

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S K MOHANTY, WHOLE TIME MEMBER

ORDER

Under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992

In the matter of M/s. ABL Biotechnologies Ltd.

S. No.	Names of the Noticee	PAN
1.	M/s. ABL Biotechnologies Ltd	AAACA5463G
2.	Clifford Capital Partners A.G.S.A	Not Available
3.	Mr. Kollenmareth Oomman Isaac	AAAPI2428J
4.	Ms. Rosemary Isaac	AAEPR5705R
5.	Mr. G Subramanian	AARPS0953K
6.	Mr. Raveendran Sappany	AAGPR8625Q

(hereinafter collectively referred to as “Noticees”)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted an investigation into the issue of Global Depository Receipts (hereinafter referred to as “GDR”) by M/s. ABL Biotechnologies Ltd. (hereinafter referred to

as “ABL/Company/Noticee no. 1”). The relevant period of investigation was from June 6, 2008 to July 5, 2008.

2. It was observed that ABL had issued 0.82 million GDR for USD 6.68 million on June 20, 2008. Details of the GDR issue is tabulated below:

Table no. 1

GDR issue date	No. of GDR Issued (mn.)	Capital raised (US\$mn.)	Local custodian	No. of equity shares underlying GDR	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
20-June-2008	0.82	6.68	ICICI Bank Ltd., Mumbai	41,00,000 equity shares of FV Rs. 10 (1 GDR= 5 equity share)	Deutsche Bank Trust Company Americas, London	Fundabilis GmbH	Banco Efisa	Luxembourg Stock Exchange

3. The investigation revealed that Banco Efisa (hereinafter referred to as “Banco Bank/Bank”) had granted loan to Clifford Capital Partners A.G.S.A. (hereinafter referred to as “Clifford”) by way of a Credit Agreement dated June 2, 2008 (hereinafter referred to as the “Credit Agreement”) for making payment towards subscription to the GDR issued by ABL and the entire 0.82 million GDR were subscribed by only one entity, i.e. Clifford.
4. Investigation further revealed that the Company deposited the entire GDR proceeds with Banco Bank as security against the loan availed by Clifford from Banco Bank for subscribing to GDR of ABL by entering into an Account Charge Agreement dated June 19, 2008 with Banco Bank (hereinafter referred to as the “Account Charge Agreement”).
5. It was further observed that the GDR were subsequently converted into equity shares and sold in the Indian Capital Market. It was also observed that Clifford

defaulted in its repayment of the loan to Banco Bank and as a result, the amount deposited as security by ABL with Banco Bank out of the GDR proceeds was utilized by the Bank towards satisfaction of the loan.

6. Based on the above stated facts, the Company i.e. ABL (Noticee no. 1), Clifford (Noticee no. 2) and the Directors of ABL (Noticees no. 3 to 6) are alleged to have failed to disclose to Bombay Stock Exchange (BSE), or to the shareholders of the Company about the issue and allotment of GDR in a true, fair and transparent manner. The Noticees have also allegedly failed to disclose the Account Charge Agreement entered into by ABL with Banco Bank with which the proceeds of GDR were deposited to enable subscription to the GDR by Clifford and thereby violated provisions of SEBI Act, 1992 (hereinafter referred to as “SEBI Act”) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “PFUTP Regulations”).

SHOW CAUSE NOTICE, REPLY AND HEARING

7. Under the aforesaid facts and circumstances, Show Cause Notice (hereinafter referred to as “SCN”) dated June 29, 2017 was issued to all the Noticees, calling upon them as to why suitable directions shall not be issued against them under Sections 11, 11B and 11(4) of the SEBI Act. I note that pursuant to the issuance of SCN, Mr. G. Subramanian (Noticee no. 5) and Mr. Raveendran Sappany (Noticee no. 6) have submitted their written replies dated August 12, 2017 and July 20, 2017 respectively. I note that Clifford has also submitted their written replies dated August 9, 2017 and September 28, 2018. In the interest of principles of natural justice, Noticees were subsequently provided with an opportunity of personal hearing on November 20, 2018. The hearing date was rescheduled to January 22, 2019 and Noticees were informed vide letter dated November 05, 2018 to ensure that they appear and present their case before me on the said date. Mr. G. Subramanian

(Noticee no. 5), through his Authorized Representative and Mr. Raveendran Sappany (Noticee no. 6), personally attended the hearing on January 22, 2019. However, no one appeared on behalf of any of the other Noticees on the date of hearing nor any letter from these Noticees requesting for another date for personal hearing has been received till date. I note that Mr. Raveendran has submitted an additional written reply dated January 29, 2019. Thus, apart from Noticees no. 5 & 6, I find none of the other Noticees has availed the opportunity of personal hearing granted to them. Under these circumstances I deem it fit to examine and decide the matter on merit, based on the facts available from records, the SCN, the written replies and submissions made by the aforesaid two Noticees during the hearing.

ISSUES FOR CONSIDERATION AND FINDINGS

8. I have considered the SCN dated June 29, 2017 including all the Annexures as referred to in the SCN, replies received to the aforesaid SCN and all other relevant material available on record and based on them, I frame the issues for consideration in this case as under:

- (i) Whether the Company i.e. Noticee no. 1 has violated Section 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 PFUTP Regulations?*
- (ii) Whether the Noticees no. 2 to 6 have violated Section 12A(a), (b), (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations?*

ISSUE NO. 1: *Whether the Company i.e. Noticee no. 1 has violated Section 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 PFUTP Regulations?*

9. Before I proceed to examine as to whether on the facts of the matter, the aforesaid violations as alleged in SCN stand established or not, it would be proper to extract

the relevant provisions of SEBI Act and PFUTP Regulations for perusal and reference. The same are reproduced as under:

SEBI Act

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;*

SEBI (PFUTP) Regulations

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:-

(a)

(b)

.....

(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.

10. As stated earlier, the Company had issued 0.82 million GDR on June 20, 2008 for raising capital of 6.68 million US\$. The Table no. 1 presented on page no. 2 shows that the number of underlying shares issued by the Company for the said 0.82 million GDR issue were 41,00,000. Thus the ratio of number of GDR issued to equity shares of the Company was 1:5.

