

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. G V Films Ltd.

S. No.	Names of the Noticee	PAN
1.	M/s. G V Films Ltd.	AAACG2118C
2.	Mr. Mahadevan Ganesh	AHJPP4154E
3.	Mr. A. Venkatramani	AABPV3960F
4.	Mr. P. Raghuraman	AHJPP4154E
5.	Mr. R. Gopalan	ADAPG4395R
6.	Mr. V. Subramonian	AANPS8061L

(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. G V Films Ltd. (hereinafter referred to as “**GV /Company/Noticee no. 1**”). The relevant period of investigation was from March 1, 2007 to April 30, 2007.
2. It was observed that GV had issued 6.4 million GDR for US\$ 40 million on April 27, 2007. Details of the GDR issue as provided by the Company is tabulated below:

Table no. 1

GDR issue date	No. of GDR Issued (mn.)	Capital raised (US\$mn.)	Price per GDR (US\$)	Underlying shares per GDR	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
April 27, 2007	6.4	40.00	0.625	25	ICICI Bank Ltd., Mumbai	16,00,00,000	The Bank of New York Mellon, USA	Bremer Bugmann Seiler Capital Partners Ltd., Switzerland	Banco Efisa	Luxembourg Stock Exchange

3. The investigation revealed that Banco Efisa S.A. (hereinafter referred to as **“Banco Bank/Bank”**) had granted loan to Whiteview Trading Corporation (hereinafter referred to as **“Whiteview”**) by way of a Credit Agreement dated March 15, 2007 (hereinafter referred to as the **“Credit Agreement”**) for making payment towards subscription to the GDR issued by GV and the entire 6.4 million GDR were subscribed by only one entity, i.e. Whiteview.
4. Investigation further revealed that the Company deposited the entire GDR proceeds with Banco Bank as security against the loan availed by Whiteview from Banco Bank for subscribing to GDR of GV by entering into an Account Charge Agreement dated March 27, 2007 with Banco Bank (hereinafter referred to as the **“Account Charge Agreement”**). It was further observed that the GDR were subsequently converted into equity shares and sold in the Indian Capital Market. During the course of investigation, it was found that the Company had not disclosed to the investors about the arrangement so made by it to ensure the successful issuance/subscription/allotment of the GDR by facilitating the loan to Whiteview. It was also concealed that the proceeds of GDR would be kept as security with the Banco Bank and thereby misled the Shareholders/investors at large by providing partial and distorted information.
5. On the backdrop of the above stated facts, the Company (Noticee no. 1) and the Noticees no. 2 to 6 have been alleged to have 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

6. Under the aforesaid facts and circumstances, a Show Cause Notice (hereinafter referred to as “SCN”) dated August 10, 2017 was issued to all the Noticees, calling upon them to show cause as to why suitable directions shall not be issued against them under Sections 11, 11B and 11(4) of the SEBI Act. Noticees no. 1 to 5 have submitted separate letters, each dated August 30/31, 2017 seeking copies of documents relied upon by SEBI in the present proceedings. Noticee no. 6, Mr. V. Subramonian has submitted a written reply to the SCN vide letter dated August 30, 2017. I note from the records that SEBI has provided the copies of relevant documents relied upon in the SCNs to all the Noticees vide letter dated September 28, 2017. I further note that Noticees no. 1 to 5 have subsequently submitted their respective written replies, each dated March 6, 2018. Further, Noticee no. 6 had requested for inspection of relevant documents which was granted to him on November 30, 2018. Replies submitted by the Noticees were considered, and in the interest of principles of natural justice, Noticees have been subsequently provided with an opportunity of personal hearing on December 5, 2018. Noticees no. 1 to 5, represented by a common advocate appeared for the hearing on December 5, 2018 and made detailed submissions. They were also asked to provide their responses to some of the queries raised during the hearing. Noticee no. 6 also attended the hearing along with his advocate and presented his case. He further sought time to submit a written explanation along with copy of his passport in support of the explanation offered by him about his visit to London for signing the Account Charge Agreement. I note that Noticee no. 6 has submitted a written explanation dated December 17, 2018 and Noticees no. 1 to 5 have also submitted a common additional written reply vide letter dated January 15, 2019. The replies of all the Noticees are discussed in succeeding paragraphs while deciding the issues involved in the SCNs. I now proceed to examine and decide the matter on merit based on the facts available from records, the SCN and the written replies and submissions made by the Noticees during the hearing.

ISSUES FOR CONSIDERATION AND FINDINGS

7. After carefully examining the SCN dated August 10, 2017 including all the annexures as referred to in the SCN, replies received from Noticees to the aforesaid SCN and all other relevant material

available on record, I find that the pertinent issues that require consideration in this matter are 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?*

8. Before I proceed to examine the aforesaid issues and decide as to whether on the facts of the matter, the aforesaid violations alleged in SCN stand established or not, it would be proper to reproduce hereunder, the relevant provisions of SEBI Act and PFUTP Regulations alleged to have been violated by the Noticees in the instant matter. The same are as under:

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;

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.*

- 9. I note that the Company had issued 6.4 million GDR on April 27, 2007 for raising 40 million US\$. The Table no. 1 presented on page no. 2 shows that the number of underlying shares issued by the Company against the said 6.4 million GDR issue, were 16,00,00,000. Thus the ratio of number of GDR issued to equity shares of the Company was 1:25.
- 10. The Board of GV had passed a Resolution in its Meeting on March 16, 2007, wherein *inter alia*, a decision was taken to open an account with Banco Bank and also to authorize Banco Bank to use the GDR proceeds as security against loan. Relevant extracts of the Board Resolution are as under:

“The Board considered the proposal of the opening account with Banco Efisa S. A. Lisbon (the Bank) or any of the branch of Banco Efisa S. A. including offshore Branch outside India for the proposed GDR issue of up to USD 40 millions.

In this regard the Chairman informed the Board that Company has already opened an account with Banco Efisa S. A. and suggested that Mr. V. Subramonian, President Corporate affairs of the company may also be authorized to sign and execute documents on behalf of the company. After through discussion following resolutions passed:-

‘RESOLVED THAT a bank account be opened with Banco Efisa S. A. Lisbon (the Bank) or any of branch of Banco Efisa S. A. including offshore Branch outside India for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of the Company.’

‘RESOLVED FURTHER THAT Mr. A. Venkatramani, Director of the company, Mr. Mahadevan Ganesh, Director of the Company and Mr. V. Subramonian, President Corporate Affairs of the company be and are hereby severally authorized to sign, execute any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time as may be required by the Bank and to carry and affix, Common seal of the Company thereon, if and when so required.’

‘RESOLVED FURTHER THAT Mr. A. Venkatramani, Director of the company and Mr. Mahadevan Ganesh, Director of the Company be and are 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 of branch of Banco Efisa S. A, Lisbon including 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.’

