

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

Under Sections 11 and 11B(1) of the Securities and Exchange Board of India Act, 1992

In respect of:

Noticee No.	Names of the Noticee	PAN
1.	M/s. Rana Sugars Limited	AABCR6744C
2.	Mr. Rana Ranjit Singh	ADXPS5464N
3.	Mr. Rana Inder Pratap Singh	AVNPS6106M
4.	Mr. A. S. Sodhi	ALZPS2923G
5.	Mr. S. A. S. Bajwa	ACDPB9217H
6.	Mr. Rana Veer Pratap Singh	BAFPS9170M
7.	Mr. Baljit Singh	AIJPS7302L

In the matter of M/s. Rana Sugars Limited

(The aforesaid entities are hereinafter individually referred to by their respective names/ Noticee nos. and collectively as “Noticees”, unless the context specifies otherwise)

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. Rana Sugars Limited (hereinafter referred to as **“Rana Sugars/Company/Noticee no. 1”**). The investigation pertains to the period April 1, 2006 to May 31, 2006.
2. It was observed that the Company had issued 2.45 million GDR for US\$ 18 million on May 15, 2006. 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.)	Local custodian	No. of equity shares underlying GDR	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDR listed on
15-May-2006	2.45	18	ICICI Bank Ltd., Mumbai	2,45,56,620 equity shares of FV Rs10 (1 GDR=10 equity share)	The Bank of New York	Chartered Capital and Investment Ltd., Ahmedabad	Banco Efisa	Dubai International Financial Exchange.

3. The investigation revealed that Banco Efisa S.A. (hereinafter referred to as **“Banco Bank/Bank”**) had granted loan to Seazun Ltd. (hereinafter referred to as **“Seazun”**) by way of a Credit Agreement dated April 12, 2006 (hereinafter referred to as the **“Credit Agreement/Loan Agreement”**) for making payment towards subscription to the GDR issued by Rana Sugars. It was also observed that the entire 2.45 million GDRs were subscribed by only one entity, i.e. Seazun.

4. Investigation further revealed that the Company stood guarantor and deposited the entire GDR proceeds received from Seazun with Banco Bank as a security against the loan that was availed by Seazun from Banco Bank for subscribing to the GDRs issued by the Company, in terms of an Account Charge Agreement dated May 15, 2006 signed by the Company with Banco Bank (hereinafter referred to as the **“Account Charge Agreement/Pledge Agreement”**). It was further observed that the GDRs were subsequently converted into equity shares and were sold in the Indian Securities Market. During the course of investigation, it was noticed that the Company had not disclosed to the investors about the aforesaid arrangement so made by it with Banco Bank so as to ensure a successful issuance/subscription/allotment of GDRs by way of facilitating Seazun to avail a loan from Banco Bank. It was further concealed from the public that the proceeds of GDRs would be kept as security with the Banco Bank and would not be available to it for utilization, and thereby, the Company misled the Shareholders/investors at large, by providing partial and distorted information about its GDR issue in overseas market. It was also revealed in the investigation that out of the total GDR proceeds, an amount of US \$2.27 million had been diverted by the Company to Seazun without any justification for such transfers.
5. On the backdrop of the above stated factual observations, the Company (Noticee no. 1) and its Directors, Noticees no. 2 to 7 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. In view of the aforesaid facts and circumstances, a common Show Cause Notice (hereinafter referred to as “SCN”) dated June 23, 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. Subsequently, a supplementary SCN dated June 12, 2018 was issued to the Company (Rana Sugars) asking the Company to show cause as to why a further direction for bringing back the money diverted to Seazun should not be issued. The Noticees initially sought time to file its reply to the SCNs, however, did not submit any reply. Thereafter, in the interest of principles of natural justice, Noticees were provided with an opportunity of personal hearing on November 22, 2018, which was subsequently rescheduled to February 12, 2019. I note from the records that Noticee no. 1 has submitted a written reply dated September 28, 2018. The authorised representatives on behalf of the other Noticees no. 2 to 7 sought an adjournment of the scheduled hearing in order to be able to submit their written replies to the SCN. Accordingly, another opportunity of personal hearing was scheduled for all the Noticees on April 24, 2019, but again, the Noticees requested for rescheduling of the said hearing. Accordingly, personal hearing in the matter was finally fixed on August 20, 2019. I note that Noticees no. 2 to 7 have submitted their written replies on the said date i.e. August 20, 2019. Further, a common Authorised Representatives appeared on behalf of all of the Noticees on the aforesaid date of hearing and advanced his arguments broadly on the lines of their written replies. During the course of hearing, the Noticees were asked to furnish their written responses to certain queries raised during the hearing including an explanation for the transfer of 2.27 million USD out of the GDR proceeds (18 million USD) by the Company to Seazun

(borrower) and also explanation for not receiving the same amount back, from Seazun. I have perused the written reply dated September 28, 2018 submitted by the Company and the written replies, each dated August 20, 2019 submitted by other Noticee no. 2 to 7 after they were heard personally through their authorised representatives. I find that the submissions made by all the Noticees in their replies are almost identical. The Noticees have also submitted an additional written reply dated September 10, 2019 in which they have primarily reiterated the contentions raised by them in their previously filed replied as well as during the hearing.

ISSUES FOR CONSIDERATION AND FINDINGS:

7. After carefully examining the SCN dated June 23, 2017 and supplementary SCN dated June 12, 2018 including all the annexures as referred to in the SCNs, replies received from Noticees to the aforesaid SCNs 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 7 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 afore stated issues and decide as to whether on the facts of the matter, the aforesaid violations alleged in SCN against Noticee no. 1 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 recognised 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 recognised 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 recognised 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 recognised 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 2.45 million GDR on May 15, 2006 for raising 18 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 2.45 million GDR issue, were 2,45,56,620. Thus the ratio of number of GDR issued to equity shares of the Company was 1:10.

10. The Board of Rana Sugars had passed a Resolution in its Meeting on January 31, 2006, 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 (emphasis supplied) against loan.** Relevant extracts of the Board Resolution are as under:

“RESOLVED THAT a bank account be opened with Banco Efisa, S.A. (“the Bank”) or any branch of Banco Efisa S. A., including the off-shore branch, outside India for the purpose of receiving the subscription money in respect of the Global Depository Receipt issue of the Company.

RESOLVED FURTHER THAT Rana Inder Pratap Singh, Managing Director be and is hereby authorized to sign, execute any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other papers 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 Rana Inder Pratap Singh, Managing Director be and is hereby authorized to draw cheques and other documents, and to give instructions from time to time as may be necessary to the said Banco Efisa, S.A. or any of branch of Banco Efisa S.A., including the off-shore 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 Resolutions (copy enclosed as annexure -3 of the SCN), I note that the said Resolutions were approved by the Board on January 31, 2006 for *inter alia*, opening of a bank account with Banco Bank for the purpose of receiving subscription money

in respect of the GDRs proposed to be issued by the Company. According to the above cited Resolutions, the Noticee no. 3, Mr. Rana Inder Pratap Singh was authorized to sign, execute any application, agreement, etc. as may be required by the Banco Bank. Accordingly, the Company had opened an Account no. 6266880 in its name in the 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 a decision was taken as early as on January 31, 2006, about the proposed issuance of GDR and at that very stage itself, it was decided 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, particularly with regard to proposal to keep the GDR proceeds as a security in Banco Bank, was not disclosed to the Shareholders. The Company has allegedly misled the investors by concealing such an important disclosure from them.

12. I further note that Seazun had signed a Credit Agreement dated April 12, 2006 with Banco Bank for availing a loan of up to 18 million US\$ so as to subscribe to the full amount of the GDR issue of Rana Sugars worth of US\$ 18 million. In this regard some of the relevant clauses of the said **Credit Agreement**, which are worth quoting, are cited as under:

“1. Definitions and interpretations

.....
Deposit Charge means the charge over the deposit made by Rana 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 Rana**.

.....
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 \$18,000,000.

3. Purpose

The Borrower shall use the proceeds of the Advance to subscribe for global depository receipts to the value of up to US \$18,000,000 issued by Rana on the terms of the Listing Particulars to be delivered to the Dubai International Financial Exchange.

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.

