

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

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

In the matter of Visu International Limited

In respect of:

Noticee No.	Names of the Noticee	PAN
1.	M/s. Visu International Ltd	AABCV1500A
2.	Mr B. Prabhakar Reddy	ACVPB8307N
3.	Dr. K. Visawanath Reddy	Not Available
4.	Mr. Mukesh Chauradiya	AAVPC0966A

(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 **Visu International Limited** (hereinafter referred to as “**Visu / Company / Noticee no. 1**”). The relevant period of investigation was from April 01, 2006 to May 31, 2006 (hereinafter referred to as “**Investigation Period**”)

2. It was observed that Visu had issued 2.175 million GDR for US\$ 9.66 million on April 21, 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
21-Apr-06	2.175 (US\$ 4.44 per GDR)	9.66	ICICI Bank Ltd., Mumbai	2,17,50,000 (10 shares for every 1 GDR)	Deutsche Bank Trust Company Americas	Credo Corporate Finance Limited, London	Banco Efisa	Luxembourg Stock Exchange

3. During the investigation, it was noted that Banco Efisa (hereinafter referred to as **“Banco 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”**) for enabling them to subscribe to the GDR issued by Visu and it was observed that the entire 2.175 million GDR were subscribed by only one entity, i.e. Seazun.

4. Investigation further revealed that the Company pledged its entire GDR proceeds with Banco Bank as a security against the loan availed by Seazun from Banco Bank for subscribing to GDR of Visu. For this purpose, the Company entered into an Account Charge agreement dated April 20, 2006 (hereinafter referred to as the **“Account Charge Agreement”**) with Banco Bank and the said agreement was signed by Noticee no. 4 on behalf of Visu. Investigation also found that Noticee no. 2 and Noticee no. 3 were directors of Visu during the relevant time of signing of Account Charge agreement and also participated in the Board meeting of the Company dated January 30, 2006, in which a resolution was passed for opening an account with Banco Bank wherein, the GDR proceeds would be deposited and a further resolution was passed authorizing Banco Bank to use the GDR proceeds of

the Company as security against loan. Another resolution authorising Noticee no. 4 to execute any documents on behalf of the Company with Banco Bank was also passed in the aforesaid Board meeting. Later on, the loan against which the GDR proceeds of the Company were used as security, turned out to be the loan taken by Seazun to subscribe to the entire quantity of GDR issued by the Company. It was further observed that the GDR issued by the Company to Seazun were subsequently converted into equity shares and sold in the Indian Securities Market. During the course of investigation, it was also found that the Company had not disclosed to the investors about the arrangement so made by it with Banco Bank to ensure the successful issuance/subscription/allotment of the GDR by facilitating a loan to Seazun in terms of the aforesaid Credit Agreement. It was further concealed from the public that the proceeds of GDR would be kept as security with the Banco Bank and would not be available for the Company's immediate use. Thus, the Company misled the Shareholders/investors at large by providing partial and distorted information, about issuance of GDR to the public.

SHOW CAUSE NOTICE, REPLY AND HEARING:

5. Based on the above noted findings made in the investigation, a common Show Cause Notice (hereinafter referred to as "SCN") dated June 27, 2017 was issued to all the Noticees, wherein Noticee no. 1 was charged with the violations of Section 12A (a), (b) & (c) Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, "SEBI Act, 1992") read with Regulations 3(a), (b), (c) & (d), 4(1) and 4(2) (f), (k) & (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations, 2003") and Noticee no. 2 to 4 were charged with the violations of Section 12A (a), (b) & (c) SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d) and 4(1) of PFUTP Regulations, 2003. The SCN called 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.

6. From the available records, I note that subsequent to the issuance of SCN, Noticee no. 2 submitted his reply to the SCN vide letter dated September 25, 2017. Noticee no. 1 (Company) has vide letter dated November 05, 2018, stated that the SCN is missing from its office records and hence sought a copy of the SCN. Accordingly, a copy of the SCN was made available to the Noticee no. 1 vide email dated November 28, 2018. I also note that Noticee no. 4 filed his reply to SCN vide email dated September 5, 2017 followed by a letter dated March 16, 2018. In compliance with the principles of natural justice, Noticees have been provided with an opportunity of personal hearing on November 15, 2018, however, only Noticee no. 4 appeared on the date of hearing. During the personal hearing, Noticee no. 4 submitted additional written response in the matter. I note that Noticee no. 2 has subsequently requested for another date of hearing vide email dated November 14, 2018. The request of the Noticee was duly considered and later on, the Noticee no. 1, 2 and 3 were provided with one more hearing opportunity on February 27, 2019. On the said date, Noticee no. 2 appeared and made submissions on behalf of self as well as on behalf of the Noticee no. 1. Subsequent to the hearing, the Company (Noticee no. 1) vide letter dated February 21, 2019 submitted a written reply in the matter. However, I find that no one has appeared on behalf of Noticee no. 3 on the above mentioned date of personal hearing. Nonetheless, vide letter dated November 28, 2019, another opportunity was granted to the Noticees for submitting additional replies/responses, if any. In response to the same, Noticee no. 1, Noticee no. 2 and Noticee no. 4 have filed their additional submissions vide letters dated December 07, 2019 and December 05, 2019 respectively. However, Noticee no. 3 has neither submitted any written reply nor has appeared before me for personal hearing.