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

11. On a perusal of the aforesaid Board Resolution (copy enclosed as annexure -2 of the SCN), I note that the said Resolutions were approved by the Board on March 16, 2007 for *inter alia*, opening of a bank account with Banco Bank for the purpose of receiving subscription money in respect of the GDR issue of the Company. Noticee no.2, Mr. Mahadevan Ganesh (Chairman of GV), Noticee no. 3 Mr. A. Venkatramani, both as Non-Executive Directors of the Company; and Noticee no.6, Mr. V. Subramonian who was President-Corporate affairs of the Company, were authorized to sign, execute any application, agreement, etc. as may be required by the Banco Bank. Accordingly, the Company had opened an account no. 6263970.15.001 in its name in Banco Bank. It was further resolved by the Board to authorize the Banco Bank to use the funds so deposited in the said bank account as security

in connection with loans if any. A comprehensive reading of all the above said Board Resolutions indicates that the Company and the Board of Directors had already decided, at least as far back as on March 16, 2007, about the proposed issuance of GDR and had decided at that very stage to open a bank account with Banco Bank. Further, the Board had also contemplated on the date of passing of the said Resolution itself, that the funds/proceeds of the proposed GDR to be received in their Banco Bank account would be used as a security for loans. Passing of such a Resolution by the Board involving the future use of the GDR proceeds as a security against a loan indicates that the Company did not intend to utilize the GDR proceeds immediately for the objects for which the GDR were to be issued. In this regard, I note that the information with regard to the aforesaid Board Resolution was not disclosed to the Shareholders and the Company had misled the investors by concealing such an important disclosure from them.

12. I further note that Whiteview had signed a Credit Agreement dated March 15, 2007 with Banco Bank (i.e. one day before the Board of GV passed the aforesaid Resolution) for availing a loan of upto 40 million US\$ so as to subscribe to the full amount of the GDR issue of GV worth of US\$ 40 million. In this regard some of the relevant clauses of the said Credit Agreement are worth quoting, which are cited as under:

“1. Definitions and interpretations

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Deposit Charge means the charge over the deposit made by G.V. Films 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 G.V.Films.

.....

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 up to US \$40,000,000.

3. Purpose

The Borrower shall use the proceeds of the Advance to subscribe for global depository receipts to the value of up to US \$40,000,000 issued by G.V. Films on the terms of the Listing Particulars to be delivered to the Luxembourg Stock Exchange.

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4. **Conditions Precedent**

Notwithstanding any other term of this Agreement, the Bank shall not be under any obligation to make the Facility available to the Borrower unless it has notified the Borrower that it has received all the documents listed in Schedule 1 (in form and content satisfactory to it).

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."

13. I also note that on the strength of afore-stated authorization given by the Board to "use the funds so deposited in the aforesaid bank account as security in connection with loans if any" Noticee no. 6, Mr. V. Subramonian had signed an Account Charge Agreement with Banco Bank dated March 27, 2007 therein undertaking to deposit in the designated account of GV with Banco Bank, an amount not exceeding the loan availed by Whiteview for subscribing to GDR of GV, as a security against the obligations of Whiteview under the Credit Agreement. Some of the relevant clauses of the Account Charge Agreement signed by the Company with Banco Bank are quoted as under:

"1. Definitions

.....
Loan agreement means the Loan agreement signed between Whiteview (as borrower) and the Bank dated on or around the date of this Agreement by which the Bank agreed to lend to Whiteview the maximum amount of up to US\$ 40,000,000.
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2. Account Charge

*Subject to the terms of this Agreement, G. V. Films deposited in a designated account with the Bank (**hereinafter the Account**) an amount not exceeding US\$ 40,000,000 (**hereinafter the Deposit**) as security for all the obligations of Whiteview 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, G. V. Films 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 G. V. Films, release the deposit made in the Account.

G. V. Films 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 determines.

G. V. Films hereby irrevocably appoints by way of security the Bank as the attorney of G.V.Films with full power in the name and on behalf of G. V. Films 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 G.V.Films 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 realization of the security hereby created.

G. V. Films 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 G. V. Films itself and G. V. Films hereby undertakes to ratify and confirm all such deeds, instruments and documents lawfully executed by virtue of the authority and power hereby conferred.

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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 another under this Agreement shallbe given to that other Party at the respective addresses given herein under.....

G. V. Films Limited

G. V. Films

No. 4, Seshadri Road, Alwarpet, Chennai-600018

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Attention: Mr. A. Venkataramani”

14. On a careful and combined examination of the contents of clauses of the “Credit Agreement” and the “Account Charge Agreement”, following observations are made:-

- a) The Account Charge Agreement was executed mainly to secure the obligations of the borrower i.e. Whiteview, which was granted a loan for 40 million US\$ 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 \$40,000,000 as security for all the obligations of Whiteview under its Credit Agreement and the Company assigns all the rights, title, interest and benefit accruing out of its designated account as a continuing security for the payment and discharge of the obligations of Whiteview under its Credit Agreement with the Bank.

- b) In terms of the Account Charge Agreement, only upon payment of the amounts due under the Credit Agreement by Whiteview, GV could withdraw equivalent amount from its designated account and only upon payment and final discharge of all the obligations by Whiteview under its Credit Agreement, the rights and obligations of the parties under the Account Charge Agreement shall cease and Banco Bank shall release the amount of bank balance lying in its account to GV.
- c) The Account Charge Agreement also mentions that GV has undertaken to pay and discharge the obligations of Whiteview under their Credit Agreement to Banco Bank and Banco Bank will be entitled to apply all or any part of the deposit made by GV in the designated account against the obligations of Whiteview without further notice.
- d) As a consequence to such terms & conditions contained in the Account Charge Agreement, I note that even after the GDR issue, GV could not get the GDR proceeds at its disposal for its business utilization until repayment of the loan was made by Whiteview.
- e) As per clause 3 of the Credit Agreement the said loan was sanctioned to Whiteview for the purpose of subscribing to the GDR issue of GV upto the value of USD 40,000,000. Further, as per clause 10 of the Credit Agreement, obligations of the borrower (Whiteview) was secured *inter alia*, by a charge over the deposit made by GV with Banco Bank and any other documents acknowledging as security for the obligations of the Obligor (Whiteview and GV).
- f) Thus, in the Credit Agreement executed by Whiteview one day before the Board Resolution, the Company, GV, was christened as an obligor, although the Company was not a signatory to the said Credit Agreement. It implies that Whiteview was completely assured by GV at the time of signing the Credit Agreement even prior to being authorized by its Board, that GV will take the entire obligation of loan liability of Whiteview. Accordingly, clause 2 of the Account Charge Agreement authorized Banco Bank to apply all or any part of the deposit made by GV to settle the loan liability of Whiteview. It becomes clear that the Noticee no.1 (Company) has authorized vide its Account Charge Agreement that, in all eventuality, in case of any default by the borrower, the security including proceeds of GDR to be deposited in its designated account would be realizable by Banco Bank.
- g) The Credit Agreement and Account Charge Agreement were thus inextricably connected and executed in a manner that clearly points out that the Noticee no.1 i.e. the Company, had consciously facilitated the loan to Whiteview so as to ensure success of issuance of GDR and

to create a good overseas market impact about the scrip of the Company. The above stated acts were performed by the Company knowing well that the GDR proceeds cannot be used for its business, until the repayment is made by the borrower cum subscriber to its entire GDR issue.

