

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

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

In respect of:

S. No.	Names of the Noticee	PAN
1.	Kemrock Industries & Exports Ltd.	AAACK8810B
2.	Mr. Kalpesh Patel	ADFPP0505K
3.	Mr. Mukund Bakshi	ABXPB7925R
4.	Mr. Kaushik Bhatt	ABXPB2109D
5.	Mr. Dinesh Patel	AGQPP3633A

In the matter of Kemrock Industries & Exports Ltd.

(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 pertaining to issuance of Global Depository Receipts (hereinafter referred to as "**GDR**") by Kemrock Industries & Exports Ltd. (hereinafter referred to as "**Kemrock/Company/Noticee no. 1**") for the period from April 1, 2010 to May 31, 2010.

2. It was observed that *Kemrock* had issued 4.83 million GDR for USD 50.00 million on April 29, 2010. Details of the GDR issued by the *Company* are tabulated below:

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
April 29, 2010	4,827,200 (at USD 10.36 per GDR)	50.00	DBS Bank, Mumbai	4,827,200	The Bank of New York Mellon	Arkios 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 April 23, 2010 (hereinafter referred to as the "**Loan Agreement**") to subscribe to the GDR issued by *Kemrock* and the entire amount of the said loan was used to subscribe all the 4.83 million GDR issued by the *Company*, resultantly, entire GDR issue was subscribed 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 *Kemrock*. For this purpose, the *Company* entered into a Pledge Agreement dated April 23, 2010 (hereinafter referred to as the "**Pledge Agreement**") with *Euram Bank* and the said agreement was signed by *Noticee no. 2* on behalf of *Kemrock*. It has been noticed that the *Company* in its Board Meeting dated March 16, 2010, had passed a resolution for opening an account with *Euram Bank* wherein, the GDR proceeds were proposed to be deposited. The Board of the *Company* (hereinafter referred to as the "**Board**") further authorised *Euram Bank* to use the GDR proceeds of the *Company* as security against loans, if any. Investigation also noticed that *Notices no. 3, 4 and 5* have certified the copy of Board Resolution dated March 16, 2010 to be true and therefore were aware of the Board Resolution authorizing *Euram Bank* to use the GDR proceeds so deposited in the said bank account as a security in connection with loan sanctioned to *Vintage*. 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 its shareholders as well as from the investors of Securities Market and had indulged in a fraudulent scheme to ensure the success of issuance of GDR, thereby inducing the domestic investors to trade in its securities without being able to take 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 be falling in the category of fraudulent acts on the part of the *Noticees* to mislead and induce 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 August 28, 2018 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 *Noticees 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, 11(4) and 11B of the *SEBI Act, 1992*.

6. From the available records, I note that the SCN was duly served upon all the *Noticees* except for *Noticee no. 1*. It is noted that pursuant to receipt of the SCN, a letter dated September 18, 2018 was submitted on behalf of Mr. Kaushik Bhatt (*Noticee no. 4*) stating that he is out of India and will be filing a detailed reply. Mr. Dinesh Patel

(*Noticee no. 5*) has filed a written reply dated September 26, 2018 while Mr. Mukund Bakshi (*Noticee no. 3*) has made his written replies vide letters dated October 5, 2018 and November 5, 2018. *Noticee no. 4* has also filed a short reply vide letter dated October 20, 2018 but has sought more time to file a detailed reply which he could not file on account of having met with an accident. I note that Mr. Kalpesh Patel (*Noticee no. 2*) and *Noticee no. 3* have also sought inspection of documents and subsequently *Noticee no. 3* has carried out inspection of the documents relied upon the SCN on February 26, 2019. *Noticee no. 2* did not avail the opportunity to carry out the inspection of documents but has submitted his written reply to the SCN vide letter dated May 22, 2019. As mentioned above, the SCN could not be delivered to the *Company* and subsequently, it came to notice that the *Company* is in liquidation. In this regard, a letter was received by SEBI from the Office of Official Liquidator of the *Company* (for convenience "*OL*") vide letter dated November 6, 2019 stating that since the cause of action and allegations in the present proceedings pertain to pre-liquidation period, the *OL* is not concerned about the same nor has any knowledge about the said matter, hence the ex-Directors may be contacted.

7. In compliance with the principles of natural justice, all the *Notices* were provided with an opportunity of personal hearing before me on January 14, 2020. However, *Notices no. 3 and 4* requested for an adjournment of the personal hearing. Accordingly, the personal hearing of all the *Notices* was adjourned to March 31, 2020. *Noticee no. 4* again sought adjournment stating that he is unable to travel on account of COVID-19. Keeping in view the seriousness of the pandemic situation at that time, the personal hearing was adjourned and the next hearing was scheduled in the matter on June 4, 2020. Subsequently, another adjournment request was received from *Noticee no. 4*. The hearing was adjourned to August 4, 2020 *qua* him, whereas *Notices no. 3 and 5* duly attended the personal hearing through video-conference facility on June 4, 2020 and presented arguments based on their written replies submitted earlier in response to the SCN. Later on, these two *Notices* have also filed their post hearing submissions incorporating responses to certain queries put to them during the

personal hearing. *However, Noticee no. 4* vide email dated August 6, 2020 sought another date for personal hearing stating that he is old and not attending to work regularly and could not see the mail addressed to him intimating the hearing date in the matter. In the interest of justice, another opportunity of personal hearing was provided to him and to the *Noticees no. 1 and 2* as well on September 29, 2020. On that date, the hearing was attended only by *Noticee no. 4* through video conferencing. Subsequently, *Noticee no. 4* vide letter dated September 30, 2020 and also vide email dated October 12, 2020 has submitted his post hearing submissions. With regard to the *Noticees no. 1 and 2*, I find that sufficient opportunities for personal hearing have been provided to them and considering the fact that no request of adjournment has been received from them, no useful purpose would be achieved by granting any more opportunity. Therefore, I deem it appropriate to proceed in the matter on the basis of materials available on record and replies filed by them, if any.