Schedule 1 – Conditions precedent

1. A Certified Copy of the certificate of incorporation.....and the memorandum and articles of association of each of Rana and the Borrower.....
2.
3. Certified Copies of the board minutes and resolutions of Rana approving and authorizing the execution, delivery and performance by it of each Security Document to which it is a party.....”

13. I also note that apparently 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” the

Noticee no. 3, Mr. Rana Inder Pratap Singh, Managing Director of the Company had signed

an Account Charge Agreement with Banco Bank dated May 15, 2006 therein, undertaking to make a deposit in the designated account of Rana Sugars with Banco Bank, an amount not exceeding the loan availed by Seazun for subscribing to GDR of Rana Sugars, as a security against the obligations of Seazun under their 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 Seazun (as borrower) and the Bank dated on or around the date of this Agreement by which the Bank agreed to lend to Seazun the maximum amount of up to US\$ 18,000,000.
.....

2. Account Charge

Subject to the terms of this Agreement, Rana deposited in a designated account with the Bank (hereinafter the Account) an amount not exceeding US\$ 18,000,000 as security for all the obligations of Seazun 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, Rana 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 Rana, release the deposit made in the Account.

Rana 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.

Rana hereby irrevocably appoints by way of security the Bank as the attorney of Rana with full power in the name and on behalf of Rana 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 Rana 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.

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

Rana

.....

Attention: Mr. Inderjietsing Rana”

14. On a careful and combined examination of the contents of various clauses of the “Credit Agreement” signed by Seazun and the “Account Charge Agreement” signed by Noticee no. 3 on behalf of the Company with Banco Bank, following observations are made:-

- a) The Account Charge Agreement was executed mainly to secure the obligations of the borrower i.e. Seazun, which was granted a loan for 18 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 \$18,000,000 as security, for all the obligations of Seazun 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 Seazun under its Credit Agreement with the Bank.
- b) In terms of the Account Charge Agreement, as and when Seazun would pay any sum towards repayment of dues under the Credit Agreement by Seazun, Rana Sugars can withdraw equivalent amount from its designated account and only upon full payment

and final discharge of all the obligations by Seazun under its Credit Agreement, the rights and obligations of the parties under the Account Charge Agreement shall cease and Banco Bank shall release the remaining full amount of bank balance lying in its account back to the Company.

- c) The Account Charge Agreement also mentions that Rana Sugars has undertaken to pay and discharge the obligations of Seazun under their Credit Agreement to Banco Bank and Banco Bank will be entitled to apply all or any part of the deposit made by Rana Sugars in their designated account (with Banco Bank) against the obligations of Seazun 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, Rana Sugars could not get the GDR proceeds at its disposal for its business utilization until full repayment of the loan was made by Seazun.
- e) As per clause 3 of the Credit Agreement, the said loan was sanctioned to Seazun for the purpose of subscribing to the GDR issue of Rana Sugars upto the value of USD 18,000,000. Further, as per clause 10 of the Credit Agreement, obligations of the borrower (Seazun) was secured *inter alia*, by a charge over the deposit made by Rana Sugars with Banco Bank and any other documents acknowledging as security for the obligations of the Obligor (Rana Sugars).
- f) Thus, in the Credit Agreement itself executed by Seazun, the Company, Rana Sugars, was already christened as an obligor, although the Company was not a signatory to the said Credit Agreement. It implies that Seazun was completely assured by Rana Sugars at the time of signing the Credit Agreement that Rana Sugars will take over the entire obligation of loan liability of Seazun. Accordingly, clause 2 of the Account Charge

Agreement has authorized Banco Bank to apply all or any part of the deposit made by Rana Sugars in its designated Bank account to settle the loan liability of Seazun. 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 (Seazun), the security in the form of proceeds of GDR to be deposited in its designated account would be realizable by Banco Bank.

- g) I also note that a copy of Memorandum and Articles of Association of the Company along with copy of Board Resolution dated January 31, 2006 is enclosed with the Credit Agreement in terms of clause 4 and Schedule -1 of the Credit Agreement, even when the Company is not a party to the Credit Agreement.
- h) 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 Seazun so as to artificially ensure full subscription to its issuance of GDR and to create a good overseas market perception about the scrip of the Company. The above stated acts were performed by the Company knowing very well that the GDR proceeds cannot be used for its business, until the repayment is made by the borrower cum single subscriber to its entire GDR issue.

15. As already observed above, the arguments advanced by all the Noticees in their written replies as well as during their personal hearing are almost identical. Therefore, I will be addressing the common submissions made by the Noticees viz:- the Company (Noticee no. 1) and Noticee directors (Noticees no. 2 to 7) while adjudicating the first issue and the additional submissions made by the Noticee Directors (Noticees no. 2 to 7) will be dealt with while considering the

second issue identified by me at paragraph 7 above. At the outset, I will deal with some of the preliminary contentions raised by the Noticees before adverting to the submissions made by the Noticees on merit. The Noticee no. 1 (Company) has contended that Adjudication Proceedings have also been initiated against it, *inter-alia*, for the charge of delayed disclosures, arising out of the same set of facts as alleged in the present proceedings and despite vehemently contesting the said allegations levelled against it during the Adjudication Proceedings, the Company was visited with the imposition of monetary penalty. The penalty so imposed in the Adjudication Proceedings was paid by the Company in order to put a quietus to the entire matter. The Company therefore contends that continuing the present proceedings after conclusion of the Adjudication Proceedings is completely untenable and amounts to serious harassment to the Company. However, the Company ought to note here that Adjudication Proceedings and the instant proceedings under Section 11B are two different quasi-judicial proceedings/actions envisaged under the provisions of SEBI Act. It is a trite law that provisions under SEBI Act, permits for initiation of multiple proceedings under different provisions of the SEBI Act based on same set of facts and allegations, and there is no bar for initiation of multiple proceedings. I further note that the two proceedings referred to above are aimed to achieve distinct and different objective/outcome. The two proceedings are sui generis and are distinguishable in their intent and consequences. In this regard, I further note that Hon'ble SAT in the matter of *Sunita Gupta vs SEBI (DoD- 21.04.2017)* has held that "*SEBI Act itself contemplates that where a person violates SEBI Act and the regulations made thereunder, then apart from imposing penalty under Chapter VI A, it would be open to the Board to issue such directions as it deems fit under Chapter IV of SEBI Act.*" Hence, the contentions raised by the Noticees is misplaced.

16. The next preliminary contention of the Noticees is that a copy of investigation report and other connected documents have not been provided to the Noticees and that these documents have to be proved with the right of cross examination to them. I note that the allegations against the Noticees are clearly articulated in the SCN and all the relevant documents relied upon in the SCN have been provided to the Noticees. In view thereof, I do not find that the Noticees have been prejudiced in any manner. Noticees have also made a bald statement claiming that other connected documents have not been provided to them by SEBI, without specifying as to what other documents have not been provided to them and how the same has caused them prejudice. I find that the copies of all the relevant documents relied upon in the SCN have been duly given to the Noticees. Under the circumstances the Noticees' claim that they have not been provided with the copy of investigation report and other connected documents is without any basis.

17. I also note that the Noticees have claimed in their written reply dated September 10, 2019 that there is an omission on part of SEBI to provide certain documents to them till the date of personal hearing and that these documents were not annexed to the SCN and were shown to them only during their personal hearing, due to which they could not deal with/cover them in their replies. In this regard, I note that the bank account statement of the Company maintained with Banco Bank was already supplied to the Noticees along with the supplementary SCN to support the charge of diversion of GDR proceeds by the Company to Seazun. During the Personal hearing, copy of a letter dated November 29, 2006 addressed by the Company (signed by Noticee no. 3) to Banco requesting them for transferring USD 2.27 million from its bank account to Seazun (borrower) was shown to the Noticees to elicit their responses about the said letter. This document was merely an additional document confronted to the Noticees

during the hearing to elicit their explanation thereon as the said document was originated from the end of the Company in connection with transfer of funds to Seazun about which the company and its Directors can only provide answer. Therefore, I do not find any reasons as to how the interest of Noticees stand prejudiced by bringing the said letter to their knowledge during the Personal hearing. I would rather point out that despite being provided with such documents, which pertained to the Company and have been created by the Company as well as signed by its own Managing Director (Noticee no. 3), the Noticees have not been able to provide any justification in their defence for those acts committed by them as per the allegations made in the SCN.