7. I have perused the aforementioned written replies submitted by the Noticees and after having heard them personally through their authorized representatives, the contentions / submission of the Noticees are summarised as below:

Noticee no. 1 (The Company) and Noticee no. 2 (Mr B. Prabhakar Reddy):

- a) The day to day affairs, the corporate funding, major policy decisions of the Company were solely handled by the Chairman Late Shri C. Chandrasekhar Reddy in Ed & tech International Limited (Formerly known as Visu International Limited). He was the lone person who had complete knowledge on GDR and related matters and he passed away in the year 2014.
- b) Noticee no. 2 was an independent Director during the Investigation Period and does not have sufficient knowledge on the GDR issue. He was appointed as an independent non-executive Director of Visu in the FY 2002-03 and continued as Independent Director till FY 2009-10. He only attended the Board meetings whenever they were called for by the Company and did not participate in the day to day affairs of the Company.
- c) The Board Resolution as such does not specifically authorize Mr. Mukesh Chauradiya to enter into an Account Charge Agreement. The bare perusal of the Board resolutions would show that they are general in nature and can be understood to be in the ordinary course of business. The said agreement was not placed before the Board for approval. There was no occasion to know about the said Account Charge Agreement as it was entered into after three months of the passing of Board Resolution i.e., on April 20, 2006.
- d) With regard to non-disclosures to BSE regarding entering into Account Charge Agreement, Noticee no. 1 and Noticee no. 2 have submitted that as the Company has become defunct, they are unable to trace any documents to verify the disclosures made to the stock exchanges.

Noticee no. 4 (Mr. Mukesh Chauradiya):

- e) The Noticee has denied all the allegations contained in the SCN stating that he was neither a Director, Officer or an Employee of the Company, nor was he responsible for the management of Visu.

- f) He was an employee of Vintage FZE, a company fully owned and controlled by Mr. Arun Panchariya. My employer had recommended my name to Visu for representing Visu in relation to its bank account to be opened with Banco Bank.
- g) The Board Resolution authorized Noticee no. 4 to sign, execute any application, agreement, escrow agreement, documents, undertakings confirmations, declaration and other paper(s) from time to time as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, If and when so required.
- h) It is apparent from the Board Resolution that the bank account was opened specifically in relation to the GDR issuance by the Company. The Board members had contemplated the underlying loan arrangement for subscription to its GDR and had expressly authorized Banco Bank to use the GDR proceeds as security in connection with loans. My role was limited to act as per the express authorization by the Board of Visu and I had no involvement in deciding any matters in relation to the GDR issue or its proceeds.
- i) The Account Charge agreement was signed in London and was subject to Portuguese Law and Portuguese Court. Further, it was signed on April 20, 2006, after the loan was disbursed to Seazun Ltd. (April 12, 2006).
- j) The Noticee no. 4 has submitted that as per the settled position of law laid down by the Hon'ble Supreme Court and in the facts and circumstances of this case, SEBI does not have jurisdiction in respect of the matters relating to issue of GDR. The Noticee has relied upon the judgement of *SEBI v. PAN Asia Advisors Ltd & anr.*, (2015) 14 SCC 71 rendered by Hon'ble Supreme Court to state that in order to claim its jurisdiction for taking action in a matter arising out of a GDR issue, SEBI must establish that the same had adversely impacted the Indian securities market.

- k) The Noticee has further submitted that despite being aware of the allegations levelled by SEBI in respect of GDR issued by us, neither Ministry of Finance nor the RBI has chosen to proceed against Visu or any of the Noticees including me despite being the authorities under whose administrative control the matters raised in the present proceedings fall.
- l) Even the foreign regulatory authorities in whose jurisdiction the GDR were issued by us have not chosen to take any action against VISU or any other Noticee including Noticee no. 4, which leads to the implied conclusion that they also did not find any discrepancy in the GDR's issued by VISU.
- m) He has not derived any unfair advantage as a result of the alleged violations.

ISSUES FOR CONSIDERATION AND FINDINGS:

8. I have perused the SCN dated June 27, 2017, along with its annexures, the replies filed by the Noticees, submissions made during the course of personal hearing, and written submissions filed after the personal hearing, as detailed in para 7 above. After perusing all the 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 4 have violated Section 12A(a), (b), (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations?

ISSUE NO. 1: Whether the Company i.e. Noticee no. 1 has violated Section 12A(a), (b), (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4(1), 4(2) (f), (k), (r) of PFUTP Regulations?

9. Before I proceed to examine the afore stated issues and decide as to whether on the facts of the matter, the aforesaid violations alleged in SCN stand established or not, it would be proper to reproduce hereunder, the relevant provisions of SEBI Act

and PFUTP Regulations alleged to have been violated by the Noticees in the instant matter. The same are reproduced below:

12A. No person shall directly or indirectly –

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in*

contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices-

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

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

(a)

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors

(r) planting false or misleading news which may induce sale or purchase of securities.

10. I note that the Company had issued 2.175 million GDR on April 21, 2006 for raising 9.66 million US\$. The table no. 1 presented on page no. 1 shows that the number of underlying shares issued by the Company against the said 2.175 million GDR issue, were 2,17, 50,000. Thus the ratio of number of GDR issued to equity shares of the Company was 1:10.

11. The Board of Visu had passed a Resolution in its Meeting on January 30, 2006, wherein, *inter alia*, a decision was taken to open an account with Banco Bank for the purpose of depositing the GDR Proceeds therein and also to authorize Banco Bank to use the GDR proceeds as security against loan. Relevant extracts of the Board Resolution are as under:

“RESOLVED THAT a bank account be opened with Banco Effisa S. A. (“the Bank”) or any of the branch of Banco Effisa S. A., including the offshore Branch, outside India

for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of the Company.

RESOLVED FURTHER THAT Mr. Mukesh Chauradiya, Authorised Person be and is hereby authorized to sign, execute any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time as may be required by the bank and to carry and affix, Common Seal of the Company thereon, if and when so required.

.....RESOLVED FURTHER THAT Mr. Mukesh Chauradiya, Authorised Person 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 offshore Branch, for the purpose of operation of and dealing with the said bank account and carry out other relevant and necessary transactions and generally to take all such steps and to do all such things as may be require from 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"

12. On a perusal of the aforesaid Board Resolution (copy enclosed as annexure -3 of the SCN), I note that the said Resolution was approved by the Board on January 30, 2006 for inter alia, opening of a bank account with Banco Bank for the purpose of receiving subscription money in respect of the GDR issue of the Company. According to the Resolution, the Noticee no. 4, Mr. Mukesh Chauradiya 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. 62640 67.15.001 in its name in Banco Bank. It was further resolved by the Board to authorize the Banco Bank to use the funds so deposited in the said bank account as security in connection with loans, if any. A comprehensive reading of all the above said Board

Resolution indicates that a decision was taken as on January 30, 2006 itself about the proposed issuance of GDR and at that very stage a decision was also taken 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. The said contemplation of using the proceeds as security for loan was contrary to the common commercial practise. 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. The Company, instead of raising funds through domestic means thought it proper to explore the possibility of raising funds offshore but did not seem to have any intentions to make use of such funds for the benefit of the Company. In this regard, I note that the information with regard to the aforesaid Board Resolution, particularly the resolution for keeping the GDR proceeds as security against loan if any, was not disclosed to the Shareholders of the Company, thereby misleading the investors in India by concealing such an important information from them.

13. As noted in the beginning, that Seazun had signed a Credit Agreement dated April 12, 2006 with Banco Bank for availing a loan of up to 10 million US\$ so as to subscribe to the full amount of the GDR issue of Visu worth of US\$ 9.66 million. In this regard some of the relevant clauses of the said Credit Agreement, are cited as under:

- a) ***“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 \$10,000,000.*
- b) ***Purpose-*** *The borrower shall use the proceeds of the advance to subscribe for global depository receipts to the value of up to US \$10,000,000 issued by Visu on the terms of the Listing particulars to be delivered to the Luxembourg Stock Exchange.*

c) **Drawdown**

Drawdown period: Subject to the terms of this agreement, the loan shall be made to the Borrower at any time during the Drawdown period by way of a single advance, when requested by means of a Drawdown notice.

Drawdown Notice: When the Borrower wishes to drawdown under the Facility, it shall give a duly completed Drawdown notice to the Bank to be received not later than 11.00 a.m. on the third business day before the Drawdown Date.

A drawdown notice shall be irrevocable and the borrower shall be obliged to borrow in accordance with its terms."

14. I also note that apparently on the strength of the 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. 4, Mr. Mukesh Chauradiya had signed an Account Charge Agreement with Banco Bank dated April 20, 2006 therein giving an undertaking on behalf of Visu to deposit in the designated account of Visu with Banco Bank, an amount not exceeding the loan availed by Seazun for subscribing to the GDR of Visu, as a security against the obligations of Seazun under the said 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\$ 10,000,000.

2. Account Charge

Subject to the terms of this agreement, Visu deposited in its designated account with bank (hereinafter the Account) an amount not exceeding US\$ 10,000,000 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 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, Visu 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 Visu, release the deposit made in the account.

Visu covenants with the Bank that it will on demand pay and discharge the secured obligations when due to the bank.

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11. Notices

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

(b) Delivery: *any notice or other communication to be given by one Party to another under this Agreement shallbe given to that other Party at the respective addresses given herein under.....*

Visu

104 Lumbini Enclave, Opposite NIMS Hospital

Punjagutta, Hyderabad - 500082

Attention: Mr. Mukesh Chauradiya"

15. On a careful and combined examination of the contents of the relevant clauses of the “Credit Agreement” signed by Seazun and the “Account Charge Agreement”, signed by Visu with Banco Bank, following observations are forth coming: -

- a) The Account Charge Agreement was executed mainly to secure the obligations of the borrower i.e. Seazun, which was granted a loan for 10 million US\$ by Banco Bank. The Account Charge Agreement also mentions that the Company (Visu) will deposit in its designated account with the Banco Bank, an amount not exceeding US \$10,000,000 as security for all the obligations of Seazun in terms of its Credit Agreement and the Company thereby assigned 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, only upon payment of the amounts due under the Credit Agreement by Seazun, Visu could withdraw equivalent amount from its designated account in the Banco Bank and also only upon payment and final discharge of all the obligations by Seazun under its Credit Agreement, that the rights and obligations of the parties(i.e. Visu and Banco Bank) under the Account Charge Agreement shall cease to exist and thereafter, Banco Bank shall release the remaining amount of bank balance lying in the account of the Company to Visu.
- c) The Account Charge Agreement also mentions that Visu has undertaken to pay and discharge the obligations of Seazun under their Credit Agreement to the Banco Bank. Accordingly, Banco Bank was entitled to apply all or any part of the deposit made by Visu in its designated account 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, Visu could not get

the GDR proceeds at its disposal for its business utilization until 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 Visu upto the value of USD 10,000,000. 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 Visu with Banco Bank and any other documents acknowledging as security for the obligations of the Obligor (Seazun and Visu).
- f) Thus, in the Credit Agreement itself executed by Seazun to avail loan from Banco Bank, the Company, Visu, was christened as an obligor, although the Company was not a signatory to the said Credit Agreement. It implies that Seazun was completely assured by Visu at the time of signing the Credit Agreement that Visu will take upon itself the entire obligation of loan liability of Seazun. Accordingly, clause 2 of the Account Charge Agreement authorized Banco Bank to apply all or any part of the deposits made by Visu in its designated 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, the security including proceeds of GDR to be deposited in its designated account would be realizable by Banco Bank.
- g) The Credit Agreement and Account Charge Agreement were thus inextricably connected and executed in a manner that clearly points out that the Noticee no. 1 i.e. the Company, had consciously facilitated the loan to Seazun so as to ensure success of issuance of GDR and to create a good overseas market impact about the scrip of the Company. The above stated acts were performed by the Company knowing well that the GDR proceeds

cannot be used for its business, until the repayment is made by the borrower cum subscriber to its entire GDR issue, i.e. Seazun.

