

WTM/ AB /EFD/DRA-1/ 01/2018-19

**SECURITIES AND EXCHANGE BOARD OF INDIA
BEFORE WHOLE TIME MEMBER ANANTA BARUA
FINAL ORDER**

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of Sybly Industries Limited

In respect of: -

Noticee No.	Name of the Noticees	PAN
1	Sybly Industries Limited	AACCS6886M
2	Mr. Mahesh Chand Mittal	ABJPM0503C
3	Mr. Umesh Kumar Mittal	ABJPM0512B
4	Mr. Vimal Prakash Mittal	AAAPM0629B
5	Mr. Satya Prakash Mittal	ABJPM0511C
6	Mr. Mahendra Kumar Gupta	AAQPG8960J
7	Mr. Subodh Kumar Goel	ACBPG3533H

Background:

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) investigated the issuance of Global Depository Receipts (GDRs) in overseas market by Sybly Industries Limited (hereinafter referred to as “company/ Sybly”) for the period May 01, 2008 to August 31, 2008 which revealed that Sybly issued 1.51 million GDRs (amounting to USD 6.99 million) on June 19, 2008 on the Luxembourg Stock Exchange, equivalent to 3,02,05,000 equity shares of Rs. 10 each. Summary of the GDR issue of Sybly is tabulated below:

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
19-June-2008	1.510 (at USD 4.63 each GDR)	6.99	ICICI Bank	3,02,05,000 of Rs. 10 each	Deutsche Bank Trust Company Americas	Pan Asia Advisors Ltd.	EURAM Bank, Austria	Luxembourg Stock Exchange (LSE)

Show Cause Notice, Reply and Personal Hearing:

2. A Show Cause Notice (“SCN”) dated June 07, 2018 containing the findings of the investigation was issued to the Noticees asking them to show cause as to why action should not be taken for the alleged violation of the provisions Section 12A(a), (b), (c) of the Securities and Exchange Board of India Act, 1992 (‘SEBI Act’) read with Regulations 3 (a), (b), (c), (d) and 4(1), 4(2) (f), (k), (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (‘SEBI (PFUTP) Regulations, 2003’). Along with the SCN, copies of documents relied on to substantiate the allegations were enclosed as Annexures 1 to 11 and the details are as under:

Annexure no.	Particulars
1	Letter dated June 22, 2015 received from Sybly by SEBI inter alia furnishing details such as list of allottees, copy of board resolution, annual reports of the company, intended use of GDR proceeds etc.
2	Corporate announcements made by Sybly to BSE during January 28, 2008 to June 20, 2008
3	Loan Agreement dated May 30, 2008 between Vintage and EURAM Bank to subscribe to GDRs of Sybly
4	Sybly’s Board Resolution dated March 31, 2008 with respect to the GDR issue
5	Minutes of the board meeting dated March 31, 2008
6	Sybly’s annual report for the year 2007-08
7	Pledge Agreement dated May 30, 2008 between Sybly and EURAM Bank
8	Statement of bank account of Vintage with EURAM Bank
9	Statement of escrow account of Sybly with EURAM Bank
10	Retail account statement of Sybly with EURAM Bank
11	Cancellation/ conversion details of GDRs provided by custodian, ICICI Bank Limited

3. The aforesaid SCN contained findings of investigation as under:
 - a. The scrip of the company is listed on the Bombay Stock Exchange (hereinafter referred to as “BSE”).
 - b. Vintage FZE (now known as Alta Vista International FZE) (hereinafter referred to as “Vintage”), a company having its registered office in Dubai, United Arab Emirates (UAE) was the only subscriber to the GDR issue and that the subscription amount was paid by obtaining loan from European American Investment Bank AG, Vienna, Austria

(hereinafter referred to as “EURAM Bank”) vide Loan Agreement dated May 30, 2008 (Annexure 3 to SCN). The loan was secured by Pledge Agreement dated May 30, 2008 (Annexure 7 to SCN) between Sybly and EURAM Bank whereby the GDR issue proceeds were pledged to EURAM Bank. The Loan Agreement was entered into between Vintage and EURAM Bank for the specific purpose of subscribing to the GDR issue by Sybly.