18. The Noticees have contended that the allegations in the SCN pertain to the year 2006 and there is no justification for initiating the present proceedings against the Company after such enormous delay of more than 12 years. They have relied on the judgement of Hon'ble SAT in the matter of *HB Stockholdings Ltd. v. SEBI* to support their contention that unexplained delay in initiating the show cause proceedings ought to result in quashing of the proceedings. In this regard, I note that SEBI conducted investigation into a few cases of GDRs issues which 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 GDRs in overseas market. During the course of investigation similar modus operandi was also observed in respect of several other GDR issuances, which prompted SEBI to widen the investigations so as to encompass in its fold, scrip wise investigation into a large number of GDR issue cases. In view of the fact that a large number of scrips and issues were taken up for investigation simultaneously and collectively for which substantial amount of information had to be collected from different entities including from the authorities situated outside India

through regulatory coordination with overseas Regulators, it required considerable time for completion of the investigation after which, SCNs have been issued to a number of such GDR issuer-companies. I note that major portion of relevant information in this regard was received from CMVM, Portugal (Portuguese Securities Market Regulator) vide letter dated March 18, 2016. I further note that SEBI order dated June 16, 2016 has recorded that investigation was initiated in respect of 59 GDR issues made by 51 Indian Companies during the period 2002 to 2014 and Rana Sugars was also one such scrip in respect of which the investigation was completed in March, 2017. Further, after completion of the investigation, the SCN was issued to the Noticees on June 23, 2017. Therefore, the time taken for completion of investigation into a large number of cases of similar nature and for issuing SCNs to large number of Noticees connected with those cases, is fairly understandable. Without prejudice to the above factual observation, I find that no provision under SEBI Act prescribes any time limit for taking cognizance of the alleged breach of provisions of SEBI Act, and rules and regulations made thereunder. Therefore, the aforesaid argument of the Noticees is misconceived. For ascertaining as to whether there is any delay in the matter, the date on which the violations as alleged in the SCN came to the notice of the SEBI would be the relevant point and not the date of alleged violation. Whether a delay in a particular case is justified or not depends on the facts and circumstances of each case. The order passed by Hon'ble SAT in *HB Stockholdings Ltd. v. SEBI* (Appeal no. 114 of 2012 decided on August 27, 2013), as relied upon by the Noticees, has been perused. It is noted that this decision also endorses my observations regarding the legal position on the issue of delay, as stated above. In fact, in *HB Stock Holding's case* (supra), Hon'ble SAT have held that delay is not fatal in each and every case. Further, in the case of *Ravi Mohan & Ors. v. SEBI* (SAT Appeal No. 97 of 2014 decided on 16.12.2015), Hon'ble SAT while referring to its own decision in *HB Stockholdings case* (supra)

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.) have 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.....”

19. It is submitted by the Noticees that the allegation about Company's failure to disclose that Seazun was the sole subscriber to the GDR issue was incorrect for two reasons, firstly because the identity of the GDR subscriber in the present case was immaterial considering that GDR is a tradeable security on an overseas stock exchange and secondly, the Company could have only known the identity of domestic custodian which was ICICI Bank and not about the overseas subscriber. Further, as per the limited information as regards the subscribers which was received from the intermediaries, Seazun was not the sole subscriber and rather there were six other entities who were the initial allottees. Therefore by merely following the advice of intermediaries in the matter the Noticee cannot be alleged for any wrongdoing when no violation of provisions of law is shown and moreover, since the intermediaries have not been arrayed in the proceedings, it shows that a selective investigation has been conducted against the Noticees which is not permissible. Noticees have also contended that given the limited information available with the Company, after a lapse of 12 years, the Company is not aware that the initial allottee of GDR was only Seazun and is also not able to recall the precise reasons for executing the Account Charge Agreement. It has been submitted by the Noticees that the execution of the Account Charge Agreement was part of an overall set of documents which

were executed by the Company on the advice of the consultants and intermediaries through whom all the transactions was carried out. Further, in the absence of any express legal requirement mandating an issuer company to disclose the name of the GDR subscriber, no fault can be found with the disclosure made by the Company.

20. I find the aforesaid submissions made by Noticees to be far away from the truth and are not supported by the materials available on record. It is not disputed that the Company has issued the GDRs on the basis of approval given by its Board by passing a Resolution and the proceeds of the GDRs so issued were received in its designated account opened with Banco Bank as per the directives in the said Resolution. The choice and decision to have a bank account and to hire consultants including Intermediaries like a domestic custodian for assisting the Company in executing the GDR issue was a prerogative of the Company itself. Therefore, for any fault on the part of its Intermediaries in executing the wish of the Board, it is the Company that is liable and it can't escape from its statutory responsibility on the ground of acting in the good faith on the advice of its intermediaries and consultants. The Company has not submitted any documents to substantiate its claim as to how it got persuaded by the said intermediaries to open an account with the Banco Bank only (and in no other Bank) and under what circumstances, they thought it fit and proper to execute the Account Charge Agreement, with Banco Bank thereby voluntarily fastening itself with the liabilities of an unrelated Borrower (Seazun) of Banco Bank in terms of a Credit Agreement signed by the said Borrower with Banco Bank without involving the Company. Moreover, through the said Account Charge Agreement, the Issuer Company has gone to the extent of guaranteeing that it will repay the loan of an unrelated party (Seazun) in case default is committed by the said borrower (Seazun) in terms of its Credit Agreement with Banco Bank. If the Noticees are so convinced that the

Account Charge Agreement was executed as part of documentation process in connection with issuance of GDR acting on the advice of the intermediaries and consultants, then they were duty bound to take a stringent legal action against those intermediaries for such criminal breach of trust. In my view, instead of projecting themselves as a victim, it is expected that they should have taken strong action against the consultants to show their bonafide, since according to the Noticees, the consultants have deceptively fastened a huge liability on them by subjecting the entire GDR proceeds as securities against the loan taken by a third party, with which the Noticees claim to have no connection. However, to my surprise, no action has been initiated by the Company or other Noticees against any of the intermediaries/consultants so far. Thus, the explanation furnished by the Noticees is an attempt to shift their culpability on to others so as to avoid any likely enforcement actions for their wrongful disclosure to the public at large and for resorting to fraudulent acts against the interests of the shareholders hence, would not be maintainable under law or in facts of the case. Further, the claim by the Noticees that they had no access to information beyond their domestic custodians to know about the details of overseas subscribers to their GDR issue, is nothing but a self-serving specious argument. The Company, having signed an Account Charge Agreement with Banco Bank taking upon itself the loan obligations of Seazun and having full access to the GDR proceeds deposited in its Banco Bank Account, cannot feign ignorance about exact details of the subscribers to its GDR issue. Without prejudice, it is the responsibility of the issuer Company and directors to verify the genuineness of the information before dissemination to the public at large and it is not permissible for them to take shelter under the excuse that the disclosures made by the Company was based on the information received from a third persons i.e. consultants/intermediaries in this case.

21. It is also pertinent to note that the Noticees have not disputed to the execution and contents of the Account Charge Agreement but have merely contended that the Account Charge Agreement was part of overall set of documents which were executed by the Company on the advice of the consultants. For the reasons stated by me above, the explanation submitted by the Noticees appear to be ex facie baseless, lacking rational and on the face of preponderance of facts are not acceptable. There is no explanation put forth by the Noticees as to why the Account Charge Agreement was executed by them primarily to secure the interest of the Banco Bank and to take over the obligations of Seazun in the Credit Agreement. As pointed out earlier, the Account Charge Agreement makes specific references to the Credit Agreement entered into between Banco Bank and Seazun. Therefore, ignorance of these stipulations in the Account Charge Agreement duly entered into by the Company with Banco Bank is disquieting and far from the reality with no substance to rely on. I would rather believe that these submissions of the Company are merely an afterthought exercise only to evade the consequences of the present proceedings. Therefore, the contention of the Noticees that they were blissfully unaware as to how Banco Bank has applied its GDR proceeds for securing the loan given to the Seazun and that the information pertaining to subscriber to the GDR issue including information about control over the GDR funds lay with the intermediaries till the receipt of GDR funds in Company's Indian account, is undeniably a lame excuse, bereft of any credence and therefore deserves to be rejected. Moreover, it is noted from the covenants and clauses of the two agreements that the Credit Agreement postulated furnishing a certified copy of the Board Resolutions of the Company as a condition precedent for the approval and disbursal of the loan amount to Seazun. From the same, it is evident that the Company was very much aware of the fraudulent scheme of facilitating the grant of loan to its 'would – be' subscriber and to facilitate the same, the Board resolutions were readily made available to

Banco Bank to make them part of the Credit Agreement. Subsequently, the Company itself took the plunge and entered into an Account Charge Agreement with Banco Bank whereby, it not only restrained itself from utilising the proceeds of GDR but at the same breath undertook to pay the liability of the borrower (Seazun), in case of any default on the part of the said borrower. Therefore, under no circumstances, it is conceivable that the Company was not aware of the Account Charge Agreement which was entered into on its behalf by its own Managing Director, duly authorized by the Board, especially when the Noticee Company is not even contesting the execution of such an Account Charge Agreement. There is also no explanation available on record as to why and how the Company's Memorandum of Association and copy of Board Resolution dated January 31, 2006 were enclosed with the Credit Agreement, when the Company was not even a party to the said Agreement.