11. I further note that the Board of ABL had passed a resolution in its meeting held on April 30, 2008, wherein inter alia, a decision was taken to open an account with Banco Bank and also to authorize Banco Bank to use the funds so deposited in the

said bank account as security against loan. Relevant extracts of the Board Resolution are as under:

“The Board considered the proposal for the opening account with Banco Efisa, S.A, Lisbon including offshore branch outside India.

The Board was informed that Company has to open an account with Banco Efisa, S.A Lisbon and that Mr. K. O. Isaac, Managing Director of the Company be authorized severally to sign and execute documents on behalf of the Company. After detailed discussion the Board passed the following resolutions unanimously:

‘Resolved that a bank account be opened with Banco Efisa, S.A, Lisbon, Portugal (the Bank) or any of the branches of Banco Efisa S.A. Lisbon including offshore Branch outside India for the purpose of Business Operation.’

‘Resolved further that Mr. K. O. Isaac, Managing Director of the Company be and is hereby severally, authorised 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 so required.’

‘Resolved further that Mr. K. O. Isaac, Managing Director of the Company be and is hereby severally, authorized to draw cheques and other documents and to give instructions from time to time as may be necessary to the said Banco Efisa, S.A. or any branch of Banco Efisa S.A. including offshore branch for the purpose of operation of and dealing with the said bank account and to 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.’

‘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 managements if and when so required.” (emphasis supplied)

12. On a perusal of the aforesaid Board Resolution (copy enclosed as Annexure -5 of the SCN), it is noted that the said Resolution was approved by the Board on April 30, 2008 for opening of a bank account with Banco Bank for the purpose of business operation. Mr. K.O.Isaac, Managing Director (hereinafter referred to as “MD”) of the Company was authorized to sign, execute any application, agreement, etc. as may be required by the Banco Bank. Accordingly, on the strength of the above resolution the Company has opened an account no. 6374065.15.001 in its name in Banco Bank.

It was also resolved by the Board to authorize the Banco Bank with which the account was to be opened, to use the funds so deposited in the said bank account as security in connection with loans if any. A comprehensive reading of the said Board resolution indicates that the Company and the Board of Directors had already decided at least as far back as on April 30, 2008 to open a bank account with Banco Bank for business operation purposes and had also decided to authorize Banco Bank to use the funds to be received in their Banco Bank account as a security for loans.

13. In this context it is to be noted that Clifford had signed a Credit Agreement dated June 2, 2008 with Banco Bank for availing a loan of upto 7.50 million USD for the purpose of making subscription to GDR of ABL. Some of the relevant clauses of the said Credit Agreement are cited as under:

“ **1. Definitions and interpretation**

.....

Deposit Charge means the charge over the deposit made by ABL with the Bank dated on or around the date of this Agreement.

.....

Financing Documents means this Agreement and the Security Documents

.....

Obligor means each of the Borrower and ABL

.....

Security Documents means the Deposit Charge and any other guarantee or document creating, evidencing or acknowledging security in respect of any of the obligations and liabilities of any Obligor under any Financing Document.

.....

2. Facility

Subject to the terms of this Agreement, the Bank agrees to make available to the Borrower a Dollar term loan facility in the maximum principal amount of upto \$7,500,000.

3. Purpose

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The Borrower shall use the proceeds of the Advance to subscribe for global depository receipts to the value of upto \$7,500,000 issued by ABL on the terms of the Listing particulars to be delivered to the Luxembourg Stock Exchange.

.....

10. Security

The obligations and liabilities of the Borrower to the Bank under this Agreement shall be secured by the interests and rights granted in favour of the Bank under the Security Documents

.....

Schedule 1- Conditions Precedent

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3. Certified Copies of board minutes and resolutions of ABL approving and authorizing the execution, delivery and performance by it of each Security Document to which it is a party on the terms and conditions of those documents and authorizing a person or persons to sign or otherwise attest the due execution of those documents and any other documents to be executed by it pursuant to those documents together with a certificate of a duly authorized officer of ABL setting out the names and signatures of the persons authorized to sign such documents on its behalf.”

14. I also note that on the strength of aforesaid authorization given by the Board of the Company to “*use the funds so deposited in the aforesaid bank account as security in connection with loans if any*” Mr. K.O Isaac had signed an Account Charge Agreement with Banco Bank dated June 19, 2008 agreeing to deposit in the designated account of ABL with Banco Bank, an amount not exceeding the loan availed by Clifford for subscribing to GDR of ABL, as security against the obligations of Clifford under the Credit Agreement. Some of the relevant clauses of the Account Charge Agreement signed by the Company are quoted as under:

“1. Definitions

.....

***Loan agreement** means the Loan agreement signed between Clifford Capital (as borrower) and the Bank dated on or around the date of this Agreement by which the Bank agreed to lend to Clifford Capital the maximum amount of up to US \$7,500,000.*

.....

2. Account Charge

*Subject to the terms of this agreement, ABL deposited in its designated account with the Bank (hereinafter the Account) an amount not exceeding US \$7,500,000 as security for all the obligations of Clifford Capital under the Loan Agreement (hereinafter the **Secured Obligations**), and with full title guarantee hereby assigns to and charges by way of first fixed charge in favour of the Bank all the rights, title, interest and benefit in and to the Account as well*

as all the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof. Such assignment and charge shall be a continuing security for the due and punctual payment and discharge of the Secured Obligations.

Upon payment of all or part of the amounts due under the Loan Agreement, ABL may withdraw from the Account the equivalent amount.

Upon payment and final discharge in full of all the Secured Obligations, this Agreement and the rights and obligations of the Parties shall automatically cease and terminate and the Bank shall, at the request of ABL, release the deposit made in the Account.

ABL covenants with the Bank that it will on demand pay and discharge the Secured Obligations when due to the Bank.

At any time after the Bank shall have demanded payment of all or any of the Secured Obligations the Bank may without further notice apply all or any part of the Deposit against the Secured Obligations in such order as the Bank in its discretion determine.

ABL hereby irrevocably appoints by way of security the Bank as the attorney of ABL with full power in the name and on behalf of ABL to sign, seal and deliver any deed, assurance, instrument or act in order to perfect this charge and at any time after an event of default by ABL to sign, seal and deliver any deed assurance, instrument or act which may be required for the purpose of exercising fully and effectively all or any of the powers hereby conferred to the Bank to take all necessary action whether in the nature of legal proceedings or otherwise to recover any moneys which may be held in the Account and to give valid receipts for payment of such moneys and also for the purpose of enforcement and realisation of the security hereby created.