15. The submissions made by the Company vide its reply dated March 6, 2018 are summarized as under:

- That requisite disclosures were made and relevant approvals were obtained from the Shareholders of the Company for undertaking the GDR issue as well as for entering into an Account Charge Agreement and therefore, the Company is not in violation of any provisions of SEBI Act and PFUTP Regulations.
- That the Company was not aware of the Credit Agreement signed by Whiteview with Banco Bank nor was it aware that the charge over the account of the Company would be utilized by Banco as security for the loan given to Whiteview.
- That since the GDR issue was already disclosed to the Stock Exchange and Shareholders, details in the Board Resolution dated March 16, 2007 (with regards to opening of bank account and appointing a banker for GDR issue) are procedural in nature, hence specific disclosure are not warranted.
- That the authority given to the Bank to use the funds of the Company as security was a standard condition required by the Bank agreeing to act as banker to the GDR issue.
- That specific averments of allegations and violations have not been made qua the Company in the SCN, hence, proceedings are liable to be quashed. It is also submitted that the SCN is based on low preponderance of probabilities and serious allegations of PFUTP regulations can't be based on mere surmises and conjectures.
- That the Company could not have known that Whiteview would be the only subscriber to GDR issue.
- That it has not been determined whether anyone has even been defrauded or misled by any act or omission by the Company.

16. As highlighted above, it is the contention of the Company that it has made the requisite disclosures to the Exchange and that relevant approvals were obtained by it from the Shareholders for

undertaking the GDR issue as well as for entering into an Account Charge Agreement, hence, the Company is not in violation of any provisions of SEBI Act and PFUTP Regulations.

17. At this juncture, it would be appropriate to examine all the disclosures made by the Company to the Stock Exchange during the relevant period of time to check the veracity of Noticee's claim:-

30 November 2005

Outcome of Board meeting held on November 29, 2005

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A Committee was formed to decide the key areas like appointment of merchant bankers and other related bodies, issue size, allotment etc. regarding issue of GDR, ADR, FCCB. The Committee consists of Mr. A Venkatramani, Director, Mr. Mahadevan Ganesb, Director Mr. S Ramanathan, Director, Mr. P Raghuraman, Director and Mr. P. Thirumalaikumar Company Secretary of the Company

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25 May 2006

GV Films – Outcome of Board Meeting

GV Films Ltd has informed BSE that the Board of Directors of the Company at its meeting held on May 25, 2006, inter alia, has discussed and decided the following:

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2. The Board has recommended the following for the consideration of the Shareholders:

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An issue of GDR / FCCB for an aggregate amount upto USD 300 Million in one or more branches.

14 July 2006

GV Films – Outcome of AGM

GV Films Ltd has informed BSE that the members at the 17th Annual General Meeting (AGM) of the Company held on July 11, 2006, inter alia, have accorded to the following:

1. Adoption of the Balance Sheet and P & L Account for the year ended March 31, 2006 of the Company, along with the Directors & Auditors Reports thereon.
2. Reappointment of Mr. Mahadevan Ganesb & Mr. S Ramanathan as Directors of the Company, liable to retire by rotation.
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6. Authority to the Board to offer, issue, and allot Global Depository Receipts(GDRs) / American Depository Receipts (ADRs) / Foreign Currency Convertible Bonds (FCBs) / Equity Shares / warrants and / or instruments convertible into Equity Shares optionally or otherwise ("Securities"), for an aggregate sum up to US\$300 million or equivalent in Indian and / or any other currency (ies) inclusive of such premium as may be permitted by the Ministry of Finance / such other authorities, subject to necessary provisions & approvals.
7. Authority to the Board to issue, offer and allot Equity Shares on preferential basis.....

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9. *Authority to the Board to sell, lease or dispose off or the creation by the on behalf of the Company of such fixed or floating charge, lien, mortgage, pledge, or other encumbrance over the whole or any part of the undertaking, property, or assets of the Company in favour of the existing and future lenders, Including banks, financial institution and other person/ bodies corporate on all or any of the immovable and/ or movable properties of the Company both present and future of every nature and kind whatsoever to secure the current and future borrowings upto an aggregate amount of Rs 25000 million (excluding overdraft / cash credit and similar facilities from bankers) of the Company, subject to necessary provision & approvals.*
 10. *Authority to the Board to borrow any sum or sums of money.....*
 11. *Authority to the Board to make any loan to any body corporate; give any guarantee, or provide security, in connection with a loan made by any other person to, or to any other person by any body corporate and acquire, by way of subscription, purchase or otherwise the securities of any other body corporate: In excess of the limits prescribed under Section 372 A, as they may , in their absolute discretion deem beneficial and in the interest of the Company upto an aggregate amount of Rs 5000 million, subject to necessary provision & approval.*

19 Jul 2006

GV Films – Outcome of Board Meeting

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The Proposal for further issuing GDR/ FCCB was discussed. The Board has proposed for an issue of GDR/FCCB up to US \$ 180 million in the 1st tranche. A Committee of Directors has been formed and the Board has delegated the power to decide all relevant matters in this regard.

26 April 2007

GV Films – Board Meeting on Apr 27, 2007

GV Films Ltd has informed BSE that a meeting of the committee of the Board of Directors of the Company will be held on April 27, 2007, to discussed and decide the following subjects:

1. *To approve the GDR issue and the proposal to list the GDRs at Luxemburg Stock Exchange.*
 2. *To approve all documents / agreements with regard to the proposed issued of GDR.*
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27 April 2007

GV Films – Allotment of GDRs

GV Films Ltd has informed BSE that the Committee of Board of Directors of the Company at its meeting held on April 27, 2007, has approved the allotment of 64,00,000 GDRs of US\$ 6.25 each amounting to US \$ 40 million representing 16,00,00,000 Equity shares of Rs 10 each issued at the price of Rs 10.80 per share.