22. A listed Company and its directors should be very cautious while conducting its business directed towards achieving the Company's objects. Therefore, the Board should act diligently and responsibly for the very reason that the shareholders have reposed faith on them and they are supposed to act as custodian of the hard earned money of the thousands of the innocent investors. Further, even if one is to accept the submissions of the Noticees that the Account Charge Agreement was executed solely by relying on the advice of the consultants and intermediaries appointed by them and they were unaware of the pledge of their GDR proceeds with Banco Bank against the loan granted to Seazun, I find that Noticees have provided no explanation as to what did they do when the GDR proceeds which were expected to be realized immediately after the allotment, remained un-available for use by the Company and was made available to be used by the Company in trenches, in terms of the clauses of Account Charge Agreement. No explanations have been offered in this respect as to why no inquiry was made

to ascertain the details of amount received in the Bank accounts against the issuance of GDR. As noted earlier, the GDR proceeds have been made available by Banco Bank for the use by the Company only in trenches however, no query was ever raised by any of the Noticees to the Bank to ascertain the reasons for remitting the proceeds from the Bank in trenches long after the GDR proceeds were deposited in the Bank account of the Company. It has also been pointed out that the amount of money raised by the Company through GDR issue was identically the same amount of loan financed by the Banco Bank to Seazun for subscribing to the GDR of the Company.

23. As pointed out earlier, I don't find any substance in the submissions advanced by the Noticees that they were not aware that Seazun was the only subscriber to the GDR issue of the Company. The undisputed fact that the Company (Rana Sugars) had secured the loan of USD 18 million availed by Seazun from Banco Bank only for the purpose of subscribing to the GDR issue of the Company, by entering into an Account Charge Agreement with the same Bank, clearly shows that the Company was very much aware about the loan facility extended to the subscriber. Further by allowing the GDR proceeds to be held as security against the loan availed by Seazun and thereafter making a false statement to the Stock Exchanges that the GDRs have been subscribed successfully, the Noticees have fraudulently led the investors in India to believe that the foreign investors have shown great interest in the GDRs of Rana Sugars. There cannot be two opinions that by opening an account with Banco Bank and by executing an Account Charge Agreement, the Noticee Company has in reality, facilitated financing the subscription to its own GDR. The submissions about not being aware about the details of subscription/subscribers to its GDRs does not inspire confidence in the absence of any justification or satisfactory explanation offered by the Noticees. Further, in case the GDRs

were actually subscribed by six entities as has been claimed by the Noticees, it is not explained as to what were the compelling reasons to execute the Account Charge Agreement to the tune of USD 18 million with Banco Bank with explicit provisions to help Seazun obtain loan from the same Bank with which Seazun had already executed a Credit Agreement for the purpose of subscribing to the entire GDR issue of the Company and, for that purpose the Board Resolutions of the Noticee Company were submitted to the Bank. In view of the above, the fraudulent and unfair method resorted by the Company to make somehow the GDR issue successful, exposes, a scheme that was initiated by the Company with the passing of Board Resolution to open a bank account with Banco Bank for depositing the GDR subscription amount, which was further acted upon by authorizing its Directors to execute the Account Charge Agreement dated May 15, 2006 to ensure that the GDR subscription amount of USD 18 million could be fully subscribed.

24. The intention of the Noticees becomes writ large from the fact that based on the Resolution dated January 31, 2006, an account with Banco Bank was in fact opened in the name of the Company for depositing the GDR proceeds. Subsequently, on issuance of GDR, the GDR subscription proceeds were deposited in the said account of the Company with Banco Bank. The allotment of GDR was made on May 15, 2006, however, the proceeds of the GDR were immediately not available for utilization by the Company as the same was held as a security against the loan advanced to Seazun and its release was dependent on the repayment of loan by the borrower *i.e.* Seazun, who happened to be the lone subscriber to the GDR issued by the Company. The GDR subscription amount deposited in the said bank account with Banco Bank was to be withdrawn by the Company in a deferred manner depending upon the repayment of loan to be received from Seazun in consonance with the stipulations in Account

Charge Agreement executed by the Company. It is observed that the Noticee no. 3, who was authorized in terms of the Company's Board Resolutions to open bank account with Banco Bank and was further authorized for execution of documents in connection with GDR issue, went on to execute the Account Charge Agreement for creation of security in favour of Seazun's loan liabilities and has neither denied the opening of the bank account nor the execution of the Account Charge Agreement nor even the covenants of the said Account Charge Agreement. Further, strangely enough, the Noticee Company or its Directors other than the Noticee no. 3, have till date neither inquired from the Noticee no. 3, about the details of execution of the documents nor have they ever contemplated for initiating any action against him for executing the said Account Charge Agreement which has been claimed to be beyond the scope of authority conferred on him by the said Board Resolutions if indeed, he has exceeded his terms of authorisation granted to him by the Board. It is also interesting to note that as a consequence to signing the aforesaid Account Charge Agreement, it was only during the period from June to December, 2006 i.e. spread over a period of seven months after the GDR issue, that the Company could withdraw the GDR subscription amount from its account in Banco Bank that too, in several instalments and accordingly, had to get the funds remitted in instalments to its India account while transferring, some amounts to Vintage and Seazun. The withdrawals made by the Company in instalments were apparently in the terms & conditions stipulated in the Account Charge Agreement signed by the Company through the Noticee no. 3. The details of transfer of GDR proceeds from the company's bank account with Banco to its Indian bank account as well as to others are shown in the table below:

Table-2

Date of instructions by RANA to Banco for transfer of USD	Date of debit in RANA's account with Banco	Amount of USD debited in RANA's account with Banco	Date of credit to RANA's Indian bank account	Amount of funds received by RANA in India (INR)	Remarks
20/06/2006	23/06/2006	25,000.00			Transferred to Vintage FZE
06/07/2006	30/06/2006	500,000.00	07/07/2006	*23,035,580.00	-
01/07/2006	07/07/2006	500,000.00	10/07/2006	*23,016,832.00	-
07/07/2006	10/07/2006	295,000.00	11/07/2006	*13,618,226.00	-
11/07/2006	13/07/2006	375,000.00	14/07/2006	*17,386,332.00	-
18/07/2006	19/07/2006	650,000.00	20/07/2006	*30,422,926.00	-
19/07/2006	20/07/2006	610,000.00	21/07/2006	*28,552,151.00	-
25/07/2006	25/07/2006	330,000.00	26/07/2006	*15,451,950.00	-
27/07/2006	27/07/2006	175,000.00	28/07/2006	*8,144,311.00	-
27/07/2006	28/07/2006	620,000.00	28/07/2006	*28,809,464.00	-
31/07/2006	02/08/2006	600,000.00	03/08/2006	*28,021,055.00	-
07/08/2006	07/08/2006	500,000.00	08/08/2006	*23,278,061.00	-
24/08/2006	29/08/2006	4,000,000.00	30/08/2006	#185,953,721.00	-
06/09/2006	11/09/2006	2,400,000.00	12/09/2006	#111,183,452.00	-
13/09/2006	15/09/2006	1,500,000.00	18/09/2006	#69,126,233.00	-
15/09/2006	15/09/2006	1,000,000.00	18/09/2006	#46,083,733.00	-
19/09/2006	22/09/2006	1,000,000.00	25/09/2006	#45,848,739.00	-
22/09/2006	27/09/2006	650,000.00	28/09/2006	#29,836,988.00	-
03/10/2006	04/10/2006	235,000.00	-	-	Transferred to Vintage FZE
29/11/2006	29/11/2006	2,277,000.00	-	-	Transferred to Seazun Ltd
07/12/2006	14/12/2006	31,700.00	-	-	Transferred to Vintage FZE
TOTAL		18,273,700.00	-	727,769,754.00	-
Amount credited to Indian Bank a/c		15,705,000.00	-	-	-

25. It can be seen from the above table that the Company had received GDR subscription proceeds of US \$15.71 million for its use in different instalments over a period of 4 months. It is further observed that an amount of US \$ 0.29 million was transferred to Vintage and an amount of US \$ 2.27 million was transferred to Seazun from its account with Banco Bank. With regard to the amount transferred to Seazun, (US \$2.27 million), the Noticees have not provided any plausible explanation as to why the said payment was made to the subscriber itself. From a comprehensive reading of the Board Resolution of Company dated January 31, 2006 authorizing its Managing Director 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 that permitted utilization of GDR proceeds by the Company only

to the extent of repayments made by Seazun and from the fact that the Company did not raise any objection when Banco Bank did not make available the GDR proceeds for its utilization immediately after the issuance of the GDRs, it clearly emerges that the Noticee Company was very much seized of the fact that the entire GDR would be subscribed by Seazun 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.

26. The contentions of the Noticees that they were merely following the advice of their intermediaries and therefore cannot be held liable for any wrongdoing done by the intermediaries and more particularly in the absence of intermediaries not been arrayed in the instant proceedings, is a frivolous attempt to deflect the attention from their role in the present proceedings to some external unidentified entities which is not permissible. In any case, one who seeks equity must come out with clean hands and it is not fair for the Noticees to shift burden of defending themselves against the allegations levelled in the SCN by claiming that those violations have been committed by certain other entities on which no action has been initiated. The scope of the instant proceedings is to determine as to whether or not, based on the evidences available on record and having considered the replies furnished by the Noticees, the allegations made under the SCN are maintainable against the Noticees. Accordingly, my findings are required to be confined to the issues involved in the instant proceeding qua the Noticees only. Therefore, making any observation on or against other entities or intermediaries, on whom the Noticees have raised their accusing fingers, without even naming those intermediaries on whom they want to fix the responsibilities for any violation whatsoever, would be grossly unfair as none of those those unidentified intermediaries/entities

is a part of the present proceedings. Nonetheless, assuming without admitting for a moment that the submission of the Noticee is valid, the mere fact that no action has been initiated against some of the entities or intermediaries, cannot be taken as a ground by the Noticees for absolving themselves or helping them to escape from their own liability for the violations committed by them as alleged in the SCN. In this regard, to address the aforesaid grievance of the Noticee, I rely on the findings of Hon'ble SAT in the case of *Systematix Shares & Stocks India Limited v. SEBI (2012)* in which the Hon'ble SAT also had the occasion to deal with a similar argument advanced by the appellant contending that the Board should have proceeded against all wrong doers and the action against the appellant and a few entities alone was discriminatory. The Hon'ble SAT observed that *"We cannot subscribe to this view since the Board has set its own benchmark in selecting cases for action and, in any case, the appellant cannot plead himself innocent or his trades as lawful."* The Noticee no. 1 being a listed company in India and Noticees no. 2 to 7 being the Company's directors, owe the Company's shareholders and other investors in the Indian Securities market, an onerous duty to conduct the functioning of the Company in a transparent manner and to ensure that the interest of the shareholders is protected against all perils. Instead of answering as to how the Noticees have performed the said duty and instead of trying to come clean on the allegations levelled against them in the SCN, the Noticees are raising other extraneous issues having no relevance to the present proceedings.

27. The Noticees have also contended that the SCN does not refer to any violation of Companies Act or SEBI Act as far as the process of issuance of GDR is concerned and that evidently, there is no illegality in the manner of subscription to its GDR issuance or receipt of funds by the Company pursuant to subscription of GDR or conversion of GDR to equity shares. The Noticees have further submitted that there is no investors complaint for having suffered losses

or that the Company has not gained any undue monetary advantage out of the GDR issue. It is further contended that the SCN alleges irregularities in intimation to stock exchanges and irregularities regarding documentation executed by the Company in furtherance of the process of issuance of GDR and since the regulatory provisions in relation to issuance of GDR have been enacted and administered by RBI, the present proceedings are being proceeded without jurisdiction. In response to such an assertion made by the Noticees, I note that the SCN has spelt out the allegations clearly, qua the Noticees about how by their acts and the transactions made by them, the Noticees have issued the GDRs in an overseas market by fraudulent methods in order to mislead the shareholders and public at large, that have resulted in violation of securities market law, *i.e.* provisions of SEBI Act and PFUTP Regulations. A company listed in India is bound to follow all the statutory provisions and regulations of SEBI and has to make true and adequate disclosures in terms of the Listing Agreement and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and not to engage in any activity that can amount to defrauding the investors in breach of provisions of PFUTP Regulations. As the SCN has been issued with respect to violations of various specific provisions of Securities law, the Noticees' claim that the present proceedings lack jurisdiction is an absurd and untenable proposition. Further, the question of jurisdiction of SEBI over GDR issue was deliberated by Hon'ble Supreme Court in the case of *SEBI v. PAN Asia Advisors Ltd & anr.*, (2015) 14 SCC 71 in which the observations of the Hon'ble Supreme Court in the matter squarely covers the issue as far as jurisdiction of SEBI is concerned. The relevant extracts of the judgment of Hon'ble Supreme Court dealing with the said issue are placed as under:

"80.It is true that the creation of GDR and its trading in the global market are governed by the respective laws of the country in which they are dealt with. But one special feature to be borne in mind is that in the case on hand, the allegations levelled against the issuing company in connivance with the respondents are that a make believe affair was created, as though there was

genuine creation of GDRs and its investments by the foreign investors on the very date when the GDRs were issued and thereby the global performance of the issuing company in the local market of the issuing company had a boost in the commercial sector, which lured the local investors to develop their keen interest to make the investments on a higher share value by virtue of the investment made by the foreign investors and in that process it is alleged that the issuing company itself provided every scope for the foreign investments to be financed and in reality the ultimate investment was made by Indian investors viz., the ordinary share holders. The said fact would certainly call for a probe at the hands of SEBI on whom a duty is cast under Section 11(1) to protect the interest of investors in securities and the security market.....

81.

82. We are therefore convinced that having regard to the nature of allegations in the interests of investors in securities as well as the statutory obligation/duty cast upon SEBI to protect their interests, SEBI has got every jurisdiction to proceed against the respondents as well as the issuing company. The contention made on behalf of the respondents that the only authority which can proceed against the issuing company can be only for violation of the FEMA Act or the RBI Act is therefore not appealing to us.....

.....

86.....Therefore, we are unable to see any violation of exercise of its jurisdiction since the underlying shares of GDR were created and dealt with as well as traded in the stock market of Indian Territory. Any act which caused any infringement in such trading of those underlying shares by virtue of any malfeasance or misfeasance or misdeeds committed by any person under the Act which worked against the interests of the investors in securities and the securities market, the SEBI was entitled to proceed against such persons who are involved in any of those allegations. Therefore, the reference to those provisions contained in other enactments in our considered opinion does not cause any impediment for SEBI to proceed against the respondents in exercise of its jurisdiction under the SEBI Act, 1992.....”