ABL hereby warrants and declares that any and all such deeds, instruments and documents executed on its behalf by or on behalf of the Bank by virtue of this Agreement shall be as good, valid and effective, to all intents and purposes whatsoever, as if the same had been duly and properly executed by ABL itself and ABL hereby undertakes to ratify and confirm all such deeds, instruments and documents lawfully executed by virtue of the authority and power hereby conferred.

.....

11. Notices

(a) Method: *each notice or other communication to be given under this Agreement shall be given in writing in English and, unless otherwise provided, shall be made by letter or fax.*

(b) Delivery: *any notice or other communication to be given by one Party to anotherbe given to that other Party at the respective addresses given hereinunder.*

.....

ABL

.....

Attention: K. O. Isaac

.....”

15. The contents and the clauses of the Credit Agreement and Account Charge Agreement extracted above are carefully examined and the following observations are made:-

- a) It is noted that the Account Charge Agreement was executed mainly to secure the obligations of the borrower, Clifford, which was granted a loan for 7.5 million USD by Banco Bank. The Account Charge Agreement also mentions that the Company will deposit in its designated account with the Banco Bank an amount not exceeding US \$7,500,000 as security for all the obligations of Clifford under the Credit Agreement and assigns all the rights, title, interest and benefit in the aforesaid designated account as a continuing security for the payment and discharge of the obligations of Clifford under the Credit Agreement.
- b) In terms of the Account Charge Agreement, only upon payment of the amounts due under the Credit Agreement, ABL could withdraw equivalent amount from its designated account and upon payment and final discharge of all the obligations by Clifford under the Credit Agreement, the rights and obligations of the parties under the Account Charge Agreement shall cease and Banco Bank shall release the amount so deposited by way of subscription to the GDR issued by ABL.
- c) The Account Charge Agreement also mentions that ABL has undertaken to pay and discharge the obligations of Clifford under the Credit Agreement to Banco Bank and Banco Bank will be entitled to apply all or any part of the deposit made by ABL in the designated account against the obligations of Clifford without further notice.

- d) As a consequence to such terms contained in the Account Charge Agreement, I note that even after the GDR issue, ABL could not get the GDR proceeds at its disposal for utilization for its business purposes until repayment of the loan by Clifford to Banco Bank.
- e) As per clause 3 of the Credit Agreement the said loan was sanctioned by Banco Bank to Clifford for the purpose of subscribing to the GDR issue of ABL upto the value of USD 7,500,000. Legally speaking it is a loan transaction purely between Banco Bank and its borrower, i.e. Clifford. However, the Credit Agreement makes frequent references to ABL at different clauses. Clause 1 defines 'Deposit Charge' as a charge over the deposit made by ABL with the Banco Bank and also includes ABL as an obligor to the loan taken by Clifford. Similarly para 3 of the schedule 1 of the Credit Agreement stipulates for making certain documents available by the Company (ABL) as condition precedent for the grant of loan to the borrower (Clifford). The said para stipulates that “*Certified Copies of board minutes and resolutions of ABL approving and authorizing the execution, delivery and performance by it of each Security Document to which it is a party on the terms and conditions of those documents and authorizing a person or persons to sign or otherwise attest the due execution of those documents and any other documents to be executed by it pursuant to those documents together with a certificate of a duly authorized officer of ABL setting out the names and signatures of the persons authorized to sign such documents on its behalf.*”
- f) Further, as per clause 10 of the Credit Agreement, obligations of the borrower (Clifford) was secured by way of Security Documents which included the charge over the deposit made by ABL with Banco Bank and any other documents acknowledging as security for the obligations of the Obligor (Clifford and ABL). Correspondingly clause 2 of the Account Charge Agreement unambiguously authorized Banco Bank to apply all or any part of the deposit made by ABL to

settle the loan liability of Clifford. Thus, the Noticee Company vide the Account Charge Agreement has authorized that in all eventuality, in case of any default by the borrower, the security including proceeds of GDR lying deposited in its designated account with Banco Bank would be realizable by Banco Bank. The Credit Agreement and Account Charge Agreement were inextricably connected in a manner that clearly points out how the Noticee Company ABL had consciously facilitated the loan to Clifford so as to ensure sure success of issuance of GDR and to create a good market impact about the stock of the Company, knowing well that the GDR proceeds cannot be used for its business, until the repayment is made by the borrower.

16. Records available before me suggest that the GDR proceeds of an amount of USD 6,683,000 was credited to the bank account no. 6374065.15.001 of ABL with Banco Bank on June 20, 2008 and the same was transferred to its deposit account no. 637406525001 on June 20, 2008. Subsequently, Banco Bank informed Clifford on March 24/25, 2009 that the loan amount with interest was outstanding and the same constitutes a default in terms of the Credit Agreement and demanded Clifford for immediate repayment. Clifford was also informed by Banco Bank that in case of failure to comply with the aforesaid demand, Banco Bank will be exercising its rights under the Security Documents. Since Clifford did not repay the loan amount due to Banco Bank, the Bank transferred an amount of USD 6.64 million from the Company's account on April 1, 2009 and applied the same against satisfaction of the outstanding loan repayable by Clifford. From the above, it can be concluded that Clifford has received the GDR to the extent of USD 6.64 million alongwith the underlying equity shares without payment of consideration and because of the non-payment of the said amount to the Bank against its loan obligations, the Company

in turn could not receive consideration for its GDR issue worth USD 6.64 million from the Banco Bank.

17. Moreover, the execution of Credit Agreement dated June 2, 2008 and Account Charge Agreement dated June 19, 2008 i.e. just before the GDR issue on June 20, 2008 shows that Clifford was pre decided to be the sole subscriber to the GDR issue and the Company was aware about its would be subscriber before the actual issuance of GDR. The Company was also aware that the proceeds to be realized against the issuance of GDR to Clifford would be kept as security towards the loan amount availed by Clifford to subscribe the GDR and by executing the Account Charge Agreement, Company had consciously restrained itself from using the proceeds of the issuance of GDR.
18. On 23rd June, 2008 the Company had informed BSE that *the Board of Directors of the Company, in the meeting, held on June 20, 2008 has approved the allotment of 8,20,000 GDRs representing the 41,00,000 equity shares of Rs. 10- each at an issue price of US\$ 8.15 per GDR amounting to \$6,683,000.* However, despite being aware about the specific entity who would be subscribing to whole of its GDR issue as per its premeditated arrangement with Clifford and Banco Bank, the material facts surrounding the Credit and Account Charge Agreements have been concealed from the investors. Instead of following a fair and transparent process, the Noticees have made a distorted and partial disclosure deliberately to conceal material information pertaining to its decision to pledge the proceeds to be realized pursuant to GDR issue. The investors were never allowed to know that the proceeds of GDR would be kept as security towards the loan taken by the subscriber and in case of default by the subscriber the proceeds would be utilized by Bank to settle the loan obligations of the borrower/Subscriber.
19. In view of the above, I find that the Company, despite having made a pre-arrangement with its prospective single subscriber to its proposed GDR in favour

of whom it had also pledged the proceeds of GDR so as to secure full subscription to its GDR issue deliberately made a partial distorted disclosure and concealed material facts from the knowledge of the investors. The Company (ABL) deliberately misled its investors to believe in its so called successful GDR issue by concealing such an important information and by disseminating information in a distorted manner to the investors/shareholders in the domestic market.

20. The disclosures made by the Company on June 23, 2008 on the platform of the Exchange about successful subscription of GDR issue without disclosing the arrangement undertaken by it with Clifford to ensure a successful subscription to its GDR, has given a misleading impression to the Investors and the market about the strong potential of the Company. This misleading disclosure assumes further critical importance considering the fact that owing to default in repayment of the loan by Clifford, the GDR proceeds to the extent of USD 6.64 million have been applied by the Banco Bank towards settlement of the loan obligations of Clifford thereby depriving the Company of USD 6.64 million receivable by it from GDR issued to Clifford, while Clifford has enjoyed the economic benefits of the equity shares underlying such GDR. The above acts of the Company represent a serious breach of trust with its shareholders and a grave fraudulent and unfair trade practice, inflicted on the shareholders and also on the innocent investors in the Securities Market at large. The Investors including the shareholders of ABL were made to believe that the shares of the Company have a good market abroad and have been very well received by foreign investors hence, the Company has a great value for investment in India as well. Such misleading inferences and false positive expectations about the shares of the Company were caused by the Company's own acts of collusive arrangement with the GDR subscriber as well as by concealment of actual material facts from the knowledge of its shareholders.

21. Needless to emphasize here that the Securities Market, being an important part of capital market, plays a crucial instrumental role in the development of the economy of the country. Over the years, the market has witnessed tremendous growth, characterized by increasing participation by the public particularly by retail investors. Investors' confidence in the market can be sustained largely by ensuring that all the market participants/players provide a level playing field to the investors who should be shared with fair, true and correct information above all corporate actions in a transparent manner. Disclosure and transparency are the two pillars on which market integrity rests. It is important to note that investors are generally guided by the disclosures made by the companies on the Stock Exchanges where their shares are listed. Therefore, companies whose securities are listed on any Stock Exchange are expected and required to ensure that investors should be made available with all relevant disclosures so as to enable them to take an informed decision in the matter of investment in the Securities Market. It is therefore statutorily mandated that the Company, whose securities are listed on Stock Exchange has to provide transparent, true and fair disclosure to the investors. Any concealment or mis-representation of facts, or providing information in distortion of facts would amount to engaging in deceptive, fraudulent and manipulative scheme to deprive the investors of relevant & vital information.
22. The facts of the case as discussed above reveal how information has been made available to the investors by ABL in a distorted manner and it can be stated that the Company has committed a fraud upon the investors. The facts clearly indicate that the Company had not disclosed the true and correct information about its GDR issue. In the disclosure that the Company made before BSE, it never furnished any information about either the Credit Agreement or the Account Charge Agreements entered by it with Banco Bank through which it managed the subscription to its GDR issue without actually receiving the proceeds of the GDR. In the instant case

the Noticee Company had pre-arranged subscription/allotment of GDR through a scheme drawn in collusion with Clifford. The subscription of GDR would not have been successful had the Account Charge Agreement not been executed by the Company with Banco Bank. The execution of Account Charge Agreement by the Company was a crucial material fact which should have been disclosed to the shareholders of the Company and the investing public in the market. I am of the view that by concealing material information or providing information in distorted manner the Company had committed a fraud upon the investors by depriving them of such materially relevant and vital information that was necessary to enable investors to take an informed decision. I note that although Company was fully aware of and was a party to such arrangement, it had not disclosed the same to BSE which clearly brings out the deceptive intent of Company. The investors were not aware about the artifice created by the Company through which it enforced a successful subscription/allotment of its GDR.

23. In this context, I refer to judgment of Hon'ble Supreme Court dated July 6, 2015 in *SEBI v. PAN Asia Advisors Ltd & Ors.*, (2015) 14 SCC 71 wherein Hon'ble Supreme Court, while dealing with issue of GDR by way of a similar arrangement of Loan and Pledge Agreement, observed the following

“the most relevant fact which is to be borne in mind is that the existence of GDRs is always dependent upon the extent of underlying ordinary shares lying with the Domestic Custodian Bank.....

.....that for creation of GDRs which can be traded only at the global level, the issuing company should have developed a reputation at a level where the marketability of its investment creation potential will have a demand at the hands of the foreign investors. Simultaneously, having regard to the development of the issuing company in the market and the confidence built up with the investors both internally as well as at global level, the issuing company's desire to raise foreign funds by creating GDRs should have the appreciation of investors for them to develop a keen interest to invest

in such GDRs. Mere desire to raise foreign investments without any scope for the issuing company to develop a market demand for its GDRs by increasing the share capital for that purpose is not the underlying basis for creation of GDRs.....

To put it differently, by artificial creation of global level investment operation, either the issuing company on its own or with the aid of its lead Manager cannot attempt to make it appear as though there is scope for trading GDRs at the global level while in reality there is none....”

24. It is also appropriate to refer to a decision by the Hon’ble Securities Appellate Tribunal (hereinafter referred to as “SAT”) dated October 25, 2016 in the case of *PAN Asia Advisors Ltd. & anr. v. SEBI* in which the Hon’ble Tribunal have observed the following:

“The expression ‘fraud’ is defined under the PFUTP Regulations.....

.....from the aforesaid definition 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.....

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

25. I note from the records that the Company (Noticee no. 1) has so far not submitted any written reply and no one has appeared on behalf of the Company on the scheduled date of hearing. The Company was also reportedly not co-operative during the course of investigation and has not provided the desired information. Keeping in view the discussions and my observations in the preceding paragraphs, I find that the entire scheme created by the Company (ABL) involving series of actions starting with the entering into the Account Charge Agreement, making a corporate announcement on June 23, 2008 that the GDR have been successfully allotted and then not disclosing the Credit and Account Charge Agreement or about the pre-decided GDR subscriber to the investors have cumulatively resulted in publication of misleading and concocted news to the stock exchanges which contained misinformation rather than any true & fair disclosure. Such a scheme and arrangement involving the Company and the subscriber (Clifford) can be viewed as satisfying all the ingredients that comprise a fraudulent activity in the Securities Market. In view of the above, I hold that by its acts of concealing and suppressing material facts about the arrangement contrived by it through the Account Charge and Credit Agreements, ABL has committed a fraudulent act upon its own existing shareholders and also upon all the investors of the Securities Market who might have been induced by the artificially created positive outlook of the Company's performance and its attraction to foreign investors, hence is in violation of provisions of Section 12A(a),(b),(c) of the SEBI Act and Regulations 3(a),(b),(c),(d), 4(1),4(2)(f),(k),(r) of PFUTP Regulations.

ISSUE NO. 2: *Whether the Noticees no. 2 to 6 have violated Section 12A(a), (b), (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations?*

26. As pointed out earlier, Noticee no. 2 (Clifford) had subscribed to the GDR of ABL against which it could not repay the loan taken by it from the Banco Bank. Consequently, Banco Bank applied the GDR proceeds of the Company to the extent of USD 6.64 million to satisfy the loan obligation of Clifford. Now I deal with the written replies submitted by Clifford vide letter dated August 9, 2017 and September 28, 2018. Clifford has affirmed having signed the Credit Agreement dated June 2, 2008 with Banco Bank so as to subscribe to the GDR of ABL, however, it has claimed to have liaised only with Banco Bank during the whole process and was never in contact with ABL. Clifford has further submitted that it was never a party to the alleged fraudulent scheme of ABL as alleged against it. However, the facts of the case suggest otherwise. In this regard, I refer to clause 10 of the Credit Agreement which provides for the obligations of the borrower (Clifford) to be secured by Security Documents and “Security Documents” have been defined to include a charge on the deposit to be made by ABL with Banco Bank on or around the date of Credit Agreement as well as any other documents creating/acknowledging security for the obligations of obligor (Clifford or ABL). I further note that in terms of clause 4 of the Credit Agreement, one of the condition precedent for disbursing the loan by Banco Bank to Clifford is the receipt of certified copies of board minutes and resolutions of ABL approving and authorizing the execution and delivery of each Security Document to which ABL is a party, proving that both Credit Agreement and Account Charge Agreement are closely interlinked. If Clifford claims to have no knowledge of the alleged fraudulent scheme of ABL or to have not liaised with ABL throughout its transactions in connection with the GDR issue, there is no explanation provided by Clifford as to

why ABL offers its deposit in its account with Banco Bank as security for the loan taken by it to subscribe to the GDR or why ABL was included as an Obligor under the Credit Agreement (executed between Clifford and Banco Bank). The fact that Clifford has affirmed having signed the Credit Agreement and has neither denied defaulting on the bank loan nor has given any explanation as to why Banco Bank has applied the GDR proceeds deposited in the Bank account of ABL towards satisfaction of the loan amount due from Clifford provides a strong evidence of the pre-GDR nexus between ABL and Clifford. The Noticee no. 2 has also not produced any document to show that it had the financial capability to subscribe to the GDR, without the support of the security provided by the Company (ABL) through its MD in the form of Account Charge Agreement executed by the Company with Banco Bank. The records and the provisions of the two agreements referred above (viz:- Credit Agreement and Account Charge Agreement) clearly indicate that the scheme was designed and planned in a manner to ensure that the Company's GDR issue is entirely subscribed by the Noticee no.2 i.e Clifford by availing loan from Banco Bank supported by the security provided by the issuer Company itself i.e. ABL. The manner in which the GDR has been issued, subscribed and financed by way of a pre-planned strategy involving the issuer Company, the overseas subscriber and the overseas banker leaves no doubt to conclude that Noticee no. 2 had actively participated with the Company (ABL) in the fraudulent scheme of issue of GDR and thereby has acted in violation of the provision charged under the SCN.

27. I have already noted above that the Company has not provided any information to SEBI during investigation, neither preferred to file any written reply to the SCN nor opted to appear before me for making any submission. I also note that Noticee no. 3 being MD of the Company and Noticee no. 4, who is wife of Noticee no. 3 have also chosen not to file any reply or appear before me for making submissions

in response to the allegations levelled against them in the SCN. Considering the non-cooperation from the Noticees mentioned above, I am constrained to examine the matter on the basis of the SCN and other records available before me to take a view about the role played by Noticee no. 3 and 4. In this connection, from a perusal of the Annual Report of ABL for the FY 2008-09 it can be seen that seven board meetings were held during the said year and three directors of ABL (Noticees no. 3 to 5), Mr. K. O. Isaac, Ms. Rosemary Isaac, Mr. G. Subramanian have attended all of the seven board meetings while Mr. Raveendran Sappany (Noticee no. 6) has attended six board meetings till he rendered his resignation on December 13, 2008. Therefore, there is no dispute that all the four directors (Noticees no. 3 to 6) have attended the relevant board meeting held on April 30, 2008 and have passed the above discussed resolution to the effect that the funds to be deposited with Banco Bank would be utilized by the Bank as security in connection with loans and on the force of such a resolution, Mr. K. O. Isaac (Noticee no. 3) has executed the above mentioned Account Charge Agreement with Banco Bank. I note that efforts have been made to contact the Company and its Directors viz:- Noticees no. 3 and 4, Mr. and Mrs. Isaac through Noticee no. 6 Mr. Raveendran as well as by addressing several letters, which could not be delivered. It appears that though Noticees no. 3 and 4 are aware of the current proceedings against them, have been willfully abstaining from attending the proceedings. Given the past history of non-cooperation by these Noticees even during the investigation process, there is a strong reason to believe that Noticees no. 3 and 4 have deliberately abstained from the personal hearing and have decided not to file any written submission in the matter.

28. As regards the role of Noticee no. 3, Mr. Isaac, I note that he is the MD of the Company and has executed the alleged Account Charge Agreement. He was the one who has obtained authorization from the Board for signing the Account Charge

Agreement and being MD of the Company was instrumental and liable for the affairs and management of the Company. I note that Noticee no. 3 had even mentioned himself as the contact person (for ABL) in respect of any notices or letters to be served under the Account Charge Agreement. As observed earlier, the Company had used the GDR mechanism to mislead and induce the Indian investors. The Company had not divulged its fraudulent arrangement with Clifford with respect to the Credit Agreement and Account Charge Agreement in its disclosure made to BSE about GDR and by merely disclosing that the GDR were successfully allotted, it presented a misleading and colorable appearance of the so called great value and potential of its stock to the investing public in the domestic markets. Such a misleading disclosure is nothing short of a fraud on the gullible investors who may easily fall prey to the artificially projected successful issuance of GDR in overseas market and get induced to invest in its shares expecting better returns. Noticees no. 3, being the Chairman and MD and in charge of day to day affairs of the Company, has devised a fraudulent arrangement with the subscriber, i.e. Clifford and has actively perpetrated such acts of the Company to mislead the investors.

29. Noticee no. 3 being the MD of the Company was in charge of day to day affairs of the Company and was accountable for management and affairs of the Company and therefore was required to come completely clean before the Board with all the facts, strategy, steps to be followed and compliances to be made with respect to the proposed GDR issue, before moving a resolution before the Board. He was in the driving seat of the Company and knew how to steer the GDR issuance and therefore ought to have clarified to the Board members about the arrangement with Clifford and Banco Bank and the proposed Account Charge Agreement that was being planned to be executed with the Bank. He should have explained to the Board the rationale and justification for moving a resolution to authorize Banco Bank to

use the Company's funds deposited in the Bank account in connection with loans if any, when the Company intended to raise capital through issue of GDR for its business purposes. There is nothing on Company's record to justify as to why GDR proceeds received in Banco Bank accounts was required to be used by Banco Bank as a security against a loan. Under the circumstances, the MD has prima facie, acted fraudulently by keeping the Board members and investors at large in dark about the proposed Account Charge Agreement and the arrangement with Clifford and thus the acts of the Noticee no 3 are in breach of the provisions alleged under the SCN.

30. In this regard, I rely on the judgment of Hon'ble Supreme Court in the case of *SEBI v. Rakhi Trading Pvt. Ltd.*, (2018) 13 SCC 753, holding that Regulation 4(1) of PFUTP Regulations in clear and unmistakable terms has provided that *"no person shall indulge in a fraudulent or an unfair trade practice in securities"* and while referring to its own judgment in the case of *SEBI v. Shri Kanaiyalal Baldevbhai Patel and Ors.*, (2017) 15 SCC 1, have further held that;

"31 Although unfair trade practice has not been defined under the regulation, various other legislations in India have defined the concept of unfair trade practice in different contexts. A clear cut generalized definition of the 'unfair trade practice' may not be possible to be culled out from the aforesaid definitions. Broadly trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions. It is to be noted that unfair trade practices are not subject to a single definition; rather it requires adjudication on case to case basis. Whether an act or practice is unfair is to be determined by all the facts and circumstances surrounding the transaction. In the context of this regulation a trade practice may be unfair, if the conduct undermines the good faith dealings involved in the transaction. Moreover the concept of 'unfairness' appears to be broader than and includes the concept of 'deception' or 'fraud'

.....

Having regard to the fact that the dealings in the stock exchange are governed by the principles of fair play and transparency, one does not have to labour much on the meaning of unfair trade practices in securities. Contextually and in simple words, it means a practice which does not conform to the fair and transparent principles of trades in the stock market.”

31. Hon’ble Supreme Court, in the above case has appreciated that fairness, integrity and transparency are the hallmarks of the stock market in India and the stock market is not a platform for any fraudulent or unfair trade practice. Hon’ble Court has further observed that *“The SEBI Act, 1992 was enacted to protect the interest of the investors in securities. Protection of interest of investors should necessarily include prevention of misuse of the market.”*
32. In view of the discussion and observation made above, I find that the Noticee no. 3 had signed documents while opening of bank account with Banco Bank and also while entering into Account Charge Agreement with Banco Bank, so as to provide security to the Noticee no. 2 to avail loan from the Banco Bank to subscribe to the issuance of GDR and render it successful in the eyes of the investors, although in reality the Company was not getting benefitted from the said issue of GDR. I further find that Noticee no. 3 had irrevocably authorized Banco Bank, on behalf of ABL, to carry out instructions transmitted by Telephone, Telefax and/or email, without waiting for a written confirmation by letter thereof. It is thus evident that Noticee 3, who attended Board Meeting held on April 30, 2008 and got the resolution and authorization passed by the Board, had full knowledge of the scheme and therefore was involved at all stages relating to issuance of GDR, arrangement of loan to Noticee no. 2 by signing various documents including the Account Charge Agreement necessary for the purpose. Therefore, I am of the view that Noticee no. 3 was actively instrumental and has masterminded the entire scheme and device to

defraud the investors by conceiving and executing the manipulative scheme in close co-ordination with and co-operation from Noticee no.2.

33. Thus, from the facts on records and reasons mentioned above, I find that Noticee no. 3 being the MD and Chairman of ABL at the time of passing resolutions in its Board Meeting held on April 30, 2008, was fully aware of the modus operandi and was a party to the collusion with Noticee no. 2, well before the GDR issue, by designing and planting a deceptive, manipulative and fraudulent device/scheme and executing the same to defraud its shareholders and other investors and thereby has acted in violation of provisions of Section 12 A (a) (b) (c) of SEBI Act, 1992 read with Regulation 3 (a) (b) (c) (d) and 4 (1) of SEBI (PFUTP) Regulations.
34. As regards the role of Noticee 4, I note that she has neither replied to the SCN dated June 29, 2017 nor has availed the opportunity of personal hearing before me. It is noted that Noticee no. 4 is wife of Noticee no. 3 and also the director of ABL in non-executive capacity.
35. Mr. G. Subramanian (Noticee no. 5) vide letter dated August 12, 2017 has submitted that he is a retired professor of Microbiology with various accolades and research experience in the said field based on which he was approached by Mr. Isaac to provide his inputs to ABL's research unit in the capacity of a non-executive director and he agreed in order to help developing biotechnology industry in the country. He has submitted that he had no knowledge of company's day-to-day operations or financial matters. As a non-executive Director, he was not involved in the day to day affairs of the Company and has not received any consideration for his services other than actual expenses for his travel and stay and claims to have resigned from the Board on January 19, 2010.
36. I have also taken note of the written submissions made by Mr. Raveendran (Noticee no. 6) vide letter dated July 20, 2017. He has submitted that he is an orthopedic surgeon and has been conferred several awards for excellence in the field of medical

practice and that he got acquainted with Mr. K. O. Isaac during playing badminton at Chennai. As per his submission, Noticee no. 3 informed him about the scientific research involved in the Company, ABL and invited Noticee no. 6 to be a technical adviser for pharmaceutical formulations of the Company and to be a Technical Director on the Board of the Company. Due to his liking for research in the aforesaid field and for alleviation of sufferings of persons from orthopedic problems, Noticee no. 6 preferred to join the Board of ABL from April 15, 2004 as a Technical Director. It is also submitted that he has joined the Company pro bono, without any remuneration and wanted to resign as a Technical Director since February, 2008 but at the instance of Mr. Isaac, continued to be a director of ABL till December 13, 2008. Noticee no.6 also submitted that he did not hold any shares of Company/ABL and has no knowledge or understanding of Securities Market including the GDR process and thought that the authority given by the alleged board resolution was required for the Company's own operations and could not visualize that the same would be misused subsequently. As per Mr. Raveendran, the reference to loans in the said Board Resolution could only be construed in respect of loans that might be obtained by ABL and not by any third party. He has also denied the knowledge of the execution of Account Charge Agreement as well as of violation of provisions of PFUTP Regulations.

37. During the hearing, reference was made to a disclosure made by the Company, ABL on March 3, 2008 about formation of a committee consisting of Noticee no. 3 and Noticee no. 6 to take steps for completion of all formalities of GDR. Noticee no. 6 vide letter dated January 29, 2019 has stated that he had not given his approval for inclusion of his name in the GDR committee and has not signed any document for formation of the committee and was ignorant about the existence of the said committee. It was further submitted that not even a single meeting took place after constitution of the committee.

38. I note from the above that the main contentions of Noticee no. 5 and Noticee no. 6 are that they were non-executive/Technical Directors and have resigned from the Company subsequently. I note that these two Noticees have not disputed their directorship during the relevant period of GDR issue or their presence in the Board Meeting held on April 30, 2008. It also remains undisputed that they remained directors during the period when the Company made those incomplete, partial, distorted and misleading disclosures to the BSE and to the public at large. The claims that they have resigned subsequently would not have any relevance to their liability as charged under the SCN served on them. It is their submissions that they were merely non-executive/independent/technical directors and not possessing any expertise knowledge pertaining to the Securities Market especially about issuance of GDR and hence, were not involved in any decision making in the matter.
39. The Noticee directors have also pleaded that the Board Resolution dated April 30, 2008 merely authorized the opening of a bank account in normal course of business. A careful reading of the Board Resolution suggests that the said resolution authorizes opening of a bank account without specifically stating the purpose of opening the bank account in connection with GDR issue.
40. On a close examination of the submissions made by Noticees no. 5 and 6 alongwith the material available on record suggests a preponderance of probability that Noticees no 5 & 6 were not aware of the specific purpose, or about the pre-planned scheme behind the issuance of GDR, nor have they signed any documents or any other correspondence with respect to issuance of GDR. It appears that the Noticee no 5 & Noticee no. 6 have merely and routinely participated in the Board resolutions and did not act anything in furtherance of the object of issuance of GDR and have not done anything further to passing of the Board resolutions to facilitate the MD to carry out his scheme of defrauding the investors. Being an independent/non-executive director, they acted *probono* and had not earned any pecuniary benefit from

the Company. Further, upon perusal of the Board Resolution passed in the Board Meeting held on April 30, 2008, I note that the proposal discussed therein relates to opening of bank account, for business purposes including opening of offshore branch and there was no mention about GDR issue in the said resolution. In the absence of the same and considering that bank accounts could also be opened for general business purposes and in the absence of any other attendant facts and circumstances to suggest their involvement in the GDR issue, the allegation of fraud attributed to these Noticees does not hold good, based on the material available on record. Therefore, I am inclined to give benefit of doubt to the Noticees no. 5 and 6. Similarly, even though Noticee no. 4 has not responded to the SCN and has not offered any explanation, she being a non-executive director on the Board of the Company and there being no evidence to suggest her involvement in the GDR issue, I cannot hold her liable for the issuance of GDR in a fraudulent manner. Accordingly the charge of fraud against Noticee no. 4, Noticee no. 5 and Noticee no 6 does not stand established.

41. However, being Independent/non-executive directors, the role of the aforesaid three Noticees was akin to trustees of stake holders and in such capacity, it was expected from them to take all such steps and measures necessary in furtherance of the interest of shareholders and to demonstrate highest standards of governance. Ignorance of law or lack of knowledge about securities market is no excuse. The non-executive directors cannot confine themselves to merely lending their names to the Company and its resolutions as they have onerous responsibility for the affairs of the company for the protection of interest of all stakeholders, which includes the shareholders. I am of the view that, while the extent of responsibility of an independent/non-executive director may differ from that of an executive director, an independent director has a duty of care and caution. This duty calls for exercise of independent judgment with reasonable care, diligence and skill which is expected

to be reasonably exercised by a prudent person with basic knowledge, skill and experience. The independent/non-executive Directors have to discharge the duty of protecting the interest of investors by raising pertinent questions or by seeking clarification from the management on relevant issues affecting the interest of the stake holders and whenever necessary, they should assert themselves with their independent views so that the governance of the Company is perfectly aligned with the interests of the shareholders of the Company and the management does not act in manner detrimental to the interests of the shareholders. In this regard, I find from the records and Board resolution that Noticee no 4 to 6 have not performed their duties cast upon them as independent /non-executive directors and have not raised any queries or concerns before the Board or the management pertaining to the GDR issue at the relevant time even though they are claiming before me that they have no knowledge about GDR issue. Though, I find that the material available on record are not sufficient to hold the charge of fraud against these Noticees who were non-executive directors with the Company, however, the conduct of these Noticees cannot be said to be as expected of an independent/non-executive director of a listed corporate entity. They have apparently acted in a callous and careless manner and have not shown any diligence in performing their role of an independent/non-executive director.