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18. Upon a careful reading of the aforestated disclosures, especially from the disclosure made by the Company on July 14, 2006 regarding the outcome of its AGM, I find that the contentions of the Company are factually erroneous and misleading. First of all, the approval by the Shareholders in the AGM of July 11, 2006 (at items no. 9 and 11) has no mention about GDR or any other form of

raising capital in the overseas market. The Noticee's attempt to use the approval by the Shareholders at item no. 9 and 11 in the AGM dated July 11, 2006 to support its claim that it has obtained necessary approval of the Shareholders for its proposed GDR issue and the related activities including providing security to Whiteview against the loan obtained by it from Banco Bank, is thoroughly misplaced and is a dubiously misleading claim put forth by Noticee. The items no. 9 and 11 of the above stated Shareholders approval do not even remotely relate to the proposed issue of GDR by the Company. Item no. 9 only authorizes the Company to sell, lease or create a charge in Company's assets to secure Company's borrowing upto an amount of Rs. 25,000 million while item no. 11 is another general authorization given by Shareholders to the Board to extend loan, guarantee or provide security against loan that may be taken by a third party or to subscribe/purchase security of another body corporate in terms of Section 372 of Companies Act.

19. These two items contain generic authorizations by the Shareholders to the Company to enable the Company to discharge the day to day business operations which usually involves lending and borrowing against fixed assets and creating charge on assets, etc. I do not find that any of these two items of the approval made by the Shareholders in the AGM held on July 11, 2006 has any reference whatsoever to raising of capital overseas by the Company by issue of GDR or otherwise. Therefore, the Shareholders, to the best of their knowledge, can't be assumed to have even imagined, let alone according any authority to the Company with respect to keeping the GDR proceeds as security against loan taken by the subscriber in order to facilitate the GDR issue. Therefore, the reliance on the outcome of the AGM of July 11, 2006 by the Company to demonstrate Shareholders' support to its actions involving the Account Charge Agreement and Credit Agreement and consequent extending of security to Whiteview to enable it to obtain loan from Banco Bank for subscribing to its GDR, is specious and hence rejected.
20. As observed from the aforesaid disclosures made by the Company to BSE, the vital Board Resolution dated March 16, 2007 which is the central subject matter of this Order and which provides specific authorization to the Company by the Board pertaining to the GDR has not been disclosed by the Company. The reasons cited by the Company that the said Board Resolutions were procedural in nature and hence were not disclosed to the Stock Exchange is not acceptable. It was rather more significant to disclose the said Board Resolution as it contained specific authorizations pertaining to GDR issue of the Company which should have been disseminated to the Shareholders and public at

large. However, taking the alibi of “procedural in nature”, the Company has shrewdly suppressed the information about the Board Resolution from its Shareholders and the public.

21. Under the circumstances, it is clear that the Company has tried to selectively quote from certain Board Resolutions and Shareholders approvals which have been disclosed to the Exchange but are not related to GDR issue at all, to substantiate its specious claim that it has obtained necessary approvals from Shareholders with respect to its activities pertaining to its GDR issue which are the subject matter of the present SCN. Besides, there are certain glaring inconsistencies observed from the submissions of Noticee Company which further strengthens the veracity of allegations made in the SCN, as pointed out below:-

- (a) Noticee on the one hand has pleaded ignorance about the charge created on its proceeds of GDR by Banco Bank to secure the loan granted to Whiteview, while on the other hand has pleaded that approval from the Shareholders was already taken in the Meeting held on July 11, 2006 and disclosure to that effect was also made on July 14, 2006 to BSE.
- (b) The Account Charge Agreement signed by the Company bears unmistakable references to Whiteview and its Credit Agreement with Banco Bank and the contents of the Account Charge Agreement shows how it is intertwined with the contents of the Credit Agreement of Whiteview.
- (c) It is apparent from the Account Charge Agreement and their submissions that the Noticee Company was very much aware about keeping the GDR proceeds as security to facilitate the loan sanctioned to the subscriber. In such an eventuality, nothing prohibited the Noticee from making a specific disclosure to the effect that GDR proceeds were to be kept as security towards loan availed by the subscriber from the same Bank in which GDR proceeds were to be deposited. However, the non-disclosure of the same shows Noticee never wanted to come clean on the matter to its Shareholders.
- (d) The Credit Agreement and Account Charge Agreement further indicate that the Noticee Company was aware that there would be a single subscriber to the entire GDR issue and Noticee Company was aware that Whiteview would be the only subscriber to the GDR and, that proceeds of GDR received from them would be kept as security to facilitate the subscriber to avail a loan for making subscription to the GDR issue of the Company.

22. As pointed out earlier, the authorizations given by the Shareholders to the Company/Board in the AGM dated July 11, 2006 are generic in nature to enable the Company to carry on its day to day business activities. Instead, it was the Board Resolution dated March 16, 2007 that provided specific authorizations by the Board in respect of issue of GDR by the Company, which ought to have been disclosed, however, has not been disclosed to the Stock Exchange.
23. In view of the aforestated observations, I find that the disclosures made by the Company suffered from gross deficiencies as the Company never disclosed that Whiteview has been identified as the only entity to subscribe to the entire GDR and that the Noticee Company had agreed to facilitate their subscription by keeping the GDR proceeds as security with Banco Bank, subject to repayment by the borrower/ Whiteview. Further, investors have not been informed that in case of default by Whiteview, Company would be liable and the proceeds of GDR kept as security would be used by Banco Bank to settle the default amount of Whiteview. I find that Noticee is trying to interpret the Shareholders approvals to various general proposals moved in the AGM held on July 11, 2006 to its convenience to support its submission that the Shareholders as well as the market was aware of all the nuances of the GDR issue, which is factually incorrect and misleading. Interestingly, on the one hand the Noticee Company claims to have obtained approval of the Shareholders to secure the loans taken by a third party in connection with the GDR issue, while on the other hand the Company pleads ignorance of the fact that the Account Charge Agreement executed by it was ever used to secure the loan given by Banco Bank to Whiteview. During the personal hearing before me, the Company was asked to pinpoint as to where exactly it has disclosed to the Shareholders and the Stock Exchange that the Company proposes to enter into an agreement with the Banco Bank, to keep the GDR proceeds as security to facilitate financing of the subscription of its GDR issue. The Company merely reiterated its written submissions as discussed earlier and could not answer to the specific queries raised during the hearing. Under the extant domestic securities laws, a company listed in India is required to make true, fair and proper disclosures to the Shareholders and the Securities Market. Noticee Company has not made its disclosure in a fair manner and rather has concealed important material information from the investors by suppressing the Board Resolutions dated March 16, 2007 and other information pertaining to its activities in connection with the GDR issue from its Shareholders and from the Public at large. Noticee Company has certainly concealed a very crucial information which ought to have been disclosed to the market and to its Shareholders.

