

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

Under Sections 11, 11B(1) and 11(4) of the Securities and Exchange Board of India Act, 1992

In the matter of GDR issue (2010) of Beckons Industries Ltd.

In respect of:

Noticee no.	Names of the Noticee	PAN
1.	Beckons Industries Ltd	AABCA2425K
2.	Mr. Gurmeet Singh	ABRPS0882N
3.	Mr. I. S. Sukhija	AGEPS8345J
4.	Mr. Chandra Prakash	AHBPM1644G
5.	Mr. H. S. Anand	AAAPA0982F

(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 **Beckons Industries** Limited (hereinafter referred to as "*Beckons/ Company/ Noticee no. 1*").

2. It was observed that *Beckons* had issued 2.49 million GDR for US\$ 10.54 million (approximately INR 50.14 crore) on June 14, 2010. Details of the GDR issue as provided by the *Company* are 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
14-June-2010	2.49	10.54	DBS Bank, Mumbai	4,98,52,800 (20 shares per GDR)	The Bank of New York Mellon	IKON Capital Ltd.	EURAM Bank, Austria	Luxembourg Stock Exchange

3. During the investigation, it was revealed that Euram Bank, Austria (hereinafter referred to as “*Euram Bank*”) had granted loan to Vintage FZE (hereinafter referred to as “*Vintage*”) by way of a Loan Agreement dated June 07, 2010 (hereinafter referred to as the “*Loan Agreement*”) to subscribe to the GDR issued by *Beckons* and it was observed that the entire amount of the said loan was used to subscribe to all the 2.49 million GDR by only one entity, i.e. *Vintage*.

4. Investigation further revealed that the *Company* pledged its entire GDR proceeds with *Euram Bank* as a security against the aforesaid loan availed by *Vintage* from *Euram Bank* for subscribing to the GDR of *Beckons*. For this purpose, the *Company* entered into a Pledge Agreement dated June 07, 2010 (hereinafter referred to as the “*Pledge Agreement*”) with *Euram Bank* and the said agreement was signed by *Noticee no. 2* on behalf of *Beckons*. Investigation also found that *Noticees no. 2, 3, 4 and 5* were not only signatory to the Board Resolution authorising the *Company* to enter into a *Pledge Agreement*, but also were directors of *Beckons* during the relevant time of signing of the said *Pledge Agreement*. It has been noticed that these 4 *Noticees* (*Noticee no. 2* to 5) also participated in the meeting of the Board of Directors (hereinafter referred to as “*Board*”) of the *Company* dated February 21, 2008, in which a resolution was passed for opening an account with *Euram Bank* wherein, the GDR proceeds was proposed to be deposited. The Board further authorised *Euram Bank* to use the GDR

proceeds of the *Company* as security against loans if any. During the course of investigation, it was also noticed that the *Company* had not disclosed to the investors about the arrangement so made by it to ensure the successful issuance/subscription/allotment of the GDR by facilitating a loan to *Vintage* in terms of the aforesaid *Loan Agreement*. It was concealed from the public that the proceeds of GDR would be kept as security with the *Euram Bank* and would not be made available for the *Company's* immediate use. Thus, the *Company* had concealed material facts from shareholders of the *Company* and investors of Securities Market and thereby had prevented them from taking an informed decision. The above acts of providing partial and distorted information to the public about issuance of GDR by the *Company* were observed to acts falling in the category of fraudulent acts on the part of the *Noticees* to mislead the shareholders/investors at large.

SHOW CAUSE NOTICE, REPLY AND HEARING:

5. Based on the above narrated findings made in the investigation, a common Show Cause Notice (hereinafter referred to as “SCN”) dated June 28, 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 5* 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 *SEBI 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 subsequent to the issuance of SCN, *Noticee no. 2, 3 and 5* had sought inspection of certain documents from SEBI. In this regard, I note from the material available on record that inspection of relevant documents has been provided to the aforesaid *Noticees* by SEBI. I find that *Noticees*

no. 2, 3 and 5 have submitted their written replies to the SCN. While the said proceedings were in progress, an application for Settlement was preferred by the *Noticee no. 2*, which finally got rejected on April 17, 2020. Meanwhile, in compliance with the principles of natural justice, *Noticees* were provided with an opportunity of personal hearing on November 15, 2018, however, upon receipt of request from certain *Noticees*, the hearing was adjourned to March 26, 2019. I further note that on the basis of requests received from *Noticee no. 2, 3 and 5* citing health issues, personal issues and COVID pandemic, etc. from time to time, the personal hearing was adjourned several times and finally the *Noticees* were heard on July 14, 2020. After completion of their personal hearing, *Noticees no. 2 and 5* (vide separate letters dated July 27, 2020) and *Noticee no. 3* (vide letter dated July 29, 2020) have also submitted their respective post hearing written submissions.

7. I have perused the aforementioned written replies submitted by the *Noticees*, the presentations made on their behalf during personal hearing and also the post-hearing submissions made before me by the *Noticees*. The contentions / submission of the *Noticees* are briefly summarised as below:

Common Submissions by *Noticee no. 2, 3 and 5*

a) GDR were issued by the *Company* in 2010 while SEBI has issued SCN after 7 years of the GDR and such inordinate delay of around 7 years is unjustified and unfair. In this regard, the *Noticees* have placed reliance on following case laws:

- Hon'ble SAT in the matter of *SEBI vs. H B Stockholdings (Appeal No. 114 of 2012)*;
- Hon'ble Supreme Court in the matter of *SEBI vs. Bhavesh Pabari (2019, SCC Online SC 294)*;
- Hon'ble SAT in the matter of *SEBI vs. Ashok Shivalal Rupani & Anr. (Appeal no. 417 of 2018)*;

- Hon'ble SAT in the matter of *SEBI vs. Aditi Dalal* (Appeal no. 143 of 2011);
 - Hon'ble SAT in the matter of *SEBI vs. ICICI Bank Ltd.* (Appeal no. 583 of 2019);
- b) *Noticees* have placed reliance on Section 63 of the Indian Evidence Act, 1872 which necessitates a pre-requisite satisfaction of any of the conditions as laid down under section 65 of the Indian Evidence Act, 1872 and have submitted that the reliance by SEBI on the photocopy of the documents during the course of investigation conducted by SEBI which are used for issuance of SCN's against the *Noticees*, is bad in law.
- c) It is brought to my notice that in addition to this proceeding, an additional proceeding is also going on against the *Noticees* with respect to issuance of GDR proceeds in year 2008. In this regard, *Noticees* have requested to merge the two proceedings in the matter of *Beckons* (2008 and 2010) into a single proceeding.
- d) *Noticees* have placed reliance on the following case laws to further their arguments:
- Hon'ble SAT in the matter of *SEBI vs. Adi Cooper & Anr.* (DoD: 05.11.2019, Appeal no. 124 of 2019);
 - Hon'ble SAT in the matter of *SEBI vs. Pritha Bag* (DoD: 14.02.2019, Appeal no. 291 of 2017);
 - Hon'ble SAT in the matter of *SEBI vs. R.K. Global* (DoD: 16.09.2010, Appeal no. 158 of 2008);
 - Hon'ble SAT in the matter of *SEBI vs. Narendra Ganatra* (DoD: 29.07.2011, Appeal no. 47 of 2011);
 - Hon'ble SAT in the matter of *SEBI vs. Sterlite Industries* (2001, 34 SCL 485);

- Hon'ble SAT in the matter of *SEBI vs. Parsoli Corporation* (DoD: 12.08.2011, Appeal no. 146 of 2011);
- Hon'ble Supreme Court in the matter of *SEBI vs. Kishore Ajmera* (DoD: 23.02.2016, CA no. 2018 of 2008);
- Hon'ble Supreme Court in the matter of *Govt. of NCT Delhi & Ors. vs. Gorkha Security Services* (DoD: 23.02.2016, CA no. 2018 of 2008);
- SEBI order dated 31.12.2014 in the matter of Cals Refineries Ltd.
- SEBI order dated 03.04.2019 in the matter of CAT Technologies Ltd.
- SEBI order dated 31.05.2019 in the matter of ABL Biotechnologies Ltd.
- SEBI order dated 31.05.2019 in the matter of Rana Sugars Ltd.

Submissions by Noticee no. 2

- e) Noticee had resigned as Managing Director of Beckons in 2011 and even as a Director of the *Company* with effect from 14.05.2011.

