

WTM/ AB /EFD-1/DRA-1/ 16 /2018-19

SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: ANANTA BARUA, WHOLE TIME MEMBER
ORDER

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

In respect of: -

Noticee No.	Name of the Noticees	PAN
1	Syncom Healthcare Limited	AAKCS3247G
2	Mr. Ajay S Bankda	ADHPB2851J
3	Ms. Jyoti Bankda	ADHPB2855N
4	Mr. Jagadish Prasad Bagaria	AAEPB0276F
5	Mr. Bharat Kumar Doshi	ABTPD1004D
6	Mr. Govind Das Pasari	AAAHG7397A
7	Mr. Avichal Kasliwal	ADQPK3720J

(The aforesaid entities are hereinafter referred to by their respective names/serial numbers or collectively as “the Noticees”)

Background:

1. Securities and Exchange Board of India (hereinafter referred to as ‘SEBI’) investigated the issuance of Global Depository Receipts (hereinafter referred to as ‘GDRs’) in overseas market by Syncom Healthcare Limited (hereinafter referred to as ‘company/Syncom’) for the period August 20, 2010 to September 20, 2010 which revealed that Syncom issued 4.5 million GDRs (amounting to USD 20.74 million) on September 03, 2010 on the Luxembourg Stock Exchange, equivalent to 2,25,00,000 equity shares of Rs. 10 each. Summary of the GDR issue of Syncom 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
Sept 03, 2010	4.5 (at USD 4.61 each GDR)	20.74	DBS Bank, Mumbai	2,25,00,000 (5 shares per GDR) (at Rs. 43/ share)	The Bank of New York, Mellon	Prospect Capital Ltd.	EURAM Bank, Austria	Luxembourg Stock Exchange (LSE)

Show Cause Notice, Reply and Personal Hearing:

2. A Show Cause Notice (hereinafter referred to as ‘SCN’) dated August 11, 2017 containing the findings of the investigation was issued to the Noticees asking them to show cause as to why action should not be taken against them for the alleged violation of the provisions of Section 12A(a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘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 (hereinafter referred to as ‘SEBI (PFUTP) Regulations, 2003’). Along with the SCN, copies of documents relied on to substantiate the allegations were enclosed as Annexures 1 to 8 and the details are as under:

Annexure nos.	Particulars
1	Syncom’s letter to SEBI dated June 30, 2015
2	Loan Agreement between Vintage, a company having its registered office in UAE and EURAM Bank, Austria dated August 20, 2010 for amount USD 20.74 million
3	Board Resolution passed in meeting dated July 07, 2010 for opening bank account with EURAM Bank for GDR issue
4	Minutes of board meeting of Syncom dated July 07, 2010 authorizing Mr. Ajay Bankda, MD to sign, execute any agreement as may be required by EURAM Bank
5	Pledge Agreement dated August 20, 2010 entered into between Syncom and EURAM Bank executed by Mr. Ajay Bankda thereby pledging the GDR proceeds for the loan availed by Vintage for subscribing the GDR.
6	Statement of Loan Account held by Vintage with EURAM Bank
7	Statement of Retail Account held by Syncom with EURAM Bank
8	Statement of Escrow Account held by Syncom with EURAM Bank

3. The aforesaid SCN dated August 11, 2017 contained findings of investigation as under:
- a. The scrip of the company is listed on the Bombay Stock Exchange Limited (hereinafter referred to as 'BSE') and National Stock Exchange of India Limited (hereinafter referred to as 'NSE').
 - 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 by Syncom and 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 August 20, 2010 (Annexure 2 to SCN). The loan was secured by Pledge Agreement dated August 20, 2010 (Annexure 5 to SCN) between Syncom 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 Syncom.
 - 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. Ajay S. Bankda (Managing Director) on behalf of Syncom which was approved by the Board through a resolution dated July 07, 2010. Therefore, the company and its directors including Mr. Ajay S. Bankda had knowledge about the subscriber to GDR issue, the Pledge Agreement and the Loan Agreement. These agreements enabled Vintage to avail loan from EURAM for subscription of GDRs of Syncom by providing GDR proceeds as collateral for the loan extended by EURAM to Vintage. The GDR issue would not have been subscribed if Syncom 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 by the company.
 - 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 made by Syncom on BSE 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 of GDRs started from February 2011 and continued till January 2016. All 4,500,000 GDRs were converted by January 2016.
 - f. The directors of Syncom namely Noticee No. 2 i.e. Mr. Ajay S. Bankda, Noticee No. 3 i.e. Ms. Jyoti Bankda, Noticee No. 4 i.e. Mr. Jagadish Prasad Bagaria, Noticee No. 5 i.e. Mr. Bharat Kumar Doshi, Noticee No. 6 i.e. Mr. Govind Das Pasari and Noticee No. 7 i.e. Mr. Avichal Kasliwal who approved the Board Resolution authorizing the company and on its behalf Mr. Ajay Bankda, Managing 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 Syncom are alleged to be in violation of provisions of SEBI Act and SEBI (PFUTP) Regulations, 2003.
4. In the SCN dated August 11, 2017, the Noticees were also advised to file their reply within a period of 21 days from the date of receipt of the SCN. The SCN was served on Syncom, Noticee no. 1, Mr. Ajay Bankda, Noticee no. 2, Ms. Jyoti Bankda, Noticee no. 3 and Mr. Jagadish Prasad Bagaria through Hand Delivery. The SCN was served on Mr. Bharat Kumar Doshi, Noticee no. 5 and Mr. Govind Das Pasari, Noticee no. 6 through Speed Post. The SCN was served on Mr. Avichal Kasliwal at his last known address through Affixture.
5. In their reply dated November 20, 2018, the Noticee nos. 1 to 4, namely, Syncom, Mr. Ajay Bankda, Ms. Jyoti Bankda and Mr. Jagadish Prasad Bagaria have stated the following:
- a. There has been a delay of seven years in initiating proceedings against the company and its directors for a GDR issue which happened in 2010. Noticee nos. 1 to 4 have relied on the orders of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as, 'SAT') in *H B Stockholdings v. SEBI* and *Khandwal Securities Ltd. v. SEBI*.
 - b. Lapse of more than 7 years would gravely prejudice their ability to defend themselves and they may not be able to retrieve both physical and electronic data.