24. The Company's submissions that it was not aware of the Credit Agreement signed by Whiteview with Banco Bank, nor was it aware that the charge over the Bank account of the Company would be utilized by Banco as a security for the loan given to Whiteview; are far away from truth. If the Company is so aggrieved with Banco Bank's action, it is not known as to why the Company has not till date, contested the contents of the Account Charge Agreement before Banco Bank or in a competent court of law, despite having been served with the SCN in the year 2017. The aforesaid claim made by the Noticee also does not draw any support from the materials available on record. I rather note that in terms of clause 4 of the Credit Agreement, one of the condition precedent for disbursing the loan by Banco Bank to the borrower (Whiteview) is the receipt of certified copies of Board minutes and Resolutions of GV, approving and authorizing the execution and delivery of each Security Document to which GV is a party.
25. The Company has taken a plea that since the GDR issue was already disclosed to the Stock Exchange and Shareholders, the details in the Board Resolution dated March 16, 2007 (with regards to opening of bank account, appointing a banker for GDR issue and using GDR proceeds as security against loan etc.) are procedural in nature and have been undertaken in the ordinary course of business. The Company has further stated that specific disclosure pertaining to procedural formalities are not warranted and the authority given to the Bank to use the funds of the Company as security was a standard condition required by the Bank agreeing to act as banker to the GDR issue. As explained in the preceding paragraphs, I do not find that the Company had disclosed anything about placing its GDR proceeds for facilitating loan to Whiteview. There is no disclosure about the Account Charge Agreement or the Credit Agreement which have apparently been used as a device/ scheme/ arrangement so as to ensure the success of its GDR issue, thereby misleading the investors and depriving them from taking an informed decision about the scrip of the Company after weighing all the facts that led to the successful issue of GDR by the Company.
26. I also note that Noticee has not disputed the execution and contents of the Account Charge Agreement but has merely contended that it was not aware that the same would be used to secure the loan given to Whiteview, which is an improbable and illogical explanation and not acceptable. As pointed out earlier, the Account Charge Agreement makes specific references to the Credit Agreement entered into between Banco Bank and Whiteview. Therefore, ignorance of these stipulations in the Account Charge Agreement duly entered into by the Company with Banco Bank cannot be pleaded by the Company. These submissions of the Company are merely an afterthought

exercise only to evade the consequences of the present proceedings. Therefore, the contention of Noticee that it was not aware as to how the Banco Bank has used its GDR proceeds for securing the loan given to Whiteview is undeniably a lame excuse, deserving to be rejected.

27. I note that reliance is placed on the judgment of the Supreme Court in the case of *Gorkha Security Services vs. Govt. of NCT of Delhi & Ors.*, (2014) 9 SCC 105 to contend that specific averments of allegations and violations have not been made qua the Company in the SCN, hence, proceedings are liable to be quashed. It is also submitted that the SCN is based on low preponderance of probabilities and serious allegations under PFUTP Regulations can't be based on mere surmises and conjectures. In this regard, I note that the SCN has clearly spelt out the allegations, the device, artifice, scheme engaged or practiced by the Company for facilitating financing the subscription and allotment of its GDR issue without disclosing the true and correct facts to the investors hence, the Noticee has allegedly committed fraud upon them. The allegations made in the SCN are further supported by adequate evidence available in the Board Resolutions, non-disclosures of the relevant specific Board Resolutions and other information to the Exchange and other corroborative materials available on record. Hence, the assertions made by the Company by citing the above mentioned decision of Hon'ble Supreme Court are unfounded on facts and lack merit. In this regard, I find it apt to refer to and rely on the views of the Hon'ble Supreme Court in the case of *SEBI v. Kishore Ajmera* (2016) 6 SCC 368, wherein the apex court has made the following observations about the nature of evidence to be used while adjudicating a quasi-judicial proceeding:-

".....It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion...

.....Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned....."

28. Further, I find that the case of Gorkha Security as cited by the Noticee to question the bonafide of the present Proceedings is factually distinguishable and not applicable to the present proceedings, for the following reasons:

- a. In Gorkha Security case, the matter pertained to blacklisting of a contractor by a government agency, which resulted in depriving the contractor from entering into any public contracts, thus

violating the fundamental rights of such person. There is no such situation arising out of the present proceedings.

- b. In Gorkha Security case, the contractor was blacklisted for breaching the terms of the contract, whereas the present SCN has been issued for violation of statutory provisions, and not for violation of any contractual obligations.
- c. In Gorkha Security case, blacklisting was imposed by way of penalty whereas in the instant proceedings, the purpose of issuing directions, if found necessary, would be preventive and remedial in nature.
- d. In Gorkha Security Case, blacklisting of the contractor was provided in the contract itself as a penalty to be imposed in case of breach of terms of contract, whereas in the present matter, provisions of law under which directions are contemplated to be issued, confer discretion to SEBI to take such measure as it may deem fit in the interest of investors and Securities Market.

29. There is no force in the submission of Noticee Company that it could not have known that Whiteview would be the only subscriber to GDR issue. From a comprehensive reading of the Board Resolution of Company dated March 16, 2007 authorizing its Directors & officials to sign and execute any application, agreement, escrow agreement, undertaking etc, followed by a reading of the terms of Credit Agreement and Account Charge Agreement stipulating utilization of GDR proceeds only to the extent of repayment made by Whiteview and then, the Company not raising any objection when Banco Bank did not make available the GDR proceeds for its utilization, it clearly emerges that Noticee Company was very much seized of the fact that the entire GDR would be subscribed by Whiteview only. The preponderance of evidence as highlighted above is so overwhelming that it cannot persuade me to accept the submission of the Noticee pleading its ignorance or innocence about the matter.

30. As regards the submissions of the Company that it has not been determined whether anyone has even been defrauded or misled by any act or omission by the Company, I would like to rely on the following observation made by Hon'ble Supreme Court in the case of *SEBI v. Rakhi Trading Pvt. Ltd.* (2018) 13 SCC 753:

"According to SAT, only if there is market impact on account of sham transactions, could there be violation of the PFUTP Regulations. We find it extremely difficult to agree with the proposition. As already noted above, SAT

has missed the crucial factors affecting the market integrity, which may be direct or indirect. The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is affected. Except the parties who have pre-fixed the price nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market.”

31. The execution of Credit Agreement dated March 15, 2007 and Account Charge Agreement dated March 27, 2007 before the issuance of GDR on April 27, 2007 shows that Whiteview was already 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 would be kept as security towards the loan amount availed by Whiteview and by executing the Account Charge Agreement, Company had consciously restrained itself from using the proceeds of the issuance of GDR.
32. Further, I also notice that the Company, despite having identified the prospective single subscriber to its proposed GDR in favour of whom it undertook to place the proceeds of GDR so as to secure the subscription by the said single subscriber, deliberately suppressed the vital and material facts from the knowledge of the investors. The Company (GV) deliberately misled its Shareholders and investors by disseminating information in a selective and distorted manner, leading them to believe such a pre-arranged GDR issue to be a successful issue of its securities in overseas market.
33. The Company had informed BSE that *the Committee of Board of Directors of the Company at its meeting held on April 27, 2007, has approved the allotment of 64,00,000 GDRs of US\$ 6.25 each amounting to US\$ 40 million representing 16,00,00,000 Equity shares of Rs. 10 each issued at the price of Rs. 10.80 per share.* However, despite being aware about the specific entity who would be subscribing to whole of its GDR issue as per its premeditated arrangement with Whiteview and Banco Bank, the crucial material facts surrounding the Credit and Account Charge Agreements and also about the single subscriber were concealed from the investors. The investors were never allowed to know that the GDR proceeds would be kept as a security towards the loan taken by the subscriber and in case of default by the subscriber, the proceeds would be eventually utilized by Bank to settle the loan obligations of the borrower/subscriber.
34. The afore mentioned declaration made by the Company on April 27, 2007 on the platform of the Stock Exchange about successful subscription of GDR issue without disclosing the advance

arrangement undertaken by it with Whiteview to ensure full subscription to its GDR, has given an ostensible impression to the investors and the market about the strong potential of the Company. The above acts of the Company represent a serious fraudulent and unfair trade practice, inflicted on the Shareholders and also on the innocent investors in the Securities Market at large. The investors including its own Shareholders 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 and that the Company has a great value for investment in India as well. Such a misleading inferences and false positive expectations about the shares of the Company were caused by the Company's own acts by devising and arranging a scheme through which it ensured a successful issuance of GDR and by concealment of actual material facts from the knowledge of its Shareholders. The investors were not aware about the artifice created by the Company through which it enforced the successful subscription to its GDR.

35. In this context, I refer to judgment of Hon'ble Supreme Court dated July 6, 2015 in *SEBI v. PAN Asia Advisors Ltd & anr.*, (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....”

36. I also find it appropriate to refer to a decision by the Hon'ble Securities Appellate Tribunal (DOD 25.10.2016) in the case of *PAN Asia Advisors Ltd. & anr. v. SEBI*, wherein 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”.

37. In view of the discussions and observations made in the preceding paragraphs, I find that the entire scheme created by Company (GV) starting with passing of Board Resolution, followed by entering into the Account Charge Agreement to permit use of the funds deposited in its account with Banco Bank as a security against a loan, making a corporate announcement on April 27, 2007 that the GDR have been successfully allotted and then not disclosing the relevant Board Resolutions and details of Account Charge Agreement and its arrangement with subscriber to secure the obligation of its loan liability to the public, have cumulatively resulted in misleading the investors at large. Such a scheme and arrangement has in it, 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 vital material facts about the arrangement of the Account Charge and Credit Agreements, Noticee Company 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 to deal in the shares of the Company due to the artificially created positive outlook about the Company's performance. Under the circumstances, the acts of engaging in such practices, scheme and concealing material information from Shareholder are held to be 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?

38. From the email received from GV dated May 15, 2017 (copy enclosed as annexure-3 to the SCN), I find that the Directors of the Company, viz:- Noticees no. 3, 4 and 5, Mr. A. Venkatramani Mr. P. Raghuraman and Mr. R. Gopalan and Noticee no. 6, Mr. V. Subramonian (President – Corporate Affair) attended the Board Meeting held on March 16, 2007. Further, the Board Resolution of the said Meeting categorically mentions that on suggestion of the Chairman (i.e. Noticee no. 2), the Board had authorized Mr. V. Subramonian to sign /execute agreements with Banco Bank. Accordingly, on the basis of such authorization given by the Board, Mr. V. Subramonian has signed the Account Charge Agreement on behalf of the Company, which provided *inter alia*, for GDR proceeds to be kept as a security towards the loan availed by Whiteview for subscription to the GDR of GV. Further, Noticee no. 6 (Mr. V. Subramonian) has affirmed on oath on April 19, 2017 that the said Account Charge Agreement was signed by him.
39. I note that the Directors of the Company i.e., Noticees no. 2 to 5 vide their separate written replies, dated March 6, 2018 have made almost identical submissions with that of the Noticee no.1 (GV). Therefore, the issues raised by Noticee no. 2 to 5 which have also been raised by the Noticee Company and have since been dealt in the preceding paras are not being repeated hereunder for the sake of brevity. I note from the records that during the relevant period, Noticee no. 4 was functioning as a Whole Time Director managing day to day affairs of the Company while Noticee no. 2, 3 and 5 were Non-Executive Directors on the Board of the Company. Noticee no. 6, as stated earlier was functioning as the President-Corporate Affairs of the Company.
40. I note that Noticee no. 5, Mr. Gopalan has also submitted in his written reply dated August 30, 2017 that he was an Independent (Non-Executive) Director and has resigned from the Company on May 29, 2014. He has not disputed his directorship during the relevant period when Noticee Company had issued GDR. He has stated that he may not have attended all the Board Meetings but has not disputed the facts of his participation in the Board Meeting held on March 16, 2007. It also remains undisputed that he remained Director during the period when the Company made those incomplete, selective and misleading disclosures to the BSE and suppressed vital information from its Shareholders. Therefore, the submissions that he has resigned subsequently would not have any relevance to his liability as charged under the SCN served on him. I find that Noticee no. 5 has not

only failed to perform the duties cast upon him as an Independent Director but also, by passing the above mentioned Board Resolution, he has acted in a manner to promote the unscrupulous design of the Company to perpetrate a fraud upon its Shareholders and the investors of Securities Market. The Noticee no. 5 has not produced any evidence or any submission to support that he has actually acted responsibly or that he has raised all pertinent issues and had asked relevant questions before the Board at the relevant time before agreeing to pass such Resolution, as expected of him as an Independent Director. There is no material or evidence to suggest that he has made due enquiries with or has confronted the management by questioning them as to why GDR proceeds should be kept as security for any loan in an overseas bank and how the GDR proceeds are proposed to be used in terms of the objects of issue. He has also not raised any question on the actual utilization of the GDR proceeds in terms of the objects of the issue. His claim of subsequent resignation from the Board does not absolve him from his expected duties and responsibilities during his tenure as a Director of the Company, which bestowed a responsibility on him to act diligently in the interest of the Company and the Shareholders. The phrase of acting diligently embodies in itself the duty not to be careless and casual in approach while taking decisions. 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”.

41. The aforesaid observations equally apply to the other two Non-Executive Directors on the Board of the Company, viz. Noticees no. 2 and 3, who also actively participated in the said Board Meeting and ensured the passage of the Resolutions on March 16, 2007 thereby facilitating the fraudulent issuance of GDR by the Company. These two Directors have also not disputed their involvement in the passing of the aforesaid Board Resolution. I note that the provisions under Companies Act, 1956 do not make any distinction with regard to the liability under the Act, between Executive and Non-Executive/Independent Directors. As held by me earlier, the Company has used the GDR mechanism to mislead and induce the Indian investors. The Company has not divulged its fraudulent arrangement of the Credit Agreement and Account Charge Agreement in its disclosure made in the Indian securities market and by merely informing that the GDR were successfully placed, has

presented a misleading appearance and a false promise of great value and potential about the stock of the Company in the domestic markets. Such a misleading disclosure tantamount to fraud on the investors with a motive to further its interest as opposed to the interests of investors of Securities Market who may easily fall prey to the artificially created successful GDR issue and get induced to invest in its shares expecting better returns. Noticees no. 2, 3 and 5 being Non-Executive Directors of the Company, ought to have taken due precautions and diligence before agreeing on the Resolutions of the Board that sowed the seeds of the Account Charge Agreement against a loan taken by an unrelated third party as part of a collusive scheme, to mislead and defraud the investors. As regards Noticee no. 4, he being the Whole Time Director and in charge of day to day affairs of the Company, has contrived the fraudulent arrangement and has also actively perpetrated such acts of the Company to mislead the investors. I also note from the disclosures made by Company to Stock Exchange on November 30, 2005 and July 19, 2006 that a committee of Directors was formed to decide on various aspects in connection with the proposed GDR issue, and Noticees no. 2, 3 and 4 were part of the said committee. Thus, apart from Noticee no. 4 who was a Whole Time Director of the Company, the Non-Executive Directors (Noticee no. 2 and Noticee no. 3) also have played a proactive role in respect of issuance of GDR, than merely being part of the Board Resolutions.

42. Moving on to Noticee No 6 (Mr. V. Subramonian), he has submitted a written reply vide letter dated December 17, 2018 stating that:-

- He had joined GV as a President-Corporate Affairs in January 2006 and was looking after theatre and webcasting work and has resigned from the services of the Company in December 2009.
- The SCN has been issued after considerable delay and suffers from serious latches.
- He has been provided with only photocopies of documents at the time of Inspection and has been informed that annexures 1 to 5 are the only documents collected and relied upon in the SCN. He has placed reliance on the decision of Hon'ble Supreme Court in the matter of *SEBI v. Price Waterhouse* (C.A No 6000-604 of 2012- DOD 10.01.2017) contending that all the relevant documents should be provided to the Noticee.
- He further points out to some inconsistencies in the annexures to SCN, eg. date of drawdown notice and Credit Agreement are absent.
- He was merely implementing the decision taken by the Board by signing the Account Charge Agreement as it was his duty as an employee to do so.

- He has also submitted that he is filing his reply only for compliance with requirements of personal hearing and would be able to reply on merits after he is provided with inspection of original documents.

43. One of the submissions of Noticee no. 6 is that the SCN has been issued after a considerable period of 10 years and therefore suffers from serious laches. In this regard, from the records I find that investigation caused by SEBI into a few cases of GDR issues initially revealed that one Mr. Arun Panchariya, in connivance with different issuer companies and their promoters/directors, had conceived such fraudulent schemes to help those companies to issue GDR. Similar modus operandi were also observed in several other GDR issuances, hence, later on the investigations were further escalated and scrip wise investigation was undertaken into a large number of GDR issue cases. In view of the fact that large number of scrips and issues were taken up for investigation collectively for which information had to be collected from different entities including from the authorities situated outside India through regulatory coordination with overseas Regulators, it required adequate time for completion of investigation after which SCNs have been issued to a number of such GDR issuer-companies. Therefore, the time taken for completion of investigation into large number of similar cases and for issuing SCNs to large number of Noticees is fairly understandable. Without prejudice the above factual observation, I find that no provision under SEBI Act, prescribes time limit either for issuing show cause notice or for adjudicating the show cause notice. In the matter of *Ravi Mohan & Ors. Vs. SEBI* (DOD- 16.12.2015), Hon'ble SAT while referring to its own decision in *HB Stockholdings Ltd. vs. 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 vs. Bhagsons Paint Industry (India)* reported in 2003 (158) ELT 129 (S.C.), has 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, argument of the appellants that in view of the delay in issuing the show cause notice the impugned SCN must be quashed, cannot be accepted.

44. With respect to his grievance about providing inspection of documents, I find that copies of all the relevant documents relied upon in the SCN have been duly given to the Noticees. I further note that majority of documents annexed to the SCN pertains to the Noticee Company. Documents referred to and relied upon in the SCN were collected by SEBI during the course of investigation. The originals of the two agreements i.e Credit Agreement and Account Charge Agreement has to be in the possession of either the Noticee Company or the Banco Bank and SEBI has received only copies of these agreements during investigation. I note that SEBI has obtained most of these documents through the office of overseas regulatory authorities. Accordingly, copies of the documents as collected by SEBI in the course of investigation, have been duly provided to the Noticees including to the Noticee no.6. I further note that Noticee no. 6 is not disputing the signing and execution of Account Charge Agreement. He has in fact admitted that he was on a business visit to London and as the Board had resolved that he could sign the agreement and since he was already in London he executed the Account Charge Agreement or else, one of the other two Directors would have been required to visit London specifically for executing the agreement. Since he has executed the Account Charge Agreement at Banco Bank at London, admittedly, he is the one, who was privy to the original agreements and their whereabouts. I further find that the Noticee has not pointed out to any specific documents, which according to him has not been made available to him and non-furnishing of such particular document has caused prejudice to him in defending the allegations levelled under the SCN. The contention of Noticee is not specific and rather more roving in nature. Under the circumstances the Noticee's claim that he has not been provided with original documents is frivolous and without any basis.

45. Noticee no.6 has further taken a technical objection stating that Credit Agreement is not dated and signed. With respect to the Drawdown Notice, it is also contended that the same appears to be notarized on 16.03.2007, whereas in the SCN, the same is mentioned as dated 22.03.2007. In this regard, on a closer look at the document, I find that the Credit Agreement is dated March 15, 2007. A copy of the signed Credit Agreement was also made available to all the Noticees including Noticee no. 6. I also note from the said copy that the notarized Drawdown Notice appears to have been sent

through fax on 22.03.2007 and on the top it bears the fax date as 22.03.2007. Therefore, the contention that Drawdown Notice is dated 22.03.2007 in the SCN looks like a mere typographical error in the SCN wherein the date of fax apparently has been taken as date of the Drawdown Notice. It is pertinent to note here that the execution of the Credit Agreement, Drawdown Notice, release of loan amount to Whiteview for subscribing to the GDR of Noticee Company and the execution of Account Charge Agreement have not been disputed by the Noticee Company nor the Noticee no. 6. Similarly, Noticee no. 6 has also not denied execution of Account Charge Agreement, which also contains a specific clause about the execution of Credit Agreement between Banco Bank and Whiteview. I note that Noticee no. 6 has affirmed having signed the Account Charge Agreement on behalf of the Company. He was holding the position of President-Corporate Affairs in the Company and had also attended the Board Meeting dated March 16, 2007. He has also submitted in his reply that he was aware of the proposed GDR issue by GV (the Company) and was asked to help the team in preparing the GDR documents for the Company. Since he was travelling to London on a business visit, the Company advised him to coordinate with the Custodian for obtaining clearance on the documents for which he had a few meetings with the Counsel in London. Considering all the aforesaid facts which indicate active involvement of Noticee no. 6 in facilitating the GDR issue and in the related documentary processes of the Company, it can be logically assumed that the Noticee no. 6 was privy to all the original documents executed pertaining to the GDR issue. I am of the view that the objections raised by the Noticee no. 6 on the aforesaid technical/procedural grounds or on lack of clarity of date etc. are frivolous and are not tenable, hence rejected. It is in fact evident that Noticee no. 6 was fully aware of the arrangements made by the Company prior to the GDR issue and has played an active role in advancing the fraudulent scheme of the Company by executing the Account Charge Agreement on behalf of the Company. Therefore, the submission of the Noticee that he was merely implementing the decision taken by the Board as a matter of his duty as an employee, is also not tenable.

46. There is no escape from the fact that the Board of Directors of GV vide Resolution dated March 16, 2007, authorized Noticee no.2, 3 (Non-Executive Directors) & Noticee no. 6 (President, Corporate Affairs), 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 Banco Bank. Further, apart from authorizing the aforesaid persons to sign all relevant documents in connection with the GDR issue, the Board of Directors vide the above stated Resolutions had further authorized the Banco Bank to use the funds

deposited in the account of the Company out of the subscription money of GDR issue, as security in connection with loans. Although Noticees no. 2, 3 and 5 were Non-Executive Directors of the Company, they were very much aware and involved in passing the aforesaid Board Resolution in connection with the GDR issue of the Company. I find that the Board Resolution of the said Board Meeting does not provide any rationale or justification for passing the said Resolution authorizing the Banco Bank to use the GDR proceeds as a security against loan, nor does it suggest, if any of these Non-Executive Directors had any dissenting views or has raised any query to the Whole Time Director about the reasons for proposing such a clause in the Resolution for using the GDR proceeds as a security against loan. Apparently none of the Non-Executive Directors has even raised any query with regard to the 'loan' referred to in the Board Resolution or has raised any concern even subsequent to the allotment of GDR when the GDR proceeds were not made available for utilization by the Company as per the object of the issuance of GDR. The above discussed facts and circumstances constrain me to conclude that the Directors were knowing the details of the proposed loans for which the GDR proceeds were proposed to be kept as security and that they have consciously agreed to the Resolution passed by the Board thereby acting in a careless and casual manner in discharge of their duties as Independent Directors.

47. Issuance of GDR was a very crucial decision by the Company and no Director – whether Whole Time or Independent can afford to be part of such a crucial decision without knowing the detailed strategy and the justification of taking such a decision. As regards the Whole Time Director (Noticee no. 4) who was in charge of day to day affairs of the Company, it was certainly his primary duty to come out 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 Whiteview and Banco Bank and the proposed Account Charge Agreement that had been devised to be executed with the Bank. Even assuming for a moment that the Whole Time Director has acted fraudulently by keeping the Board Members in dark about the proposed Account Charge Agreement and the arrangement with Whiteview, the Board Members themselves by not raising any red flag about the proposed clause in the Resolution regarding keeping the GDR proceeds as security for some loan, have made themselves liable to be blamed for the fraud committed by the Whole Time Director due to their negligence. Under the circumstances, it is not possible for me to persuade myself that the

Non-Executive Directors (Noticee no. 2, 3 & 5) were entirely innocent about the Account Charge Agreement executed with Banco Bank which was the core to the fraudulent scheme more so when Noticee no. 2 and Noticee no. 3 were part of a Committee that was authorized to carry out a number of documentary work pertaining to the GDR issue. Therefore, apart from the Whole Time Director who certainly acted fraudulently, the other Non-Executive Directors have also not acted in the interest of Shareholders of GV and investors of Securities Market, rather supported the acts of Noticee no. 4.

48. 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 Kanhaiyalal 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.”

49. Hon'ble Supreme Court, in the above case have 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.*”

50. To sum up the preceding discussions, I find that the Credit Agreement was inseparably linked to the Account charge Agreement and vice versa, and both were executed consecutively. The Account charge Agreement was signed by Mr. V. Subramonian (Noticee No. 6) on behalf of the pledgor i.e., GV. The Noticee Directors facilitated the execution of the Account charge Agreement by passing a suitable Board Resolution. The Credit Agreement and Account charge Agreement enabled Whiteview to avail loan from Banco Bank for subscription of GDR of GV. This was made possible by GV by providing its GDR proceeds as security for the loan extended by Banco Bank to Whiteview. The GDR issue would not have been subscribed if GV had not given such a security against the loan taken by Whiteview. By entering into such an arrangement, Noticees no. 2 to 6 have led the investors in India to believe that the issuer company i.e. GV has got a good reputation in terms of investment potential because of which, foreign investors have successfully subscribed to its GDR, whereas in reality, the GDR were subscribed by Whiteview with the help of the Company (GV) itself. Therefore, in effect, the Directors of the Company have facilitated the subscription of GDR by Whiteview through a loan obtained by it from Banco Bank against which, the GDR proceeds of GV were kept as security on the basis of the authorization given by the Board of Directors of GV through the Resolution passed by them on the March 16, 2007 and all these transactions and activities were undertaken behind the back of the Shareholders and other investors of the Securities Market. In my view, apart from the issuer company (GV) i.e. Noticee no. 1 and its Whole Time Executive Director i.e. Noticee no. 4 who have concealed the above information from the Shareholders, all other Non-Executive Directors (Noticee no. 2, Noticee no. 3 and Noticee no. 5) and the Noticee no. 6 who is a signatory to the Account Charge Agreement, have also acted fraudulently in breach of the provisions of Sections 12A (a) to (c) of the SEBI Act read with Regulations 3 (a) to (d) and 4 (1) of the PFUTP Regulations.

DIRECTIONS

51. 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 Securities and Exchange Board of India Act, 1992, 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 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, for a period of five years from the date of this order.
- b) The following Noticees are restrained from accessing the Securities Market and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner, from the date of this order, for the period as directed below:

S.No.	Names of the Noticee	PAN	Period
2	Mr. Mahadevan Ganesh	AHJPP4154E	Two years
3	Mr. A. Venkatramani	AABPV3960F	Two years
4	Mr. P. Raghuraman	AHJPP4154E	Five years
5	Mr. R. Gopalan	ADAPG4395R	Two years
6	Mr. V. Subramonian	AANPS8061L	Two years

52. It is clarified that during the period of restraint, the existing holding of the Noticees including units of mutual funds, shall remain frozen.

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

54. 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-

DATE: JUNE 25, 2019

S. K. MOHANTY

PLACE: MUMBAI

WHOLE TIME MEMBER