28. The Noticees have also submitted that the proceeds of GDR issue were fully utilised for the purpose for which GDRs were issued, i.e. for setting up two new sugar mill units in Uttar Pradesh. It is also submitted that the allegation of diversion of funds based on the information obtained by SEBI from Banco Bank are disputed and denied. The documents received from Banco Bank have not been furnished to the Company and the Company has the right to cross-examine all third parties that have purportedly furnished such information, specially, considering the fact that the information pertains to the year 2006 for which the Company's

records are not traceable and even as per the Income Tax Act, 1961, documents are to be preserved only for the last 8 preceding years. It has been claimed that the documentation as well as control over funds till the funds were credited to the bank accounts of the Company in India were controlled by intermediaries. I have already recorded my findings in the preceding paragraphs that the Noticees are raising a bald allegation that documents have not been furnished to them without specifying as to which referred to or relied upon in the SCN document has not been provided to them and how exactly non-furnishing of those documents has caused them prejudice. Further, the submissions of the Noticees seeking cross-examination is also unfounded, considering that no statements have been relied upon in the SCN. I find all the relevant documents relied upon in the SCN have already been provided to the Noticees with the SCN. The Noticees have also been taking shelter under their pleas that enormous delay caused in initiating the proceedings and various other procedural lapses on the part of SEBI have utterly disabled them to explain as to why some amount from the GDR proceeds were transferred to Seazun, and to substantiate their contention that they have no idea about Seazun being the only subscriber to the GDR issue. I have considered the aforesaid explanations offered by the Noticees. As regards the submissions advanced by the Noticees pertaining to the end use of the GDR proceeds, I note that the end use of GDR proceeds per se, has not been brought as an allegation in the SCN, however, the Noticees have not been able to explain as to why and how US\$ 2.27 million was transferred back from its account with Banco Bank, to 'Seazun' out of the total GDR proceeds that were received by the Company from Seazun itself, which raises a strong question mark on the actual usage of the GDR proceeds by the Company.

29. It has also been contended that Section 11B is not applicable in the present case, as the section authorises SEBI to pass directions for protection of investors and there is no power therein to direct third parties to bring back amounts or pass direction which are punitive in nature such as levy of penalty. In this regard, the Noticees are conveniently overlooking the fact that the measures prescribed in sub-section (2) of section 11 read with 11(4) and 11B of SEBI Act, 1992 are merely illustrative that may be taken by SEBI in furtherance of its duties to attain the object of the statute, without affecting the generality of provisions of sub-section (1). The Board has such powers and is duty bound to take measures in any manner as it may deem fit to prohibit, unearth and deal with fraudulent and manipulative acts in securities markets to protect the interests of investors. The SCN issued to the Noticees have spelt out the provisions under which, the desired preventive/remedial measures, if found necessary, would be issued. I note from the above table-2 presented on page 26 that an amount of US \$2.27 million out of the total GDR proceeds (18 million USD) have been transferred by the Company to Seazun and no explanation for making such a transfer to an entity which was its sole subscriber to the GDR issue has been offered by any of the Noticees. Therefore, I am left with no option but to hold that an amount of US \$2.27 million has been diverted for no bonafide reason by the Company from its GDR proceeds to Seazun. The GDR proceeds ought to have been used for the benefit of the Company and its shareholders, but instead, a portion of the GDR proceeds has been refundable back to Seazun without any justification whatsoever, hence, a direction to the Company for bringing back such amount to its accounts in India cannot be termed as punitive in nature. There can be no two opinions that by diverting and returning the said amount of USD 2.27 million to Seazun, the shareholders of the Company have been deprived of the money raised through the issuance of equity capital of the Company (through GDR route) and therefore, such an apparent mischief caused by the Noticees by siphoning/

diverting the amount is required to be remedied. The Company is still listed on the Stock-Exchange and therefore, it becomes all the more important that the shareholders of the Company should not be left disadvantaged due to a fraud played by the Company and its Directors on them by diverting USD 2.27 million out of the GDR proceeds to Seazun. There is no substance in the submissions of the Noticees that there is no power under Section 11B of the SEBI Act to direct third parties to bring back amounts, since as a matter of fact, in the instant matter, there is no direction being contemplated to a third party to bring back the diverted amount. The direction that is being considered in the instant case is qua the Company which is a Noticee in the present proceedings and it is the Company which is entitled to bring back the money that **has been diverted by it to the subscriber without any justification for doing so**. Further, I also find no merit in the submissions of the Noticee that all parties including Seazun in this respect should have been summoned so as to have the say of all parties concerned. The SCN makes allegation against the Company and its directors, and the proceedings is confined to consideration and adjudication as to whether the allegations would sustain based on the material available on record. In this regard, I note that it is the duty of the Company to answer as to why the GDR proceeds had been transferred to Seazun and I find no explanation advanced by the Company or other Noticees in this regard.

30. Further, as regards the contentions of the Noticees that invocation of the purported power of disgorgement has no applicability in the present case, especially when such power did not exist at the time of the alleged violation is concerned, I can state that such contentions are baseless and devoid of any merit. To begin with, the instant proceedings and the allegations made in the SCN do not call for any disgorgement of the illegal gain made by any of the Noticees. It is evident from the SCN that the Noticees through a supplementary SCN, have been asked to

explain as to why the amount diverted/transferred to Seazun should not be directed to be brought back into the books of the Company. Thus the SCN has only addressed the issue of bringing back that portion of GDR proceeds which have been diverted by the Company to Seazun from its overseas Bank account without any justification. Without prejudice to the above, I find that by way of the Securities Laws (Amendment) Act, 2014 an explanation to Section 11B, has been inserted whereby it has been declared that the power to issue such direction (disgorgement) shall be included and shall always be deemed to have been included under Section 11B of SEBI Act. As stated earlier, the present proceedings merely seek to direct the Company to bring back to India the amount diverted by it to Seazun and, no provisions of disgorgement have been invoked in the present matter. Under the circumstances, the argument advanced by the Noticees about lack of power to issue such direction as contemplated/proposed in the supplementary SCN is misleading in facts and is not maintainable under the extant provisions of SEBI Act.

31. The Noticees have denied violation of provisions of PFUTP Regulations and have stated that the allegation of fraud being a serious charge, cannot be established on the basis of disputed facts and hearsay evidence against the parties without giving them an opportunity to make submissions. In this regard, I note that the SCN has clearly spelt out the allegations pointing out at the device, artifice, scheme allegedly engaged or practiced by the Company and by its directors for contriving the financing of the subscription to its GDR issue, without disclosing the true and correct facts to its shareholders and the investors hence, the Noticees have been alleged to have committed fraud upon the investors. The allegations made in the SCN are further reinforced by adequate amount of evidence available in the form of Board Resolution, execution of Credit Agreement and Account Charge Agreement, delay in receipt of the GDR

proceeds, non-disclosures of the relevant specific Board Resolution and other information to the Exchange thereby keeping the shareholders in dark about the aforesaid activities and also other corroborative materials available on record. Hence, the assertions made by the Noticees are unfounded on facts and lack credibility. 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.....”*

32. Applying the above test in the instant proceedings, I am of the view that there are plentiful evidences available on record which sufficiently attest to the fraudulent intent of the Noticees to mislead the investors by concealing material facts from them. Further in my view, the disclosure of the information pertaining to GDR issue in a distorted and misleading manner, had sufficient potential to induce investors to trade in the scrip, hence such misguiding and incomplete disclosures made by the Company deserve to be held as unfair and fraudulent within the ambit of PFUTP Regulations. I further find the observations of the Hon'ble Supreme Court in the case of *SEBI v. Rakhi Trading Pvt. Ltd.*, (2018) 13 SCC 753 is relevant to be relied on, wherein it was held 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 then referring to its own judgment in the case of *SEBI v. Shri Kanhaiyalal Baldevbhai Patel and Ors* (2017) 15 SCC 1 have 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.”

33. The Noticees have also submitted that there is not even a remote allegation of any adverse impact on the market or investors as a result of the GDR issue and rather, the shareholders of the Company have benefited from the inflow of foreign capital pursuant to the GDR issue and the Company has also witnessed exponential financial growth after the inflow of foreign capital. It has also been claimed by the Company that it has always complied with all regulatory requirements and has a robust team of professionals for ensuring compliance with regulatory norms mandating disclosures and there is no other prosecution or proceedings initiated by SEBI or by ROC pending against them. Noticees have further stated that there is no material to suggest any intention of the Company to create an artificial market to make monetary gains or to spike in trading of its shares on account of disclosure dated May 16, 2006 or to suggest that any investor was induced to trade due to improper disclosures thereby has suffered loss. It is also contended that the ‘reasonable investor test’ of whether an investor would use such information to decide on whether to trade in the present case will show that an investor would trade on account of a proposed GDR issue and not on account of the identity of foreign investor subscribing to GDR or on account of nature of documentation such as Account Charge Agreement.

34. The Noticees have also contended that the GDR issue was pursued with full corporate approvals and any ancillary documentation in furtherance of the Company's commitment to proceed with GDR issue is not entirely material for the purpose of disclosure. The Account Charge Agreement only facilitates the modalities of subscription and once the GDR have been issued, and the proceeds in foreign currency have subsequently been received, the allegation of attempting to mislead the investors is misconceived.