- c. The Noticees have not been allowed the opportunity to inspect the original of the documents annexed to the SCN and other documents sought vide their letter dated October 31, 2017 which is against the principles of natural justice.
- d. The list of subscribers to the GDR issue was provided to SEBI by the company vide letter dated June 30, 2015. The said list was also provided to the stock exchanges based on the information received from the Lead Manager/ Merchant Banker and they relied upon the list which has been the practice over the years. They did not have any independent mechanism to verify the list of subscribers due to the secrecy laws applicable in other jurisdictions.
- e. Loan agreement was signed between Vintage and EURAM Bank for subscription of GDR's Syncom. Since the Noticees are not party to the loan agreement, they cannot be held liable for any averments/ declaration/ statements made therein. Hence, any liability of Vintage and EURAM Bank cannot be lumbered upon them.
- f. The company had authorized Mr. Ajay Bankda with the task of carrying out the GDR issue. The company relied upon the Merchant Banker registered with reputed foreign authority. The company is also surprised to know that the GDR was subscribed by only one entity.
- g. The company had authorized Mr. Ajay Bankda to sign any documents/ agreements/ papers/ forms if and when required. This authority was given to the authorized signatory prior to any GDR issue or any other fund issuance carried out by the company in ordinary course of business.
- h. Mr. Ajay Bankda never informed the company and other Noticees that he has entered into a pledge agreement with EURAM Bank.
- i. The Board had authorized Mr. Ajay Bankda and were of the opinion that he would have carried out the same diligently with full integrity. The nature of the document was never brought to the notice of the company and other directors.
- j. It is denied that the company signed any pledge agreement with EURAM Bank as the same was signed by Mr. Ajay Bankda and the company not informed of the same. The company had not authorized Mr. Ajay Bankda to sign the Pledge Agreement.
- k. The SCN is not giving true picture and trying to show proximity between two independent events which has happened separately.
- l. Adjudication proceedings have also been initiated against the Noticees for the same violation which amounts to double jeopardy and is in gross violation of Article 20 (2) of the Constitution of India.

- m. To support their contentions the Noticees have relied *inter alia* on the following judicial decisions:
- i. *Nandkishore Prasad v. State of Bihar* (1978) 2 SCC 366: Suspicion cannot be allowed to take the place of proof even in domestic inquiries.
 - ii. *Vintel Securities Pvt. Ltd. v. The Adjudicating Officer* (Appeal no. 219 of 2009): It is not enough to say that the Appellant is guilty of the charge. The impugned order must show the charge stands established.
 - iii. *Sterlite Industires Limited v. SEBI* (2002) 34 SCL 485 (SAT- Mumbai): Mere conjectures and surmises are not adequate to hold a person guilty of such a serious offence.
 - iv. *Videocon International v. SEBI* (2002) 4 CLJ 402 (SAT)
 - v. *Milkyways Merchantiles Pvt. Ltd. and SPFL Securities Limited* decided on March 16, 2017, the AO observed: The necessity of ‘intent’ and the element of “fraud” appears to be a pre – requisite in all the parts of Regulations 3 and 4 of the PFUTP Regulations.
6. Mr. Ajay Bankda, Noticee no. 2 in his reply dated November 20, 2018 and December 05, 2018 has stated the following:
- a. The Noticee has denied acting as a party to the fraudulent scheme in the matter of GDR issue of Syncom. Prospect Capital limited (hereinafter referred to as ‘Prospect’) was the lead manager of the GDR issue. The Noticee trusted and carried out the process as per instructions given by them.
 - b. The Noticee relied on the expertise of Merchant Banker and signed all the agreements in good faith.
 - c. The Noticee denied executing the pledge agreement with EURAM Bank. The originals have not been made available by SEBI.
 - d. The Lead Managers wrongly made the Noticee a party to the Pledge Agreement.
 - e. The Lead Manager never informed the Noticee that it has entered into a Pledge Agreement on behalf of the company with EURAM Bank.
7. Noticee no. 3, Ms. Jyoti Bankda vide her reply dated November 20, 2018 and December 07, 2018 has stated the following:

- a. Mr. Jyoti Bankda was a director of Syncom from July 29, 2002 till July 07, 2010. The Noticee has resigned from the directorship of Syncom from July 07, 2010 with immediate effect.
 - b. The Board Resolution authorizing the issue of GDR was approved in the same Board Meeting on July 07, 2010. Therefore, she did not participate in any decision with reference to the issuance of GDR. Therefore, no adverse inference ought to have been drawn against her.
 - c. The company has submitted a detailed reply dated November 20, 2018 and she adopts the submissions made by Syncom.
8. Noticee no. 4, Mr. Jagadish Prasad Bagaria in his reply dated November 20, 2018 has denied the allegations made in the SCN and has adopted the submissions made by Syncom.
9. In their replies dated September 22, 2017 and September 04, 2017, Noticee no. 5, Mr. Bharat Kumar Doshi and Noticee no. 6, Mr. Govind Das Pasari have stated the following:
 - a. Mr. Bharat Kumar Doshi has stated that he was a non-executive independent director of the company and was appointed on May 28, 2008. He resigned from the post of independent director on October 18, 2014 which was approved by the RoC vide its email dated October 27, 2014.
 - b. Mr. Govind Das Pasari has stated that he was an independent director of the company and was appointed on May 28, 2008. He resigned from the post of independent director on October 16, 2014 which was approved by the Board vide its meeting dated October 22, 2014.
 - c. As independent directors they had no role to in any day to day activities. All the decisions, policies and financial matters are decided by Managing Director/ Whole Time Director of Syncom. The allegations in the SCN arise out of day to day activities performed by the whole time directors/ executives/ officials of Syncom wherein allegation of concealing and suppressing material facts about the Pledge and Loan Agreement has been alleged.
 - d. Except opening of bank account with EURAM Bank there is nothing in the SCN that alleges that the alleged activities carried out by Syncom were approved in Board meetings.

- e. Except for making allegation as regards attending the Board Meeting of Syncom, nothing specific has been attributed to him like how he was involved in the day to day activities or that the alleged activities had his approval or he was aware of it.
- f. As regards creation of security, the Board had authorized Mr. Ajay Bankda which established that it was his decision to enter into a pledge agreement.
- g. The secretarial department of the company looked after matters such as intimating the stock exchange before and after the board meetings including the content to be submitted to the stock exchanges etc. Thus, they cannot be alleged to have provided misleading information to the stock exchanges.
- h. They did not have any material/ pecuniary relationship as director with Syncom, its promoters, directors, senior management or its holding company, its subsidiaries or associates which could affect his independence as a director.