8. The explanations offered and arguments advanced by each of the *Noticees* through their Personal hearing as well as written replies have been perused. The contentions / submission of the *Noticees* are briefly summarised as below:

Noticee no. 2

- a) He was Promoter of the *Company* and on the Board of Directors from 1991 till May 2015.
- b) There is immense delay in issuing SCN and since the *Company* is in liquidation, he has no access to documents and many relevant persons have also left the *Company*.
- c) SEBI has no jurisdiction over GDR issued in foreign jurisdiction unless the same has an adverse effect in Indian Securities Market, due to allied transactions in the underlying shares of GDR issue. The SCN does not make such allegation and GDR issue was compliant with Foreign laws, hence it is not SEBI's jurisdiction to allege that such scheme of issuance of GDR was fraudulent.

- d) GDR issue was done for financing the expansion needs of the *Company* (relating to carbon fibre production) and repayment of loans, hence they engaged a consultant who brought *Vintage*, an entity who was willing to subscribing to GDR issue of the *Company*.
- e) The *Pledge Agreement* was executed as per the advice of the consultant to the Board of Directors who advised that the same was compliant with all laws. Relevant disclosures about GDR issue have been made, therefore, as far as disclosure of *Pledge Agreement* is concerned, it becomes the discretion of the Board of Directors as to what needs to be disclosed. *Noticee* has further relied on Clause 36 of the Listing Agreement to further support his argument.
- f) The *Noticee* has admitted having signed the *Pledge Agreement* in furtherance of the authorization by the Board of Directors. He has not made any unlawful gain and has not sold shares even after price of the shares of the *Company* went high and rather he had bought shares subsequently.

Noticee no. 3

- g) He was appointed as an Independent/Non-Executive Director in 2004 and has resigned on August 28, 2010 owing to professional commitments and lack of time. He has enclosed Form 32 in support of his resignation.
- h) He was not involved in day to day affairs of the *Company* and was unable to attend the Board Meetings regularly and to the best of his knowledge, he did not attend meetings pertaining to GDR issue.
- i) The alleged fraudulent arrangement pertaining to GDR issue was not brought to his notice and he was not aware of the manipulative designs and was not part of discussions pertaining to signing of documents between *Kemrock*, *Vintage* and *Euram Bank*.

- j) He was informed by the *Company* that it is in the process of opening a bank account outside India with *Euram Bank* and that the copy of Board Resolution approving GDR issue and opening a bank account is to be certified by two Independent Directors as per the requirement of *Euram Bank*.
- k) The said Board Resolution only authorised opening of account and to carry out transactions including offering of the funds as security. Accordingly, he had certified the copy of the Board Resolution in good faith believing that it was in the interest of the *Company* and it is generally found that the proceeds of issue are normally placed in short term deposit till actually required.
- l) Further, the Company Secretary of the *Company* has also certified the copy of Resolution and disclosures, if any, with respect to GDR issue and matters connected with Stock Exchanges were being made by the Company Secretary and other Executive officers of *Kemrock*.
- m) *Noticee* has sought information from *Company*, MD and OL vide several letters sent to them, however, no information has been received from them. He has not even received remuneration from the *Company* for attending any of the Board Meetings.

Noticee no. 4

- n) *Noticee* was a Non-Executive, Independent and Professional Director and was never looking after the day to day affairs of the *Company* and has never received any remuneration for being the Director of the *Company*.
- o) *Noticee* is a practicing lawyer and has joined the *Company* to look after certain legal proceedings against the *Company*.
- p) *Noticee* has sought information from OL to provide the minutes of the *Company*, however, no information has been received by the *Noticee*. He has

not even received remuneration from the *Company* for attending any of the Board Meetings.

Noticee no. 5

- q) *Noticee* is unaware of the *Pledge Agreement* or *Loan Agreement* and he was only aware of passing of the alleged Board Resolution and was merely certifying the copy in a mechanical/clerical manner.
- r) *Noticee* has submitted an affidavit vide letter dated August 17, 2020 wherein he has reiterated his ignorance about the *Pledge Agreement* or *Loan Agreement* as well as the alleged transactions entered into by the *Company* pursuant to the Board Resolution dated March 16, 2010, until receipt of SCN from SEBI.
- s) Role of the *Noticee* was limited to the secretarial functions of the *Company* and not connected with the management of the *Company*. He has relied on Section 54 of Companies Act, 1956 to emphasise that it is one of the most routine functions of a Company Secretary to issue copies of board Resolutions.

ISSUES FOR CONSIDERATION AND FINDINGS:

9. I have perused the SCN including all the annexures as referred to in the SCN, replies received from *Noticees* to the aforesaid SCNs, submissions made during the course of personal hearing and written submissions filed as well as all other relevant material available on record, and find that the following issues require consideration in this matter:

(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 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 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?

10. Before I proceed to examine the afore-stated issues and decide as to whether on the facts of the matter, the aforesaid violations as alleged in SCN stand established or not, it would be proper to reproduce hereunder, the relevant provisions of the *SEBI Act, 1992* and the *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)

(b)

.....

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

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

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

11. As mentioned above, Noticee no. 1 (the Company) 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.

12. As noted earlier, the *Company* had issued 4.83 million GDR on April 29, 2010 for raising USD 50.00 million and for this purpose, the *Board* of *Kemrock* had passed a Resolution in its Meeting held on March 16, 2010, 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 of Kemrock Industries and Exports Limited (Company) be opened with EURAM Bank (“the Bank”) or any branch of EURAM Bank, including the off-shore branch, outside India for the purpose of receiving subscription money in respect of the Global Depository Receipts issue (GDRs) of the Company.

RESOLVED FURTHER THAT, Mr. Kalpesh Patel, the Chairman & Managing Director and Mr. Shailesh Patel, the Manager Accounts, the Authorized Signatories of the Company, be and are hereby severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other papers from time to time as may be required by the Bank and to carry and affix common seal of the Company thereon, if and when so required.