35. I have considered the aforesaid arguments of the Noticees which in my view, represent a feeble attempt by the Noticees to wean away the focus from the core issues surrounding their acts to deliberately conceal material information from the knowledge of its shareholders, leading to severe information asymmetry in the minds of the investors about the so called successful subscription to its GDR issue. The issue is not about whether the inflow of foreign funds ultimately benefited the shareholders or the Company has a track record of good regulatory conduct or whether it had to execute many incidental documentations, but the issue is that the Company kept the public in dark about its arrangement with Banco Bank and Seazun to continue a successful GDR issue that smacks of an ill motivated gross non-disclosure on the part of the Noticees. I find that the scheme or artifice to facilitate the subscription of GDR by Seazun is evident with the execution of Credit Agreement and Account Charge, whereby it can be logically inferred that before the issuance of GDR on May 15, 2006 Seazun was already pre decided to be the sole subscriber to the GDR issue and the Company was aware about it's 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 against the loan amount availed by Seazun and by executing the Account Charge Agreement, Company had

consciously restrained itself from using the proceeds of the issuance of GDR for a considerable period of time. Further, I also notice that the Company, despite having identified a prospective single subscriber to its proposed GDR in favour of whom it undertook to pledge the proceeds of GDR so as to secure the subscription by the said single subscriber, deliberately suppressed these vital and material facts from the knowledge of the investors. The Company 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 genuinely successful issue of its securities in overseas market. Further, I would like to rely on the following observation made by Hon'ble Supreme Court in the case of *Rakhi Trading Pvt. Ltd. (Supra)* to contend the submission of the Noticees that no gain is accrued to them or for absence of adverse impact on the Securities Market:

“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.”

36. The Company had informed BSE that *“the Board of Directors of the Company at its meeting held on May 15, 2006, has allotted 24,55,662 Global Depository Receipts (GDRs) underlying 2,45,56,620 equity shares of Rs. 10/- each aggregating to US\$ 18,000,002....”* However, despite being aware about the specific entity who would be subscribing to whole of its GDR issue as per its premeditated arrangement with the Seazun 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 entire proceeds were exposed to the risk of eventually being utilized by Bank to settle the loan obligations of the borrower/subscriber.

37. The afore mentioned declaration made by the Company on May 16, 2006 on the platform of the Stock Exchange about the successful subscription of GDR issue without disclosing the advance arrangement made by it with the Seazun 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 received an overwhelming response in the market abroad and have been very well received by investors abroad, 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 by devising and arranging a scheme through which it ensured a successful issuance of GDR behind the back 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.

38. In this context, I further find proper to refer to observation of Hon'ble Supreme Court of India 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, has 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....”*

39. 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”.*

40. In view of the discussions and observations made in the preceding paragraphs, I find that the entire scheme created by the Company (Rana Sugars) 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 an announcement on May 16, 2006 that the GDR have been successfully allotted and then not disclosing to the Public the relevant Board Resolutions and details of Account Charge

Agreement and its arrangement with the sole subscriber to secure the obligation of its loan liability etc. 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, the 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. I also note that since the Company has not provided any justifiable reasons for the diversion/transfer of US \$2.27 million to Seazun from its Bank account out of the total GDR proceeds deposited therein, the charge of diversion/siphoning off of these funds stands established.

ISSUE NO. 2: *Whether the Noticees no. 2 to 7 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?*

41. I note from the SCN that the Directors of the Company, viz:- the Noticees no. 2 to 7 attended the Board Meeting held on January 31, 2006. Accordingly, on the basis of such authorization given by the Board, the Noticee no. 3 has signed the Account Charge Agreement on behalf of the Company, which provided *inter alia*, for the GDR proceeds to be kept as a security towards the loan availed by Seazun for making subscription to the GDR of Rana Sugars.

42. I note that the Noticee Directors of the Company i.e., the Noticees no. 2 to 7 have submitted their written replies, each dated August 20, 2019 and as pointed out earlier, the contentions made in these replies are almost identical to the explanations submitted by the Company, which have already been dealt with by me in the preceding paragraphs under the 1st issue. I note from the records that Noticee no. 2 was the Promoter Chairman of the Company, Noticee no. 3 was the Managing Director of the Company and Noticees no. 4 to 7 were the Non-Executive Directors of the Company.

43. Admittedly, the Noticee no. 3 was the Managing Director of the Noticee Company and was in-charge of the day to day management of the affairs of the Company. As per the Board Resolution of the Company dated January 31, 2006, the GDR proceeds were authorized/permitted to be kept as a security against the loans, if any. I find that an amount of USD 18 million, were raised through GDR as per the objects of the issue. Therefore, in the absence of any other contingency, I don't find that there could be any other reason to keep the GDR proceeds as a security for any loan that may be taken unless any loan taken by the Company itself. The Noticee no. 3 being the Managing Director of the Company has not brought any documents or reason to substantiate, as to whether as on January 31, 2006, there was any proposal on part of the Company to take any loan outside India apart from the proposal to raise capital through the GDR issue. Therefore, in the facts of present case, the reasons for passing of a Board Resolution on January 31, 2006 authorising the Banco Bank to hold the GDR proceeds of the Company as a security against a loan remained a mystery and an unexplained proposition till April 12, 2006/May 15, 2006, when the Credit and Account Charge Agreement were signed which exposed the hidden intent behind passing that specific

Board Resolution on January 31, 2006. Further, by executing the Account Charge Agreement, the Noticee no. 3 knew that the GDR subscription amount was liable to be kept as security for the loan taken by the Seazun. The Account Charge Agreement signed and executed by the Noticee no. 3 also incorporated suitable cross references to the stipulations in the Credit Agreement and accordingly the Noticee Company undertook to discharge the liability of Seazun, in case Seazun defaults in repaying the said loan taken by it from Banco Bank.

44. The aforesaid observations leave no iota of doubt that the Noticee no. 3 was very much seized of the intent behind the Resolution passed as early as on January 31, 2006 pursuant to which he has signed the Account Charge Agreement to secure the loan taken by the Seazun for subscribing to the GDR of Rana Sugars. Therefore, the argument of the Noticee no. 3 that he did not know anything about the Account Charge Agreement or about the fraudulent scheme is a self-effacing specious argument which cannot be relied on, more particularly, when I find that the resolution of the Company were provided by the Company to the Banco Bank as a condition precedent to the approval and disbursal of the loan to Seazun and the same were found to have been furnished as enclosures to the Credit Agreement. Undoubtedly, the Noticee no. 3 was the Managing Director and was responsible for the day to day affairs of the Company and it was certainly his primary duty to come out completely clean before the Board with all the facts, strategy, steps proposed to be followed and compliances to be made with respect to the proposed GDR issue, before moving a Resolution before the Board. He being in the driving seat of the Company knew how to steer the proposed issuance and therefore ought to have clarified to the Board Members about the pre-arrangement with the Seazun and Banco Bank and the proposed Account Charge Agreement that was contemplated to be executed with the Bank as part of his pre-decided arrangement with the Bank and the potential

subscriber. Therefore, it is not open to him to plead ignorance of those facts and the implications and consequence of the Board Resolution dated January 31, 2006 and he cannot now take shelter under the plea that he signed the documents including the Account Charge Agreement blindly on good faith and under influence of the consultants/intermediaries to the issue. The Noticee no. 3 is rather answerable to the Board for keeping the Board members in the dark about the true implications behind moving the aforesaid Board Resolution and for signing the Account Charge Agreement without disclosing the same to the Company or to the Public, even after the completion of GDR issue.

45. Having held that the Noticee Company had resorted to a fraudulent scheme and had made false, incomplete and misleading disclosure to the investors, it would be inconceivable to think that the person who was instrumental in passing the Resolution and further executed the desired agreements to enable Seazun to successfully subscribe to the GDR without paying any consideration at the time of subscription, was not aware of the consequences of the Resolution and execution of the Account Charge Agreement. In the facts of the matter, it becomes clear that the sole subscriber to the GDR of Rana Sugars was Seazun and no one else. In these circumstances, the argument advanced by the Noticee no. 3 that he was unaware of the scheme and that the information disclosed to the Stock Exchange regarding the successful subscription to the GDR of the Company was on the basis of information received from the consultants/intermediaries, lacks any persuasive value and rather shows that it was all done to mislead the investors in India. Having opened an account on behalf of the Company with Banco Bank for depositing the GDR subscription amount of USD 18 million and having executed the Account Charge Agreement so as to secure the loan taken by the Seazun for subscribing to the GDR of the Company, the Noticee no. 3 cannot afford to contend that he

honestly believed that there were six other foreign investors and not Seazun who had subscribed to the GDR of Rana Sugars and that he was not aware of any 'security' having been created by the Banco Bank out of the Company's GDR proceeds to ensure subscription to the GDR by the Seazun. I would rather believe that the Noticee no. 3, being the executive in charge of the Company, was involved in the fraud perpetrated in relation to the GDR issue of the Company and was very well involved in the execution of Account Charge Agreement and Credit Agreement with Banco Bank. Thus, despite being aware of the transaction between Rana Sugars and Seazun, the Noticee no. 3 has grossly failed to take steps to disclose the same to the investors and Shareholders of the Company.

46. I note that the Noticees no. 2 to 7 have not disputed their directorship during the relevant period when the Noticee Company had issued GDR. They have also not disputed that they had attended the Board Meeting dated January 31, 2006. It is also clear that they remained Directors during the period when the Company made those incomplete, selective and misleading disclosures to the BSE and suppressed vital information from its Shareholders. On a perusal of the Annual Report of the Company for the FY 2017-18, I find that all these directors have continued to remain as directors in the Company at least till March 31, 2018. Needless to state that issuance of GDR was a very crucial decision of the Company and it was expected from the Board member to be careful and cautious while deliberating and deciding on the course of action. Noticee no. 2 was the Chairman of the Company and as per the minutes of the Board meeting held on January 31, 2006, he was the Managing Director from January 31, 2002 and was redesignated as the Chairman on same remuneration terms. Undoubtedly, Noticee no. 2 (Mr. Rana Ranjit Singh), Chairman of the Company along with the Managing Director (Noticee no. 3) were in charge of the day to day affairs of the Company

and it was certainly their primary duty to come clean before the Board with all the facts, strategy, steps to be followed and compliances to be made with respect to any proposed issue, before moving a Resolution before the Board. However, with respect to the Non-Executive Directors of the Company, even assuming for a moment that the Chairman and Managing Director have acted fraudulently by keeping the Board Members in dark about the proposed Account Charge Agreement and the hidden arrangement made by them with Seazun, I find that Noticees no. 4 to 7 have not brought any evidence to show that they had acted diligently while discharging their role as Non-Executive Directors. I note that Noticee no. 6 is a promoter/Non-Executive Director while Noticees no. 4, 5 and 7 are Non-Executive/Independent Directors. I further note from the Annual Report for the FY 2006-07 that all these three Non-Executive Directors Independent Directors were also part of the Audit Committee. In any case, in their written submissions or even during their Personal hearing, none of these Directors has alleged that he has been misled by the Company or by the Chairman/Managing Directors (Noticees no. 2 and 3) with regard to the GDR issue. This shows that they have tacitly supported their own actions by authorising Noticee no. 3 to sign the Account Charge Agreement amongst other documents, to facilitate the financing of the Company's GDR issue. Even, subsequent to the issue and allotment of GDR, no steps or actions seem to have been taken by the Noticees no. 4 to 7 to ensure that the GDR proceeds are received by the Company in time, which shows that they have not acted diligently in discharging their role as directors on the Board of the Company. Moreover, by not raising concern over non receipt of the GDR proceeds for Company's utilisation immediately after the issues or by not questioning the management about the diversion of 2.27 million USD from GDR proceeds to Seazun, they have further raised a strong suspicion about their possible collusions with the Company and other Directors. The presumption about their consent and

collusion in the entire scheme further get strengthened by the fact that even after receipt of the SCN, none of the Non-Executive Directors has so far bothered to even enquire from the Noticee no. 3 as to why and how he conducted himself in transacting with Banco Bank and in executing the GDR issue on behalf of the Company which has caused issuance of SCN to them. Turning a blind eye and allowing something to be done in disregard of the duties of a Director can't be considered as a mere omission, but has to be perceived as an active collaboration with the other Noticees who have translated the fraudulent scheme into actual implementation.

47. In my considered view, the Directors cannot absolve themselves from their onerous duty to look after the best interests of the Company and cannot escape from their fiduciary duties towards the minority shareholders by taking the plea that they have done everything by relying on the expertise of the consultants/intermediaries. Therefore, apart from the Chairman and the Managing Director who certainly acted fraudulently, the other Non-Executive Directors have also not acted in the interest of Shareholders of Noticee no. 1 (Company) and the investors of Securities Market, and rather by their conduct they appear to have acted in collusion, albeit passively, with other Noticees.

48. As held by me, the Company has used the GDR mechanism to mislead and induce the Indian investors. The Company has not divulged its fraudulent arrangement in the form of the Account Charge Agreement and Credit Agreement in its disclosure made in the Indian securities market and by merely informing that the GDRs were successfully placed, has painted 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

innocent 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 optics about the successful GDR issue and get induced to invest in its shares expecting better returns. The Noticees no. 4 to 7 being Non-Executive Directors of the Company, ought to either 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 or should have acted diligently at least subsequent to the GDR issue by raising appropriate questions before the management of the Company, in order to establish their bonafide as being victim of a fraud and not part of the fraud . I note that the Noticees no. 4 to 7 have not shown the much desired diligence on their part as Non-Executive Directors in the entire GDR issue or even otherwise, in the functioning of the Company.

49. The Hon'ble Supreme Court, in the matter of *Rakhi Trading (supra)* 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. The 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. Rana Inder Pratap Singh (Noticee No. 3) on behalf of the Pledgor i.e., Rana Sugars. 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 Seazun to avail loan from Banco Bank for making subscription to the entire GDR issue of Rana Sugars. This was made possible by the Company by providing its GDR proceeds as security for the loan extended by Banco Bank to Seazun. The GDR issue would not have been subscribed, if the Company had not given such a security against the loan taken by Seazun. By entering into such an arrangement, the Noticees no. 2 to 7 have led the investors in India to believe that the issuer Company i.e. Rana Sugars enjoyed an immensely 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 Seazun with the help of the Company itself. Therefore, in effect, the Directors of the Company have facilitated the subscription of GDR by Seazun through a loan obtained by it from Banco Bank against which, the GDR proceeds of the Company were kept as security on the basis of the authorization given by the Board of Directors of the Company through the Resolution passed by them on the January 31, 2006 and all these transactions and activities were undertaken behind the back of the Shareholders and other investors of the Securities Market. It is only when Seazun repaid the loan, presumably by liquidating the underlying shares in the Securities Market, that the Company could get back its GDR proceeds from Banco Bank for its utilisation. In my view, apart from the Issuer Company (Rana Sugars) i.e. Noticee no. 1 and Managing Director (Noticee no. 3), its Chairman (Noticee no. 2) who have undoubtedly concealed the above information from the Shareholders, all other Non-Executive Directors (Noticees no. 4 to 7), have also failed to advance any credible explanation supported by any evidence to prove their innocence, hence, it constrains me to hold that they too have acted fraudulently along with Noticees no. 1, 2 and 3, 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 (1) 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 shall bring back a sum of USD 2.27 million, which was diverted to Seazun, into the Company's bank account in India within a period of three months from the date of this Order.
- b) The present directors of the Company are directed to take appropriate necessary steps to ensure compliance of the above direction by the Company.
- c) 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 the above direction, within a period of 15 days from the date of completion of period of three months as directed at (a) above.

- d) Noticee no. 1, i.e the Company, is restrained from accessing the Securities Market including by way of 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 (5) years from the date of this order.
- e) 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 (years)
1.	Mr. Rana Ranjit Singh	ADXPS5464N	Two years
2.	Mr. Rana Inder Pratap Singh	AVNPS6106M	Three years
3.	Mr. A. S. Sodhi	ALZPS2923G	One year
4.	Mr. S. A. S. Bajwa	ACDPB9217H	One year
5.	Mr. Rana Veer Pratap Singh	BAFPS9170M	One year
6.	Mr. Baljit Singh	AIJPS7302L	One year

52. It is clarified that during the period of restraint, the existing holding of securities 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: JANUARY 31, 2020

S. K. MOHANTY

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA