCHARIYA	AEVPP6124P

- ii. The following entities are prohibited from accessing the capital market directly or indirectly, and dealing in securities or instruments with Indian securities as underlying, in any manner whatsoever, for a period of **six years** from the date of this Order.

	ENTITY	PAN
1.	INDIA FOCUS CARDINAL FUND [SUB-ACCOUNT]	AACCK8021E
2.	KII LIMITED [SUB-ACCOUNT]	AACCK8021E

- iii. I note that vide the Interim Order dated September 21, 2011 (later confirmed through Confirmatory Order–IFCF on December 30, 2011 and Confirmatory Order–KII on January 23, 2013), the aforementioned entities were directed not to deal in securities or instrument with Indian securities as underlying, in any manner whatsoever, until further orders. In this context, I note the aforementioned entities have already undergone the prohibition imposed vide the Interim Order for a period of approximately **six years**. In view of this factual situation, it is clarified that the prohibition already undergone by the aforementioned entities pursuant to the aforementioned SEBI Interim Order shall be reduced while computing the period in respect of the prohibition imposed vide this order.

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

	ENTITY	PAN
1.	ALKARNI HOLDINGS LIMITED	NOT AVAILABLE
2.	SHRI SATISH PANCHARIYA	ADRPP1806H
3.	CARDINAL CAPITAL PARTNERS LIMITED	NOT AVAILABLE
4.	CREDO CAPITAL PLC.	AABCI9518D

- v. The following entity is hereby warned to ensure that all its future dealings in the securities market be done strictly in accordance with law. The Interim Order dated September 21, 2011 read with the Confirmatory Order dated January 25, 2012 alongwith the SCN dated September 19, 2014, is accordingly disposed of. –

	ENTITY	PAN
1.	EUROPEAN AMERICAN INVESTMENT BANK AG [FOREIGN INSTITUTIONAL INVESTOR]	NOT AVAILABLE

8.1.2 This Order shall come into force with immediate effect.

8.1.3 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