- c. The Pledge Agreement was an integral part of the Loan Agreement and vice versa and both were executed concurrently. The Pledge Agreement was signed by Noticee no. 2 i.e. Mr. Mahesh Chand Mittal (Managing Director) and Noticee no. 3 i.e. Mr. Umesh Kumar Mittal on behalf of Sybly which was approved by the Board through a resolution. Therefore, the company and its directors including Mr. Mahesh Chand Mittal and Mr. Umesh Kumar Mittal had knowledge about the subscriber to GDR issue and the Loan Agreement. These agreements enabled Vintage to avail loan from EURAM for subscription of GDRs of Sybly by providing GDR proceeds as collateral for the loan extended by EURAM to Vintage. The GDR issue would not have been subscribed if Sybly had not given such security towards the loan taken by Vintage. The fraudulent arrangement of loan and pledge agreement, which resulted in facilitating the subscription of GDR issue of the company was not disclosed to the stock exchange.
- d. Investigation observed that information regarding signing of Loan Agreement and the Pledge Agreement was material information of contingent liability to the extent of GDR issue. Suppression of such material information showed that the corporate announcement was primarily meant to mislead Indian retail investors that GDRs were genuinely subscribed.
- e. GDRs were later converted into equity shares and these shares were sold in the Indian Securities Market. Cancellation details provided by custodian ICICI Bank Limited revealed that cancellation of GDRs started from March 03, 2010 continued upto April 04, 2013.
- f. The directors of Sybly namely Noticee No. 2 i.e. Mr. Mahesh Chand Mittal, Noticee No. 3 i.e. Mr. Umesh Kumar Mittal, Noticee No. 4 i.e. Mr. Vimal Prakash Mittal, Noticee No. 5 i.e. Mr. Satya Prakash Mittal, Noticee No. 6 i.e. Mr. Mahendra Kumar Gupta and Noticee No. 7 i.e. Mr. Subodh Kumar Goel who approved the Board

Resolution authorizing the company and on its behalf Mr. Mahesh Chand Mittal, Managing Director and Mr. Umesh Kumar Mittal, Director to execute the Pledge Agreement acted as party to the fraudulent scheme.

- g. The above acts of concealing material facts and the fraudulent arrangement of the loan and pledge agreements by Sybly are alleged to be in violation of provisions of SEBI Act and SEBI (PFUTP) Regulations, 2003.
4. The Noticees were also advised to file their reply within a period of 21 days from the date of receipt of the SCN. In response to SCN dated June 07, 2018, the company and its directors submitted a common reply vide letter dated July 23, 2018 in the matter. The response of all the Noticees is summarized as under:
- a. The company admitted it had come out with the GDR issue as per the details given in the SCN. It was also admitted that the Noticee no. 2 and 3 signed the Pledge Agreement.
 - b. During the entire course of GDR issue, the Noticees acted in the interest of the company, Sybly.
 - c. None of the Noticees took any benefit throughout the GDR issue. Violation of any provision of law, if any, is due to oversight or ignorance of law.
 - d. There was never any *malafide* behind any actions/ information provided.
 - e. As regards allegation pertaining to violation of s 12A of the SEBI Act, the Noticees have stated that they have engaged only reputed and authorized agencies and followed all compliances as per rules of Luxembourg Stock Exchange and the laws applicable in India. They have further submitted that in the SCN there is ‘no allegation that either of the Noticees have adopted any manipulative device’. The issue and listing of 3,02,05,000 equity shares on BSE was done after complying with all the provisions and rules. If it were not so, then BSE would not have granted its approval. Even after listing, the company never received a complaint/ notice from BSE. Further, none of the Noticees have acted in a manner that would fall within the ambit of “dealing in securities”.
 - f. As regards allegation pertaining to violation of reg. 3 (a) to (d) of the SEBI (PFUTP) Regulations, the Noticees have submitted that the none of the noticees have bought, sold or otherwise dealt in the securities of the company which is required to attract reg 3 (a) of the SEBI (PFUTP) Regulations. Further, none of the Noticees resorted to any

manipulative or deceptive device or contrivance in contravention of the provisions of SEBI Act or rules or regulations made thereunder.

- g. As regards allegation pertaining to violation of reg. 4 (1), 4(2) (f), (k), (r) of the SEBI (PFUTP) Regulations, the Noticees have denied the same.
 - h. There was no loss to any stakeholder at large or any statutory authority.
 - i. In view of the above, the Noticees may be pardoned and no action may initiated against them.
5. An opportunity of personal hearing was granted to the Noticees on October 25, 2018 which was communicated vide letters dated September 05, 2018. As the hearing notice could not be served on Noticee no. 7 i.e. Mr. Subodh Goel through Speed Post, a copy of the hearing notice was affixed at his last known address. The hearing notice was served on all other Noticees. Hearing in the matter was held on October 25, 2018. On the said date, Mr. Rupinder Singh Bhatia, Company Secretary, appeared on behalf of Noticee nos. 1 to 7 except Noticee no. 4 i.e. Mr. Vimal Prakash Mittal, who has passed away. The following submissions were made on behalf of the Noticees:
- i. The company was under the genuine belief that since the pledge agreement was outside India, disclosures in this regard were not required to be made on the Bombay Stock Exchange.
 - ii. The failure to make disclosure was due to ignorance and there was no mala fide intention behind such non – disclosure.
 - iii. Neither the company nor the directors are involved in any fraudulent scheme. The company has always complied with the provisions of SEBI Act and Regulations. Further, no complaints have been received against the company in SCORES.
 - iv. Neither the company nor the directors have gained in any way by floating the GDR.
 - v. No loss has been caused to the investors.

In respect of utilization of the GDR proceeds, Mr. Rupinder Singh Bhatia sought time of two days to submit the relevant documents along with bank statements of Sybly International FZE (company's UAE subsidiary to which GDR proceeds were transferred), for the relevant period. Hearing in the matter was concluded on October 25, 2018. Vide email dated October 31, 2018 the company sought more time to submit the documents. Accordingly, the company was granted time till November 06, 2018 to provide the documents. Vide letter dated November 03, 2018 received by SEBI on November 09, 2018,

Sybly has provided copies of letters and disclosures made to BSE regarding GDR proceeds lying in its escrow account and of its subsequent transfer to its subsidiary of GDR Issue proceeds and publication of Unaudited Financial Returns in newspapers.

Consideration of issues and findings:

6. I have considered the SCN dated June 07, 2018 along with the findings of the Investigation and all the Annexures as referred to in para 2 of this order; replies received to the aforesaid SCN and submissions made by the noticees pursuant to the hearing granted to them; and all other relevant material available on record and the issues for consideration are:

- (i) *Whether the company i.e. Noticee no. 1 has violated Sections 12A(a), (b), (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4(1), 4(2) (f), (k), (r) of SEBI (PFUTP) Regulations?*
- (ii) *Whether the directors i.e. Noticee nos. 2 to 7 have violated Sections 12A(a), (b), (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations?*

7. Before proceeding further, the relevant provisions are reproduced below:

(A) 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;

(B) SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('SEBI (PFUTP) Regulations, 2003')

3. Prohibition of certain dealings in securities.

No person shall directly or indirectly –

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (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.

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(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: –

- (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.*

8. Sybly is a company listed on BSE. By virtue of being a listed company, it is required to make all the material disclosures such as important corporate announcements. On perusal of corporate announcements made by Sybly to BSE during January 28, 2008 to June 20,

2008 (Annexure 2 to SCN dated June 07, 2018), it was observed that on June 20, 2008 BSE reported that *“Sybly Industries Ltd. has informed BSE that GDR Issue of the Company for US \$ 7.00 Millions has been fully subscribed and closed on June 19, 2008 and allotment has been made of 15,10,250 Global Depository Receipts underlying 3,02,05,000 Equity Shares of Rs 10/- each at par by the Board in its meeting held on June 20, 2008.”* Pan Asia Advisors Limited (Now Global Finance & Capital Ltd), a UK based entity was Lead Manager of GDR issue of Sybly.

9. Sybly vide letter dated June 22, 2015 (Annexure 1 to SCN) provided the list of the GDR allottees to SEBI which is as under:

Sl. No.	Name of the subscriber	Address	No. of GDRs
1	Rexflec Ltd.	Level 41, Emirates Tower, Sh. Zayed Road, Dubai – UAE	5,00,000
2	Tradetec Corporation	Level 47, Prudential Tower, 30, Cecil Street, Singapore.	5,00,000
3	Greenwich Management Inc	18 th Floor, One International Finance Centre, 1 Harbour View Street, Central Hong Kong	5,10,250
	Total		1,510,250

10. From the copy of Sybly’s Board Resolution dated March 31, 2008 provided by EURAM Bank (Annexure 4 to SCN) and copy of minutes of the board meeting held on March 31, 2008 provided by Sybly vide email dated January 02, 2018 (Annexure 5 to SCN), it is observed that the Board of Directors of Sybly had *inter alia* passed the following resolution in the said meeting.

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

“RESOLVED FURTHER THAT Shri Mahesh Chand Mittal, Managing Director and Shri Umesh Kumar Mittal, Director of the Company, be and are hereby severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and 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 the Bank be and is hereby authorized 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.”