RESOLVED FURTHER THAT, Mr. Kalpesh Patel, the Chairman & Managing Director and Mr. Shailesh Patel, the Manager Accounts, the Authorized Signatories of the Company, be and are hereby severally authorized to draw cheques and other documents, and to give instructions from time to time as may be necessary to the said EURAM Bank or any of branch of EURAM Bank , including the off-shore branch, for the purpose of operation of and dealing with the said bank account and carry out other relevant and necessary transactions and generally to take all such steps and to do all such things as may be required from time to time on behalf of the Company.

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

13. On a perusal of the aforesaid *Board Resolutions* (copy enclosed as annexure-4 to the SCN), I note that the said *Resolutions* were approved by the *Board* on March 16, 2010 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, *Noticee no. 2*, Mr. Kalpesh Patel Chairman & Managing Director of the *Company* and another Mr. Shailesh Patel, Manager Accounts were authorized to sign, execute any application, agreement, etc., as may be required by the *Euram Bank*. Accordingly, the *Company* had opened an account no. 580020 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* clearly suggest that a decision was taken by the Board of the *Company* as far back as on March 16, 2010, 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 *Resolutions* 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 *Company* 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 be put 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* Resolutions, 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.

14. As noted in the beginning, *Vintage* had signed a *Loan Agreement* dated April 23, 2010 with *Euram Bank* for availing a loan of up to USD 50,000,137.6 so as to be in a position to subscribe to the full amount of the GDR issue of *Kemrock* worth of USD 50.00 million. It is also observed that *Noticees* have neither made any submission nor have they furnished any documents to establish that the said sole subscriber, i.e. *Vintage* was otherwise, (even in the absence of the said loan that was facilitated to it from *Euram Bank* by the *Company*), 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 50,000,137.6

2. Nature and Purpose of Facility

To provide funding enabling *Vintage FZE* to take down GDR issue of 4,827,200 Luxembourg public offering and may only be transferred to EURAM account no. 580020, Kemrock Industries and Exports 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. 580020 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.*

....."

15. From the above, I 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. Kalpesh Patel, Chairman & Managing Director (CMD) of the Company had signed a Pledge Agreement with Euram Bank dated April 23, 2010 therein giving an undertaking on behalf of Kemrock, to deposit in the designated account of Kemrock with Euram Bank, an amount not exceeding the loan availed by Vintage for subscribing to the GDR of Kemrock 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 K230410-003 (hereinafter referred to as the “Loan Agreement”) dated 23 April 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 50,000,137.60. The pledgor has received a copy of the Loan Agreement no. K230410-003 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 50,000,137.60 existing from time to time at present or hereafter on the securities account(s) no. 580020 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. 580020 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, 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.”

16. 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 *Kemrock* 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 50.00 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 (*Kemrock*) pledges to *Euram Bank*, all the rights, title and interest in the securities deposited and balance of funds up to USD 50.00 million in the A/C no. 580020 maintained with *Euram Bank* (hereinafter referred to as “*Pledged Accounts*”). I note that account no. 580020 was the account of the *Company* where the GDR proceeds of *Kemrock* were to be deposited and the same was pledged by *Kemrock* as security against the loan taken by *Vintage*, vide *Pledge Agreement* dated April 23, 2010 executed by *Kemrock* before the actual GDR issue that took place on April 29, 2010.
- b) In terms of the clause 6 of the *Pledge Agreement* (pertaining to realization of the Pledge), *Kemrock* had given consent to the *Euram Bank* to apply the funds in the *Pledged Accounts* in the event of default of repayment by the borrower, i.e. *Vintage* for settling their obligations as a borrower.
- c) As a consequence, to such pledge terms, I find that even after the GDR issue, *Kemrock* could not get the GDR proceeds at its disposal for utilization until repayment of the loan was made by *Vintage*.
- d) Further, on a perusal of Annexure-6 to the SCN, I note that *Vintage* has repaid its loan in several instalments from July, 2010 to February, 2011. It is also noticed that immediately after repayment of each loan instalment by *Vintage*, almost identical sum of money was transferred from *Kemrock's Euram Bank* account to its Indian Bank account as well as accounts of other

entities abroad. The manner in which GDR proceeds were received by the *Company* in its Indian bank account/by other entities indicates that the utilisation of GDR proceeds by the *Company* was essentially conditioned to the repayments made by *Vintage*.

- e) It is noted that both the agreements (viz. the *Loan Agreement* and the *Pledge Agreement*) are dated April 23, 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*, it is evident that 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 account of *Kemrock* with *Euram Bank* bearing Account No. 580020, however, the same would not be available for use by the *Kemrock*, until the borrower/subscriber makes the payment of the loan availed by it to subscribe the GDR of *Kemrock*. Further, clause 6 of the *Pledge Agreement* authorized the *Euram Bank* to realize the proceeds lying in the account of *Kemrock* 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*, in the event also, 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 lying

deposited in its designated account, can be used by *Euram Bank* to its absolute liberty to satisfy its outstanding loan advanced to a purportedly unrelated borrowing entity. It is thus found that the *Loan Agreement* and *Pledge Agreement* were inextricably connected in a manner that clearly points out that the *Noticee Company, Kemrock* (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.

17. The execution of *Loan Agreement* and *Pledge Agreement* on the same day i.e. on April 23, 2010 and well before the issuance of GDR, which took place on April 29, 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 and the same is also evident from the submissions made by the *Noticee no. 2*, wherein, he has admitted to have knowledge of the would be subscriber of the GDR. It further shows that 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 said *Pledge Agreement*, *Company* had consciously restrained itself from using the proceeds of the issuance of GDR.