16. As highlighted above, the Company (Noticee no. 1) has taken a plea that since it has become defunct, it is unable to trace any documents to verify the disclosures made by it to the stock exchanges. At this juncture, it would be appropriate to examine all the disclosures made by the Company to the Stock Exchange during the relevant period of time: -

24 May 2005

Outcome of Board meeting held on May 23, 2005

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Board of Directors at meeting held on May 23, 2005, has inter-alia accorded to issue of 30 million shares to the Persons resident outside India by way of GDR/ADR/FCCB etc.

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28 June 2005

Outcome of EGM

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Authorised the Board to issue and allot, in the course of international offerings in one or more foreign markets, in the form and/or name of Global Depository Receipts or otherwise, equity shares and/or any securities convertible into equity shares at the option of the Company and/ or holder of the securities representing either Equity shares or convertible securities representing either Equity shares or convertible into equity shares ("Securities") subscribed in foreign currency (ies) to foreign investors for an aggregate number equity shares or such receipts or instruments equivalent to 30 million equity shares of Rs 10/- each including the over allotment option, if any, as decided by the Company/underwriters, such issue and allotment to be made at such time or times, in such tranche or tranches, at such Price or Prices at a discount or premium to market price or prices, in such manner as the Board may, in its discretion think fit.

.....

25 April 2006

Global Depository Receipts (GDR) of the Company has been officially listed on the Euro MTF of Luxembourg Stock Exchange, UK since April 24, 2006.

The Company was in the process of issuing capital by way of Global Depository Receipts (GDR) Issue. The Lead Managers to the GDR Issue informed that the Issue has closed on April 20, 2006. The allotment of the aforesaid 2.175 million GDR underlying 21.75 million equity shares of Rs 10/- each is done in the Board Meeting of the Company held on April 21, 2006.

17. After a careful reading of the afore-stated disclosures, I note that the Company has made no disclosures about the Board Resolutions pertaining to usage of GDR proceeds by Banco Bank as a security against loan, if any, as passed in the Board meeting dated January 30, 2006. In the aforementioned disclosures, the Company has also consciously concealed the information regarding authorizing Mr. Mukesh Chauradiya to perform various activities including opening and operating of a bank account in Banco Bank. The Company has also not disclosed its pre-planned arrangement for getting the GDR subscribed by Seazun by facilitating a loan to Seazun from Banco Bank and its decision to keep the GDR proceeds receivable from Seazun as security against the loan availed by the Seazun. Under the circumstances, such incomplete and misleading disclosures about the successful allotment and listing of GDR were bound to create an artificial impression about a strong demand by the foreign investors to subscribe to the equity capital of the Company. Thus, it is clear that the Company has not disclosed to the stock exchanges, the most relevant information pertaining to GDR issue on the basis of which crucial resolutions have been passed by the Board.

18. Apart from non-disclosure of crucial information to the Exchange which are the subject matter of the present SCN, it is also observed that there are certain glaring

inconsistencies in the submissions made by the Noticee Company which further strengthens the veracity of allegations made in the SCN, as pointed out below:

- a) The Account Charge Agreement signed by the Company with Banco Bank bears unmistakable references to Seazun and the Credit Agreement of Seazun with Banco Bank. Moreover, the contents of the Account Charge Agreement signed by the Company shows how it is intertwined with the contents of the Credit Agreement of Seazun. Therefore, the contentions of the Noticee no. 1 that it was not aware about the GDR issue is utterly false and deserve to be rejected.
- b) It is apparent from the Account Charge Agreement and the submissions of Noticees that the Noticee Company was very much aware about keeping the GDR proceeds as security to facilitate the loan sanctioned to the subscriber (i.e. Seazun). In such an eventuality, nothing prohibited the Noticee from making a specific disclosure to the effect that GDR proceeds were to be kept as security towards loan availed by the overseas subscriber from the same Bank in which GDR proceeds were to be deposited. However, the non-disclosure of the same shows that Noticee never intended to come clean on the matter to its Shareholders.
- c) The Credit Agreement and Account Charge Agreement further indicate that the Noticee Company was aware that there would be a single subscriber to the entire GDR issue and Noticee Company was aware that Seazun would be the only subscriber to the GDR and, that proceeds of GDR received from them would be kept as security against the loan availed by the subscriber for making subscription to the GDR issue of the Company.

19. In view of the afore-stated observations, I find that the disclosures made by the Company suffered from gross deficiencies as the Company never disclosed that Seazun has been identified as the only entity to subscribe to the entire GDR and that the Noticee Company had agreed to facilitate their subscription by undertaking as

an 'obligor' to Banco Bank for keeping the GDR proceeds as security with Banco Bank, subject to repayment by the borrower/ Seazun. Further, investors have not been informed that in case of default by Seazun, Company would be liable and the proceeds of GDR kept as security would be used by Banco Bank to settle the default amount of Seazun leading to forfeiture of the entire GDR Proceeds so received by the Company. Under the extant domestic securities laws, a company listed in India is required to make true, fair and proper disclosures to the Shareholders and the Securities Market. It is now amply clear that the Noticee Company has not made its disclosure in a fair manner and rather has concealed very crucial material information pertaining to its actions & transactions in connection with the GDR issue, from its Shareholders investors and from the Public at large.