11. Further, from Page 7 of the annual report for the year 2007-08 (Annexure 6 to SCN) and the copy of minutes of meeting ("1. Leave of Absence – It was noted that all directors were present at the meeting"), it is observed that all the six directors of the company, namely Noticee No. 2 i.e. Mr. Mahesh Chand Mittal, Noticee No. 3 i.e. Mr. Umesh Kumar Mittal, Noticee No. 4 i.e. Mr. Vimal Prakash Mittal, Noticee No. 5 i.e. Mr. Satya Prakash Mittal, Noticee No. 6 i.e. Mr. Mahendra Kumar Gupta and Noticee No. 7 i.e. Mr. Subodh Kumar Goel had attended the aforesaid meeting. From the aforesaid minutes, it is observed that the board of directors of Sybly had authorized Noticee No. 2, Mr. Mahesh Chand Mittal, Managing Director of Noticee No. 1 and Noticee No. 3, Mr. Umesh Kumar Mittal, Director of the Noticee No. 1 severally, to sign, execute, any application, agreement and other paper(s) from time to time as may be required by the EURAM Bank. The Board of Directors had further authorized the Bank to use the funds deposited in the bank account opened with EURAM Bank for receiving the subscription money in respect of the GDR issue of the company as security in connection with loans, if any.

12. I note that Noticee no. 1 i.e. Sybly entered into a Pledge Agreement dated May 30, 2008 (Annexure 7 to SCN) with EURAM Bank which was signed by Noticee No. 2 i.e. Mr. Mahesh Chand Mittal and Noticee No. 3 i.e. Mr. Umesh Kumar Mittal in the capacity of Managing Director and director of Sybly respectively, wherein, Sybly pledged GDR proceeds as collateral against loan availed by Vintage from EURAM Bank. The salient clauses of the Pledge Agreement are as under:

1. Preamble

By loan agreement (hereinafter referred to as the "Loan Agreement") dated May 30, 2008, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahmadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates ("the Borrower") in the amount of \$ USD 6,992,457.50. The Pledgor has received a copy of the Loan Agreement No. 300508-001 and acknowledges and agrees to its terms and conditions."

2. Pledge

2.1. *In order to secure any and all obligations, Present and future, whether conditional or unconditional of the Borrower towards the bank under the Loan Agreement and any and all respective amendments thereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the Loan Agreement – including those limited as to condition or time or not yet due – irrespective of whether such claims have originated from the account relationship, from bills of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from*

business relations, or have been assigned in connection therewith to the Bank ("the Obligations") the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:

2.1.1. all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount of \$ USD 6,992,457.50 existing from time to time at present or hereafter on the securities account(s) no. 540081 held with the Bank (hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein.

2.1.2. all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 540081 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account ") and all amounts credited at any particular time therein.

(the Pledged securities account and the Pledged Time Deposit account hereinafter referred to as the "Pledged Accounts", the Pledged Securities and the Pledged Accounts hereinafter collectively referred to as "Collateral")

2.2. The Pledgor agrees to deposit with the Bank all dividends, interest and other payments, distributions of cash or other property resulting from the Pledged securities and funds.

6. Realisation of the Pledge:

6.1. 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. In such case the Bank shall transfer the funds on the Pledged Accounts, even repeatedly, to an account specified by the Bank.

6.2. Notwithstanding the foregoing, in the case that the Borrower fails to make payment on any due amount, or defaults in providing or increasing security, the Pledgor herewith grants its express consent and the Bank is entitled to realize the Pledged Securities (i) at a public auction for those items of Pledged Securities for which no market price is quoted or which are not listed on a recognized stock exchange or (ii) in a private sale pursuant to the provisions of Section 376 Austrian Commercial Code unless the Bank decides to exercise its rights through court proceedings. The Pledgor and the Bank agree to realize those items of the Pledged Securities for which a market price is quoted or which are listed on a stock exchange through sale by a broker publicly authorized for such transactions, selected by the Bank.

6.3. The Bank may realize the Pledge rather than accepting payments from the Borrower after maturity of the claim if the Bank has reason to believe that the Borrower's payments may be contestable."

13. The Pledge Agreement clearly states that the borrower i.e. Vintage has been granted a loan of USD 6,992,457.50 vide Loan Agreement dated May 30, 2008 (Annexure 3 to SCN) and that the pledgor i.e. Sybly has received a copy of the Loan Agreement. Thus, I note from the Pledge Agreement that while acknowledging the terms and conditions of the Loan

Agreement have agreed to pledge all its right, title and interest in and to the securities deposited in the Pledged Securities Account and funds in Pledged Time Deposit account so as to secure the present and future obligations of Vintage as is evident from the Pledge Agreement which states that “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”. The Pledge Agreement and Loan Agreement were both dated May 30, 2008. Clause 6.1 of the Loan Agreement stated that the Pledge Agreement was an integral part of the Loan Agreement.