10. No reply was received from Noticee no.7, Mr. Avichal Kasliwal.

11. A personal hearing was scheduled on October 26, 2018 which was communicated to the Noticees through letter dated September 06, 2018. The hearing notice was served on Syncom, Noticee no. 1, Mr. Ajay Bankda, Noticee no. 2 and Ms. Jyoti Bankda, Noticee no. 3 through Hand Delivery. As the hearing notice dated September 06, 2018 to Mr. Jagadish Prasad Bagaria, Noticee no. 4 was returned undelivered with the remark, “Consignee Shifted”, letter dated September 11, 2018 was issued to the company requesting it to handover the hearing notice to Mr. Jagadish Prasad Bagaria. The hearing notice was served on Mr. Bharat Kumar Doshi, Noticee no. 5 and Mr. Govind Das Pasari, Noticee no. 6 through Speed Post. The hearing notice was served on Mr. Avichal Kasliwal at his last known address through Affixture.

12. Hearing in the matter was scheduled on October 26, 2018. Noticee no. 5 and 6, namely, Mr. Bharat Kumar Doshi and Mr. Govind Das Pasari were appeared before me and were represented by M/s Halai & Co. Noticee no. 7, Mr. Avichal Kasliwal authorized M/s Halai & Co. to appear on behalf of him. It was argued on behalf of Noticee no. 5, 6 and 7 namely, Mr. Bharat Kumar Doshi, Mr. Govind Das Pasari and Mr. Avichal Kasliwal that they were independent directors of Syncom. Mr. Bharat Kumar Doshi and Mr. Govind Das Pasari joined the company from May 28, 2008 and Mr. Avichal Kasliwal joined the company from June 2, 2008. They had no role to play in the day to day activities of the company. They

also relied on the order of the Adjudicating Officer (hereinafter referred to as, 'AO') of SEBI in the matter of ABL Biotechnologies Ltd.

13. At the end of the hearing the Noticees were advised to submit the following by October 31, 2018:

- a) Proof of independent directorship,
- b) Agenda papers for Board meeting on July 07, 2010.

14. In their submissions dated November 02, 2018 made through their authorized representatives, the Noticee nos. 5, 6 and 7 have furnished Form 32 from the MCA showing that they were independent directors in Syncom. As regards furnishing agenda papers, it was submitted that they were never in possession of Agenda or Minutes of the company pertaining to the meeting of July 07, 2010. Enquires made by them with the company yielded no results, as the company informed the Noticee nos. 5, 6 and 7 that the Agenda is not available with the company being a document of more than 8 years old and appears to have been misplaced while shifting its office.

15. Vide letter dated October 19, 2018, Noticee nos. 1 to 4 sought adjournment. The next date of hearing for Noticees no. 1 to 4 was granted on November 05, 2018. SEBI received another letter dated October 31, 2018 from Noticees no. 1 to 4 seeking another adjournment citing unavailability of advocates on the said date. Accordingly, a last opportunity of being heard was given to the said Noticees on November 28, 2018 which was communicated vide letter dated November 12, 2018.

16. On November 28, 2018, the Noticee nos. 1, 3 and 4 namely, Syncom, Mrs. Jyoti Bankda and Mr. Jagadish Prasad Bagaria were represented by their advocates. The advocates reiterated the submissions made by the Noticees vide their replies dated November 20, 2018. The authorized representatives were informed that the company has not yet provided the bank account statement of its UAE subsidiary where the money was transferred. The Advocates sought time of 10 days to make additional submissions on behalf of Noticee nos. 1, 3 and 4 and to revert on the aspect of providing bank account statement of the UAE subsidiary. The same was granted.

17. Noticee no. 2 namely, Mr. Ajay Bankda was represented by his authorized representative. During the hearing, a copy of Mr. Ajay Bankda's statement dated May 16, 2017 made before the Investigating Authority was shown to her wherein he had stated that after consultation with the accounts department of Syncom and on the basis of the trust on the Lead Manager he signed the impugned Pledge Agreement. A copy of the said statement and further time of 10 days to make additional submissions was sought on behalf of Mr. Ajay Bankda. The same was granted. A copy of the aforesaid statement of Mr. Ajay Bankda was provided to the authorized representatives of the Noticee nos. 1 to 4.

Consideration of issues and findings:

18. I have considered the SCN dated August 11, 2017 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.

19. 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.

20. Syncom is a company listed on BSE and NSE. 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 Syncom to BSE during July 2010 to September 2010, investigation observed that Syncom had informed BSE that their Board of Directors in their meeting held on August 18, 2010 inter alia had approved the opening of GDR issue for an aggregate amount equivalent to 2.25 Crore equity shares. Syncom further informed BSE on September 03, 2010 that the Board at its meeting held on September 03, 2010 has inter alia transacted the following business:

“Successfully concluded the placement of 4,500,000 GDRs at USD 4.61 each underlying 22,500,000 equity shares... totaling to USD 20.745 mn.”

21. Syncom vide letter dated June 30, 2015 informed SEBI that it had issued 4,500,000 GDRs (USD 20.74 million, approximately Rs. 96 crore) on September 03, 2010. It also provided the list of subscribers to its GDRs to SEBI which is tabulated as under:

Sl. No.	Name of the subscriber	Country of subscriber	No. of GDRs allotted	Amount subscribed (USD)
1	Trapezius Capital Limited	Germany	810,000	3,734,100
2	Nigella Ltd.	Bahrain	750,000	3,457,500
3	Chromestar Assets Ltd.	Hong Kong	720,000	3,319,200
4	Mediterranean Capital Holdings Corp	Saudi Arabia	740,000	3,411,400
5	New Jersey Capital Limited	France	700,000	3,227,000
6	Cromwell Capital Corp	Qatar	780,000	3,595,800
	Total		4,500,000	20,745,000

22. From the copy of Syncom's Board Resolution dated July 07, 2010 provided by EURAM Bank and copy of minutes of its board meeting held on July 07, 2010 (provided by Syncom vide email dated March 22, 2017), it is observed that the Board of Directors of Syncom 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.”

Resolution further states that:

“RESOLVED FURTHER THAT Mr. Ajay S Bankda, Managing Director of the Company be and is hereby authorized to sign, execute, any application, agreement, escrow agreement, documents, 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.”

Resolution also states that:

“.....RESOLVED FURTHER THAT Mr. Ajay S Bankda, Managing Directors of the Company, be and is hereby authorized 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 of branch of Euram Bank, including the Offshore Branch, for the purpose of operation of and dealing with the said bank account and carry out other relevant and necessary transactions and generally to take all such steps and to do all such things as may be required from time to time on behalf of the Company”

Resolution further states that:

“.....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.”

23. As per the minutes of the Board meeting of Syncom on July 07, 2010, the directors namely, Mr. Ajay Bankda, Noticee no.2, Ms. Jyoti Bankda, Noticee no. 3, Mr. Jagadish Prasad Bagaria, Noticee no. 4, Mr. Bharat Kumar Doshi, Noticee no. 5, Mr. Govind Das Pasari, Noticee no. 6 and Mr. Avichal Kasliwal, Noticee no. 7 attended the said board meeting. It is observed from the aforesaid minutes of board meeting that the Board of directors had authorized Mr. Ajay S. Bankda, Managing Director of Syncom to sign and execute any application, agreement and other paper(s) from time to time as may be required by the EURAM Bank. I 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 GDR issue of the company as security in connection with loans, if any.

24. I note that Noticee no. 1 i.e. Syncom entered into a Pledge Agreement dated August 20, 2010 with EURAM Bank which was signed by Noticee No. 2 i.e. Mr. Ajay Bankda in the capacity of Managing Director of Syncom respectively, wherein, Syncom 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 K200810-003 (hereinafter referred to as the “Loan Agreement”) dated 20 August 2010, the Bank granted a loan (hereinafter referred to as the “Loan”) to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates (the “Borrower”) in the amount of USD 20,745,000. The pledgor has received a copy of the Loan Agreement No. K200810-003 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 hereto 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 bill 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 USD 20,745,000,

existing from time to time at present or hereafter on the securities account(s) no. 580028 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. 580028 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.

2.3 The Bank herewith accepts the pledge established pursuant to section 2.1 hereof.

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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 Account 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 transaction, a 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.”

25. The Pledge Agreement clearly states that the borrower i.e. Vintage has been granted a loan of USD 20,745,000 vide Loan Agreement dated August 20, 2010 and that the pledgor i.e. Syncom 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, Syncom has 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 August 20, 2010. I also note that Clause 6.1 of the Loan Agreement dated August 20, 2010 also states that the Pledge Agreement is an integral part of the Loan Agreement.

26. The SCN alleged that Vintage FZE was the only entity to have subscribed to 4.5 million GDRs (amounting to USD 20.74 million) of Syncom by obtaining a loan of USD 20.74 million by obtaining a loan availed through signing a Loan Agreement dated August 20, 2010 with EURAM Bank for payment of subscription amount of USD 20.74 million for GDR issue of Syncom. The relevant clauses of the loan agreement are produced as under:”

2. *Nature and purpose of facility:*

To provide funding enabling Vintage FZE to take down GDR issue of 4,500,000 Luxembourg public offering and may only be transferred to EURAM account no. 580028, Syncom Healthcare Limited.”

...
...
...

6. *Security:*

...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 deemed by the Bank:

- *Pledge of certain securities held from time to time in the Borrower’s a/c no. 540012 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. 580028 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.*

27. 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 \$ 20.74 million from EURAM Bank to subscribe to the GDRs of Syncom which was credited to its bank account on September 02, 2010. Further, on reading together the Loan Agreement, EURAM bank account statement of Vintage and EURAM bank escrow account statement of Syncom it is observed that the entire GDR proceeds received by Syncom on September 02, 2010 in its escrow account bearing no. AT281934005800280020 held with EURAM Bank were from the loan amount raised by Vintage, transferred from Vintage's bank account held with EURAM Bank. I note that the said amount of USD 20.74 million was transferred on the same day i.e. September 02, 2010 to Syncom's retail account bearing no. AT721934005800280101 held with EURAM Bank which was pledged to EURAM Bank under the Pledge Agreement from Syncom's escrow account. From the above, it is observed that the obligation of Vintage under the Loan Agreement was, thus, secured by Syncom through the Pledge Agreement. I note that the arrangement of pledging securities and GDR proceeds, which resulted in and facilitated the subscription of GDR issue of the company by only one subscriber i.e. 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 September 03, 2010, the company reported to BSE that it had *"Successfully concluded the placement of 4,500,000 GDRs at USD 4.61 each underlying 22,500,000 equity shares... totaling to USD 20.745 mn."* 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. Syncom 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 with the support of the loan agreement and pledge agreement.

28. I also note that the company provided incorrect information to SEBI vide letter dated June 30, 2015 stating that the GDR issue was subscribed by six investors namely, Trapezium Capital Ltd., Nigella Ltd., Chromestar Assets Ltd., Mediterranean Capital Holdings Corp,

New Jersey Capital Limited and Cromwell Capital Ltd., and not Vintage. It is observed that the GDR issue of Syncom (4.5 million GDRs amounting to USD 20.74 million) was subscribed by only one entity, i.e., Vintage through the above arrangement as stated in paras 24 to 27 of this order, and not the six entities as was stated in Syncom's letter dated June 30, 2015 (Annexure 1 to SCN) to SEBI.

29. Based on the statement of bank accounts of Vintage and Syncom held with EURAM Bank, the SCN stated that Vintage repaid the loan to EURAM Bank in several installments from March 2011 to September 2011. Details of repayment of loan by Vintage and further transfer of funds by Syncom to its bank account in India and its UAE subsidiary's bank account, as provided by EURAM Bank are as under below:

Date	Loan amount repaid by Vintage (USD)	Date	Amount of funds transferred from Syncom's EURAM a/c to Syncom's bank account in India and UAE subsidiary's bank a/c (USD)
		22.03.2011	180,000.00 (bank account in India)
25.03.2011	735,000	25.03.2011	735,000.00 (bank account in India)
12.07.2011	350,000		
15.07.2011	1,030,000	15.07.2011	1,400,000.00
28.07.2011	5,300,000		
		29.07.2011	5,300,000.00
04.08.2011	2,000,000	04.08.2011	2,000,000.00
10.08.2011	2,000,000	10.08.2011	2,000,000.00
24.08.2011	3,000,000	24.08.2011	3,060,000.00
30.08.2011	2,750,000	30.08.2011	2,750,000.00
07.09.2011	2,500,000	07.09.2011	2,500,000.00
14.09.2011	1,080,000	14.09.2011	1,093,438.15
Total	20,745,000		21,018,438.15

30. On the perusal of the Syncom's EURAM Bank account statement and Vintage's loan account statement, I note that only after Vintage repaid loan installments, on the same day equal amount of money was transferred from Syncom's EURAM Bank account to (a) Syncom's UAE subsidiary's bank a/c or (b) Syncom's bank a/c in India (except on three instances when on one occasion equal amount of money was transferred on next day and on the two occasions either more money was transferred to Syncom's account or money was transferred before repayment of loan by Vintage). From the above, it is evident that the

amount transferred from Syncom's EURAM Bank account 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.

31. From the above, I also note that the GDR subscription amounts of USD 20.74 million were not available to Syncom until the loan taken by Vintage for subscribing to the GDRs was repaid to the EURAM Bank. I note that the last instalment towards amount of USD 20.74 million along with accrued interest was available to Syncom only in September 2011 when the loan was fully repaid by Vintage to EURAM Bank.
32. As regards utilization of GDR proceeds, the Offering Circular (Listing Prospectus) of GDRs of Syncom stated that *"...Proceeds so raised will be utilized for the following activities viz., Capital expenditure, long term working capital requirements and investment in proposed overseas subsidiary companies in UAE"*. In its letter dated June 30, 2015 the company informed SEBI that out of the total GDR funds of USD 21, 018, 438 inclusive of interest income, USD 0.91 million were transferred to Syncom's bank account in India and USD 20.10 million were transferred to Syncom's UAE based subsidiary namely Syncom Healthcare International FZE's (hereinafter referred to as 'SHIF') bank account. However, Syncom has not provided its UAE based subsidiary SHIF's bank account statement. In the personal hearing on November 28, 2018, authorized representatives of Noticee no. 1 had sought time of 10 days to provide the details of utilization of funds transferred to the company's UAE subsidiary. The same has not been furnished so far.
33. It is, therefore, unclear whether the money transferred to Syncom'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 those proceeds were transferred from such overseas subsidiaries to certain entities. In this case, the company merely stated that the money has been transferred to SHIF, and no further evidence has been provided to show that SHIF has invested the money in furtherance of its objects.
34. The Noticees have also stated that there has been a delay of seven years in issuing the SCN which gravely affected their ability to defend themselves. In this connection, I note that

SEBI investigated the GDRs issues by seven Indian companies in overseas market and the investigations revealed that a Dubai based Non Resident Indian, Mr. Arun Panchariya perpetrated a fraudulent schemes in connivance with the promoters/ directors of those issuer companies. While examining the bank account statements of Vintage in connection with its involvement in other GDR issues, it was observed in the year 2014 that Vintage has dealt with the GDRs of several other companies and that the Lead Managers were also common in many of the said suspected companies, SEBI found similar modus operandi. In view of many such GDR issues, scrip-wise investigation has been carried out against the entities involved. Syncom was one such scrip where such a fraudulent scheme was also observed and the investigation was completed in the year 2017. I also note that collection of information from various entities was a tedious and time consuming process, particularly obtaining documents from outside India and through regulatory process. I note that after the investigation was completed, the SCN was issued to the Noticees in August 2017.

35. I note that there is no provision in the SEBI Act, which may have the effect of prohibiting SEBI from taking action beyond a particular period of time in a given case. Offences under SEBI Act, 1992 are economic offences. In *Ravi Mohan & Ors. v. SEBI* and other connected appeals decided on 27.08.2013, the Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT') while referring to its own decision in *HB Stockholdings Ltd. v. SEBI* (Appeal no. 114 of 2012 decided on 27.08.2013) and decision of Hon'ble Supreme Court in *Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India)* reported in 2003 (158) ELT 129 (S.C.), held as under:

"....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the

adjudication order is passed after a lapse of several years from the date of issuing notice....”

Therefore, I am unable to accept the contention of the Noticees in the facts and circumstances of the case as elaborated above, more particularly in para 34 of this order.

36. The Noticee nos. 1 to 4 have also stated that they have not been allowed to inspect the original documents relied upon in the SCN. In this regard, I note that as stated in para 2 of this order, copies of the following documents relied upon in support of the SCN have been provided along with SCN and the reasons for not acceding to the request to provide original documents is as under:

Sr. No.	Original of documents sought for inspection which are Annexed to the SCN	Whether request for the Inspection of original documents is tenable
1	Company's letter to SEBI dated June 30, 2015 (Annexure 1 to SCN)	This letter was written by Syncom (Noticee No. 1) itself to SEBI. Request for the inspection of original is untenable.
2	Loan Agreement between Vintage and EURAM Bank dated August 20, 2010 for amount USD 20.74 million (Annexure 2 to SCN)	This document was signed and executed outside India by parties located outside India. Original of the document is not available with SEBI. Request for inspection of the original is untenable.
3	Board Resolution of Syncom passed in meeting dated July 07, 2010 for opening bank account with EURAM Bank for GDR issue (Annexure 3 to SCN)	The resolution was passed by the Syncom (Noticee No. 1) itself. The original of the document must be available with Syncom. Original not available with SEBI. Request for inspection of original is untenable.
4	Minutes of board meeting of Syncom dated July 07, 2010 authorizing Mr. Ajay Bankda to sign, execute any	The Minutes are of Syncom's Board Meeting which were provided to SEBI by the company vide email dated

	agreement as may be required by EURAM Bank (Annexure 4 to SCN)	March 22, 2017. The original of the document must be available with Syncom itself. Original not available with SEBI. Request for inspection of original is untenable.
5	Pledge Agreement dated August 20, 2010 entered into between Syncom and EURAM Bank (Annexure 5 to SCN)	The agreement was executed between Syncom, itself and EURAM Bank, and signed by Noticee no. 2 (Mr. Ajay Bankda), on behalf of Noticee No. 1. Copy of the document, as available with SEBI, was provided to the Noticee. Original of the document is not available with SEBI. Request for inspection of original is untenable.
6	Statement of Loan Account held by Vintage with EURAM Bank (Annexure 6 to SCN)	The said account statement issued by EURAM Bank belongs to Vintage, a company registered outside India. Original of the document is not available with SEBI. Request for inspection of original is untenable.
7	Statement of Retail Account held by Syncom with EURAM Bank (Annexure 7 to SCN)	These are account statements of Noticee no. 1, Syncom, itself issued by EURAM Bank. The original of the document must be available with Syncom. Original not available with SEBI. Request for inspection of original is untenable.
8	Statement of Escrow Account held by Syncom with EURAM Bank (Annexure 8 to SCN)	

37. Noticee nos. 1 to 4 in their reply have also stated that the documents in nature of correspondences exchanged between SEBI and DBS Bank, Mumbai, The Bank of New York Mellon, Prospect, EURAM Bank, Luxembourg Stock Exchange and correspondences exchanged between SEBI and financial regulator of Austria i.e. Financial

Market Authority (FMA) were not provided to them during the inspection of documents. At para 4 (b) of letter dated October 31, 2017 of Syncom, the company has sought correspondence between SEBI and DBS Bank, Mumbai, The Bank of New York Mellon, Prospect, EURAM Bank and Luxembourg Stock Exchange while referring to Table 1, para 1 of the SCN. I note that Table 1 in para 1 of the SCN refers to the details of GDR reproduced as under.

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
Sept 03, 2010	4.5 (at USD 4.61 each GDR)	20.74	DBS Bank, Mumbai	2,25,00,000 (5 shares per GDR) (at Rs. 43/ share)	The Bank of New York, Mellon	Prospect Capital Ltd.	EURAM Bank, Austria	Luxembourg Stock Exchange

The information contained in the aforesaid Table was furnished by Syncom itself to SEBI vide letter dated June 30, 2015. Further, I note that DBS Bank and The Bank of New York Mellon have been appointed as local custodian and global depository bank for the GDR issue by Syncom. The Board of Directors of Syncom in their resolution dated July 07, 2010 has approved the opening of bank account with EURAM Bank and authorized the bank to use the funds deposited in the said bank account as security. Syncom listed its GDR issue on the Luxembourg Stock Exchange. I observe that the Noticees have not disputed the above facts and table. On the contrary I note that the request for inspection of correspondence between SEBI and DBS Bank, Mumbai, The Bank of New York Mellon, Prospect, EURAM Bank and Luxembourg Stock Exchange is roving and fishing in nature as the same has been made without citing any particular document even while SEBI might not have entered into any correspondence with some of such entities, and have not relied upon such correspondence in the SCN. Therefore, I note that the request for the aforesaid correspondence is untenable. As regards correspondences exchanged between SEBI and financial regulator of Austria i.e. Financial Market Authority (FMA) whereby FMA has provided copies of documents such as loan agreement (annexure 2 to SCN), pledge agreement (annexure 5 to SCN), bank account statements held with EURAM Bank (annexures 6, 7 and 8 to SCN) etc., I note that copies obtained through such correspondence which were relevant for the GDR issue of Syncom have been furnished to the Noticees as

annexures to the SCN. I note that the aforesaid request for inspection is roving and fishing in nature as the same has been made without citing any particular documents. Further, correspondences/ letters seeking information exchanged between SEBI and FMA i.e. two regulators are confidential in nature governed by the confidentiality clause of the MoU entered between them. These correspondence also contain third party information pertaining to other GDR issues. I note that the copies of all the documents relied upon in support of the SCN have been furnished to the Noticees. Therefore, the request for inspection of the original of the correspondence between SEBI and FMA, not relied upon in the SCN, is untenable.

38. Noticee nos. 1 to 4 in their reply dated November 20, 2018 have stated that the Loan agreement was signed between Vintage and EURAM Bank for subscription of GDRs of Syncom and since they are not party to the loan agreement, they cannot be held liable for any averments/ declaration/ statements made therein. I note that as per the Minutes of Board Meeting on July 07, 2010, the company was proposing to issue GDRs. The issue of GDR, authorization given to Mr. Ajay Bankda to open the bank account with EURAM Bank for receiving the subscription money in GDR issue, authorization given to Mr. Ajay Bankda to sign/ execute any application, agreement, escrow agreement, document etc. and authority given to EURAM Bank to use the funds deposited in the bank account as security in connection with loans was discussed and reduced into writing in the Board of Director's meeting on July 07, 2010. Details of the minutes have been reproduced in para 22 of this order. I note that the Pledge Agreement dated August 20, 2010 executed by Syncom and EURAM Bank clearly states that the borrower i.e. Vintage has been granted a loan of USD 20.74 million vide Loan Agreement dated August 20, 2010 and that the pledgor i.e. Syncom has received a copy of the Loan Agreement and acknowledged the terms and conditions contained therein. The relevant portions of the Pledge Agreement have been reproduced in this order at para 24. As per the Loan Agreement, the Pledge Agreement is an integral part of the Loan Agreement. Further, on reading together the Loan Agreement, EURAM bank account statement of Vintage and EURAM bank escrow account statement of Syncom it is observed that the entire GDR proceeds received by Syncom on September 02, 2010 in its escrow account bearing no. AT281934005800280020 held with EURAM Bank were from the loan amount raised by Vintage, transferred from Vintage's account with EURAM Bank. Therefore, I am not inclined to accept the contention of the Noticees.

39. The Noticees nos. 1 to 4 have denied the execution of any pledge agreement with EURAM Bank and the company has contended that the Pledge Agreement was unilaterally signed by Mr. Ajay Bankda and the company was not informed of the same. Noticees have also stated that they had not authorized Mr. Ajay Bankda to sign the Pledge Agreement. It was further stated that Mr. Ajay Bankda never informed the company and other Noticees that he has entered into a pledge agreement with EURAM Bank and that when such authority was given the Board were of the opinion that he would have carried out the same diligently with full integrity. I note that the Pledge Agreement has been entered into Syncom and EURAM Bank. Mr. Ajay Bankda has signed on behalf of the company. All the directors of Syncom at the relevant time were present in the meeting held on July 07, 2010 where issue of GDR, authorization given to Mr. Ajay Bankda to open the bank account with EURAM Bank for receiving the subscription money in GDR issue, authorization given to Mr. Ajay Bankda to sign/ execute any application, agreement, escrow agreement, document etc. and authority given to EURAM Bank to use the funds deposited in the bank account as security in connection with loans was discussed. As per the Board Resolution dated July 07, 2010, the Board had resolved that *“Mr. Ajay Bankda, Managing Director of the company be hereby authorized to sign, execute, any application, agreement, escrow agreement, documents, 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.”* The said Pledge Agreement dated August 20, 2010 carries the common seal of the company. As per section 48 (2) of the Companies Act, 1956, use of such common seal conclusively binds the company. I also note that as per the Board Resolution dated July 07, 2010, EURAM Bank was authorized to use the funds in connection with loans, if any. Therefore, the company cannot deny entering into a Pledge Agreement with EURAM Bank, and the other directors of the company cannot claim that they were never informed of such agreement. Further, Syncom and the other directors have not furnished any evidence to show that after the receipt of SCN by them and knowing the contents of the SCN, they have taken any action against Mr. Ajay Bankda for wrongly entering into the Pledge Agreement with EURAM Bank. I note that as per its reply dated November 20, 2018, Mr. Ajay Bankda continues to be the Managing Director of the company.

40. As regards the list of subscribers, Noticees no. 1 to 4 have stated that the said list was provided to the stock exchanges and SEBI based on the information received from the Lead

Manager and that they relied upon the list which has been the practice over the years. It was submitted that they did not have any independent mechanism to verify the list of subscribers due to the secrecy laws applicable in other jurisdictions. I note that as the Lead Manager has been engaged by Syncom, it is required to share the information with Syncom in respect of GDR issue as per the agreement agreed between them. Being Issuer Company, Syncom is required to know the information pertaining to the GDR holder for the purpose of remitting corporate benefits like dividends etc. to GDR holders. Further, I note that being party to the Pledge Agreement and having access to the company's statements of escrow bank account from which it is clearly ascertainable that the GDR subscription money was received from the account of Vintage, the company cannot take the plea that it was not aware that Vintage was the only subscriber to the GDR issue. There is nothing on record to show that the company has taken action against the Lead Manager for furnishing wrong information. Therefore, I note that the company has actively misled the investors by making incorrect announcement on BSE.

41. Noticee nos. 1 to 4 have submitted that adjudication proceedings have been initiated against them for the same violation which amounts to double jeopardy and is in gross violation of Article 20 (2) of the Constitution of India. As per Article 20 (2), "No person shall be prosecuted and punished for the same offence more than once." The proceedings under section 11, 11B and Chapter VIA of the SEBI Act are two distinct proceedings, and the consequences of both the proceedings is different. Further, the present proceedings are not criminal in nature to attract Article 20 (2) of the Constitution of India. In this regard, it pertinent to note the observations of the Hon'ble SAT in Shailesh Jhaveri v. SEBI (Appeal no. 72 of 2012, decided on October 04, 2012) which are as under:

"Article 20(2) of the Constitution of provides that no person shall be prosecuted and punished for the same offence more than once. These are not criminal proceedings. This is a civil action for violation of the regulatory framework relating to the securities market and there is no legal bar in 5 initiating action for violating different provisions of the Act. The Act itself permits adjudication proceedings under Chapter VIA of the Act, issue of directions under Sections 11 and 11B of the Act and prosecution under Section 23 of the Act for violating provisions of the Act or the rules made thereunder."

Therefore, I am unable to accept the said contention of the Noticees.

42. Notice no. 1 i.e. Syncom has also stated that the SCN has not brought out any concrete figure of the loss incurred by the Indian investors due to the announcement made by the

company. In this regard, it is pertinent to note the following observations of 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:

“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.”

43. In view of the foregoing paragraphs particularly, para 20 to 42 of this order, 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 of facilitating the subscription of GDRs by Vintage through finance obtained from EURAM Bank by pledging the GDR proceeds and further, not disclosing about the subscription in a correct manner on BSE.

44. The details of the directors of Syncom during the FY 2010-11 and 2011-12 are as under:

FY 2010-11		FY 2011-12		Designation
Sl. No.	Name of director	Sl. No.	Name of director	
1.	Mr. Govind Das Pasari (Noticee no. 6)	1.	Mr. Govind Das Pasari	Independent. Non-Executive Director
2.	Mr. Avichal Kasliwal (Noticee no. 7)	2.	Mr. Avichal Kasliwal	Independent. Non-Executive Director
3.	Mr. Ajay Bankda (Noticee no. 2)	3.	Mr. Ajay Bankda	Executive/Managing Director
4.	Mr. Bharat Kumar Doshi (Noticee no. 5)	4.	Mr. Bharat Kumar Doshi	Independent. Non-Executive Director
5.	Mr. J. P. Bagaria (Noticee no. 4)	5.	Mr. J. P. Bagaria	Non- Executive Director

FY 2010-11		FY 2011-12		
Sl. No.	Name of director	Sl. No.	Name of director	Designation
6.	Mrs. Jyoti Bankda (Noticee no. 2)			Whole Time Director (resigned w.e.f. July 07, 2010)

(Source- Annual report of Syncom for FY 2010-11 and 2011-12)

45. From the copy of Syncom's Board Resolution dated July 07, 2010 provided by EURAM Bank and copy of minutes of the board meeting held on July 07, 2010 (provided by Syncom vide email dated March 22, 2017) reproduced hereinabove, I note that the Board of Directors of Syncom i.e. Noticee nos. 2 to 7, namely, Mr. Ajay S Bankda, Ms. Jyoti Bankda Mr. Jagadish Prasad Bagaria, Mr. Bharat Kumar Doshi, Mr. Govind Das Pasari and Mr. Avichal Kasliwal had participated in the decision making, and authorized Noticee No. 2 i.e. Mr. Ajay S Bankda 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 GDR issue of the company as security in connection with loans, if any. I note from the Minutes of the Meeting that all the aforesaid directors had attended the meeting on July 07, 2010. The Minutes recorded on July 07, 2010 are reproduced as under:

“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.”

Resolution further states that:

“RESOLVED FURTHER THAT Mr. Ajay S Bankda, Managing Director of the Company be and is hereby authorized to sign, execute, any application, agreement, escrow agreement, documents, 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.”

Resolution also states that:

“.....RESOLVED FURTHER THAT Mr. Ajay S Bankda, Managing Directors of the Company, be and is hereby authorized 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 of branch of Euram Bank, including the Offshore Branch, for the purpose of operation of and dealing with the said bank account and carry out other relevant and necessary transactions and generally to take all such steps and to do all such things as may be required from time to time on behalf of the Company”

Resolution further states that:

“.....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.”

46. Subsequently, Mr. Ajay S Bankda entered into a Pledge Agreement dated August 20, 2010 in his capacity as Managing Director of Syncom, wherein, Syncom pledged GDR proceeds as collateral against loan availed by Vintage from EURAM Bank.
47. I note that the Pledge Agreement was integral part of Loan Agreement and vice versa and both were executed concurrently. The Pledge Agreement was signed by Mr. Ajay Bankda (Noticee No. 2) on behalf of the pledgor i.e., Syncom in the capacity of its Managing Director. Therefore, I note that Syncom 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 Syncom by providing GDR proceeds as collateral for the loan extended by EURAM to Vintage. The GDR issue would not have been subscribed if Syncom had not given such security towards the loan taken by Vintage. By authorizing the company to enter into a pledge agreement, the directors of the company have facilitated the aforementioned fraudulent scheme which led the investors in India to believe that the issuer company i.e. Syncom 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 whole scheme of GDR issue by pledging the GDR proceeds.
48. In her reply dated November 20, 2018 and December 07, 2018, Ms. Jyoti Bankda, Noticee no. 3 has stated that she has resigned from Syncom on July 07, 2010 and that she did not take part in any of the decision making related to the GDR issue. In this connection, I note that Noticee no. 3 is the wife of Mr. Ajay Bankda, Managing Director of the company. As per the Minutes of the Board Meeting, Ms. Jyoti Bankda was present in the said meeting held on July 07, 2010. She had tendered her resignation in the said meeting and the same was accepted by the Board on the same date with a direction to file Form 32 with the Registrar of Companies which has been recorded from the Minutes of Board Meeting on July 07, 2010. However, Ms. Jyoti Bankda was present during the entire course of the meeting. Further, there is nothing in the Minutes of the Board Meeting to reflect a

dissenting note/ opinion made by Ms. Jyoti Bankda to the resolution passed, particularly with respect to opening of opening bank account with EURAM Bank for receiving the GDR subscription amount and authorization given to EURAM Bank to use the GDR proceeds as security. Therefore, I am unable to accept the said contention of the Noticee.

49. In his reply dated November 20, 2018, Mr. Ajay Bankda has denied acting as a party to the fraudulent scheme in the matter of GDR issue of Syncom and stated that Prospect was the lead manager of the GDR issue and the Noticee trusted and carried out the process as per instructions given by them. It is further stated that he Lead Managers wrongly made the Noticee a party to the Pledge Agreement and that it never informed the Noticee that it has entered into a Pledge Agreement on behalf of the company with EURAM Bank. I note that Mr. Ajay Bankda, was the Managing Director of the company during the period of investigation and had attended the meeting on July 07, 2010 where he was authorized to act on behalf of Syncom. Mr. Ajay Bankda has affixed his signatures to the Pledge Agreement dated August 20, 2010. As authorized by the Board Resolution on July 07, 2010, he had also used the common seal of the company. In his statement dated May 16, 2017 before the Investigating Authority, Mr. Ajay Bankda has admitted that he signed the Pledge Agreement with EURAM Bank. Furthermore, Mr. Ajay Bankda, at the relevant time was the Managing Director of the company. Further, it has not been shown that the company or Mr. Ajay Bankda has taken any action against the Lead Manager for entering into an agreement with EURAM Bank. Nor has it been shown that the company or Mr. Ajay Bankda has taken any steps to revoke the pledge agreement when the company noticed that it was able to use the GDR proceeds only in installments i.e. only when the loan availed by Vintage was being repaid. In this regard, it is pertinent to note the observations of the Hon'ble Supreme Court in *Official Liquidator v. P.A. Tendolkar* (1973) 1 SCC 602 has observed that

“A Director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially”.

50. Further, in *N Narayanan v. Adjudicating Officer, SEBI* the Hon'ble Supreme Court observed that:

“33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.”

Therefore, the contention of Noticee no. 2 i.e. Mr. Ajay Bankda that he is not responsible for the violations committed is not acceptable.

51. Mr. Bharat Kumar Doshi, Noticee no. 5, and Mr. Govind Das Pasari, Noticee no. 6 in their replies dated September 22, 2017 and September 04, 2017 respectively have stated that they were non-executive independent directors of the company and have resigned in 2014. They have stated that as independent directors they had no role to in any day to day activities and that all the decisions, policies and financial matters are decided by Managing Director/ Whole Time Director of Syncom. I note that the Companies Act 1956 does not differentiate between the liability of an independent director and other directors. During the personal hearing, the Noticees were advised to furnish the Agenda Papers of the meeting on July 07, 2010. The Noticees in their submissions have stated that they had never received the Agenda Papers. I note that as per the secretarial practice, all the directors are given the agenda papers for a meeting. Further, the Board Resolution dated July 07, 2010 shows that they were parties to the decision making process relating to GDR issue.

52. During the personal hearing, the authorized representative of Noticee nos. 5, 6 ad 7 stated that the said Noticees were independent directors and not involved in the day to day activities of the company and they have no material pecuniary relationship with the company or its promoters. They have also relied on the order of the AO in the matter of ABL Biotechnologies Ltd. dated April 23, 2018 wherein it was held that only the Managing Director and Chairman of ABL, at the time of passing resolutions in its Board Meeting was fully aware of the modus operandi of the GDR issue by planning a deceptive and manipulative scheme. In the said order of the AO of SEBI, an independent director was found not to have been part of the scheme to manipulate through the GDR issue because

the proposal discussed therein related to opening of bank account. The AO observed that there was no specific mention about GDR issue in the Board Resolution which stated that the account was to be opened for business purposes. Based on the aforesaid facts, the AO has given the independent directors the benefit of the doubt and disposed of the proceedings against them. I note that in this case, the Board resolution clearly states that the bank account with EURAM Bank is opened for the purpose of receiving subscription money in respect of the GDR issue of the company. Further, the resolution also authorizes EURAM Bank to use the GDR proceeds as security in connection with any loan. Therefore, the facts of this case can be easily distinguished from the facts of the aforesaid case. Therefore, the reliance of the Noticees on the order of the AO in the matter of ABL Biotechnologies Ltd. is misplaced.

53. In view of the above, I find that the directors of Syncom i.e. Noticee nos. 2 and 4 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.

54. 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.

55. The Hon'ble SAT in the matter of *V. Natarajan vs. SEBI* (Order dated June 29, 2011 in Appeal No.104 of 2011) observed the following:

"... we are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. These regulations, among others, prohibit any person from employing 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 an exchange. They also prohibit persons from engaging 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 that are listed on stock exchanges. These regulations also prohibit persons from indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true. Any advertisement that is misleading or contains information in a distorted manner which may influence the decision of the investors is also an unfair trade practice in securities which is prohibited. The regulations also make it clear that planting false or misleading news which may induce the public for selling or purchasing securities would also come within the ambit of unfair trade practice in securities...”

56. 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

57. 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, 4, 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, I am inclined to pass orders against Noticees.

Directions

58. 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 that 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 including mutual fund units shall remain frozen.

Noticee No.	Name of the Noticees	PAN
1	Syncom Healthcare Ltd.	AAKCS3247G
2	Mr. Ajay S Bankda	ADHPB2851J
3	Ms. Jyoti Bankda	ADHPB2855N
4	Mr. Jagadish Prasad Bagaria	AAEPB0276F
5	Mr. Bharat Kumar Doshi	ABTPD1004D
6	Mr. Govind Das Pasari	AAAHG7397A
7	Mr. Avichal Kasliwal	ADQPK3720J

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

60. A copy of this order shall be served on all recognized stock exchanges, depositories and Registrar and Transfer Agents of Mutual Funds to ensure compliance with above directions.

Sd/-

Date: January 15, 2019

Place: Mumbai

ANANTA BARUA

WHOLE TIME MEMBER