42. Under the circumstances, even though I have given benefit of doubt to the non-executive directors with regard to the allegation of fraud, I find them to be acting callously and not exercising any due diligence, expected of a director of a listed company. Therefore, by not preventing the management of the Company, especially the MD from issuing the GDR in a deceptive & fraudulent manner, these three non-executive directors have also not acted in the best interest of the shareholders of the Company.

43. To sum up the preceding discussions, I find that the Credit Agreement was integrally linked to the Account Charge Agreement and vice versa, and both were executed in such a manner to ensure that the loan is made available to the Noticee no. 2 so that issuance of GDR by the Company could sail through in deceptive manner so that to the outside-world, the Company can declare to have issued the GDR successfully, without having to disclose the actual modus operandi followed in collusion with Clifford to issue the GDR. The Account Charge Agreement was signed by Noticee no. 3 (Mr. K. O. Isaac) on behalf of ABL in the capacity of Chairman and MD. The Credit Agreement and the Account Charge Agreement enabled Noticee no. 2, Clifford to avail loan from Banco Bank for subscription of GDR of ABL. This was made possible by ABL by providing its GDR proceeds as security for the loan extended by Banco Bank to Clifford. The GDR issue would not have been subscribed if ABL had not given such a security towards the loan taken by Clifford. By entering into such an arrangement and not disclosing the same to investors, the Company and Noticee no. 3 have led the investors in India to believe that the issuer company i.e. ABL has got a good reputation in terms of investment potential because of which, foreign investors have successfully subscribed to its GDR while in reality, the GDR were subscribed by Clifford with the financial help of the Company (ABL) itself and the Company was not entitled to use the GDR proceeds as long as the subscriber, Clifford did not repay the loan to Banco Bank. Therefore, in effect the MD of the Company has orchestrated the whole scheme of subscription of GDR by Clifford through a loan obtained by it from Banco Bank against which, the GDR proceeds of ABL were pledged. Further, considering the fact that Noticee no. 2 (Clifford) eventually defaulted on the loan repayment leading to appropriation of the GDR proceeds by Banco Bank, which was lying in the Company's account as security, securing the loan advanced to the borrower i.e Noticee no. 2. In such circumstances, I find that the GDR were issued to Clifford without corresponding

consideration having been actually received by the Company. I also note that the Company has not taken any steps pursuant to the default by Noticee no. 2 in repaying the loan and thereby allowing the Banco Bank to adjust the GDR proceeds deposited in its account in terms of the Account Charge Agreement and Company has not taken any steps for the realization of the amount against allotment of GDR to Clifford. I also note that in terms of the interim order dated June 16, 2016, the custodians were directed to freeze the beneficiary accounts which received the underlying shares on conversion of GDR and further directed to keep the sale proceeds of the underlying shares of ABL worth Rs. 22,78,717 in an escrow account till further directions. Based, on the above, I find that stern action is required against the Noticees no. 1, 2 and 3 for committing such a fraud which has sinister consequences for the interest of the shareholders of the Noticee no. 1 (ABL).

44. Therefore, in my view Noticee no. 1 (Company), Noticee no. 2 (Clifford) and Noticee no. 3 (Mr. Kollenmareth Oomman Isaac) the MD have violated the provisions alleged under the SCN in the matter.

DIRECTIONS

45. In view of the above discussions and my concluding observations with respect to the two issues that were considered by me in the matter, in exercise of powers conferred upon me under Sections 11, 11B read with Section 19 of the SEBI Act and in order to protect the interest of investors and the integrity of the Securities Market and considering the facts of the case as well as the specific role played by the respective Noticees and to meet the ends of justice, I hereby issue the following directions:

- a) Noticee no.1, the Company shall recover a sum of USD 6.64 million from Noticee no. 2 and shall bring back the money into ABL's bank account in India

within three months from the date of this Order. The present directors of the Company are directed to take appropriate necessary steps to ensure compliance of this direction by ABL.

- b) Noticee no. 1 and its present director/s are directed to furnish a certificate from a peer reviewed Chartered Accountant of ICAI along with necessary documentary evidences to SEBI, certifying the compliance of this direction, within a further period of 15 days on completion of period of three months as directed above.
- c) Noticee no. 1, the Company is restrained from accessing the Securities Market including by issuing prospectus, offer document or advertisement soliciting money from the public and is further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner, from the date of this order till the expiry of five years from the date of bringing back the money in ABL's bank account in terms of the aforesaid direction.
- d) Noticee no. 2, Clifford Capital Partners A.G.S.A and Noticee no. 3, Mr. Kollenmareth Oomman Isaac are restrained from accessing the Securities Market in India and further prohibited from buying, selling or otherwise dealing in securities of Indian Securities Market, directly or indirectly in any manner, for a period of five years from the date of this order.
- e) Noticees no. 4, 5 and 6, Ms. Rosemary Isaac, Mr. G Subramanian and Mr. Raveendran Sappany are warned and advised to be careful and act diligently while dealing in any manner in Securities Market.

46. It is clarified that during the period of restraint, the existing holding of the Noticees no. 1, 2 and 3 including units of mutual funds, shall remain frozen.

47. The Order shall come into force with the immediate effect.

48. A copy of this order shall be forwarded to the Noticees, all the recognized stock exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

S.K. MOHANTY

DATE: MAY 31, 2019

WHOLE TIME MEMBER

PLACE: MUMBAI

SECURITIES AND EXCHANGE BOARD OF INDIA