

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

Under Sections 11, 11B and 11(4) of the Securities and Exchange Board of India Act, 1992

In the matter of GDR issue of Crew B.O.S Products Ltd.

In respect of:

Noticee No.	Names of the Noticee	PAN
1.	CREW B.O.S. Products Ltd	AAACC3222F
2.	Mr. Robin Bartholomew	AAGPB2256H
3.	Mr. Puneet Nikore	AACPN8761F

(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 Crew B.O.S Products Limited (hereinafter referred to as "**Crew/Company/Noticee no. 1**"). The relevant period of investigation was from July 01, 2005 to July 31, 2005 (hereinafter referred to as "**Investigation Period**").

2. It was observed that Crew had issued 1.8182 million GDR for US\$ 05 million on July 25, 2005. Details of the GDR issue as provided by the Company is tabulated below:

Table no. 1

GDR issue date	No. of GDRs Issued (mn.)	Capital raised (US\$ mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
25-Jul-05	1.8182	5.00	ICICI Bank Ltd., Mumbai	18,18,200 equity shares of FV `Rs10 (IGDR=1 equity share)	The Bank of New York, Mellon	Arkios Ltd, 53, Chandos Place Covent Garden, London	Banco Efisa	Luxembourg Stock Exchange

3. During the investigation, it was further revealed that Banco Efisa S.F.E., S.A. (hereinafter referred to as “**Banco Bank**”) had granted loan to Fusion Investment Limited (hereinafter referred to as “**Fusion**”) by way of a Credit Agreement dated July 07, 2005 (hereinafter referred to as the “**Credit Agreement**”) enabling them to subscribe to the GDR issued by Crew and it was observed that the entire 1.8182 million GDR were subscribed by only one entity, i.e. Fusion.

4. Investigation further revealed that the Company pledged its entire GDR proceeds with Banco Bank as a security against the loan availed by Fusion from Banco Bank for subscribing to GDR of Crew. For this purpose, the Company entered into an Account Charge agreement dated July 07, 2005 (inadvertently mentioned as 2007 in Show Cause Notice) (hereinafter referred to as the “**Account Charge Agreement**”) with Banco Bank and the said agreement was signed by Noticee no. 3 on behalf of Crew. Investigation also found that Noticee no. 2 and Noticee no. 3 were directors of Crew during the relevant time of signing of the said Account Charge agreement. These two Noticees also participated in the Board meeting of the Company dated June 18, 2005, 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 if any. During the course of investigation, it was also found that the Company had not disclosed to the investors about the fraudulent arrangement so made by it to ensure the successful issuance/subscription/allotment of the GDR by facilitating a loan to Fusion 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 findings made in the investigation, a common Show Cause Notice (hereinafter referred to as "SCN") dated June 21, 2017 was issued to all the Noticees, wherein Noticee no. 1 was charged with violations of Section 12A (a), (b) & (c) of the 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 the 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 3 were charged with the violations of Section 12A (a), (b) & (c) of the SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d) and 4(1) of the 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, 1992.

6. From the available records, I note that SCN was served to all the Noticees. Subsequent to the issuance of SCN, the Company (Noticee no. 1) and Mr. Robin Bartholomew (Noticee no. 2) submitted a written reply to SCN vide a common letter dated July 19, 2017. Further, Noticee no. 3 (Mr. Puneet Nikore) also vide letter dated July 19, 2017 filed his reply to the SCN. I also note from the records that Noticee no. 2 and Noticee no. 3 vide their respective letters dated March 22, 2019 and March 14,

2019, have filed additional responses to the SCN. In compliance with the principles of natural justice, vide letter dated March 22, 2019, Noticees were provided with an opportunity of personal hearing on June 26, 2019, however, on receiving a request from the Noticees, the hearing was adjourned to August 02, 2019. On the day of the personal hearing held on August 02, 2019, Noticee 2, Noticee no. 3 and an authorised representative on behalf of Noticee no. 1, appeared before me and made oral submissions on the lines of their written replies earlier submitted in response to the SCN. Subsequent to the hearing, the Noticee no. 2 vide letter dated August 24, 2019 and Noticee no. 3 vide letters dated August 24, 2019 & August 30, 2019, have also submitted their additional submissions in the matter.

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

- a) The Company had faced financial stringency and various petitions for winding up of the company had been filed before Hon'ble High Court of Delhi and in one such petition, the Hon'ble High Court of Delhi has appointed the provisional liquidator. Accordingly, the offices and other units of the Company where documents / records of the Company were stored have been sealed hence the Noticees have no access to its records and documents. As the documents and records are presently in the custody of Official Liquidator, the Noticees are unable to provide such information.
- b) The Company has not received any information to indicate loss caused to any shareholder or party, due to allotment of GDR.
- c) From the available electronic records, it was gathered that the GDR issue was subscribed by two parties i.e. Fossil (East) Limited and Comercio Internacional LDA. The Noticees are not aware of any entity called Fusion

as alleged in the SCN. The following documents have been submitted in support of the said contention:

- Copy of placement letter dated July 19, 2005 prepared by the Lead Manager i. e. Arkios sent to Fossil and Commercio.
 - Copy of placement confirmation letter dated July 19, 2005 signed by Directors / Authorised signatory of Fossil.
 - Copy of resolution passed in the committee of Directors of Crew on July 25, 2005 to allot the GDRs to Fossil and Commercio.
 - A certificate dated February 05, 2019 issued by Arkios certifying that the GDRs of CREW were subscribed by Fossil and Commercio.
- d) The company had availed the services of Arkios Ltd (hereinafter referred to as **“Arkios / Lead Manager”**) as Lead Manager and as a part of the GDR issue by Crew, various forms, documents and resolutions were provided and procedures were instructed by the Lead Manager. Lead Manager was hired to provide appropriate documents, check the process, evaluate documents and to do all things as per the rules and regulations. As a part of opening of account with Banco Bank, Crew had signed various documents, forms and resolutions, many of which were standard formats prescribed by Banco Bank and neither Crew nor its officials had powers to modify or amend these formats.

ISSUES FOR CONSIDERATION AND FINDINGS:

8. I have perused the SCN dated June 21, 2017, alongwith its annexures, the replies filed by the Noticees, submissions made during the course of personal hearing and written submissions filed after availing the opportunity of hearing, as detailed in para 7 above. After considering 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, 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1), 4(2) (f), (k), (r) of the PFUTP Regulations, 2003?

(ii) Whether the Noticees no. 2 and 3 have violated Section 12A(a), (b), (c) of the SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the PFUTP Regulations, 2003?

ISSUE NO. 1: Whether the Company i.e. Noticee no. 1 has violated Section 12A(a), (b), (c) of the SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1), 4(2) (f), (k), (r) of the PFUTP Regulations, 2003?

9. Before I proceed to examine the aforestated issues and decide as to whether on the facts of the matter, the aforesaid violations as alleged in SCN stand established or not, it would be proper to reproduce hereunder, the relevant provisions of the SEBI Act, 1992 and the PFUTP Regulations, 2003 alleged to have been violated by the Noticees in the instant matter. The same are reproduced below:

SEBI Act, 1992

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;*

PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

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

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

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely: -*
 - (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. As noted earlier, the Company had issued 1.8182 million GDR on July 25, 2005 for raising 05 million US\$ and for this purpose, the Board of Crew had passed a Resolution in its Meeting on June 18, 2005, 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 said Board Resolutions are as under:

“Resolved that a bank account to be opened with Banco Efisa, S.A., any branch, including the off-shore branch (the “Bank”), outside India for the purpose of receiving the subscription money in respect of Global Depository Receipts issue upto [USD 10 million] to be made by this Company.

Resolved further that Mr. Puneet Nikore, Director be and is hereby singly authorized to sign, execute any charge over the account (a charge), application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other documents 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. Puneet Nikore, Director be and is hereby singly 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. any branch, 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 this 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 for which any charge is granted as well as to enter into Escrow agreement or similar arrangements if and when so required.”

11. On a perusal of the aforesaid Board Resolutions (copy enclosed as annexure of the SCN), I note that the said Resolutions were approved by the Board on June 18, 2005 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. 3, Mr. Puneet Nikore 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. 6236616.15.001 in its name in Banco Bank. It was further resolved by the Board to authorize the Banco Bank to use the funds so deposited in the said bank account as security in connection with loans, if any. A comprehensive reading of all the above said Board Resolutions indicate that a decision was taken as far back as on June 18, 2005, 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 GDR proceeds as security for loan was contrary to the common commercial practise. Putting 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. On the one hand, the Company, instead of raising funds from domestic sources thought it proper to explore the possibility of raising funds offshore, but on the other hand, it did not seem to have any genuine intention to use such funds for the business requirement of the Company. In this regard, the SCN has brought to my notice 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 never disclosed to the Exchange or to the Shareholders of the Company, thereby concealing such an important information from the knowledge of the shareholders and other domestic investors.

12. As noted in the beginning, Fusion had signed a Credit Agreement dated July 07, 2005 with Banco Bank for availing a loan of up to 05 million US\$ so as to be able

to subscribe to the full amount of the GDR issue of Crew worth of US\$ 05 million. In this regard it is pertinent to note some of the relevant clauses of the said Credit Agreement, which 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 \$5,000,000.*
- b) ***Purpose-*** *The borrower shall use the proceeds of the advance to subscribe for global depository receipts to the value of up to US \$5,000,000 issued by Crew B.O.S. 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 in accordance with this clause 5.*

Drawdown Notice: *When the Borrower wishes to draw down 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.”

13. I can observe that apparently on the strength of the authorization given by the Board by a resolution to that effect to “use the funds so deposited in the aforesaid bank account as security in connection with loans for which any charge is granted” the Noticee no. 3, Mr. Puneet Nikore had signed an Account Charge Agreement with Banco Bank dated July 07, 2005 therein giving an undertaking on behalf of Crew, to deposit in the designated account of Crew with Banco Bank, an amount not exceeding the loan availed by Fusion for subscribing to the GDR of Crew, as a security against the obligations of Fusion under the above mentioned Credit Agreement. Some of the

relevant clauses of the Account Charge Agreement signed by Noticee No. 3 on behalf of the Company with Banco Bank are quoted as under:

"1. Definitions

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Loan agreement means the Loan agreement signed between Fusion (as borrower) and the Bank dated on or around the date of this agreement by which the bank agreed to lend to Fusion the maximum amount of up to US\$ 4,000,000.

2. Account Charge

Subject to the terms of this agreement, Crew B.O.S. deposited in its designated account with bank (hereinafter the Account) an amount not exceeding US\$ 5,000,000 as security for all the obligations of Fusion 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, Crew B.O.S. 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 Crew B.O.S., release the deposit made in the account.

Crew B.O.S. covenants with the Bank that it will on demand pay and discharge the secured obligations when due to the bank.

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

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

Crew B.O.S. 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 Crew B.O.S. itself and Crew B.O.S. hereby undertakes to ratify and confirm all such deeds, instruments and documents lawfully executed by virtue of the authority and power hereby conferred.

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11. Notices

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

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

Crew B.O.S.

M-16, Commercial Complex

Greater Kailash II

New Delhi 110030

Attention: Mr. Punnet Nikore

....."

14. On a careful and combined examination of the contents of the relevant clauses of the “Credit Agreement” signed by Fusion and the “Account Charge Agreement”, signed by Crew with Banco Bank, one can easily draw the following conclusions: -

- a) The Account Charge Agreement was executed mainly to secure the obligations of the borrower i.e. Fusion, which was granted a loan of 05 million US\$ by Banco Bank. The Account Charge Agreement stipulates that the Company (Crew) will deposit in its designated account with the Banco Bank, an amount not exceeding US \$5,000,000 as security for all the obligations of Fusion in terms of its Credit Agreement with Banco Bank and the Company thereby has 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 Fusion under its Credit Agreement with the Bank.
- b) In terms of the Account Charge Agreement signed by the Company, only upon payment of the amounts due under the Credit Agreement by Fusion, Crew could withdraw equivalent amount from its designated account in the Banco Bank and also only upon complete payment and final discharge of all the obligations by Fusion under its Credit Agreement, that the rights and obligations of the parties (i.e. Crew and Banco Bank) under the Account Charge Agreement shall cease to exist and Banco Bank shall thereafter release the remaining amount of bank balance lying in the account of the Company to Crew.
- c) The Account Charge Agreement also states that Crew has undertaken to pay and discharge the obligations of Fusion (under its Credit Agreement) towards the Banco Bank. Accordingly, Banco Bank was entitled to apply all or any part of the deposit made by Crew from the GDR Proceeds in its designated account against the obligations of Fusion 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, Crew could not get the GDR proceeds at its disposal for its business utilization until repayment of the loan was made by Fusion.
- e) As per clause 3 of the Credit Agreement the said loan was sanctioned to Fusion for the purpose of subscribing to the GDR issue of Crew upto the value of USD 5,000,000. Further, as per clause 10 of the Credit Agreement, obligations of the borrower (Fusion) was secured, *inter alia*, by a charge over the deposit made by Crew with Banco Bank and any other documents acknowledging as security for the obligations of the Obligor (Fusion and Crew).
- f) Thus, in the Credit Agreement itself which was executed by Fusion to avail loan from Banco Bank, the Company, Crew, was christened as an obligor, although the Company was not a signatory to the said Credit Agreement. It implies that Fusion was completely assured by Crew at the time of signing the Credit Agreement even prior to being authorized by its Board, that Crew will take upon itself the entire obligation of loan liability of Fusion. Accordingly, clause 2 of the Account Charge Agreement authorized Banco Bank to apply all or any part of the deposits made by Crew in its designated account to settle the loan liability of Fusion. 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 were executed in a manner that clearly demonstrates that the Noticee no. 1 i.e. the Company, had consciously facilitated the loan to Fusion from Banco Bank so as to ensure success of its GDR issue and to create a good impression in the minds of the investors in

domestic market 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 and unless repayment is made by the borrower cum subscriber to its entire GDR issue, i.e. Fusion.

15. I also note that Noticee no. 1 has not disputed the execution and contents of the Account Charge Agreement. As pointed out earlier, the Account Charge Agreement makes specific stipulations with respect to the Credit Agreement entered into between Banco Bank and Fusion. 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 therein against the loan advanced to Fusion so as to enable Fusion to subscribe to the GDR issue of the Company. Hence, any submissions by the Company at this stage feigning ignorance about the existence of Fusion, can be called as an afterthought exercise only to evade the consequences of the present proceedings.

16. I can also see from the SCN that the GDR proceeds were deposited in Crew's bank account no. 6236616.15.001 with Banco on July 25, 2005. However, from the bank account deposit entries available before me, I can observe that, Crew has actually received GDR subscription amount of US \$4.95 million (i.e. Rs.21.89 crore) during the period from July 29, 2005 to January 13, 2006 (i.e. over a period of 5 ½ months). Details of realization of GDR proceeds amounting to of US \$ 5.0 million as observed from the company's overseas bank account maintained with Banco and its Indian account in Citi Bank respectively are tabulated as follows:

Table no. 2

Date of instructions by CREW to Banco for transfer of USD	Date of debit in CREW's account with Banco	Amount of USD debited in CREW's account with Banco	Date of credit to CREW's Indian bank account	Amount of funds received by CREW in India (Citibank account) (₹)
27/07/2005	27/07/2005	83,700	-	Unknown transferee

Date of instructions by CREW to Banco for transfer of USD	Date of debit in CREW's account with Banco	Amount of USD debited in CREW's account with Banco	Date of credit to CREW's Indian bank account	Amount of funds received by CREW in India (Citibank account) (₹)
27/07/2005	27/07/2005	900,000.00	29/07/2005	3,89,79,000.00
03/10/2005	04/10/2005	1,000,000.00	05/10/2005	4,41,30,000.00
07/10/2005	11/10/2005	1,400,000.00	13/10/2005	6,27,06,000.00
30/12/2005	03/01/2006	600,000.00	04/01/2006	2,66,94,000.00
09/01/2006	10/01/2006	1,000,000.00	12/01/2006	4,41,00,000.00
12/01/2006	12/01/2006	52,156.73	13/01/2006	22,99,941.63
TOTAL		5,035,856.73		21,89,08,941.60

17. The SCN has further alleged that as per the credit agreement of July 07, 2005, Fusion was to repay the loan amount within six months from the date of agreement. From the aforesaid table no. 2, it is evident that repatriation of GDR proceeds from Banco Bank to Company's India account through periodic remittances was on the lines of the stipulations made in the two agreements and correspondingly was dependent on periodic repayment of loan to be made by Fusion as per the said stipulations. In this regard, I note that the Company has neither produced any documentary evidences nor has provided any justification for rebutting the aforesaid finding in the SCN, which establishes the fact that the Company was in a position to repatriate the GDR proceeds to India only in tranches over a period of 5 & ½ months (and not at one-go) as and when Fusion repaid its loan to Banco Bank in terms of its Credit Agreement with the Banco Bank. The Company did not have discretion to bring the entire GDR Proceeds to India promptly after the GDR issue.

18. The execution of Credit Agreement and Account Charge Agreement on the same day i.e. on July 07, 2005 and before the issuance of GDR on July 25, 2005 shows that Fusion 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 Fusion and by executing the Account Charge Agreement, Company had consciously restrained itself from using the proceeds of the issuance of GDR.

19. As mentioned in the preceding paragraphs, the Company (Noticee no. 1) has taken a plea that since it is currently under liquidation, it is unable to trace any documents to provide the information pertaining to GDRs issue. 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: -

March 16, 2005

Outcome of the Board meeting held on March 16, 2005

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Board of Directors at meeting held on March 16, 2005, has inter-alia accorded approval to issue further shares in the international market in the form of GDR's / FCCB's so as to raise funds up to USD 10 million.

April 20, 2005

Outcome of EGM held on April 19, 2005

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The members at the Extra Ordinary General Meeting of the Company held on April 19, 2005, inter alia, accorded approval to issue further shares in the international market in the form of GDR's / FCCB's so as to raise funds up to USD 10 million.

23 July 2005

The Company has successfully raised US \$ 5.00 million through the issue of 1.8182 million Global Depository Receipts (GDRs). Each GDR represents one underlying equity share. The GDRs will be listed shortly on the Luxembourg Stock Exchange. M/s Arkios Ltd, London acted as Lead Manager and M/s Rajani Associates, Mumbai as Legal Advisors to the issue.

20. After a careful reading of the afore-stated disclosures, I note that the Company did not make necessary disclosures pertaining to the fraudulent arrangement made by it with Banco Bank and Fusion to ensure a successful subscription to its GDR. The Company did not disclose about the resolutions pertaining to usage of GDR proceeds

by Banco Bank as a security against loan, if any, passed by its Board in the Board meeting held on June 18, 2005. I further find from the afore noted disclosures that the Company has consciously concealed the information regarding the Board's authorisation of Mr. Puneet Nikore to perform various activities including opening and operating of a bank account in Banco Bank. The Company has also not disclosed its fraudulent scheme of getting the GDR subscribed by Fusion under a pre-planned arrangement by facilitating a loan to Fusion against which the entire GDR proceeds receivable from Fusion was pre-designed to be kept with the Banco Bank. Under the circumstances, the disclosure made by the Company about the successful allotment and listing of GDR cannot be called a true & fair disclosure, which was rather an incomplete and misleading disclosure that was bound to create an artificial impression in the minds of the domestic investors about the strong demand by the foreign investors to subscribe to the equity capital of the Company. Thus, it is visibly clear that the Company has not disclosed to the stock exchanges, certain important information pertaining to GDR issue in terms of the resolutions passed in the Board meetings which possessed crucial material content that deserved to be disclosed to the shareholders and investors at that point of time.

21. 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 Fusion and the Credit Agreement signed by Fusion with Banco Bank. Moreover, the contents of the Account Charge Agreement signed by the Company show how it is intertwined with the contents of the Credit Agreement signed by Fusion. Therefore, the contention of the Noticee no. 1 that it was not aware about the any entity named 'Fusion' is utterly baseless 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. Fusion). 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 Fusion would be the single subscriber to the entire GDR issue and that proceeds of GDR received from it would be kept as security against the loan availed by the said single subscriber for making subscription to the GDR issue of the Company.

22. In view of the afore-stated observations, I find that the disclosures made by the Company to the Exchange for the benefit of its shareholders suffered from gross deficiencies as the Company never disclosed that Fusion has been identified as the only entity to subscribe to the entire GDR and that the Noticee Company had agreed to facilitate subscription to its GDR issue by Fusion, by giving an undertaking to be an 'obligor' to Banco Bank for which it undertook to keep the GDR proceeds as security with Banco Bank, till the said loan was repaid by the borrower/ Fusion. Further, investors and shareholders have not been informed that in case of default by Fusion, Company would be liable and the entire proceeds of GDR kept as security would be used by Banco Bank to settle the default amount of Fusion which could lead 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 of all material information about its affairs to the Shareholders and to the Securities Market at large. It is now amply clear that the Noticee Company has not made its disclosure to the Stock Exchange in a fair manner

and has rather concealed the very crucial material information pertaining to its actions & transactions with Banco Bank and Fusion in connection with the GDR issue, from its Shareholders and from the Public at large. Consequently, the Company (Crew) deliberately misled its Shareholders and investors by suppressing these vital information pertaining to GDR issue and Account Charge Agreement, thereby leading them to believe that the GDR issue of the Company was on its own merit 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 Fusion.

23. The declaration made by the Company on July 23, 2005 on the platform of the Stock Exchange about successful subscription of GDR issue without disclosing its advance arrangement with Fusion to ensure full subscription to its GDR, was bound to give 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 breach of trust reposed by the shareholders and an unfair trade practice that was 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 therefore, 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 artificially 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. I 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”.

25. In view of the discussions and observations made in the preceding paragraphs, I find that the entire scheme created by Company (Crew), 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 July 23, 2005 that the GDR have been successfully allotted and then, not disclosing the crucial Board Resolutions and details of Account Charge Agreement and its arrangement with the subscriber to secure its (subscriber's) loan liability etc., all behind the back of its shareholder 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 in overseas market. 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, 1992 and Regulations 3(a), (b), (c), (d), 4(1), 4(2) (f), (k), (r) of the PFUTP Regulations, 2003.

ISSUE NO. 2: *Whether the Noticees no. 2 and 3 have violated Section 12A(a), (b), (c) of the SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4 (1) of the PFUTP Regulations, 2003?*

26. I note that during the relevant time of issuance of GDRs, the Noticee no. 2 was the promoter and CMD of the Company while the Noticee no. 3 was the Executive Director of the Company. I find from the submissions of Noticee no. 2 and Noticee no. 3 that they have offered identical explanations in the matter while some of their submissions are similar to the submissions of the Noticee no. 1 which I have already dealt with in the preceding paragraphs. Therefore, for the sake of brevity, I shall be dealing only with the additional and fresh contentions of the Noticee no. 2 and Noticee no. 3 in the subsequent paragraphs, which are not covered while considering the first issue pertaining to Noticee No. 1.

27. From the available records, I find that the Directors of the Company, viz. Noticees no. 2 (Mr. Robin Bartholomew) and Noticee no. 3 (Mr. Puneet Nikore) had attended the Board Meeting held on June 18, 2005. Further, the Board Resolution of the said Meeting categorically mentions that the Board had authorized Mr. Puneet Nikore to sign /execute agreements with Banco Bank. Accordingly, on the basis of such authorization given by the Board, Mr. Puneet Nikore has signed the Account Charge Agreement on behalf of the Company, which provided *inter alia*, that the GDR proceeds shall be kept as a security against the loan availed by Fusion for making subscription to the GDR of Crew. I note that the Noticee no. 2 and 3 have neither

disputed their Directorship during the relevant period when Noticee Company had issued GDR nor have they disputed the fact of their participation in the Board Meeting held on June 18, 2005. It also remains undisputed 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.

28. I note that the both the Noticees (no. 2 and no. 3) have contended that the company had hired the services of Arkios as Lead Manager in the GDR issue to provide appropriate documents, check the process, evaluate documents and do all things that were required to be done as per the rules and regulations. I find that the Noticees have tried to shift blame on to the Lead Manager regarding the non-disclosures as per the regulatory norms. There cannot be two opinions that being the Executive Directors of the Company, it was the responsibility of the Noticees to ensure that the GDRs of the Company are issued in compliance with all the regulatory rules and regulations. Further, the Noticee no. 2 and 3 have not produced any piece of evidence to demonstrate that after the issuance of GDR or subsequent to knowing about the charge of fraud as alleged against them in the SCN, they have raised any concerns over these issues against the Lead Manager before any authority if they felt that the Lead Manager has actually failed to do its duty or has misled the Company in the matter. Hence, such submissions made by the Noticees so as to pass on the entire responsibility to the Lead Manager in the GDRs issuance who acted as their agents are merely an afterthought strategy to evade the adverse outcome of the present proceedings.

29. With regard to their contention that the GDR issue was subscribed by two parties i.e. Fossil and Commercio, I note that the Noticee no. 2 and 3 have submitted certain documents such as copy of certificate by the Lead Manager and copy of resolution passed in the committee of Directors of Crew on July 25, 2005 to allot the GDRs to Fossil and Commercio, etc. After going through the aforesaid documents, I find that the Noticee no. 2 and 3 have not produced any evidence pertaining to the

bank accounts, from which it can be inferred with certainty that the amount of GDRs proceeds that were deposited in the account of Crew with Banco Bank after the GDR issue was closed, were actually received from Fossil and Commercio. I also note that the Noticees have submitted a certificate issued by the Lead Manager certifying that the GDRs of CREW were subscribed by Fossil and Commercio. However, in the absence of supporting evidence especially bank statement to show the actual receipt of GDR Proceeds, certificate supposedly issued by the lead Manager whose role is already under suspicion, cannot be relied upon to accept the contention of the Noticees with respect to identities of the subscribers.

30. I further note that none of the Noticees has disputed the fact of Noticee no. 3 signing the Account Charge Agreement dated July 07, 2005 on behalf of Crew with Banco Bank. The Noticee no. 2 and 3 have only offered a general narrative to state that, as a part of opening of account with Banco Bank, Crew had signed various documents, forms and resolutions, many of which were standard formats prescribed by Banco and neither Crew nor its officials had powers to modify or amend these formats. I find no substance in the above submissions made by Noticee no. 2 and Noticee no. 3. Being the Executive Directors of the Company, they were duty bound to take and would have certainly taken due precautions and diligence before signing various forms and documents with an overseas Bank and also before moving the enabling draft Resolutions before the Board that sowed the seeds for signing such an Account Charge Agreement by the Company only to secure a loan taken by an unrelated third party as part of a collusive scheme, to ensure successful subscription to its GDR issue. The plea of ignorance made by them appears to be an unfounded afterthought exercise and has no credence to rely on. In view of the reasons recorded above and confronted with solid factual evidence that clearly exposes the proactive and collusive role of Noticee No. 2 and 3 in moving the Board Resolutions and getting the Account Charge Agreement executed with Banco Bank, I am not inclined to accept their plea of ignorance and innocence in the matter.

31. The Company had issued GDR on July 25, 2005 prior to which, it had executed Account Charge Agreement with Banco Bank on July 07, 2005 and on the same date, the Credit Agreement was also signed by Fusion with Banco Bank. Although the Company and the two Noticee Directors deny that Fusion was the sole subscriber of the GDR issue, they have not denied having executed the Account Charge Agreement with Banco Bank which contains categorical references to Fusion and its loan liabilities towards Banco Bank that was undertaken to be secured by the GDR proceeds to be deposited in the Company's account with Banco Bank. However, the Noticees have preferred to remain silent about the insertion of those clauses and cross-references in the two agreements mentioned above. The Noticees have rather preferred to remain evasive on the issue of Fusion being the sole subscriber on the basis of a document issued by the Lead Manager, whom they themselves have held responsible for wrong advises in the matter of their GDR issue. Further, no evidence of having received GDR subscriptions from any of the subscribers has been furnished to disprove 'Fusion' as the sole subscriber of the GDR issue. The issues raised by Noticees in this case had come for consideration before the Hon'ble SAT in the matter of *Cals Refineries Limited Vs SEBI* (Appeal No 04 of 2014- Date of Decision 21.10.2017), wherein the Company and Directors had claimed to be victims of fraud and not a vehicle of fraud. The Hon'ble SAT after hearing the parties at length was pleased to find their submission as unsustainable. Relevant observations of Hon'ble SAT in the *Cals Refineries (supra)* are as under:

".....(f) Fact that the minutes as per the minute book of Cals does not contain any resolution to open a bank account with Banco cannot be a ground to infer that Cals had not intended to open an account with Banco because, firstly, on the basis of the Board resolution dated 30/10/2007 certified by Sundararajan, director of Cals, an account was in fact opened in the name of Cals with Banco for depositing the GDR subscription amount. Secondly, on issuance of GDRs, the GDR subscription amount was in fact deposited in the said account of Cals with Banco. Thirdly, apart from the Board resolution dated 30/10/2007 certified by Sundararajan, there is no other resolution

passed by Cals to open an account for depositing the GDR subscription amount. Fourthly, the GDR subscription amount deposited in the said bank account with Banco has been withdrawn by Cals in installments from time to time which is in consonance with the Account Charge Agreement executed by Cals. Without opening a bank account, Cals could not have opened the GDR issue. Very fact that Cals operated the account opened with Banco on the basis of resolution dated 30/10/2007 certified by Sundararajan clearly falsifies the case put up by Cals that it had not authorized any one to open an account with Banco for depositing the GDR subscription amount.

(g) Similarly, argument that Cals had never authorized any person to sign any Account Charge Agreement is also without any merit, because, the Account Charge Agreement was signed by Goorha promoter-director of Cals. The Account Charge Agreement provides that all communications in relation thereto should be addressed either to Goorha or Sundararajan as they were the two authorized signatories to operate the Bank account of Cals with Banco. It is relevant to note that Goorha was the founder, promoter, director of Cals, whereas, Sundararajan was the director of Cals nominated by the Spice Energy group which had taken over Cals with a view to implement its refinery project through Cals by raising funds through issuance of GDRs. Admittedly, Sundararajan was in-charge of the entire GDR process. Thus, the bank account with Banco for depositing the GDR subscription amount was opened by Sundararajan, director representing the Spice Energy group and the Account Charge Agreement was signed by Goorha, director representing the promoter group of Cals. In these circumstances, the conclusion drawn by SEBI that opening a bank account with Banco and executing the Account Charge Agreement were the acts done by Cals through its directors to finance Honor for subscribing the GDRs issued by Cals in gross violation of Section 77(2) of the Companies Act, 1956 and the provisions contained in the SEBI Act, 1992 and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for convenience), cannot be faulted. "

32. I find the aforesaid observations of Hon'ble SAT, are squarely applicable in the instant proceedings also, due to close similarities of facts and contexts of the present case and the case in which the Hon'ble SAT made the aforestated observations. As stated earlier, the proceeds of GDR were withdrawn by Crew in instalment from time to time, which was very much in consonance with the timeline provided in the Account Charge Agreement. Therefore, the submissions of Noticees that they are not aware of Fusion being the sole subscriber and instead, they knew that Fossil and Commercio were the two subscribers to the GDR issue is not sustainable as not being supported by any credible evidence.

33. With regard to the submission of the Noticees that they have been compliant with the law and procedure and have not derived any benefit or caused any loss to the investors, I am of the view that such submissions sound hollow and untenable when the acts of the Noticees have been held to be fraudulent and not fair. In this regard, it is appropriate to rely on the observations made by Hon'ble Sat in its order dated July 14, 2006 in the matter of Ketan Parekh Vs. SEBI, wherein it was observed that "*We are therefore of the view that inducement to any person to buy or sell securities is the necessary consequence of manipulation and flows therefrom. In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so wide spread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law can never impose on the Board a burden which is impossible to be discharged.....*"

34. Having held that the Noticee Company had resorted to a fraudulent scheme and had made false disclosure to the investors, it would be inconceivable to think that the persons who were instrumental in passing the Board Resolution and executed the desired agreement to enable Fusion to successfully subscribe to the GDR without actually paying a penny from its pocket, were not aware of the misleading impact and artificial inducement to be created by their actions. In the facts of the

matter, it becomes clear that the sole subscriber to the GDR issue of Crew was Fusion and no one else. In these circumstances, having piloted those Board resolutions and having executed the Account Charge Agreement with Banco Bank, the argument advanced by the Noticee no. 2 and Noticee no. 3 that they were unaware of the existence of any scheme and that the information disclosed by the Company regarding the successful subscription to the GDRs of Crew, was on the basis of information received by them from the Lead Manager, lacks any persuasive value and rather shows that the entire scheme was engineered to mislead the investors in India. The Noticee no. 2 and 3 cannot afford to contend that they believed that Fossil and Commercio and not Fusion had subscribed the GDR of Crew, as their acts & deeds and transactions with Banco Bank clearly suggest to the Contrary.

35. I also find no substance in the submissions advanced by Noticees that on account of the Company being in liquidation, they were not able to access the relevant document to defend properly the charges made on them. The Noticees have not produced any documents to substantiate their case. Nothing has been filed before me to show that they had approached the concerned competent court seeking permission to have access to the document so as to be in a position to defend the charges or they were denied access to the documents by the Court or the Liquidator. In the absence of the same, the submissions lack any merit or substance for consideration.

36. 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 in the form 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 Executive Directors of the Company, ought to either have taken due precautions and diligence before moving those Resolutions for the approval by the Board that laid the foundation of the Account Charge Agreement to secure a loan taken by an unrelated overseas party or at least should

have displayed their concerns to the Lead Manager at the time of signing such documents, if they genuinely believed that the GDR proceeds were not meant to be provided as security against any loan. I find that neither the Noticee no. 2 nor Noticee no. 3 has shown any diligence on his part as Executive Directors of the Company in the matter of GDR issue or even otherwise, in the functioning of the Company. The fact and circumstances of the case would rather compel me to believe that the Noticee no. 2 and 3, being the executive heads having complete command and control over the affairs of Company, were actively involved in the fraudulent arrangements in relation to the GDR issue of Crew and have deliberately participated in the execution of Account Charge Agreement and Credit agreement with Banco Bank. Thus, despite being aware of the prior arrangement between Crew & Fusion and between Crew & Banco Bank, the Noticee no. 2 and 3 have grossly misled the investors and Shareholders of the Company.

37. 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 that 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.*"

38. 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. Puneet Nikore (Noticee no. 3) on behalf of the pledgor i.e., Crew. 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 Fusion to avail loan from Banco Bank for subscription to GDR of Crew. This was made possible by Crew by offering its GDR proceeds as security for the loan extended by Banco Bank to Fusion. The GDR issue would not have been subscribed if Crew had not given such a security against the loan taken by Fusion. By authorising

Noticee no. 3 to enter into such an arrangement, Noticees no. 2 and 3 have led the investors in India to believe that the issuer company i.e. Crew has got a good reputation in terms of investment potential because of which, foreign investors have successfully subscribed to its GDRs, whereas in reality, the GDRs were subscribed by Fusion with the help of the Company (Crew) itself. Therefore, in effect, the Directors of the Company have facilitated the subscription of GDR by Fusion through a loan obtained by it from Banco Bank against which, the GDR proceeds of Crew were kept as security on the basis of the authorization given by the Board of Directors of Crew, 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 (Crew) i.e. Noticee no. 1, its Directors (Noticee no. 2 and Noticee no. 3) are equally to be blamed for concealing the above information from the Shareholders, and hence all the three Noticees have acted fraudulently in breach of the provisions of Sections 12A (a) to (c) of the SEBI Act, 1992 read with Regulations 3 (a) to (d) and 4 (1) of the PFUTP Regulations, 2003.

DIRECTIONS:

39. 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. As informed that Noticee no. 1 is under liquidation, therefore, the above direction shall be

subject to any order passed by the Hon'ble Court/ Tribunal having jurisdiction approving any scheme for the revival of the Company or under the resolution plan approved under the Insolvency and Bankruptcy Code, 2016.

- 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:

Sr. No.	Names of the Noticee	PAN	(Period In Year)
1.	Mr. Robin Bartholomew	AAGPB2256H	02 Years
2.	Mr. Puneet Nikore	AACPN8761F	02 Years

40. 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.

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

42. 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: 18, February, 2020

S. K. MOHANTY

PLACE: MUMBAI

WHOLE TIME MEMBER