Submissions by Noticee no. 3

- f) Noticee was a non-Executive Director of the *Company* during the period from 28.09.2002 to 30.09.2011 and during his tenure he was not involved in day to day affairs of the *Company*.
- g) Noticee has placed reliance on the following cases to further his arguments:
- Hon'ble SAT in the matter of *SEBI vs. Adi Cooper & Anr.* (DoD: 05.11.2019, Appeal no. 124 of 2019);
 - SEBI order dated 28.07.2020 in case of *Satish Bagrodia and Ors. in the matter of GDR issuance of Winsome Yarns Ltd.*
- h) Noticee has submitted that he was a Non-Executive Independent Director at the relevant time and had no role to play in the day to day business activities of Beckons. Noticee has also referred to the MCA master circular no. 1/2011 dated 29.07.2011 to emphasize on his points as to when an independent

director can be held liable. *Noticee* has also asserted that as per Section 149(12) of Companies Act, 2013, the Non-Executive Director and Independent Director cannot be held liable unless he had knowledge of commission of wrong doing by Company or he did not act diligently. Since in this case the violation, if any, has taken place without his knowledge, the charges against him should be dropped.

- i) The *Noticee* has never traded in the scrip of the *Beckons*.

Submissions by *Noticee no. 5*

- j) *Noticee* has placed reliance on an order of Adjudicating Officer (hereinafter referred to as “AO”) of SEBI dated 30.06.2020 in the matter of Beckons Industries Ltd. and has mentioned that the proceedings initiated against the *Noticee* were dropped without imposing any penalty. The *Noticee* made references to the AO’s order and requested for disposal of the present proceedings in his favour.
- k) *Noticee* was a non-Executive Director of the *Company* during the period from 10.10.2003 to 11.11.2011 and during his tenure he was not involved in day to day affairs of the *Company*.
- l) *Noticee no. 5* has also relied on MCA master circular no. 1/2011 dated 29.07.2011 in line with the submission of *Noticee no. 3*.
- m) *Noticee* was not part of any of the committees of *Beckons*. The *Noticee* had attended only 2 Board meetings in Financial Year (FY) 2008-09 and did not attend any Board meeting in FY 2009-10 and 2010-11.

ISSUES FOR CONSIDERATION AND FINDINGS:

8. I have perused the SCN dated June 28, 2017, along with its annexures, the replies filed by the *Noticees*, submissions made during the course of personal hearing and written submissions filed and thereafter 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 SEBI PFUTP Regulations, 2003?

(ii) Whether the Noticees no. 2 to 5 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 SEBI 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 SEBI PFUTP Regulations, 2003?

9. Before I proceed to examine the afore-stated issue 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 *SEBI 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;*

SEBI 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. It has been noticed that *Noticee no. 1* has neither submitted any reply to the SCN nor has appeared before me for personal hearing, despite being granted sufficient opportunity, hence, I find it proper to proceed in the matter qua *Noticee no. 1* on the basis of material available before me and record my findings in the succeeding paragraphs.

11. As noted earlier, the *Company* had issued 2.49 million GDR on June 14, 2010 for raising 10.54 million US\$ and for this purpose, the *Board of Beckons* had passed a Resolution in its Meeting held on February 21, 2008, wherein, *inter alia*, a decision was taken to open an account with *Euram Bank* for the purpose of depositing the GDR Proceeds therein and also to authorize *Euram 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 be opened with Euram Bank (“the Bank”) or any branch of Euram Bank, 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 Shri Gurmeet Singh, Managing Director of the Company, be and are hereby severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.”

“.....RESOLVED FURTHER THAT 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 Resolutions* (copy enclosed as annexure to the SCN), I note that the said *Resolutions* were approved by the *Board* on February 21, 2008 for, *inter alia*, opening of a bank account with *Euram Bank* for the purpose of receiving subscription money in respect of the GDR issue of the *Company*. According

to the Resolution, the *Noticee no. 2*, Mr. Gurmeet Singh was authorized to sign, execute any application, agreement, etc., as may be required by the *Euram Bank*. Accordingly, the *Company* had opened an account no. 540133 in its name in *Euram Bank*. It was further resolved by the *Board* to authorize the *Euram Bank* to use the funds so deposited in the said bank account of the *Company* as security in connection with loans, if any. A comprehensive reading of all the above said *Board* Resolutions suggest that a decision was taken by the Board of the *Company* as far back as on February 21, 2008, related to the proposed issuance of GDR including a decision that was taken at that very stage itself to open a bank account with *Euram 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 issue to be received in their *Euram Bank* account would be used as a security for loans by the *Euram Bank*. The said contemplation of using the GDR proceeds as security for loan was sans any reason and contrary to the commonly accepted commercial practise. No reasons have been assigned by the Board for passing such a resolution. Further, putting the GDR proceeds as a security against a loan clearly suggests that the *Company* did not have any need for the GDR proceeds to put them to immediate use for the objects for which the GDR were to be issued. On the one hand, the *Company*, instead of raising funds from the domestic sources thought it proper to explore the possibility of raising funds offshore, while on the other hand, it did not seem to have any genuine intention to immediately use such funds for the business requirement of the *Company*. Apparently, this act of the *Company* gives an impression that the *Company* did not have any serious and urgent need of funds to meet its business requirement. 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 a security against loan if any, was never disclosed to the Stock Exchange or to the Shareholders of the *Company*, which amounted to concealing of such an important information from the knowledge of the shareholders and other domestic investors and consequently preventing them from taking an informed decision.

13. As noted in the beginning, *Vintage* had signed a *Loan Agreement* dated June 07, 2010 with *Euram Bank* for availing a loan of up to US\$ 10,543,867.20.84 so as to be in a position to subscribe to the full amount of the GDR issue of *Beckons* worth of 10.54 million US\$. It is also observed that *Noticees* have neither made any submission nor have they furnished any documents to rebut that the said sole subscriber, i.e. *Vintage* was otherwise, even in the absence of the said loan that it got from *Euram Bank*, was financially capable to subscribe to the entire GDR issue. In this regard it is pertinent to note some of the relevant clauses of the said *Loan Agreement*, which are cited as under:

"1. Currency and Amount of Facility

USD 10,543,867.20.84

2. Nature and Purpose of Facility

To provide funding enabling Vintage FZE to take down GDR issue of Beckons Industries Limited's Luxembourg public offering and may only be transferred to EURAM account no. 540133, Beckons Industries Limited.

3. Draw down

The Bank makes the Facility available to the Borrower subject to the fulfillment of the conditions precedent as set out in section 9 of this Loan Agreement and solely for the purpose as set forth above.

.....

6. Security

6.1 In order to secure all and any of the Bank's claims and entitlements against the Borrower, arising now or in the future out of or in connection with the Loan or any other obligation or liability of the Borrower to the Bank, including without limitation other loans granted in the future, it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be demanded by the Bank:

- *Pledge of certain securities held from time to time in the Borrower's account no. 540012 at the Bank as set out in a separate Pledge Agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*
- *Pledge of the account no. 540133 held with the Bank as set out in a separate Pledge Agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*

.....”

14. From the above, I can observe that apparently on the strength of the authorization given by the Board to that effect to “use the funds so deposited in the aforesaid bank account as security in connection with loans if any” the Noticee no. 2, Mr. Gurmeet Singh had signed an *Pledge Agreement* with *Euram Bank* dated June 07, 2010 therein giving an undertaking on behalf of *Beckons*, to deposit in the designated account of *Beckons* with *Euram Bank*, an amount not exceeding the loan availed by *Vintage* for subscribing to the GDR of *Beckons* and further to keep the deposited amount as a security against the loan obligations of *Vintage* under the above mentioned *Loan Agreement*. Some of the relevant clauses of the *Pledge Agreement* signed by Noticee no. 2 on behalf of the Company with *Euram Bank* are quoted as under:

“1. Preamble

“By Loan Agreement K070510-003 (hereinafter referred to as the “Loan Agreement”) dated June 07, 2010, the Bank granted a loan (hereinafter referred to as the “Loan”) to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates (the “Borrower”) in the amount of USD 10,543,867.20. The pledgor has received a copy of the Loan Agreement no. K070510-03 and acknowledges and agrees to its terms and conditions.”

2. Pledge

2.1 In order to secure any and all obligations, present and future, whether conditional or unconditional of the Borrower towards the Bank under the Loan Agreement and

any and all respective amendments thereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the Loan Agreement- including those limited as to condition or time or not yet due- irrespective of whether such claims have originated from the account relationship, from bills of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations") the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:

2.1.1 all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount USD 10,543,867.20 existing from time to time at present or hereafter on the securities account(s) no. 540133 held with the Bank (hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein.

2.1.2 all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 540133 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and all amounts credited at any particular time therein....

(The Pledged Securities Account and the Pledged Time Deposit Account hereinafter referred to as the "Pledged Accounts", the Pledged Securities and the Pledged Accounts hereinafter collectively referred to as "Collateral")

.....

6. Realisation of the Pledge

6.1 In the case that the Borrower fails to make payment on any due amount, or defaults in accordance with the Loan Agreement, the Pledgor herewith grants its express consent and the Bank is entitled to apply the funds in the Pledged Accounts to settle the Obligations. In such case the Bank shall transfer the funds on the Pledged Accounts, even repeatedly, to an account specified by the Bank.

6.2 Notwithstanding the foregoing, in the case that the Borrower fails to make payment on any due amount, or defaults in providing or increasing security, the Pledgor herewith grants its express consent and the Bank is entitled to realize the Pledged Securities (i) at a public auction for those items of Pledged Securities for which no market price is quoted or which are not listed on a recognized stock exchange or (ii) in a private sale pursuant to the provisions of Section 376 Austrian Commercial Code unless the Bank decides to exercise its rights through court proceedings. The Pledgor and the Bank agree to realize those items of the Pledged Securities for which a market price is quoted or which are listed on a stock exchange through sale by a broker publicly authorized for such transaction, as selected by the Bank.

6.3 The Bank may realize the pledge rather than accepting payments from the Borrower after maturity of the claim if the Bank has reason to believe that the Borrower's payments may be contestable."

15. On a careful and combined examination of the contents of the relevant clauses of the "Loan Agreement" signed by Vintage with Euram Bank and the "Pledge Agreement", signed by Beckons with Euram Bank, following observations are made: -

- a) The Pledge Agreement was executed mainly to secure the obligations of the borrower i.e. Vintage, which was granted a loan for USD 10.54 million by Euram Bank. The preamble of the Pledge Agreement mentions that the Pledgor received a copy of the Loan Agreement and acknowledges the terms of the Loan Agreement. Further, the Pledge Agreement also mentions that the Pledgor (Beckons) pledges to Euram Bank, all the rights, title and interest in the securities deposited and balance of funds up to 10.54 million USD in the A/C no. 540133 maintained with Euram Bank (hereinafter referred to as "Pledged Accounts"). I note that the account no. 540133 was the account opened by the Company where the GDR proceeds of Beckons were to be deposited and it is the same account whose deposits were pledged by Beckons to Euram Bank as security against the loan taken by Vintage, vide the

said *Pledge Agreement* dated June 07, 2010 executed by *Beckons* before the actual GDR issue took place on June 14, 2010.

- b) In terms of the clause 6 of the *Pledge Agreement* (pertaining to realization of the Pledge), *Beckons* had given consent to the *Euram Bank* to apply the funds / deposits in the Pledged Accounts in the event of default of repayment by the borrower, i.e. *Vintage* for settling their loan obligations as a borrower.
- c) As a consequence to such pledge terms, I note that even after the GDR issue, *Beckons* could not get the GDR proceeds at its disposal for utilization until and unless repayment of the loan was made by *Vintage*.
- d) Further, on a perusal of table no. 2 of the SCN, I note that *Vintage* has repaid its loan in several instalments from July 27, 2010 to September 16, 2010 i.e. over a period of 3 months. From the details of facts unearthed in the course of investigation, it is also noticed that immediately after repayment of each loan instalment by *Vintage*, almost an identical sum of money was permitted to be released from *Beckons's Euram Bank A/C* to its Indian Bank account or the account of its subsidiary *Company*. It is further noted that certain amount was also transferred from *Beckons's* account in *Euram Bank* to Pan Asia Management Ltd, Seychelles, to which no explanation has been provided by the *Noticee Company*. The manner in which GDR proceeds were received by the *Company* in its Indian bank account/subsidiary bank account in instalments depending on the instalments of loan repayments made by *Vintage*, shows how the utilisation of GDR proceeds by the *Company* was conditionally attached to the repayments to be made by *Vintage*.
- e) It is noted that although both the agreements (viz. the *Loan Agreement* and the *Pledge Agreement*) are dated June 07, 2010, the *Pledge Agreement* was incorporated in the *Loan Agreement* and was annexed to the *Loan Agreement*, indicating that the *Euram Bank* signed the *Loan Agreement* with *Vintage* only after the *Company* signed the *Pledge Agreement* with it, thereby committing

to Pledge the GDR proceeds as a security against the loan to be sanctioned to *Vintage*. Accordingly, the *Pledge Agreement* contains suitable clauses and stipulations fastening the liability on the *Company* as a pledger against the borrowing by *Vintage*.

- f) As per clause 2 and 3 of the *Loan Agreement*, the said loan was sanctioned only for the purpose of subscribing to the GDR issue and the sanctioned amount could be transferred only to the designated account of *Beckons* with *Euram Bank* bearing account No. 540133 towards GDR proceeds. Further, clause 6 of the *Pledge Agreement* authorized the *Euram Bank* to apply the said proceeds lying in the account of *Beckons* to settle the loan liability of *Vintage*, in the event of default by the borrower. The clause further authorized the *Euram Bank* to realize the said GDR proceeds lying as security in the account of the *Company* even in the event when the Bank has a reason to believe that the payment by borrower/subscriber is contestable. Thus, the *Noticee Company* has, by signing the *Pledge Agreement* authorized that in all eventuality, in case of any default or potential default by the borrower i.e. *Vintage*, the security including proceeds of GDR to be deposited in its designated account can be applied by *Euram Bank* to satisfy its outstanding loan advanced to a purportedly unrelated borrowing company. The *Loan Agreement* and *Pledge Agreement* were inextricably connected in a manner that clearly points out that the *Noticee Company, Beckons* (the Pledgor) had consciously facilitated the loan to *Vintage* so as to ensure sure success of issuance of GDR so as to create a good market impact about the stock of the *Company*, knowing well that the GDR proceeds cannot be put to its business use, until and unless the repayment is made by the borrower.

16. The execution of *Loan Agreement* and *Pledge Agreement* on the same day i.e. on June 07, 2010 and well before the issuance of GDR, which took place on June 14, 2010 clearly shows that *Vintage* was already pre decided to be the sole subscriber to the GDR issue and the *Company* was well 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 *Vintage* and by executing the *Pledge Agreement*, *Company* had consciously restrained itself from using the proceeds of the issuance of GDR.

17. It may be recalled here that the *Company* had informed BSE on June 14, 2010 regarding subscription of GDR issuance of USD 10.54 million. However, despite being aware about the specific entity who would be subscribing to whole of its GDR issue as per its premeditated arrangement with the entity, the crucial material facts surrounding the *Loan Agreement* and *Pledge Agreement* and also about the single subscriber were knowingly concealed from the investors. The investors were never allowed to know that the GDR proceeds would be kept as a security against the loan taken by the sole subscriber and in case of default by the subscriber, the proceeds would be eventually utilized by Bank to settle the loan obligations of the borrower/subscriber. 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 *Euram Bank* and *Vintage* in connection with the GDR issue, from its Shareholders and from the Public at large.

18. It is also observed that soon after their issuance to the single subscriber, the GDR were converted into equity shares and sold in the Indian Securities Market. 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. Further, by concealment of actual material facts and the arrangement made by the *Noticees* to ensure the successful subscription to its issue of GDR from the knowledge of its stakeholders, the investors were kept in dark about the artifice created by the *Company* through which it enforced the so called successful subscription to its GDR. The disclosure

made by the *Company* on the platform of the Stock Exchange about the successful subscription of GDR issue without disclosing the behind-the-scene arrangement undertaken by it with the subscriber/borrower to ensure full subscription to its GDR by facilitating a loan to the said subscriber, has given an ostensible impression to the domestic investors and the market about the strong potential of the *Company* because of which investors outside India had shown overwhelming interest in subscribing to the securities issued by the *Company*, which was otherwise patently false and misleading.

19. The above acts of the *Company* represent a spurious 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 investors abroad, hence, the *Company* has a great value for investment in India as well. Such misleading inferences and deceptive 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 beyond 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. Under the circumstances, identifying or ascertaining the actual figure of loss suffered by the investors in the Securities Market is neither relevant nor can it be insisted upon as a pre-condition to issue a SCN for violation of SEBI PFUTP Regulations, 2003, as argued by the *Noticees*.

20. In this context, I further find it proper to refer to the observation of Hon'ble Supreme Court of India dated 06.07.2015 in *SEBI vs. 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*, have observed the following;

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

....that for creation of GDRs which can be traded only at the global level, the issuing Company should have developed a reputation at a level where the marketability of its investment creation potential will have a demand at the hands of the foreign investors. Simultaneously, having regard to the development of the issuing Company in the market and the confidence built up with the investors both internally as well as at global level, the issuing Company's desire to raise foreign funds by creating GDRs should have the appreciation of investors for them to develop a keen interest to invest in such GDRs. Mere desire to raise foreign investments without any scope for the issuing Company to develop a market demand for its GDRs by increasing the share capital for that purpose is not the underlying basis for creation of GDRs.....

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

21. 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. vs. SEBI*, wherein the Hon'ble Tribunal have observed the following:

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

.....from the aforesaid definition it is absolutely clear that if a person by his act either directly or indirectly causes the investors in the securities market in India to believe in something which is not true and thereby induces the investors in India to deal in securities, then that person is said to have committed fraud on the investors in India. In such a case, action can be taken under the PFUTP Regulations against the person committing the fraud, irrespective of the fact any investor has actually become a victim of such fraud or not.....

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

22. I have already noted that Noticee no. 1 has neither filed a response / reply to the allegations made in the SCN nor has preferred to avail the opportunity of personal hearing. Therefore, based on the appreciation of material available on record and keeping in view the discussions and observations made in the preceding paragraphs, I find that the entire scheme created by the Company (Beckons) starting with passing of Board Resolution, followed by entering into the Pledge Agreement to permit use of the funds deposited in its account with Euram Bank as a security against a loan, making an announcement on June 14, 2010 that the GDR have been successfully allotted and then not disclosing to the Public about the relevant Board Resolutions, details of Pledge Agreement and its arrangement with the sole subscriber to secure the obligation of its loan liability, etc. have cumulatively resulted in misleading the investors at large. Such a scheme and arrangement has in it, all the ingredients that comprise a fraudulent activity in the Securities Market. In view of the above, I hold that by its acts of concealing and suppressing vital material facts about the arrangement of the Loan Agreement and Pledge Agreement, 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 that the Company had created about 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, 1992* and Regulations 3(a), (b), (c), (d), 4(1), 4(2) (f), (k), (r) of *SEBI PFUTP Regulations, 2003*.

ISSUE No. 2: *Whether the Noticees no. 2 to 5 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 SEBI PFUTP Regulations, 2003?*

23. Before proceeding to deal with issues pertaining to the *Noticees* Directors on merit, it is noted that the *Noticees* Directors (except *Noticee no. 4*) have made some common technical submissions to seek exoneration from the instant proceedings. Therefore, it would be appropriate to deal with those common preliminary issues before dealing with their matters on merit. At the outset, the *Noticees* Directors (except *Noticee no. 4*) have contended that the instant proceedings deserve to be dropped on account of delay and laches by contending that the instant proceedings have been initiated after a lapse of more than nine years from the date of the GDR issuance, hence have caused prejudices against them as they cannot defend themselves effectively. I also note that the *Noticees* Directors have placed reliance on various decisions viz; *SEBI vs. H B Stockholdings*, *SEBI vs. Ashok Shivilal Rupani* and *SEBI vs. ICICI Bank Ltd.*, etc., to content that there was inordinate delay in initiating action in the matter. The submissions advanced by the *Noticees* though appear to be appealing on first blush, however, on scrutiny of the records, I am of the view that the aforesaid observations of the *Noticees* and the decisions relied upon by them would neither be applicable nor be helpful to the *Noticees*. The instant proceedings pertain to a serious charge of fraud having been perpetrated upon the investors allegedly under a pre-fabricated scheme devised to ensure successful subscription to the GDR through the Pledge and Loan agreements and therefore, cannot be perceived lightly and leniently. Secondly, it is a settled principle that the period of limitation, *inter alia*, can at best commence from the date of knowledge of an offence / violation and therefore, the mere fact that the alleged fraud was committed much prior to the initiation of investigation, which was triggered only after it came to SEBI's

knowledge, would not take away the statutory duty vested in SEBI to do investigation and proceed for corrective measure, based on material gathered in the course of investigation.

24. In the instant matter, it is noted that while investigating a few other cases of GDR issues based on some complaints, it was noticed by SEBI that one Mr. Arun Panchariya, in connivance with different issuer companies and their promoters/directors, had conceived fraudulent schemes to help those companies to issue GDRs in certain overseas markets. While investigating those cases, information was sought from several entities including the Regulators of other countries. After analysing the information received from various sources, it was noticed that similar modus operandi was also followed in several other GDR issuances by the Companies listed in India. Under the circumstances, the scope of investigations was further enlarged and a scrip wise investigation was undertaken by SEBI into a large number of GDR issue cases spanning over different years. Since, a large number of scrips and issues were taken up for investigation collectively for which information had to be collected from different entities, mostly from the authorities situated outside India through regulatory coordination/arrangements with different overseas Regulators, it consumed sufficient time for completion of investigation. Further constraining factor was that the approach of most of such companies was non-cooperative which also delayed the completion of investigation into such large no. of GDR cases undertaken by SEBI and these facts cannot be ignored while considering the delay so happened in this case in issuing the SCNs to the *Noticees*. I also note that major portion of relevant information in this regard was received from Financial Market Authority, Austria (Austrian Financial Regulator) in March 2015. I further note that SEBI has passed an order dated June 16, 2016 in which it has recorded that investigation was initiated in respect of 59 GDR issues made by 51 Indian Companies during the period 2002 to 2014. It is seen that *Beckons* was also one such scrips in respect of which the investigation was also undertaken and after completion of investigation SCN was issued to the *Noticees* on September 08, 2017. Therefore, the time taken for completion

of collective investigation into a large number of similar cases and also for issuing SCNs to a large number of *Noticees* is fairly understandable. Under the circumstances, the contention of *Noticees* on delay in initiation of action is not well founded on facts and do not deserve favourable consideration. Without prejudice the above factual observation, I find that no provision under *SEBI Act, 1992*, prescribes any time limit for taking cognizance of the alleged breach of provisions of *SEBI Act, 1992* and rules and regulations made thereunder. As stated above, in order to ascertain as to whether there has been actually any delay in the matter, the date when the violation came to the notice of the SEBI should be the relevant point and not the date of violation. Whether a delay in a particular case is justified or not depends on the facts and circumstances of that case. In this regard, I would like to rely on the following observations of Hon'ble SAT in the case of *Ravi Mohan & Ors. vs. SEBI* (SAT Appeal No. 97 of 2014 decided on 16.12.2015):

".....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no.114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice....."

25. Keeping the foregoing observations in view, the contentions of the *Noticees* with respect to delay in initiating action against them are misconceived, hence not maintainable. Additionally, the Hon'ble SAT while dealing with a similar fraudulent arrangement concerning GDR issue in the matter of *Jindal Cortex vs. SEBI*, (Appeal

no. 376/2013; order February 5, 2020) have held that *“Arguments on delay in investigation and consequently affecting natural justice are also devoid of any merit in the matter since this Tribunal is aware of the complexity involved in the entire manipulative GDR issue; how long it took SEBI to gain information relating to the various entities from multiple jurisdictions in the matter of PAN Asia Advisors Limited (Supra) and Cals Refineries Limited (Supra) etc.”*

26. I also note that the *Noticees* have also relied on the findings of Hon’ble SAT in the case of *Adi Cooper vs. SEBI*, (Appeal no. 124/2019, Order dated November 5, 2019) to impress upon their claim that no fraud can be logically inferred from the reading of the contents of the Board Resolutions, hence basing the entire allegations of fraud as being founded and built upon the said Board Resolution is not correct. In this regard, I find that the reliance on the findings of Hon’ble SAT in the *Adi Cooper (supra)* would not be helpful to the *Noticees*, as in the same case of *Adi Cooper*, the Hon’ble SAT has also found another Independent Director guilty of the violations as alleged in the same SCN. It is further observed that similar contentions and arguments also came for consideration before the Hon’ble SAT in the matter of *Cals Refineries Limited vs. SEBI* (Appeal No 04 of 2014; Date of Decision 12.10.2017), wherein the Company and Directors had claimed that from the contents of the Board Resolutions, it would not be justified to allege and conclude that loan mentioned in the Board Resolution was ever intended for third party loan as alleged in the SCN. The Hon’ble SAT after having heard 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 instalments 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 and the SEBI (Prohibition of

Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for convenience), cannot be faulted."

27. Further, it has been brought to my notice that the fraudulent arrangement indulged in by the *Company* to ensure successful completion of GDR issue was not a solitary case dealt with by SEBI. While dealing with the contention of delay in initiating action, I have already noted that SEBI had found that as many as 51 Indian Companies have made 59 GDR issues over a period of about 12 years and in all such GDR issues, Companies have been seen resorting to almost identical arrangement wherein, even the contents of Board Resolution passed by the respective companies were found to be worded in identical manner. It has been brought to my notice that although the outcome of many of such investigations has been contested before the judicial forums, the allegations and findings pertaining such identical fraudulent schemes have been well recognised and upheld in those forums. Therefore, in the present case, considering the background and conduct of *Company* and its Board members having indulged themselves in conceiving a similar scheme and arrangement to ensure successful subscription of GDR, I find the GDR issuance of the *Company* has all the ingredients that comprise a fraudulent activity in the Securities Market.

28. Based on the above, I find that like in all other cases wherein different listed Companies have issued GDR in overseas territories, in the instant matter also the *Company* has followed identical modus operandi, viz. it has opened a bank account for receiving / depositing GDR proceeds, executed a *Pledge Agreement* with the same Bank and facilitated the execution of a *Loan Agreement* so as to secure the subscription to its GDR issue solely by one entity i.e. *Vintage*. Further, the above observations of Hon'ble SAT have been affirmed in other GDR appeals as well. I find the facts of the aforesaid case of *Cals Refineries (supra)* and the observations made by the Hon'ble SAT therein as cited above are squarely applicable to the facts of the present case involving the *Company* and its Directors. Moreover, with respect to the observation made in the case of *Adi Cooper (supra)*, I am also informed that an appeal has already been

preferred by SEBI against the said Order before Hon'ble Supreme Court, and the Hon'ble Supreme Court after having been satisfied with the case advanced by SEBI, have been pleased to issue a notice vide its order dated February 20, 2020. As the said order passed by the Hon'ble SAT is now sub-judice, the *Noticee's* attempt to rely upon the same to seek exoneration would not be proper at this stage.

29. Without prejudice to the aforesaid, in my view, the authorization given by the Board to the *Company* to use the GDR proceeds as security for loan was the starting point of the fraudulent arrangement through which the *Company* facilitated the financing of GDR subscription by Vintage. Moreover, neither such an arrangement with the would-be sole subscriber to the GDR nor the Resolution passed by the Board authorizing such an arrangement to be made by the *Company* was ever disclosed to the Shareholders of the *Company* or to the investors of the Securities Market. There is no explanation available as to why any *Company* or its Directors would at all decide at the time of planning to raise funds through an issue of GDR, to keep the same GDR proceeds as a security for any loan, when the thought of availing any loan against the GDR proceeds to be received in future was apparently not at all existing in anybody's mind in the Board. By passing such a Resolution, the Board has however exposed the hidden interest of the *Company* and has explicitly indicated that at that very planning stage itself, the GDR proceeds were not meant to be brought in to India but to be kept as a security against a loan the details of which was not intended to be disclosed to anyone at that time. Therefore, the *Noticees* cannot absolve themselves fully from the burden of adverse consequences of the said Resolutions which were passed in a cryptic manner with their consent even though they had resigned subsequently.

30. The *Noticees* have also relied on the observations made in the matter of *SEBI vs. Pritha Bag (supra)* to highlight the role and responsibility of *Noticees* as Directors in the *Company*. In this respect, I note that the observations made in the said matter could not be extended and made applicable to the *Noticees* in the instant case as the facts and the context of the aforesaid case are distinguishable from the facts of the present matter. It is noted that in the *Pritha Bag(supra)* matter, the Hon'ble SAT had

an occasion to deal with the responsibility of a Director within the realm of 'Officer in default' as defined under Section 5 (c) of the Companies Act, 1956 while determining the liability to refund to the investors, whereas the instant matter pertains to the allegation of fraud committed on the stakeholders and on the investors at large. Hence, the role of the *Noticees* is not exactly covered under the observations made by the Hon'ble SAT in the case of Pritha Bag (*supra*).

31. Further, I note that the *Noticees* have referred to the judgment of Hon'ble Supreme Court in *SEBI vs. Kishore R. Ajmera* (2016) 6 SCC 36 and some other orders of Hon'ble SAT, viz. *R. K. Global vs. SEBI* (Order dated 16.09.2010 in Appeal No. 158/2008), *Narendra Ganatra vs. SEBI* (Order dated 29.07.2011 in Appeal No. 47/2011), *Sterlite Industries(India) Ltd. vs. SEBI* (2001) 34 SCL 485 (SAT) and *Parsoli Corporation vs. SEBI* (Order dated 12.08.2011 in Appeal No. 146/2011) to contend that "intent" is pre-requisite to examine violation of Regulation 3 and 4 of the SEBI PFUTP Regulations, 2003 and that fraud is a serious charge and hence, must be supported by higher degree of proof. Regarding the requirement of "intent" for the purpose of charge of "fraud", I note that the *Kishore Ajmera* case, as cited and quoted by the *Noticee* no. 6 does not lay down any such requirement. Regarding higher degree of proof, as observed in the orders relied upon by *Noticees*, reference may be made to the Judgment of the Hon'ble Supreme Court in *SEBI vs. Kanaiyalal Baldevbhai Patel* (2017) 15 SCC 1, wherein it was observed, ".....the definition of fraud which is an inclusive definition and therefore has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly the definition expands beyond what can be normally understood to be a fraudulent act or a conduct amounting to fraud....." In the *Kanaiyalal* (*supra*) matter, Hon'ble Supreme Court further observed, ".....the difference between inducement in criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and

established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient. No element of dishonesty or bad faith in the making of the inducement would be required.....”

32. In the present case, the board meeting dated February 21, 2008 of the *Company* was undeniably attended by the *Noticee no. 2 to 5*, in their respective capacities as Directors and in the said Board meeting, the proposal to open an account with *Euram Bank* was approved by the Board of Directors apart from approving the proposal to pledge the GDR proceeds to be deposited in the said Bank account so as to secure the loans taken, if any. The *Company* while disclosing to the world at large about the success of its GDR issue had simultaneously concealed the material facts about its indulgence in a scheme to ensure successful subscriptions of its GDR issue by a single Subscriber. This arrangement had a strong hidden agenda to “induce” or to mislead the investors to trade in the securities of the *Company*, since it had all the material to create a false and misleading impression about the financial prospects and excellent future of the *Company*. I note that the allegations have been made on sufficiently strong evidence by relying upon the *Board resolutions, Pledge Agreement, Loan Agreement*, disclosure made to the stock exchanges by the *Company*, bank statements of the *Company*, etc., which in contrast to the unsubstantiated protestations of the *Noticees*, clearly demonstrate a higher degree of probability of causing inducement to or misleading the investors in the matter of dealing in the securities of the *Company*. Therefore, I find that the evidence available on record and the inferences drawn from such evidence show higher degree of probabilities of commission of fraud by the *Noticees* on the innocent investors and are in accordance with the principles settled through various judicial decisions. It has been observed by the Hon’ble Supreme Court of India in the case of *SEBI vs. Kishore Ajmera* (2016) 6 SCC 366 that “*It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances*

surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the courts can't be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion...."

In the instant matter, in my view there are more than sufficient direct evidence to show the culpability of the *Notices* in not only allowing the *Company* to perpetrate fraud on the investors and shareholders but also in actively indulging in the scheme / arrangement through which the *Company* committed such violations and fraudulent acts while managing its GDR issue.

33. The *Notices* have also relied on Section 63 and 65 of Indian Evidence Act, 1872, stating that reliance on the photocopies of certain documents for issuance of SCN against them, is bad in law. In this regard, I note that the instant proceedings are in the nature of quasi-judicial proceedings and the provisions of Indian Evidence Act, 1872 are not strictly applicable to such proceedings. Further, the principle under Section 65 (a) of the said Act, itself provides for admissibility of a document as a secondary evidence under certain condition *inter alia*, when the original is in possession of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to the process of the Court. As stated in the beginning, the copies of the documents relied upon in the SCN to prove the allegations, were actually obtained during investigation through the help of overseas securities market regulators and the copies of all such documents relied upon in the SCN have been duly made available to the *Notices*. The *Notices* have filed their written replies to the SCN by referring to those documents, hence the objection to the reliability on those documents at this stage is without any reason and does not explain as to how these copies of documents have caused prejudice to the *Notices* in defending their interest and contesting the allegations made against them in the

SCNs. I also note that most of the documents relied upon in the SCN were in fact originated by the *Noticees* themselves viz; Board Resolution, Minutes of the Board Meeting, *Pledge Agreement* etc., and therefore, without assailing the credential and contents of such documents which are very well known to the *Noticees*, mere objection on the ground of reliance upon photocopies of documents, is not maintainable.

34. *Noticees* have also relied on the judgment of the Hon'ble Supreme Court in *Gorkha Security Services vs. Govt. of NCT of Delhi & Ors.* (2014) 9 SCC 105, to contend that SCN must disclose the specific penalty/action which is proposed to be taken against the *Noticee*. I find that the case of *Gorkha Security* (*supra*) is factually distinguishable from the present case and not applicable to the present proceedings. In *Gorkha Security* case, the matter pertained to blacklisting of a contractor by a government agency, which resulted in depriving the contractor from entering into any public contracts with government, thereby violating the fundamental rights of equality of opportunity in the matter of awarding a public contract to such person. On the other hand, the present SCN has been issued for breach of provisions of law. In *Gorkha Security* case, blacklisting was imposed by way of penalty, whereas in the instant proceedings, the purpose of issuing directions, if found necessary, would be preventive and remedial in nature. In *Gorkha Security* Case, the provision for blacklisting of the contractor was provided in the governing contract itself as a penalty to be imposed in case of breach of terms of contract, whereas, in the present matter provisions of law under which directions are contemplated to be issued, confer discretion to SEBI to take such measure as it thinks fit in the interest of investors and securities market. I also note that reliance on *Gorkha Security* is not tenable as the SCN in the present case, clearly brings out the charges levelled against the *Noticees* as well as the Sections of the *SEBI Act, 1992* under which directions are proposed to be issued.

35. Having dealt with the technical and preliminary objections, now I proceed to deal with the role of *Notices Directors* on their own merit. In this regard, I note that during the relevant time of issuance of GDRs, the *Noticee no. 2* was the Managing

Director of the *Company* while the *Notices no. 3, 4 and 5* were the Directors of the *Company*. I note from the SCN and material annexed therewith that the *Notices no. 2 to 5* attended the *Board Meeting* held on February 21, 2008. Accordingly, on the basis of the authorization given by the *Board* by passing the enabling resolutions on the said date, the *Noticee no. 2* has signed the *Pledge Agreement* on behalf of the *Company*, which provided *inter alia*, for GDR proceeds to be kept as a security against the loan availed by *Vintage* for subscription to the GDR of *Beckons*. I also note that none of these Directors has disputed to his attendance in the aforesaid meeting.

36. Admittedly, *Noticee no. 2* was the Managing Director of the *Noticee Company* and was in-charge of the day to day management of the affairs of the *Company*. As per the *Board Resolution* dated February 21, 2008, the GDR proceeds were authorized/permitted to be kept as a security against the loans if any, and in this case the said loan was not availed by the *Company* but by the sole subscriber i.e. *Vintage*. In conformity with the above *Board Resolution*, I find that an amount of USD 10.54 million, which were raised through GDR issue were pledged with the *Euram Bank* and was not made available to the *Company* for its immediate utilisation. Nothing has been brought in defence to support that the intent of the aforesaid *Board Resolution* was something else and not to ensure subscription to the GDRs through any fraudulent scheme. Therefore, in the absence of any other contingency or business exigency demonstrated by the *Noticee* and the observations made by Hon'ble SAT in the matter of *Cals Refineries (supra)* as recorded above, I don't see there could be any other reason to keep the GDR proceeds as a security for any loan that was proposed to be availed by the *Company*. Instead, it is abundantly clear that as on June 07, 2010, when the *Loan and Pledge Agreements* were signed, the *Noticee no. 2* being the Managing Director and in charge of the day to day affairs of the *Company* as well as being the authorised signatory to the *Pledge Agreement*, knew very well that the GDR subscription amount was liable to be kept as a security against the loan taken by the sole subscriber of the GDR (*Vintage*) from *Euram Bank*. I also note that the *Pledge Agreement* signed and executed by the *Noticee no. 2* contains incorporation about the

Loan Agreement and accordingly in the clauses of the *Pledge Agreement* suitable stipulations have been made, whereby the *Noticee Company* has undertaken to discharge the liability of the borrower, in the event the Borrower defaults in paying the loan availed by it from *Euram Bank* to subscribe to the GDR of the *Company*. Hence, contrary to the submissions made by the *Noticee no. 2*, the question of his being innocent and not guilty of the violation alleged made in the SCN does not survive.

37. It becomes clear that *Noticee no. 2* was very much seized of the intent behind the *Board Resolution* passed on February 21, 2008 pursuant to which he has signed the *Pledge Agreement* to ensure and secure the loan taken by *Vintage* for subscribing to the GDR of *Beckons*. Undoubtedly, *Noticee no. 2* was the Managing Director and was responsible for the day to day affairs of the *Company* hence, it was certainly his primary duty to come out completely clean before the *Board* with all the facts, strategy, steps to be followed and compliances to be made with respect to the proposed GDR issue, before moving a Resolution before the *Board*. Being the Managing Director, it was he, who was statutorily required to drive, guide and manage the affairs of the *Company*. He, in his capacity as the Managing Director during the relevant period was indeed in the driving seat of the *Company* and was in charge to steer the proposed issuance and therefore ought to have clarified to the stakeholders about his pre-arrangement with the subscriber and about the proposed *Pledge Agreement* that was devised to be executed with the Bank. *Noticee no. 2* being in complete command and control of the *Company*, is answerable to the *Board* for not sharing or disclosing the true implications behind moving the aforesaid *Board Resolution* and the intention behind signing the *Pledge Agreement* which he executed after getting the *Board Resolution* passed and without disclosing the same to the stakeholders and to the Public. All these facts in the case clearly indicate that the *Noticee no. 2* was actively involved in the fraudulent arrangement for ensuring a successful issue of GDR of the *Company* and therefore, having considered the allegations and the evidence available on record, in my view all the charges made against him in the SCN are found to be established. Further, the violations alleged

against the *Noticee no. 2* becomes more serious upon noticing that *Noticee no. 2* was involved in resorting the similar arrangement in the GDR issue of the *Company* in the year 2008 and *Noticee no. 2*, who was the Managing Director, both in the year 2008 as well as in 2010, had used the authorisation passed by the *Company* in its Board meeting held on February 21, 2008 for the purpose of entering into *Pledge Agreement* pertaining to GDR issue of 2008 and 2010. Therefore, the *Noticee no. 2* while seating on the chair of Managing Director is found to have indulged in fraud of severest nature, where he not only used the authorisation of the Board to perpetrate fraud upon the stakeholders twice.

38. Moving on to the other *Noticees*, who have claimed to be associated as Non-Executive Independent Directors of the *Company* during the relevant time (*Noticee no. 3, 4 and 5*), I note that the allegation against these Directors is that they have facilitated and authorised the *Noticee no. 2* by passing the afore- stated *Board Resolution* for opening of an account with *Euram Bank* and for the execution of a *Pledge Agreement* and thereby, have allegedly indulged in a fraudulent arrangement with the *Company* to ensure successful subscription to the GDR issue of the *Company*. From the documents on record and submissions made by these *Noticees* to rebut the allegations, it can be seen that these *Noticee* Directors were actively involved and have consciously facilitated the fraudulent arrangement for allotment of GDR to a single subscriber and have further clandestinely let the *Company* to file false and misleading disclosures to the Stock Exchange about the GDR issuance, allotment and subscriptions. By their acts, these *Noticees* have also become parties to the fraud committed by the *Company* on the shareholders and investors of Securities Market. It is noted that *Noticees no. 3 and 5* have made almost similar submissions and have offered similar explanations before me, whereas *Noticee no. 4* has neither submitted any reply nor has appeared before me for personal hearing. Therefore, with regard to allegations against *Noticee no. 4*, I am constraint to conclude that he has nothing to offer in his defence to rebut the allegations made against him in the SCN.

39. The *Notices no. 3 and 5* have submitted that they were functioning as Non-Executive Independent Directors and have resigned in the year 2011. They have also submitted that they have not traded in the scrip of *Beckons* and have not made any gains or derived any unfair advantage from it. As regard to their submissions of not making any gain or profit, it is highly inconceivable to think that deriving of profit to oneself should be an essential pre-requisite to allege or find someone guilty of fraud under the realm of SEBI *PFUTP Regulations, 2003*. Persons or entities who are associated with the securities market especially persons like *Noticee no. 3 and 5* who were at the helm of business affairs of a listed *Company* are not only required to be diligent and to act in adherence to the rules and regulations but also have to desist from adopting or permitting the adoption of any unfair means, which would be detrimental to the interest of the Securities Market, even though their action per se does not lead to any unjust profit to them or any quantifiable loss to the investors. The *Notices* ought to realise that the Securities Market is not a platform for adopting or allowing the practice of any fraudulent or unfair trade practice in whatsoever manner that obstructs dissemination of true and fair disclosures to the Public. Therefore, the argument of not trading in the scrip of *Beckons* or not deriving any benefit or causing any loss to investors becomes infructuous and redundant once it is found that the act of the *Noticee* in itself is fraudulent and not fair. In this regard, it is well settled that actual inducement to any person to buy or sell securities is not the essential precondition to find someone guilty of fraudulent and/or manipulative charges. It is sufficient that once the fact of fraudulent act is established, the consequence of inducement to the investors at large cannot be ruled out and for that matter no additional evidence is required to establish the actual inducement and loss to the investors.

40. The *Noticee no. 3 and 5* have also relied upon MCA Circular dated 29.07.2011, which provides that no director shall be held liable for any violation by the company or by any other officer of the company, if the violation occurred without his or her knowledge and without his/her consent/connivance or when he/she has acted

diligently, etc. with a view to impress on me that the *Notices* are not liable for the violations as alleged in the SCNs. In this regard, I note that the directions contained in the said circular are applicable for launch of prosecution by RoC or Regional Directors for offences committed under the provisions of Companies Act, 1956. The said circular has no relevance to the facts and circumstances of the present case, since, the present proceedings are civil proceedings for determining the violation of the provisions of securities laws, as alleged in the SCNs. Nonetheless, I prefer to seek guidance from the above referred circular while determining the role and responsibility of the *Notices* no. 3 to 5. I note that no evidences have been provided by these two Independent Directors *Notices* to demonstrate that they have actually exercised considerable due diligence while dealing with Board processes pertaining to the GDR issue of the *Company*, *inter alia*, by raising any pertinent questions in the *Board* Meetings or by not signing the *Board* resolution or by objecting to the proposed fraudulent scheme being conceived by the *Company*, by bringing the same to the notice of regulator. I further notice that even subsequent to the issue and allotment of GDR, the *Notices* no. 3 to 5, don't appear to have taken any steps or done anything to show that they had acted diligently to protect the interest of the *Company* or its shareholders. Further, by not raising any concern over non receipt of the GDR proceeds for *Company's* utilisation immediately after the issue, these *Notices* have not exhibited any good conduct either by raising a suspicion before the Board or Management or by protesting against the inaction of the *Company* to bring the GDR proceeds for *Company's* use. Such inaction and misconduct on the part of the *Notices* no. 3 and 5 not only shows how these two *Notices* behaved in a casual manner but also have consciously turned a blind eye to the fraudulently acts of the *Company* thereby allowing something to be done in gross disregard of the duties of an Independent Director which can't be considered as a mere omission, but active collusion with the *Company* and other Directors to execute a pre-designed arrangement for ensuring a successful GDR issue by the *Company*.

41. I am further of the view that reference made by the *Noticee no. 3 and 5* to Section 149 (12) of the Companies Act, 2013 would not come to their rescue as in the instant matter, the *Noticees* have not shown that they had been acting diligently with their knowledge and consent, whether express or implied while discharging their role of Directors on the Board of the *Company*. These *Noticees* have not only failed to bring any documents on record to justify their act in the capacity of Independent Director, but on the contrary their participation in the Board Meeting wherein the crucial decisions were taken and the GDR related resolutions were passed, justifies their deliberate intent and active support to the *Company* in perpetrating the fraud upon the investors of Securities Market. In this regard, I prefer to rely on the observations made by the Hon'ble Supreme Court of India, in the matter of *K.K Ahuja vs. V.K Vora* (2009) 10 SCC 48; *National Small Industries vs. Harmeet Singh Paintal* (2010) 3 SCC 330 and *S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and Anr* (2005) 8 SCC 89, wherein the Hon'ble Supreme Court have upheld the position that the liability of any director in a company is restricted to actions of omission or commission committed by the company which had taken place with the knowledge and consent, whether explicit or implied, of such director. Therefore, even based on the parameters laid down in the aforesaid MCA circular i.e. absence of knowledge attributable through board processes and absence of consent/connivance/failure to act diligently, the *Noticees no. 3 and 5* are found to be liable since they had attended the crucial board meeting dated February 21, 2008 and did not raise any objection/question to the resolutions passed therein so as to show that they have indeed acted diligently as Independent Directors of the *Company*.

42. I also note that *Noticee no. 3* was part of several committees of Beckons throughout the FYs 2008-2011. Furthermore, it has been stated in the Annual reports of the *Company* regarding the *Noticee no. 3* that "*with the association of Shri I.S. Sukhija as Director the Company's Financial Management has been effective in reducing the cost of finance*". I also note that the *Noticee no. 3* was associated with Beckons as the Chairman

of Audit committee who has been mentioned in the Annual Report as a retired Banker with extensive financial and accounting knowledge.

43. Considering the aforesaid, I note that *Noticee no. 3* having financial and accounting knowledge and being closely associated with Beckons during the relevant period, has not only failed to perform the duties cast upon him as an Independent Director but also, by participating actively in the Board process and 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 as well as on the investors of Securities Market. It is thus observed that *Noticee no. 3* in his capacity of Independent Director has failed in protecting the interest of stakeholders and by maintaining a deliberate silence, the *Noticee* has not only facilitated the execution of the *Pledge Agreement* but has also allowed the 'authorisation' passed in the Board Meeting of the *Company* held on February 21, 2008 to be used deliberately for the purpose of issuance of GDR in the year 2010 as well without raising any issues, objection in any form, whatsoever. Considering the same, in my view, the acts of *Noticee no. 3* are sufficient to bring him within the fold of fraud as alleged in the SCN.

44. With regard to role of *Noticee no. 5* as an Independent Director, he has asserted that he was associated with *Beckons* for providing his technical expertise on product quality and not relating to Finance of the *Company*. The *Noticee no. 5* has relied on an order passed by the *Adjudicating Officer (AO)* on 30.06.2020 in the matter of '*Issuance of GDR by Beckons Industries Limited*' and has requested for disposal of the present proceedings in his favour on the same lines. On a perusal of the *AO's* order dated 30.06.2020, I note that the *AO* while granting relief to the *Noticee no. 5* on the charges pertaining to issuance of GDR made in the year 2010, has got persuaded by the undisputed facts that the *Noticee no. 5* had not attended any Board Meeting and had taken no part in any subsequent Board Meetings after the meeting held on February 21, 2008. In this regard, I note from the records available before me that *Noticee no. 5* had attended only 2 Board meetings in Financial Year (FY) 2008-09 and did not attend any Board meeting in FY 2009-10 and 2010-11. Though, I note that the *Noticee no. 5*

had attended the Board meeting of *Beckons* held on February 21, 2008, wherein the crucial resolution with respect to the fraudulent issues of GDR by *Beckons* was passed, however, I also note that the *Noticee no. 5* apart from attending board meeting of *Beckons* on February 21, 2008, did not participate in any of the several other Board Meetings held in FY 2009-10 and 2010-11 and he ultimately resigned from *Beckons* in 2011. Further, it is also noted that the *Noticee no. 5* was not a member of any committees of *Beckons* in the financial years 2009-2010 and 2010-2011 and had no role in the Audit committee of the *Beckons* as well. Considering the afore stated limited involvement of the *Noticee no. 5* during the period pertaining to issuance of the GDRs by *Beckons*, I am of the view that in the facts of the matter, it would be difficult to hold against *Noticee no. 5* that the authorisation given by him as a Director in the Board Meeting of the *Company* held on February 21, 2008 for issuance of GDR in the year 2008 was deliberately given with a mandate to use the same for all further issuances (GDR) as well. The allegations against the *Noticee no. 5* would be difficult to sustain in the absence of any further acts on his part after the year 2008 so as to allege that he also by maintaining silence has allowed the *Noticee no. 2* to misuse the authorisation passed in the Board Meeting of the *Company* on February 21, 2008 to issue GDR in the year of 2010 as well. Therefore, considering the fact that *Noticee no. 5* remained absent in all the subsequent Board meetings of the *Company*, deserves a benefit of doubt. Therefore, I conclude that the allegation against the *Noticee no. 5* are not sustainable in the peculiarity of the matter, highlighted above.

45. As already mentioned in the preceding paragraphs of this order that *Noticee no. 4* who was an Independent Director of the *Company* has neither submitted a reply nor has preferred to appear before me. Hence my aforesaid observations with respect to *Noticee no. 3* regarding his role as Independent Director in the Board of the *Company* in the matter of GDR issue, is equally applicable for *Noticee no. 4* as the record shows that the *Noticee no. 4* had attended 8 Board meetings of the *Company* in FY 2009-10 and FY 2010-11 apart from attending the aforesaid crucial Board Meeting held on February 21, 2008.

46. It is noted that the submissions made by the *Noticees* to seek exoneration by relying on the observations made in the matter of *Satish Bagrodia & ors (Supra)* are not helpful to them, as the exoneration in the said matter was granted in terms of Section 41 A of State Financial Corporation Act 1951, as *Noticees* in that case were holding the post of Directorship in the capacity of Nominee Directors. Similarly, the submissions of *Noticees* to club the two proceedings pertaining to issuance of two GDRs by the Company in the year 2008 and 2010 respectively deserve rejection as the submissions of *Noticees* are bereft of any prejudice caused to them because of initiation of the separate proceedings. Moreover, the said proceedings pertain to two separate Show Cause Notices with respect to two separate GDR issuances (i.e. in the year 2008 and 2010), hence, it would be proper that the two Show Cause Notices are dealt separately for convenience and clarity, even though the facts and allegations are similar.

47. In my view, in a listed company, the Independent Directors who act as trustees of stake holders should take all such steps and measures as may be necessary in furtherance of the interest of shareholders and should demonstrate highest standards of governance. Ignorance of law or knowledge is no excuse. The *Noticee no. 3 and 4* have not produced any evidence or any submission to support that they had actually acted responsibly or that they had raised all the pertinent issues and had asked relevant questions to the management before the Board, before agreeing to pass such a resolution, as expected of them as an Independent Directors. There is no material or evidence on records to suggest that they had made due enquiries with or have 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. They have never raised any question on the actual utilization of the GDR proceeds in terms of the objects of the issue. Their claim of holding a position of Independent Non-Executive Director on the Board cannot *suo moto* absolve them from their expected duties and responsibilities during their tenure as a Director of the *Company*, which bestowed a

statutory responsibility on them to act diligently in the interest of the *Company* and the Shareholders. Therefore, I am of the view that although the *Noticee no. 3 and 4* were Independent Directors, at the same time looking at the way they have conducted themselves as Independent Directors, as suggested by the facts of the matter, they have clearly allowed themselves to be a part of the fraudulent scheme and hence, do not deserve exoneration from the allegations made on them in the SCN.

48. As held by me, the *Company* has used the GDR mechanism to mislead and induce the Indian investors. The *Company* has not divulged its fraudulent arrangement of the *Loan Agreement* and *Pledge Agreement* in its disclosure made in the Indian securities market and by merely informing that the GDRs were successfully placed, has presented a misleading appearance and a false promise of great value and positive outlook about the stock of the *Company* in the domestic markets. Such a misleading disclosure tantamount to fraud on the investors with a motive to further its interest as opposed to the interests of investors of Securities Market who may easily fall prey to the artificially created successful GDR issue and get induced to invest in its shares expecting better returns. The *Noticees no. 2 to 4* being the Directors of the *Company*, ought to either have taken due precautions and diligence before agreeing on the Resolutions of the *Board* that sowed the seeds of the *Pledge Agreement* to secure a loan taken by an unrelated third party as part of a collusive scheme, to mislead and defraud the investors or should have acted diligently even subsequently, by questioning the intention of the management of the *Company* and by expressing their concerns about the said arrangement through which, GDRs were issued in a deceptive manner, in order to establish their *bonafide* as being victim of the fraud and not part of the fraud that was committed by the *Company*. I note that the *Noticees no. 2 to 4* have not shown any diligence on their part as Directors in the entire GDR issue or even otherwise, in the functioning of the *Company*.

49. To sum up the preceding discussions, I find that the *Loan Agreement* was inseparably linked to the *Pledge Agreement* and vice versa, and both were executed consecutively. The *Pledge Agreement* was signed by Mr. Gurmeet Singh (*Noticee no. 2*)

on behalf of the Pledgor i.e., *Beckons*. The *Noticee* Directors facilitated the execution of the *Pledge Agreement* by passing a conveniently enabling *Board Resolution*. The *Loan Agreement* and *Pledge Agreement* enabled *Vintage* to avail loan from *Euram Bank* for subscription to the GDR of *Beckons*. This was made possible by the *Company* by offering its GDR proceeds as security for the loan extended by *Euram Bank* to *Vintage*. The GDR issue would not have been subscribed, had the *Company* had not given such a security against the loan taken by *Vintage*. By entering into such an arrangement, the *Noticees no. 2 to 4* have led the investors in India to believe that the issuer *Company* i.e. *Beckons* has got a good reputation in terms of investment potential because of which, foreign investors have enthusiastically subscribed to its GDR, whereas in reality, the GDRs were subscribed by *Vintage* with the help of the *Company* itself. Therefore, in effect, on the basis of authorisation given by the *Board* of Directors, the *Company* has facilitated the subscription of GDR by *Vintage* on the strength of a loan obtained by it from *Euram Bank* against which, the GDR proceeds of the *Company* were kept as security. All the aforesaid transactions and activities were undertaken behind the back of the Shareholders and other investors of the Securities Market. It is only when *Vintage* repaid the loan, presumably by liquidating the underlying shares of the GDRs in the Securities Market, that the *Company* could get back its GDR proceeds from *Euram Bank* for its utilisation. In my view, apart from the Issuer *Company* (*Beckons*) i.e. *Noticee no. 1* and Managing Director (*Noticee no. 2*), who have undoubtedly concealed the above information from the Shareholders, the Non-Executive Independent Directors (*Noticees no. 3 and 4*), have also failed to advance any credible explanation supported by any evidence to prove their innocence, hence, it constrains me to hold that *Noticee no. 2, 3 and 4* 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 *SEBI PFUTP Regulations, 2003*.

DIRECTIONS:

50. 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:

Names of the <i>Noticee</i>	PAN	(Period In Year)
Mr. Gurmeet Singh	ABRPS0882N	02
Mr. I. S. Sukhija	AGEPS8345J	01
Dr. Chandra Prakash	AHBPM1644G	01

51. In light of my observations noted at paragraph 44 of this Order, proceeding against *Noticee no. 5* are disposed of without any direction.

52. It is clarified that during the period of restraint, the existing holding of securities of the aforementioned *Noticees* {mentioned at paragraph 50 (a) and (b) of this order} including units of mutual funds, shall remain frozen.

53. Obligation of the aforesaid *Noticees* {mentioned at paragraph 50 (a) and (b) of this order}, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange (s), as existing on the date of this Order,

can take place irrespective of the restraint/prohibition imposed by this Order, only in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the aforesaid *Notices* in the F&O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order. The Order shall come into force with the immediate effect.

54. A copy of this order shall be forwarded to the *Notices*, all the recognized Stock Exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

DATE: October 27, 2020

S. K. MOHANTY

PLACE: MUMBAI

WHOLE TIME MEMBER