20. The Company's submissions that it was not aware of the Account Charge Agreement in terms of which the proceeds/ balances lying in the Bank account of the Company were committed/undertaken to be utilized by Banco Bank as a security against the loan advanced to Seazun; is an impossible explanation far away from truth. If the Company is so aggrieved with Banco Bank's action, it is not known as to why the Company has not till date, contested the contents of the Account Charge Agreement before Banco Bank or in a competent court of law, despite having been served with the SCN in the year 2017. I rather also note that the Noticee has not disputed the execution and contents of the Account Charge Agreement but has merely taken a trivial plea that it was not aware that the same would be used to secure the loan given to Seazun, which is again an improbable and illogical explanation and not acceptable. As pointed out earlier, the Account Charge Agreement makes specific stipulations with respect 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 itself with Banco Bank cannot be pleaded by the Company. In fact, the contents of the Account Charge Agreement make it clear that it was entered into by the Company with Banco Bank only to create a charge on its Bank account and the proceeds lying therein against

the loan advanced to Seazun to enable Seazun to subscribe to the GDR issue of the Company. Hence, such submissions of the Company feigning ignorance about the contents of their agreements are merely an afterthought exercise only to evade the consequences of the present proceedings. Therefore, the contention of Noticee that it was not aware as to how the Banco Bank has used its GDR proceeds for securing the loan given to Seazun is undeniably a lame and specious excuse that deserves to be rejected.

21. The execution of Credit Agreement dated April 12, 2006 and Account Charge Agreement dated April 20, 2006 before the issuance of GDR on April 21, 2006 shows that Seazun was already pre decided to be the sole subscriber to the GDR issue and the Company was aware about its would-be subscriber before the actual issuance of GDR. The Company was also aware that the proceeds to be realized against the issuance of GDR would be kept as security towards the loan amount availed by Seazun and by executing the Account Charge Agreement, Company had consciously restrained itself from using the proceeds of the issuance of GDR.

22. Further, I also notice that the Company, despite having identified the prospective single subscriber to its proposed GDR in favour of whom it undertook to place the proceeds of GDR so as to secure the subscription by the said single subscriber, deliberately suppressed such vital and material facts from the knowledge of the investors and shareholders of the Company. The Company (Visu) deliberately misled its Shareholders and investors by not disseminating the above stated information pertaining to GDR issue and Account Charge Agreement, thereby leading them to believe that the GDR issue of the Company on its own was a successful issue in overseas market, which in reality, was not the case as the subscription to its GDR issue was artificially arranged and contrived in collusion with Banco Bank and Seazun.

23. The declaration made by the Company on April 25, 2006 on the platform of the Stock Exchange about successful subscription of GDR issue without disclosing the

advance arrangement undertaken by it with 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 a good market abroad and have been very well received by foreign investors and that 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 and by concealment of actual material facts from the knowledge of its Shareholders. The investors were not aware about the artifice created by the Company through which it enforced the successful subscription to its GDR.

24. As regard the contention that SEBI lacks jurisdiction and therefore any action initiated by SEBI is not legally sustainable, I find it appropriate to refer to and rely on the observations made by the Hon'ble Supreme Court in *SEBI v. PAN Asia Advisors Ltd & anr.*, (2015) 14 SCC 71 wherein Hon'ble Supreme Court, while dealing with issue of GDR by way of a similar arrangement of Loan and Pledge Agreement, observed the following;

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

....that for creation of GDR 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 GDR should have the appreciation of investors for them to develop a keen interest to invest in such GDR. Mere desire to raise foreign investments without any scope for the issuing company to develop a market demand for its GDR by increasing the share capital for that purpose is not the underlying basis for creation of GDR.....

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 GDR at the global level while in reality there is none...."

25. 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 GDR, when in fact, the GDR 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 GDR have been subscribed by foreign investors when in fact the GDR were subscribed by AP through Vintage. Any

attempt to mislead the investors in India constitutes fraud on the investors under the PFUTP Regulations”.

26. In view of the discussions and observations made in the preceding paragraphs, I find that the entire scheme created by Company (Visu) starting with passing of Board Resolution, followed by entering into the Account Charge Agreement to permit use of the funds deposited in its account with Banco Bank as a security against a loan, making a corporate announcement on April 25, 2006 that the GDR have been successfully allotted and then not disclosing the relevant Board Resolutions and details of Account Charge Agreement and its arrangement with subscriber to secure the obligation of their loan liability, behind the back of its shareholders and investors, have cumulatively resulted in misleading the investors and public 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.

ISSUE NO. 2: Whether the Noticees no. 2 to 4 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?

27. From the available records, I find that the Directors of the Company, viz. Noticees no. 2 (Mr. B. Prabhakar Reddy) and Noticee no. 3 (Dr. K. Visawanath Reddy) had attended the Board Meeting held on January 30, 2006. Further, the Board Resolution of the said Meeting categorically mentions that the Board had authorized

Mr. Mukesh Chauradiya to sign /execute agreements with Banco Bank. Accordingly, on the basis of such authorization given by the Board, Mr. Mukesh Chauradiya has signed the Account Charge Agreement on behalf of the Company, which provided inter alia, for GDR proceeds to be kept as a security against the loan availed by Seazun for subscription to the GDR of Visu. Further, Noticee no. 4 (Mr. Mukesh Chauradiya) has not disputed his act of signing the aforesaid Account Charge Agreement.

28. I note that the Noticee no. 2 vide his reply dated September 25, 2017 has made identical submissions with that of the Noticee no. 1 (Visu). Therefore, the issues raised by Noticee no. 2 which have also been raised by the Noticee Company and have since been dealt in the preceding paras are not being repeated hereunder for the sake of brevity. I note from the records that during the relevant period, Noticee no. 2 was a Non-Executive Director on the Board of the Company.

29. I further note that Noticee no. 2, has submitted in his written reply dated September 25, 2017 that he was an Independent (Non-Executive) Director and was not into the management of day to day affairs of the Company. He has further contended that he attended the Board meetings only whenever he was called by the Company and did not participate in any other activities. I note that the Noticee no. 2 has neither disputed his directorship during the relevant period when Noticee Company had issued GDR nor has not disputed the facts of his participation in the Board Meeting held on January 30, 2006. It also remains undisputed that he remained Director during the period when the Company made those incomplete, selective and misleading disclosures to the BSE and suppressed vital information from its Shareholders. Therefore, the submissions that he was an independent director and not involved in the day to day affairs of the Company would not have any relevance to his liability as a Director as charged under the SCN served on him. I find that Noticee no. 2 has not only failed to perform the duties cast upon him as an Independent Director but also, by passing the above mentioned Board

Resolution, he has acted in a manner to promote the unscrupulous design of the Company to perpetrate a fraud upon its Shareholders and the investors of Securities Market. The Noticee no. 2 has not produced any evidence or any submission to support that he has actually acted responsibly or that he has raised all pertinent issues and had asked relevant questions to the management before the Board at the relevant time before agreeing to pass such a resolution, as expected of him as an Independent Director. There is no material or evidence on records to suggest that he has made due enquiries with or has confronted the management by questioning them as to why GDR proceeds should be kept as security for any loan in an overseas bank and how the GDR proceeds are proposed to be used in terms of the objects of issue. He has also not raised any question on the actual utilization of the GDR proceeds in terms of the objects of the issue. His claim of holding a position of independent non-executive director on the Board does not absolve him from his expected duties and responsibilities during his tenure as a Director of the Company, which bestowed a responsibility on him to act diligently in the interest of the Company and the Shareholders. The phrase of acting diligently embodies in itself the duty not to be careless and casual in approach while taking decisions. He may be right in submitting that being an independent director, he was not involved in day to day management of the affairs of the Company but that itself would not be adequate in holding him not guilty of the violations alleged in the SCN. The submissions advanced by the Noticee no. 2 may appear convincing at the first blush, however, upon analysing his conduct in the backdrop of all the facts of the matter, one would find his explanations too weak to stand on its own feet. As such the Noticee no. 2 has not disputed the fact that he attended several Board meeting including the one dated January 30, 2006 wherein, apart from the opening of bank account with Banco Bank, the authorization in favour of the Noticee no. 4 was also deliberated and approved. It is also not disputed that the Noticee no. 4 was not holding any post in the management of the Company, nor was he employed with the Company in any capacity whatsoever. I find it very strange that none of Noticees

who attended the Board meeting of January 30, 2006 has raised even a whisper about the Noticee no. 4. None of them had objected or raised any query about the reasons for selecting Noticee no. 4 for the job that he was required to be assigned before passing the authorization in favour of the Noticee no. 4. I further note that in their respective replies, the Noticees have not disputed their prior knowledge about or connection with the Noticee no. 4. In the absence of the same, I am constrained to conclude that the Noticee no. 2 has not only failed miserably in performing his duties as of an Independent Director, but by consenting to authorize the Noticee no. 4, inter alia, to sign, execute any application, agreement, escrow agreement, document, undertaking, confirmation, etc., from time to time as may be required by the bank, has ostensibly indicated his indictment in the entire scheme of fraudulent arrangement of issuance and subscription of GDR followed by issuance of misleading disclosure on the platform of the Stock Exchanges.

30. I further observe that being not aware of the day to day business affairs of the Company is different from turning a blind eye to an event or incident which takes place through deliberations leading to passing of Board Resolutions and thereafter seeking exoneration from the allegations by taking shelter under the plea that being Independent Director he was not involved in day to day management of the Company. As noted above, the Noticee no. 2 was present during the Board discussions and has approved the minutes of the Board meeting held on January 30, 2006, wherein a person, stranger to the Company, was authorized to perform important business transactions overseas, on behalf of the Company. Further, the Noticee no. 2 has also not produced any piece of evidence to demonstrate and verify his innocence and also to show that even after the issuance of GDR or subsequent to knowing about the fraud as alleged in the SCN, he had raised concerns over the issues before the Company or any other authorities.

31. The Noticees have also contended that the Board Resolutions passed by them did not authorize Noticee no. 4 to enter into an Account Charge Agreement and no

such proposal was ever placed before the Board for approval. I find that such contention of the Noticees are devoid of merit as the Noticees have not placed any evidence on record to substantiate such an argument. If the above submission of the Noticees is to be believe, it is perplexing to note as to why till date, none of the Noticees has taken any action against the Noticee no. 4 for exceeding the authorisation or for abusing the authorization given to him by the Board of the Company. Further, no diligence has been shown by any of the Noticee Directors by asking the Noticee no. 4, to at least place on record, the documents signed or executed by him pursuant to the Board Resolution. Therefore, for the reason recorded above, I am of the view that though the Noticee no. 2 was an Independent Director, looking at the way he has conducted himself as an independent Director, as suggested by the facts of the matter, he does not deserve any leniency since the charges against him stand firmly established.

32. The aforesaid observations equally apply to the other Non-Executive Director on the Board of the Company, viz. Noticee no. 3, who also actively participated in the said Board Meeting and ensured the passage of the resolutions on January 30, 2006 thereby facilitating the fraudulent issuance of GDR by the Company. The Noticee no. 3 has also not disputed his directorship and involvement in the passing of the aforesaid Board Resolution. As held by me earlier, the Company has used the GDR mechanism to mislead and induce the Indian investors. The Company has not divulged its fraudulent arrangement of the Credit Agreement and Account Charge Agreement in its disclosure to the Exchanges and by merely informing that its GDR issue was successfully subscribed, has rather presented a misleading appearance and a false promise of great value and potential about the stock of the Company in the domestic markets. Such a misleading disclosure tantamount to a fraud on the investors with a motive to further its interest as opposed to the interests of investors of Securities Market who may easily fall prey to the artificially created optimistic perception signalled by the so called successful GDR issue and get induced to invest in its shares expecting better returns. Noticees no. 2 and 3 being Non-Executive

Directors of the Company, ought to have taken due precautions and diligence before agreeing on the resolutions of the Board that sowed the seeds of the Account Charge Agreement against a loan taken by an unrelated third party as part of a collusive scheme, to mislead and defraud the investors. Thus, evidently both the Non-Executive Directors (Noticee no. 2 and Noticee no. 3) have played a proactive role in facilitating the issuance of GDR and signing of the Account Charge Agreement as well as authorizing an external person to execute various transactions abroad, than merely being part of the Board Resolutions.

33. The Noticees have further submitted that they were not aware of any development about the issuance of GDR being Independent Directors and were not involved in the day to day management of the Company and further that it was the Chairman of the Company i.e. Mr. C. Chandrasekhar Reddy who was aware of the entire matter and was solely responsible of the handling of the GDR issue. I find no substance in the above submissions advanced by Noticees in the absence of any documents to substantiate their claims. The plea of ignorance made by them appear to be an afterthought exercise and has no credence to rely on. Moreover, in view of the reasons recorded in preceding paragraphs, I am not inclined to accept such a submission and the same is rejected accordingly.

34. With regard to the contentions advanced by Noticee no. 4, his main argument is that SEBI does not have jurisdiction in respect of the matters relating to issue of GDR. However, the Noticee appears to have overlooked the fact that the scrip of Noticee no. 1 has been listed on BSE Ltd. ('BSE') even prior to issue of GDR by it. If any listed company issues further securities for raising more capital through public offer, such as preferential allotment, rights issue, etc., it has to comply with the applicable provisions of the Companies Act, 2013 (previously Companies Act, 1956), securities laws including SEBI Act and rules & regulations made thereunder. The listed Companies are required to make true and complete disclosure about its business and commercial decisions for the consumption of investors at large, so as

to enable them to make informed decision about investing in the scrip of the Company. The same regulatory standards are also equally applicable to the issue of GDRs by an already existing listed company. As regard to the jurisdiction of SEBI over GDR issue is concerned, the same is no more a *res integra*. In this respect, I note that similar issue came into consideration of the Hon'ble Supreme Court in the matter of *Pan Asia* matter (*supra*) wherein the issue was discussed in detail. The relevant portion of the judgment of Hon'ble Supreme Court is reproduced 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 GDR and its investments by the foreign investors on the very date when the GDR 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 shareholders. 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....."

(emphasis supplied)

35. As may be observed from the above cited paragraphs, at para 80 of the aforesaid Order, the Hon'ble Supreme Court has overruled the Jurisdictional disputes over GDR issue and have emphasised on the special feature of the case which involved connivance of the issuer Company with the respondents therein, which created a make belief world about a genuine issue of GDR which were fully subscribed by the foreign investors on the date of its issuance as a result of which the investors in India were lured to make investments in the securities of the issuer company whereas, in reality it was the issuer company which itself had facilitated the subscription of its GDR issue. On a perusal of the SCN in the present case, I note that in the present matter too, Visu issued 2.175 million GDR (amounting to USD 9.66 million), on April 21, 2006, which were subscribed by Seazun on the same day by obtaining a loan through Credit Agreement, from Banco Bank. Visu had signed an Account Charge agreement with Banco Bank which was an integral part of Credit Agreement entered into between the subscriber and Banco Bank and because of the aforesaid Account Charge Agreement the subscriber could avail a loan of USD 10 million from Banco Bank for subscribing to the GDR of Visu. As such, Visu practically facilitated the subscription of its own GDR issue due to which, GDR issue proceeds worth USD 10 million was not available at the disposal of Visu at the time of GDR issue even though it made those boastful disclosures to the Stock Exchanges about the successful subscription to its GDR issue, thereby making the innocent investors in India to believe that Visu has successfully raised USD 9.66 million abroad through its GDR issue and to that extent the finances of the Company have become more strengthened. The crux of the allegations summed up by the Hon'ble Supreme Court in Pan Asia's matter is applicable *pari pasu* to the issuer company (Visu) in this case which facilitated subscription of its own GDR issue and also misled the public to believe that the GDR issue was genuinely subscribed by foreign

investors. Thus, the allegations made in the present matter are almost identical to those involved in the matter of Pan Asia. This being so, in terms of observations made by the Hon'ble Supreme Court at para 80 of the aforesaid order, SEBI has the jurisdiction to proceed against, inter alia against the issuer company in the matter of the GDRs issued by it in the overseas markets. Under the circumstances, the contentions raised by the Noticee no. 4 with regard to jurisdiction of SEBI over GDR issue have to rest in peace as the same is not tenable in facts or under law.

36. With respect to the role played by Noticee no. 4, there is no dispute that Noticee no. 4 (Mr. Mukesh Chauradiya) was not an employee of the Company (Visu) nor was having any prior business association with the said Company. However, it emerged from the Investigation that Noticee no. 4 was an employee of Vintage FZE which was a company fully owned and controlled by Mr. Arun Panchariya. At the same time, it is also not disputed that Noticee no. 4 was duly authorized by the Board of Visu by way of passing a resolution authorizing him to execute various documents including the Account Charge Agreement with banco bank on behalf of Visu. I further note from the SCN that the charge on the Noticee no. 4 is that of acting as a party to the fraudulent scheme in collusion with the Company and its Directors on the Board. The very fact that the Noticee no. 4, who apparently did not have any business nexus with the Company, was chosen by the Company to be authorized for executing, *inter alia*, the Account Charge Agreement with Banco Bank that occupies the central place in the entire pre-designed fraudulent strategy adopted by the Company and its Directors for financing the GDR issuance, explicitly exposes the crucial role played by Noticee no. 4 in the said arrangement fabricated by the Company and other Noticee Directors. The fact that the Board of Directors disregarded the employees of their own Company and chose to authorize an entirely outsider person employed in an overseas company run by Mr. Arun Panchariya (who has been named as a key player in such fraudulent GDR issuances in many other cases investigated by SEBI), speaks volumes of the fact that the Board of Directors in their wisdom and to the best of their conscious judgement, have

authorized a person who can successfully facilitate the passage of their GDR issuance by appropriately handling the matter at the end of the subscriber and the Bank, so that GDR issuance is implemented successfully as per the plan. The preponderance of probabilities that emerges out of the entire set of facts and circumstances, makes it glaringly clear that even though Noticee no. 4 was not part of the Company but was certainly part of the fraudulent plan drawn up by the Company and its Directors to issue GDR abroad in a deceptive manner. It is also observed that the Account Charge Agreement was executed subsequent to the execution of the Credit Agreement, which implies that the Noticee no. 4 had wilfully agreed to the insertion of the relevant clauses pertaining to the Credit Agreement in the said Account Charge Agreement and thereby consciously undertook to repay the liability of the borrower i.e. subscriber. Another undisputed fact is that the GDR were issued to the subscriber i.e. Seazun only after the execution of the Account Charge Agreement which further demonstrate the motive of the Noticees in getting the two agreements executed before the issuance of GDR. Under the circumstances, the arguments advanced by Noticee no. 4 taking the ground of his no business connection with the Company and its Board of Directors, is devoid of merit as it does not in any way go on to prove his innocence in the matter. On the contrary, keeping in view the proactive role played by Noticee no. 4 in the entire matter as highlighted above, I am convinced that the allegations made in the SCN for violations as alleged therein stands established.

37. As held by me that the Company has used the GDR mechanism to mislead and induce the Indian investors. The Company has not divulged its fraudulent arrangement of the Credit Agreement and Account Charge Agreement in its disclosure made in the Indian securities market and by merely informing that the GDR were successfully placed, has presented a misleading appearance and a false promise of great value and potential about the stock of the Company in the domestic markets. The Noticees no. 2 and 3 being Non-Executive Independent Directors of the Company, ought to either have taken due precautions and diligence before

agreeing on the resolutions of the Board that laid the foundation of the Pledge Agreement against a loan taken by an unrelated overseas party as part of a collusive scheme, to mislead and defraud the investor. The two Noticees referred to above at least should have displayed their concerns even subsequently by questioning the management of the Company about the *bonafide* of the GDR and about the utilisation of the proceeds etc. , in order to establish their *bonafide* as being victim of the fraud and not part of the fraud. I note that both the Noticees no. 2 and 3 have not shown any diligence on their part as Independent Directors in the entire GDR issue or even otherwise, in the functioning of the Company. They were expected to play an active role in safeguarding the interest of the Shareholders with alacrity by preventing the management or Whole Time Director from committing any fraud on the Shareholder, but the casual manner in which they appear to have conducted themselves in passing those Board Resolutions and even after the issuance of GDR, shows that they were oblivious to the serious implications of their actions & omissions with respect to the GDR matter.

38. The Hon'ble Supreme Court, in the matter of *Rakhi Trading (supra)* 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.*"

39. 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. Mukesh Chauradiya (Noticee no. 4) on behalf of the pledgor i.e., Visu. 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 subscription to GDR of Visu. This was

made possible by Visu by offering its GDR proceeds as security for the loan extended by Banco Bank to Seazun. The GDR issue would not have been subscribed, if Visu had not given such a security against the loan taken by Seazun. Noticees no. 2 and 3, by authorizing Noticee no. 4 to enter into such an arrangement and Noticee no. 4 by signing such agreement have led the investors in India to believe that the issuer company i.e. Visu has got a good reputation in terms of investment potential because of which, foreign investors have successfully subscribed to its GDR, whereas in reality, the GDR were subscribed by Seazun with the help of the Company (Visu) itself. Therefore, in effect, the Directors of the Company and Noticee no. 4 have together facilitated the subscription of GDR by Seazun through a loan obtained by it from Banco Bank against which, the GDR proceeds of Visu were kept as security on the basis of the authorization given by the Board of Directors of Visu, and all these transactions and activities were undertaken behind the back of the Shareholders and other investors of the Securities Market. In my view, apart from the issuer company (Visu) i.e. Noticee no. 1, its Non-Executive Directors (Noticee no. 2 and Noticee no. 3) and Noticee no. 4 are to be blamed for indulging in fraudulent arrangement and concealing the above information from the Shareholders, and all the three individual Noticees have acted fraudulently in breach of the provisions of Sections 12A (a) to (c) of the SEBI Act read with Regulations 3 (a) to (d) and 4 (1) of the PFUTP Regulations.

DIRECTIONS:

40. In view of the above discussions and my concluding observations with respect to the two issues that were considered by me in the matter, in exercise of powers conferred upon me under Sections 11, 11B read with Section 19 of the Securities and Exchange Board of India Act, 1992, in order to protect the interest of investors and the integrity of the Securities Market and considering the facts of the case as well as the specific role played by the respective Noticees and to meet the ends of justice, I hereby issue the following directions:

- a) Noticee no. 1, the Company is restrained from accessing the Securities Market including by issuing prospectus, offer document or advertisement soliciting money from the public and is further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner, for a period 05 years from the date of this order.
- b) The following Noticees are restrained from accessing the Securities Market and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner, from the date of this order, for the period as directed below:

S.No.	Names of the Noticee	(Period In Year)
1.	Mr B. Prabhakar Reddy	02
2.	Dr. K. Visawanath Reddy	01
3.	Mr. Mukesh Chauradiya	01

41. 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.

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

43. 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: 14, February 2020

S. K. MOHANTY

PLACE: MUMBAI

WHOLE TIME MEMBER