14. The SCN alleged that Vintage was the only entity to have subscribed to 1.51 million GDRs (amounting to USD 6.99 million) of Sybly by obtaining a loan of USD 6.99 million by entering into a Loan Agreement dated May 30, 2008 with EURAM Bank to subscribe to GDRs of Sybly. The Loan Agreement was signed by Mr. Arun Panchariya in his capacity as Managing Director of Vintage for subscription of GDRs of Sybly. The following was inter-alia mentioned in the Loan Agreement:-

1. Currency and the amount of facility:

USD 6,992,457.50

2. Nature and purpose of facility:

To provide funding enabling Vintage FZE to take down GDR issue of Sybly Industries Limited's Luxembourg public offering and may only be transferred to EURAM account nr. 540081, Sybly Industries Limited”

6. Security

6.1. *In order to secure all and any of the Bank's claims and entitlements against the Borrower, arising now or in the future out of or in connection with the Loan or any other obligation or liability of the Borrower to the Bank, including without limitation other loans granted in the future, it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be demanded by the Bank:*

- *Pledge of certain securities held from time to time in the Borrower's account no. 540081 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*
- *Pledge of the account no. 540081 held with the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*

15. On perusal of the above Loan Agreement and bank account statement of Vintage, I note that Vintage had availed the loan facility to the extent of US \$ 6.99 million from EURAM Bank to subscribe to the GDRs of Sybly which was credited to its bank account on June 19, 2008. Further, on reading together the Loan Agreement, EURAM bank account statement of Vintage (Annexure 8 to SCN) and escrow account statement of Sybly (Annexure 9 to SCN) it is observed that the entire GDR proceeds received by Sybly on June 19, 2008 in its escrow account bearing Escrow account no. AT41193400-540081-0021 held with EURAM Bank were from the loan amount raised by Vintage. Therefore, it is observed that the GDR issue of Sybly (1.51 million GDRs amounting to USD 6.99 million) was subscribed by only one entity, i.e., Vintage and not the three entities as was stated in Sybly's letter dated June 22, 2015 (Annexure 1 to SCN) to SEBI.
16. I note that the said amount of USD 6.99 million was transferred on the same day i.e. June 19, 2008 to Sybly's retail account bearing no. AT15193400-540081-0101 held with EURAM Bank which was pledged to EURAM Bank under the Pledge Agreement. From the above, it is observed that the obligation of Vintage under the Loan Agreement was, thus, secured by Sybly through the Pledge Agreement.
17. I note that the arrangement of obtaining loan and pledging securities and GDR proceeds, which resulted in and facilitated the subscription of GDR issue of the company by only Vintage was not disclosed to the stock exchange in a true and complete manner. The information was reported in a distorted and misleading manner to the stock exchange. On June 20, 2008, BSE reported that *"Sybly Industries Ltd has informed BSE that GDR Issue of the Company for US \$ 7.00 Millions has been fully subscribed and closed on June 19, 2008 and allotment has been made of 15,10,250 Global Depositary Receipts underlying 3,02,05,000 Equity Shares of Rs 10/- each at par by the Board in its meeting held on June 20, 2008..."* which would have led investors to believe that the said GDR issue was genuinely subscribed. Thus, the investors in India were made to believe that the issuer company i.e. Sybly has acquired a good reputation in terms of investment potential and hence, foreign investors have successfully subscribed to the GDRs when in fact the GDRs were subscribed by only subscriber, Vintage which is managed by Mr. Arun Panchariya through an arrangement as narrated above. Further, the company provided incorrect information to SEBI vide letter dated June 22, 2015 stating that the GDR issue was

subscribed by three investors namely, Rexflec Ltd., Tradetec Corporation and Greenwich Management Inc. and not Vintage.

18. Based on the statement of bank accounts of Vintage and Sybly held with EURAM Bank, the SCN alleged that Vintage repaid the loan to EURAM Bank in several installments from December 30, 2009 to February 12, 2010. Details of repayment of loan by Vintage and transfer of funds by Sybly as provided by EURAM Bank are as under below:

A: Repayment of loan by Vintage to EURAM Bank (Repayments by Vintage)

B: Transfer of amounts from Sybly to Sybly International FZE ('SIF'), Sybly's UAE subsidiary

Date	Repayment By Vintage (A)	Transfer/Payment by Sybly (B)	Remarks
30/12/2009	3,000,000	3,000,000	
07/01/2010	3,000,000	3,000,000	
12/02/2010	992,458	1,485,472	Difference of USD 493,014 is net interest earned
			Total

19. In view of the above, I note that every transfer from Sybly to SIF, its UAE subsidiary is in sync with the date and amount of loan repaid by Vintage to EURAM Bank. Therefore, I note that the amount transferred from Sybly's EURAM account to its UAE subsidiary was dependent on the repayment of the loan by Vintage. It also establishes that the purpose of the Pledge Agreement was to facilitate the subscription of GDR issue and securing the loan obtained by Vintage.
20. From the above, I also note that the GDR subscription amounts of USD 6.99 million were not available to the company until the loan taken by Vintage for subscribing to the GDRs was repaid to the EURAM Bank. I also note that after the subscription of GDR in June 2008, a partial amount of USD 3 million could be made available to the company only in December 2009 i.e. after a period of a year and half. The last instalment towards amount of USD 6.99 million along with accrued interest was available to Sybly only in February 2010 when the loan was fully repaid by Vintage to EURAM Bank.
21. The authorized representative of the Noticees in the personal hearing submitted that the Noticees were under the genuine belief that since the Pledge Agreement was outside India,

disclosures in that regard were not required to be made on BSE. I note that as a company listed in India all material disclosures such as the GDR issue, Pledge Agreement in connection with the GDR issue and subscription of GDR issue were required to be disclosed in a correct manner so as to not mislead the investors.

22. As regards utilization of GDR proceeds, the Offering Circular (Listing Prospectus) of GDRs of Sybly stated that *“the Company plans to utilize the proceeds in setting up a pet processing project in the state of Uttarkhand. In addition to that, the Company plans to set up a project for manufacturing of semi craft paper, to be used by packaging industry, either independent or in association with any other group or by joining an existing manufacturing unit. The Company also plans to utilize the proceeds for installing upto 25,000 Spindles for its textile unit established at Muradnagar, Distt. Ghaziabad, Uttar Pradesh. Furthermore, the proceeds from the Offering would be utilized for enhancing the threat manufacturing facilities of the Company and to invest in the subsidiary company overseas.”* In its letter dated June 22, 2015 the company informed SEBI that the total GDR funds of USD 69,92,457.50 inclusive of interest income have been invested in Sybly International FZE (“SIF”), Sharjah, UAE a wholly owned subsidiary of Sybly which was incorporated in December 20, 2009. I note from the statement of Sybly’s retail account with EURAM Bank that the total amount transferred by Sybly to SIF was USD 7,485,472.39.

23. In the personal hearing on October 25, 2018 the Noticees’ authorized representative had sought time of two days to provide the bank statement of SIF along with other details. However, vide email dated October 31, 2018 the company sought more time to submit the documents. Accordingly, the company was granted time till November 06, 2018 to provide the documents. Vide letter dated November 03, 2018 received by SEBI on November 09, 2018, Sybly has provided copies of letters and disclosures made to BSE regarding GDR proceeds lying in its escrow account and of its subsequent transfer to SIF, its subsidiary. The company has also provided the newspaper publications of Unaudited Financial Returns published by the company on various dates. In this regard, I note that the disclosures made to BSE, and stakeholders through newspaper publication by the company are as under:

As on Quarter ended September 30, 2009	
Funds generated through issue of GDRs	
1. Used	NIL
2. Funds lying unutilized with Company’s Offshore Escrow Account	USD 6.99 Million

As on Quarter ended December 31, 2009	
Funds generated through issue of GDRs	
1. Loans & Investment in Offshore Wholly Owned Subsidiary Co.	USD 3.00 Million
2. Funds lying unutilized with Company's Offshore Escrow Account	USD 3.99 Million
As on Quarter ended March 31, 2010	
Funds generated through issue of GDRs	
1. Loans & Investment in Offshore Wholly Owned Subsidiary Co.	USD 6.99 Million
2. Funds lying unutilized with Company's Offshore Escrow Account	NIL

As stated in the preceding paragraph, Rs. USD 7,485,472.39 were transferred by Sybly to SIF, its subsidiary. From the information furnished by the company vide letter dated November 03, 2018, is unclear that the money transferred to Sybly's UAE subsidiary remained invested in the subsidiary company. Investigation has reported that investigations in GDR issues of other scrips has revealed that GDR proceeds were transferred to overseas subsidiaries of the GDR issuer companies and subsequently GDR proceeds were transferred from such overseas subsidiaries to certain entities (suspected to be connected to Mr. Arun Panchariya/ Mr. Mukesh Chauradiya). In this case, the company merely stated that the money has been transferred to SIF, and no further evidence has been provided to show that SIF has invested the money in furtherance of its objects.

24. In the personal hearing, it was submitted that neither the company nor the directors have entered into any fraudulent scheme. The Hon'ble SAT in its order dated October 25, 2016 in Appeal No. 126 of 2013 (Pan Asia Advisors Limited vs. SEBI), while interpreting the expression 'fraud' under the PFUTP Regulations, 2003, observed:

"From the aforesaid definition (of 'fraud') it is absolutely clear that if a person by his act either directly or indirectly causes the investors in the securities market in India to believe in something which is not true and thereby induces the investors in India to deal in securities, then that person is said to have committed fraud on the investors in India. In such a case, action can be taken under the PFUTP Regulations against the person committing the fraud, irrespective of the fact any investor has actually become a victim of such fraud or not. In other words, under the PFUTP Regulations, SEBI is empowered to

take action against any person if his act constitutes fraud on the securities market, even though no investor has actually become a victim of such fraud. In fact, object of framing PFUTP Regulations is to prevent fraud being committed on the investors dealing in the securities market and not to take action only after the investors have become victims of such fraud.”

25. In view of the above, I find that the company i.e. Noticee no. 1 violated the provisions of Section 12A (a) to (c) of the SEBI Act read with Regulations 3 (a) to (d) and 4 (1), 4(2) (f), (k) and (r) of the SEBI PFUTP Regulations by devising and implementing the entire scheme which facilitating the subscription of GDRs by Vintage through finance obtained from EURAM Bank by pledging the GDR proceeds and further, the company did not disclose about the subscription in a correct manner on BSE.
26. Based on the minutes of board meeting dated March 31, 2008 reproduced in this order at para 16, I note that the board of directors of Sybly had authorized Noticee No. 2 i.e. Mr. Mahesh Chand Mittal, Managing Director of Noticee No. 1 and Noticee No. 3 i.e. Umesh Kumar Mittal, Director of the Noticee No. 1 severally, to sign, execute, any application, agreement and other paper(s) on behalf of the company from time to time as may be required by the EURAM Bank. I further note that the Board of Directors had further authorized the Bank to use the funds deposited in the bank account opened with EURAM Bank for receiving the subscription money in respect of the Global Depository Receipt issue of the company as security in connection with loans, if any. I also note that from Page 7 of the annual report for the year 2007-08 and the copy of minutes of meeting (“1. Leave of Absence – It was noted that all directors were present at the meeting”), it is observed that all the six directors namely Mr. Mahesh Chand Mittal (Noticee No. 2), Shri Umesh Kumar Mittal (Noticee No. 3), Mr. Vimal Prakash Mittal (Noticee No. 4), Mr. Satya Prakash Mittal (Noticee No. 5), Mr. Mahendra Kumar Gupta (Noticee No. 6) and Mr. Subodh Kumar Goel (Noticee No. 7) had attended the aforesaid meeting.
27. Subsequently, Mr. Mahesh Chand Mittal (Noticee No. 2) and Mr. Umesh Kumar Mittal (Noticee No. 3) entered into a Pledge Agreement dated May 30, 2008 in their capacity as Managing Director and director of Sybly respectively, wherein, Sybly pledged GDR proceeds as collateral against loan availed by Vintage from EURAM Bank.

28. I note that the Loan Agreement was integral part of Pledge Agreement and vice versa and both were executed concurrently. The Pledge Agreement was signed by Mr. Mahesh Chand Mittal (Noticee No. 2) and Mr. Umesh Kumar Mittal (Noticee No. 3) on behalf of the pledgor i.e., Sybly in the capacity of its Managing Director and director respectively. Therefore, I note that Sybly and the directors facilitated the subscription of the GDR issue. I also note that these agreements enabled Vintage to avail loan from EURAM for subscription of GDR of Sybly by providing GDR proceeds as collateral for the loan extended by EURAM to Vintage. The GDR issue would not have been subscribed if Sybly had not given such security towards the loan taken by Vintage. By entering into such an arrangement and not disclosing the same to Indian investors, Noticees no. 2 to 7 have misled the investors in India to believe that the issuer company i.e. Sybly has acquired a good reputation in terms of investment potential and hence, foreign investors have successfully subscribed to the GDRs when in fact the GDRs were subscribed by Vintage only. Therefore, I note that directors facilitated the subscription of GDRs by Vintage through loan obtained from EURAM Bank by pledging the GDR proceeds, and further did not disseminate the correct information to investors.
29. In view of the above, I find that the directors of Sybly i.e. Noticee no. 2 to 7 violated the provisions of Section 12A (a) to (c) of the SEBI Act read with Regulations 3 (a) to (d) and 4 (1) of the SEBI PFUTP Regulations.
30. However, in their reply dated July 23, 2018, the Noticees informed that Noticee no. 4 i.e. Mr. Vimal Prakash Mittal had passed away on May 16, 2011. In this regard, copy of 'Death Certificate' issued by a competent authority was provided as a proof of demise. In view of the demise of Mr. Vimal Prakash Mittal, these proceedings shall abate only with respect to him.
31. In its reply and in the personal hearing the Noticees have stated that there was no malafide intent behind non-disclosure to the stock exchange and the violations, if any, are only due to oversight. In this regard, it is pertinent to note the Hon'ble Supreme Court's judgment in *Kanaiyalal Baldevbhai Patel v. SEBI* (2017) 15 SCC 1 wherein it was observed that "*if Regulation 2(c) of the 2003 Regulations was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or not, by any person while dealing in securities to induce another person to deal in securities would amount to a fraudulent act. The emphasis in the definition in Regulation 2(c) of the*

2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities”. The Hon’ble SAT in its order in Pan Asia Advisors also noted that any attempt to mislead the investors in India constitutes fraud on the under investors under the PFUTP Regulations.

32. The Noticees have further argued that that they have not dealt in the securities of the company either by buying or selling in securities of the company. The Hon’ble Supreme Court in *Kanaiyalal Baldevbhai Patel v. SEBI* has expressed that “*the definition of ‘dealing in securities’ is broad and inclusive in nature. Under the old regime the usage of term ‘to mean’ has been changed to ‘includes’, which prima facie indicates that the definition is broad*”. Therefore, I note that ‘dealing in securities’ is not limited to mere act of buying and selling in securities. As noted above, the scheme of facilitating the subscription of the company’s GDRs also comes within the ambit of dealing in securities and therefore, will attract PFUTP Regulations if the same has been done in a fraudulent as stated above. Further, the GDR issue would not have been subscribed if Sybly if such an arrangement had not been arrived at.

33. The Noticees have also submitted that in the SCN there was no allegation that either of the Noticees have manipulated or used any deceptive device under Regulation 3 (a) to (d) of PFUTP Regulations. In this regard, I note that in its judgment in *Kanaiyalal Baldevbhai Patel v. SEBI* the Hon’ble Supreme Court has observed that “*that the provisions of Regulations 3 (a), (b), (c), (d) and 4(1) are couched in general terms to cover diverse situations and possibilities. Once a conclusion, that fraud has been committed while dealing in securities, is arrived at, all these provisions get attracted in a situation....*”.

CONCLUSION

34. In view of the above, I hold that the Noticee no. 1 has violated the provisions of Section 12A (a) to (c) of the SEBI Act read with Regulations 3 (a) to (d) and 4 (1), 4(2) (f), (k) and (r) of the SEBI PFUTP Regulations. I further hold that Noticee nos. 2, 3, 5, 6 and 7 have violated the provisions of Section 12A (a) to (c) of the SEBI Act read with Regulations 3 (a) to (d) and 4 (1) of the SEBI PFUTP Regulations Accordingly, both issue no. (i) and (ii) are concluded against the Noticees and therefore, I am inclined to pass orders against various Noticees as shown under the head ‘Directions’.

Directions

35. In view of the above, I, in exercise of the powers conferred upon me under section 19 read with sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992, hereby direct as under:

- (a) The following Noticees are hereby restrained from accessing the securities market and further prohibit them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of **five years** from the date of this order. During the period of restraint, the existing holding of the following Noticees shall remain frozen.

Noticee No.	Name of the Noticees	PAN
1	Sybly Industries Limited	AACCS6886M
2	Mr. Mahesh Chand Mittal	ABJPM0503C
3	Mr. Umesh Kumar Mittal	ABJPM0512B
5	Mr. Satya Prakash Mittal	ABJPM0511C
6	Mr. Mahendra Kumar Gupta	AAQPG8960J
7	Mr. Subodh Kumar Goel	ACBPG3533H

- (b) The proceedings emanating from SCN dated June 07, 2018 against the following Noticee stands abated:

Noticee No.	Name of the Noticees	PAN
4	Mr. Vimal Prakash Mittal	AAAPM0629B

36. This order shall come into force with immediate effect.

37. A copy of this order shall be served on all recognized stock exchanges and depositories to ensure compliance with above directions.

Sd/-

Date: November 16, 2018

Place: Mumbai

ANANTA BARUA
WHOLE TIME MEMBER