18. It may be recalled here that the *Company* had informed BSE on April 30, 2010 that "...the *Company*, on April 29, 2010, raised USD 50 million through issue of 4,827,200 Global Depositary Receipts (each representing one Equity Share of par value of Rs. 10/-) at an issue price of USD 10.358 per Global Depositary Receipt. Each GDR represents one underlying equity share in the *Company*." 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* and *Pledge Agreements* 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 arranged to be kept as a security against the loan facilitated to the sole subscriber and in case of default by the subscriber, the proceeds would be eventually utilized by the *Euram 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 sufficiently clear that the *Noticee Company* has not made its disclosure to the Stock Exchange in a fair and transparent 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.

19. The acts of the *Company* enumerated above 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. 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....”

20. I also find it appropriate to refer to a decision by the Hon’ble Securities Appellate Tribunal (DoD 25.10.2016) in the case of PAN Asia Advisors Ltd. & anr. v. SEBI, wherein the Hon’ble Tribunal have observed the following:

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

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

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

21. I have already noted above 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, despite having been granted sufficient opportunities. 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 (Kemrock)* 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 April 30, 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?*

22. I note from the SCN that on the basis of the authorization given by the Board by passing enabling resolutions on March 16, 2010, *Noticee no. 2* has signed the *Pledge Agreement* on behalf of the *Company*, which provided and facilitated, *inter alia*, for GDR proceeds to be kept as a security against the loan availed by *Vintage* for subscription to the GDR of *Kemrock*. It is further observed that the other *Noticee* Directors i.e. *Noticees no. 3 and 4* alongwith the *Company Secretary* i.e. *Noticee no. 5* have certified the copy of the Board Resolution pertaining to Board Meeting held on March 16, 2010 as true, which was submitted to *Euram Bank*.

23. Before proceeding to deal with issues pertaining to the *Noticees (Noticees no. 2 to 5)*, I will first deal with the preliminary submissions adverted by the *Noticee no. 2*. At the outset, *Noticee no. 2* has 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 eight years from the date of the GDR issuance and hence has caused prejudice against him as he cannot defend himself effectively. It has been submitted by *Noticee no. 2* that since the *Company* is in liquidation, he has no access to documents and many relevant persons have also left the *Company*. The submissions advanced by the *Noticee no. 2* may appear to be appealing on first blush, however, one must note that 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 a successful subscription to the GDR through the *Pledge Agreement* and *Loan Agreement* 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* were 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 the non-cooperative approach of most of such companies which also delayed the completion of investigation into such a large number of GDR cases undertaken by SEBI and these facts cannot be ignored while considering the delay if any, so happened in this case in issuing the SCNs to the *Noticees*. I also note that major portion of the 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 *Kemrock* was also one such scrip in respect of which the investigation was undertaken and after completion of investigation SCN was issued to the *Noticees* on August 28, 2018. 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 *Noticee no. 2* on delay in initiation of action is not well founded on facts and do not deserve favourable consideration. Without prejudice to 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 contention of the *Noticee* with respect to delay in initiating action against them are misconceived, hence not maintainable. Additionally, I would also like to refer to the observations made by the Hon'ble SAT in the matter of *Jindal Cortex Ltd. vs. SEBI*, (Appeal no. 376 of 2019; DoD: February 5, 2020) wherein, while dealing with a similar issue of limitation in initiating action against the allegations of fraudulent arrangement concerning GDR issue, the Hon'ble SAT have observed as under:

"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. With regard to contention of *Noticee no. 2* that the *Company* is in liquidation and he has no access to documents, I note that he has merely made a bald statement that since the *Company* has gone into liquidation, he has no access to documents, however he has failed to show as to what concrete steps / efforts have been taken by him to gather relevant material for his defence. He has in fact admitted to have signed the *Pledge Agreement* and that disclosure pertaining to execution of the said *Pledge Agreement* was decided to be not relevant as per the Board of Directors, hence the same was not disclosed to the stock exchange. The *Noticee* has further submitted that the decision pertaining to not disclosing the aforesaid facts about signing of the agreements and *Vintage* being the sole subscriber, was the call taken by the Board of Directors of the *Company*. However, no evidence, in support of the said submission has been adduced by the *Noticee no. 2*. The *Noticee* has not explained as to why the *Company* and the Directors agreed to indulge in a fraudulent scheme to ensure successful subscription to the GDR issue of the *Company* by resorting to such an artifice, whereby they facilitated the subscriber to have the finances (on the basis of the *Pledge Agreement*) to subscribe to the entire issue of the GDR. In the absence of any plausible explanation forthcoming from the *Noticee* to justify the circumstances

warranting for indulging in such fraudulent scheme for ensuring the subscription to the GDR and not disclosing the true and correct facts to the Shareholders of the *Company*, I am left with no option but to conclude that the same was done only to mislead the Indian investors at large.

27. The next preliminary submission made by *Noticee no. 2* is that SEBI has no jurisdiction over GDR issued in a foreign jurisdiction unless the same has an adverse effect in Indian Securities Market, due to allied transactions in the underlying shares of GDR issue. It has also been submitted that the SCN does not make such allegation and that the GDR issue was compliant with Foreign laws, hence it is not SEBI's jurisdiction to allege that such scheme of issuance of GDR was fraudulent. In this regard, I note that the SCN has spelt out the allegations clearly, qua the *Noticees* about how, by their acts and the transactions made by them, the *Noticees* have engaged in a fraudulent scheme for issuance of GDR in an overseas market in order to mislead the shareholders and public at large, that have resulted in violation of Indian Securities Market Laws, i.e. provisions of *SEBI Act, 1992* and *PFUTP Regulations, 2003*. A company listed in India is bound to follow all the statutory provisions and regulations of SEBI and has to make true and adequate disclosures in terms of the Listing Agreement and *SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015* and is not to engage in any activity that can amount to defrauding the investors in breach of provisions of *PFUTP Regulations, 2003*. As the SCN has been issued with respect to violations of various specific provisions of Indian Securities law, the *Noticee's* claim that the present proceedings lack jurisdiction is an absurd and untenable proposition. Further, the question of jurisdiction of SEBI over GDR issue was deliberated by Hon'ble Supreme Court in the case of *SEBI v. PAN Asia Advisors Ltd & anr.*, (2015) 14 SCC 71 in which the observations of the Hon'ble Supreme Court in the matter squarely cover the issue as far as jurisdiction of SEBI is concerned. The relevant extracts of the judgment of Hon'ble Supreme Court dealing with the said issue are placed as under:

"80.It is true that the creation of GDR and its trading in the global market are governed by the respective laws of the country in which they are dealt with. But one special feature to be borne in mind is that in the case on hand, the allegations levelled against the issuing company in connivance with the respondents are that a make believe affair was created, as though there was genuine creation of GDRs and its investments by the foreign investors on the very date when the GDRs were issued and thereby the global performance of the issuing company in the local market of the issuing company had a boost in the commercial sector, which lured the local investors to develop their keen interest to make the investments on a higher share value by virtue of the investment made by the foreign investors and in that process it is alleged that the issuing company itself provided every scope for the foreign investments to be financed and in reality the ultimate investment was made by Indian investors viz., the ordinary shareholders. The said fact would certainly call for a probe at the hands of SEBI on whom a duty is cast under Section 11(1) to protect the interest of investors in securities and the security market....."

81.....

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

86. Therefore, we are unable to see any violation of exercise of its jurisdiction since the underlying shares of GDR were created and dealt with as well as traded in the stock market of Indian Territory. Any act which caused any infringement in such trading of those underlying shares by virtue of any malfeasance or misfeasance or misdeeds committed by any person under the Act which worked against the interests of the investors in securities and the securities market, the SEBI was entitled to proceed

against such persons who are involved in any of those allegations. Therefore, the reference to those provisions contained in other enactments in our considered opinion does not cause any impediment for SEBI to proceed against the respondents in exercise of its jurisdiction under the SEBI Act, 1992.....”

For the afore-stated reasons, I do not find any merit in the submissions of *Noticee no. 2* that that the instant matter does not comes under the jurisdiction of SEBI and hence the said argument requires no further consideration.

28. It has been submitted by the *Noticee no. 2* that the *Pledge Agreement* was executed as per the advice of the advisors/consultant to the Board of Directors who advised that the same was compliant with all laws, therefore, as far as disclosure of *Pledge Agreement* is concerned, it becomes the discretion of the Board of Directors as to what needs to be disclosed. He has further argued that the GDR issue was done for financing the business expansion needs of the *Company* (relating to carbon fibre production) and repayment of loans, hence they engaged a consultant who brought *Vintage* who was willing to subscribing to GDR issue of the *Company*. He has relied upon clause 36 of the Listing Agreement and business judgement rule to state that the Board of Directors in their wisdom did not find the information in relation to pledging of GDR proceeds against loan availed by *Vintage* to be material. The *Noticee no. 2* has himself admitted in his submissions that as per the business judgement rule it would be improper to substitute the judgement of the Directors in the absence of evidence that the Directors did not exercise due care or did not act bona fide. However, neither the *Company* nor the other *Noticees* has till date demonstrated as to how they have exercised due care or diligence or have acted in good faith by indulging in such a fraudulent scheme for issuance of GDR and not disclosing the details thereof to the shareholders and investors in India who were entitled to know every material details about the business conduct of the *Company*. Therefore, the aforesaid submissions only seem to be furthering the *mala fide* exhibited by the *Company* and other *Noticees* in relation the GDR issue.

29. The *Noticee's* submissions seem to be tilted towards relying on the expertise of the consultant who was presumably well versed with the GDR process and has convinced the Board of Directors about the GDR issue being compliant with all laws and that similar process has been followed by several other companies and *Noticee no. 2* being a technocrat and not a legal expert, trusted these representations made by the said consultant. It has also been submitted that the process of issuance of GDR was finalised as per advise of such consultant and the directions of *Vintage's* Managing Director. *Noticee no. 2* has also stressed that whether or not, the existence of *Pledge Agreement* and others facts alleged in the SCN had to be disclosed was a matter of collective decision of the Board of Directors and he had no special role to play therein. Such an argument lacks any persuasive value and rather shows that the Board of Directors, specifically *Noticee no. 2* who has executed the *Pledge Agreement* were aware of the identity of the potential sole subscriber to the GDR issue (being *Vintage*) and yet have not raised any objections or even disclose to the stock exchange. In such a case, heaping all the blame on the consultant or advisor is not acceptable. *Noticee no. 2*, being the Chairman and Managing Director of the *Company*, was very well involved in the execution of the Pledge and Loan Agreement with *Euram Bank*. Thus, despite being aware of the transaction between *Kemrock* and *Vintage*, the *Noticee no. 2* has grossly failed to take any steps to disclose the same to the investors and Shareholders of the *Company*.

30. It is not disputed that the *Company* has issued the GDR and on the basis of approval given by its Board by passing a Resolution, the proceeds of the GDR so issued were received in its designated account, opened with *Euram Bank* as per the directives in the said Resolution. The choice and decision to have a bank account and to hire consultants for assisting the *Company* in executing the GDR issue was a prerogative of the *Company* itself. Therefore, for any fault on the part of its consultants, it is the *Company* that is liable and it can't escape from its statutory responsibility on the ground of acting in the good faith on the advice of its consultants. Further, I observe that such submissions have seemingly been made as

part of an afterthought exercise to escape the likely enforcement action since no documents whatsoever has been submitted by the *Noticee* to substantiate his claim as to how he got persuaded by the said intermediaries (Advisors / Consultants) to open an account with the *Euram Bank* only (and in no other Bank) and under what circumstances, he thought it fit and proper to execute the *Pledge Agreement*, with *Euram Bank* thereby voluntarily fastening himself (and his *Company*) with the liabilities of the said sole subscriber/Borrower (*Vintage*). Moreover, through the said *Pledge Agreement*, the Issuer *Company* has gone to the extent of guaranteeing that it will repay the loan of *Vintage* in case default is committed by the said Borrower (*Vintage*) on the loan availed by it from the *Euram Bank*. If the *Noticee* is so convinced that the *Pledge Agreement* was executed acting on the advice of the consultants, then he was duty bound to take a stringent legal action against those consultants for such criminal breach of trust. In my view, instead of projecting himself as a victim, it is expected that the *Noticee* should have taken strong action against the consultants to highlight his *bonafide*, since according to the *Noticee no. 2*, the consultants have deceptively fastened a huge liability on them by subjecting the entire GDR proceeds as securities against the loan taken by a third party. However, to my surprise, no action has been initiated by the *Company* or *Noticee* against any of the consultants so far. Thus, the explanation furnished by the *Noticee* appears to be an attempt to shift his culpability on to others (advisors / consultants) so as to avoid any likely enforcement actions against him for the wrongful disclosure made by the *Company* to the public at large and for resorting to fraudulent acts against the interests of the Shareholders, as pointed out in the preceding paragraphs. Therefore, such explanations would not be maintainable under law or in facts of the case. Without prejudice, it is the responsibility of the issuer *Company* and *Directors* to be compliant with all the laws and it is not permissible for them to take shelter under the excuse that they have merely relied on the advice of the consultants who convinced them about the legality relating to the GDR process and documents.

31. It does not require reiteration that a listed *Company* and its Directors should be very cautious while conducting its business, directed towards achieving the *Company's* objects. The Board and its directors are entrusted to act diligently and responsibly for the very reason that the Shareholders have reposed faith on them and they are supposed to act as custodian of the hard earned money of the thousands of the innocent investors. Even if for a moment one is to accept the submissions of the *Noticee* that the *Pledge Agreement* was executed solely by relying on the advice of the consultants appointed by the *Company*, I find that *Noticee* has provided no explanation as to what steps he took when the GDR proceeds, which were expected to be realized immediately after the allotment, remained un-available for use by the *Company* and was made available to be used by the *Company* in tranches over a long period of time in terms of the clauses of the said *Pledge Agreement*.

32. I note that during the relevant time of issuance of GDRs, the *Noticee no. 2* was the Managing Director of the *Company* while the *Noticees no. 3 and 4* were the Directors on the Board of the *Company*. I note from the SCN and material annexed therewith that *Noticee no. 2*, on the basis of authorisation given by the Board of the *Company*, in the *Board Meeting* held on March 16, 2010 by passing the enabling resolutions on the said date, 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 *Kemrock*. Further, *Noticees no. 3 and 4* alongwith *Noticee no. 5* who was the Company Secretary of the *Company* at relevant point of time have certified the copy of the aforesaid Board resolutions to be used for opening bank account with *Euram Bank*. I also note that none of these Directors and the Company Secretary has disputed their signature on the said certified copy of Board Resolution.

33. 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 March 16, 2010, 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* which was unrelated third party. In conformity with the above *Board* Resolution, I find that an amount of USD 50 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 successful subscription to the GDRs through any fraudulent scheme. Therefore, in the absence of any other contingency or business exigency demonstrated by the *Noticee* 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 April 23, 2010, when the *Loan Agreement* and *Pledge Agreement* 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 clauses mentioning 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.

34. It becomes clear that *Noticee no. 2* was very much seized of the intent behind the Board Resolution passed on March 16, 2010 pursuant to which he has signed the *Pledge Agreement* to secure the loan taken by the *Vintage* for subscribing to the GDR of *Kemrock*. 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*. Therefore, merely stating that it was a collective decision of the Board of Directors who were convinced that the GDR issue was compliant with all laws, will not absolve him from the consequences of his actions. He has not even brought on record any documents to show to what extent the Board of Directors was aware of the entire scheme and which Directors were specifically involved in the said scheme. He, being in the driving seat of the *Company* knew how to steer the proposed issuance and therefore ought to have clarified to the Board Members about the pre-arrangement with the sole subscriber and about the proposed *Pledge Agreement* that was devised to be executed with the Bank. Therefore, he can't be permitted to take shelter under the plea that he signed the documents as authorised by the Board of Directors and as convinced by the consultant to the GDR issue, more so, considering the fact that neither the *Company* nor the *Noticee Directors* have apparently taken any legal action against the consultant, despite having been served with a SCN dated August 28, 2018. *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 without disclosing the same to the Public. His reliance on authorisation of the Board of Directors for executing the *Pledge Agreement* also appears to be a feeble afterthought defence to evade accountability for his own actions while the facts in the case clearly indicate that the *Noticee no. 2* was actively involved in the fraudulent arrangement for the GDR issue 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.

35. Moving on to *Notices no. 3 and 4*, who have claimed to be associated with the *Company* as Non-Executive Independent Directors during the relevant period of time, I find that they have submitted that they were not involved in the day to day operations of the *Company*. They have also submitted that they were not involved in the discussions or documentation pertaining to GDR issue as such, and were unable to attend the Board Meetings regularly and to the best of their knowledge, they did not attend the meetings which deliberated on the GDR issue. I note that the present proceedings qua *Notices no. 3 and 4* have not arisen on account of their involvement in day to day affairs of the *Company* but due to the fact that they have certified the copy of the Board Resolution submitted to *Euram Bank*, based on which the *Company* has pledged the GDR proceeds in favour of the above said sole subscriber, hence these two *Notices* were allegedly aware of the aforesaid Board Resolutions and contents therein. Consequently, these two *Notices* were alleged to be party to the fraudulent scheme.

36. The *Notices no. 3 and 4* have stated that they were informed by the *Company* that it is in the process of opening a bank account outside India with *Euram Bank* and that the copy of Board Resolutions approving GDR issue and authorizing opening a bank account is to be certified by two Independent Directors as per the requirement of *Euram Bank*. It is further submitted that the said Board Resolutions only authorised opening of account and to carry out transactions including offering of the funds as security, accordingly, they had certified the copy of the Board Resolution in good faith believing that it was in the interest of the *Company*. However, the *Notices* have failed to show as to whether they had questioned the *Company* or the management as to why the said Board Resolution needs to be certified by two Independent Non-Executive Directors or why in the first place GDR proceeds should be kept as a security and for which loan, the GDR proceeds should be kept as a security.

37. I note that based on the material on record it is not ascertainable as to which Directors had attended the Board Meeting dated March 16, 2010 delving which the

said Board Resolution was passed, authorising the *Company* to execute the *Pledge Agreement*. Investigation has observed that several emails were addressed to the *Company* from 2017-18 onwards in order to ascertain which Directors attended the Meeting on March 16, 2010, however, no response thereto has been received. Further, it has been observed during investigation that the names of the Directors who attended the Meeting on March 16, 2010 could also not be ascertained from the Annual Report 2009-10. I further note that *Noticee no. 3* has claimed to have not attended the Board Meeting pertaining to GDR issue. Similarly, *Noticee no. 4* has contended that he was not able to attend all the Board meetings and for very few times, he had visited the *Company*. In this regard, I note from the annual report of the *Company* available in public domain that during the period of April 2009 to June 2010, twenty (20) Board Meetings were held and out of the said 20 Board meetings, *Noticee no. 3* had attended 17 of such Board meetings. Similarly, *Noticee no. 4* was present in 15 such Board meetings. It is pertinent to note here that none of the two Directors viz. *Noticees no. 3* and *4* has been able to provide any evidence such as their prior intimation seeking leave of absence from attending the Board meeting dated March 16, 2010 (wherein the resolution pertaining to opening of bank account with *Euram Bank* was passed by the Board of the *Company*), to indeed prove that they have not attended the said Board meeting. Even if it is presumed that none of the two *Noticees* (*Noticees no. 3* and *4*) has attended the Board meeting dated March 16, 2010, none of two *Noticees* has been able to demonstrate whether they raised pertinent questions before the management as to why they should be certifying the Board Resolution passed by the said Board Meeting during which they were not present, according to their claims.

38. I note that the *Noticee no. 3* has resigned from the *Company* on August 28, 2010 after the completion of the GDR issue on April 29, 2010. He has also stated that as per the SCN and annexures, the GDR proceeds were received in the month of April 2010 and were utilised from July 2010 till February 2011 indicating the fact that the transactions were mainly carried out after he left the *Company*. In this regard, though

I note that *Noticee no. 3* had resigned from the Board of the *Company* on August 28, 2010, but he had certified the Board Resolution on April 20, 2010 (long before his resignation) on the basis of which, further processes including opening of bank account and *Pledge Agreement* were executed by the *Company* with the *Euram Bank* through its authorised person i.e. the *Noticee no 2*. I further note that both the *Noticees* (*Noticees no. 3* and *4*) were part of the Audit Committee during the relevant time. For instance, *Noticee no. 3* was the Chairman of the Audit Committee till June 30, 2010 and *Noticee no. 4* was one of the member of the said Audit Committee during the aforesaid period. Similarly, after the resignation of *Noticee no. 3* from the Board of the *Company*, *Noticee no. 4* became the Chairman of the Audit Committee. I note that none of these two *Noticees* has shown their diligence by raising any red flag or by asking / probing questions to the management, when the whole of the GDR proceeds were not received immediately by the *Company* for its utilisation after the GDRs were issued on April 29, 2010. As already 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* and *Pledge Agreement* in its disclosure made in the Indian Securities Market and by merely informing that the GDRs were successfully issued in overseas market, has presented a misleading appearance and a false promise of great value and potential about the stock of the *Company* in the domestic markets. Such a misleading disclosure tantamount to fraud on the investors with a motive to further its interest as opposed to the interests of investors of Securities Market who may easily fall prey to such an artificially created successful GDR issue and get induced to invest in its shares expecting better returns. Undisputedly, *Noticees no. 3* and *4* were Non-Executive Independent Directors of the *Company*, and in their role as an Independent Directors, they were supposed to have shown pro-activeness in finding out the true intent of the *Company*, especially as part of Audit Committee when the GDR proceeds were not received by the *Company* immediately after the GDR issue for utilisation by the *Company* and should have acted diligently by questioning the management of the *Company* about the non-receipt of

GDR proceeds immediately after the issuance was over. I further note that *Notices no. 3 and 4* have not only failed to perform the duties cast upon them as an Independent Directors but also, by not questioning about the delayed GDR proceeds despite being the Chairman / Member of the Audit committee during the relevant point of time or raising any queries even at the time of certifying the above mentioned Board Resolution, they have apparently 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 *Notices no. 3 and 4* in their capacity of Independent Director have failed in protecting the interest of stakeholders and by maintaining a deliberate silence, the *Notices* have only facilitated the execution of the *Pledge Agreement*. Further, the submissions of the *Notice no. 2* that the sole subscriber of GDR issue was well known in advance to the Board of Directors, can't be ignored. It is trite law that in the absence of direct evidence, the adjudicating authority can't be a mere helpless mute spectator, but is empowered to gather such evidence both factual and circumstantial, by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled in the SCN. While direct evidence is definitely a more certain basis to come to a conclusion, yet, in the absence thereof, it is for the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on the basis of which, the charges/allegations are founded so as to reach what would appear 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 proceedings where findings are generally arrived at applying the principle of preponderance of probabilities. In the instant matter, it is admitted by the *Notice no. 2* that *Vintage* as sole subscriber was well known to the *Company* and the Board of Directors beforehand, none of the *Notices* has submitted any evidence to controvert the assumption about his attendance in the crucial Board Meeting held on March 16, 2010, more so when records in public domain show that the *Notice* Directors had

attended most of the Board meeting held during the relevant period, *Notices no. 3 and 4* were admittedly part of the Audit Committee and have also certified the Board Resolutions to be submitted to the *Euram Bank*, which facilitated not only the opening of the escrow account, but also paved the way for the execution of the Pledge Agreement and further authorised *Euram Bank* to retain the GDR proceeds as security, till the liability was discharged by the borrower. Considering aforesaid attendant facts that have remained uncontroverted by the *Notices*, in my view, the acts performed by the of *Notices no. 3 and 4* as per records are sufficient to bring them within the fold of the commission of fraud as alleged in the SCN.

39. 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 *Notices 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 certifying the said resolution more so while acting in the capacity of members of Audit Committee. 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 questions 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 *Notices 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 on that account.

40. With regard to submissions of *Noticee no. 5* in the instant matter, I note that he has submitted that he is unaware of the *Pledge Agreement* or *Loan Agreement* and he was only aware of passing of the alleged Board Resolution and was merely certifying the copy in a mechanical/clerical manner. Further, as instructed during the Personal Hearing, he has submitted an affidavit vide letter dated August 17, 2020 wherein he has reiterated his ignorance about the *Pledge Agreement* or *Loan Agreement* as well as the alleged transactions entered into by the *Company* pursuant to the Board Resolution dated March 16, 2010 until receipt of SCN from SEBI. He has therefore pleaded no *mala fide* with respect to the alleged fraudulent scheme of the *Company*. He has also submitted that the said Board Resolution was prima facie meant for opening of a bank account for receiving GDR proceeds and did not contain any further hidden ulterior motive in it. He has further relied on Section 54 of Companies Act, 1956 to emphasise that certifying the Board Resolutions is one of the most routine functions of a Company Secretary to issue copies of board Resolutions. He has further relied upon Section 2 (45) of Companies Act, 1956 and Article 180 of the Articles of Association of the *Company* persuading that his role was limited to performance of secretarial and administrative functions and did not extend to the management of the *Company*.

41. From careful perusal of the submissions put forth by *Noticee no. 5*, I note that he has claimed ignorance about the implementation of the alleged transactions in pursuance of the Board Resolution dated March 16, 2010. He has relied on provisions of Companies Act, 1956 and Articles of Association to contend that his role in the *Company* was limited to Secretarial functions and meeting clerical documentation requirements and did not extend to the management functions in the *Company*. I find the arguments made by *Noticee no. 5* to have some merit. I note that the charge against the *Noticee no. 5* is mainly that he has certified the copy of the Board Resolution

pertaining to Meeting dated March 16, 2010 which has been used by the *Company* to execute the *Pledge Agreement*. Based on this action performed by him, he has been accused of acting as a party to the fraudulent scheme. However, the *Noticee* has argued vehemently that he had no say in the passing of the alleged Board Resolution and that he had merely certified the Board resolution as per the material available on record. The submissions made by *Noticee no. 5* through an affidavit while responding to queries raised during the hearing also states that the intimation with regard to the requirement of a certified copy of Board Resolution for opening of bank account with *Euram Bank* for GDR issue of the *Company* to be certified by the two Directors and Company Secretary, was received from the *Noticee no. 2* and accordingly the certified copy was most probably sent to *Noticee no. 2* for onward execution of the *Pledge Agreement* by him. Under the circumstances, after considering the role and functions of the *Noticee no. 5* and his vehement plea of ignorance about the fraudulent arrangement by the *Company* as well as there being no further material to show his involvement including his presence in the Board Meeting dated March 16, 2010, I do not find there is sufficient material to hold him guilty of the violations as alleged in the SCN hence, I find that the SCN can be disposed of against him (*Noticee no. 5*) without any further directions.

42. 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. Kalpesh Patel (*Noticee no. 2*) on behalf of the Pledgor i.e., *Kemrock*. The other *Noticee* Directors who were also members of the Audit Committee, played an active role in the execution of the *Pledge Agreement*. The *Loan Agreement* and *Pledge Agreement* enabled *Vintage* to avail loan from *Euram Bank* for subscription to the GDR of *Kemrock*. 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* 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. *Kemrock* 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* (*Kemrock*) i.e. *Noticee no. 1* and Managing Director (*Noticee no. 2*), who has undoubtedly concealed the above information from the Shareholders as well as 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 *Noticees no. 2, 3 and 4* have in collusion with the *Company*, 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

43. In view of the above discussions and my concluding observations with respect to the two issues that were considered by me in the matter, I, in exercise of powers conferred upon me under Sections 11, 11(4), 11B (1) read with Section 19 of the Securities and Exchange Board of India Act, 1992, in order to protect the interest of investors and the integrity of the Securities Market and considering the facts of the case as well as the specific role played by the respective *Noticees* and to meet the ends of justice, hereby issue the following directions:

- a) *Noticee no. 1*, the *Company* is restrained from accessing the Securities Market including by issuing prospectus, offer document or advertisement soliciting

money from the public and is further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner, for a period of three (03) years from the date of this Order. As informed that *Noticee no. 1* is under liquidation, therefore, the above direction shall be subject to any order passed by the Hon'ble Court/ Tribunal having jurisdiction approving any scheme for the revival of the *Company* or under the resolution plan approved under the Insolvency and Bankruptcy Code, 2016.

- b) The following *Noticees* are restrained from accessing the Securities Market and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner, from the date of this Order, for the period as directed below:

Name of the <i>Noticee</i>	(Period in years / months)
Mr. Kalpesh Patel	02 years
Mr. Mukund Bakshi	06 months
Mr. Kaushik Bhatt	06 months

44. In light of my observations noted at paragraph 41 of this Order, proceeding against *Noticee no. 5* is disposed of without any direction.

45. It is clarified that during the period of restraint, the existing holding of securities of the *Noticees* (mentioned at paragraph 43 (a) and (b) of this Order) including units of mutual funds, shall remain frozen.

46. It is further clarified that the obligation of the aforesaid *Noticees* (mentioned at paragraph 43 (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 *Noticees* in the

F&O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

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

48. 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. A copy of this Order shall also be forwarded to the Office of Official Liquidator for information.

-Sd-

DATE: JANUARY 27, 2021

S. K. MOHANTY

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA