

WTM/AB/IVD/ID4/10343/2020-21

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

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

In respect of:

Sr. No.	Name of the Noticees	PAN/ DIN
1.	Soma Textiles & Industries Limited	AADCS0405R
2.	Whiteview Trading Corporation	NA
3.	Mr. S. K. Somany	AAGPS6467H
4.	Mr. A. K. Somany	ACBPS8983M
5.	Mr. Prafull Anubhai	ACJPS9659C
6.	Mr. P. Bandopadhyay	ACIPB0422B
7.	Mr. Sunil Patel	ARWPP5026A

The aforesaid entities are hereinafter individually referred to by their respective names/notice numbers and collectively as “the Noticees”.

In the matter of Soma Textiles and Industries Limited

1. Present proceedings have emanated from the show cause notice dated July 21, 2017 (hereinafter referred to as, “**the SCN**”) issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) to the Noticees, alleging violations of Section 12A(a), (b) & (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, “**SEBI Act, 1992**”) read with Regulations 3(a), (b), (c) & (d) and 4(1), (2)(f), (k) & (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as ‘**PFUTP Regulations**’) by Soma Textiles &

Textiles Limited (hereinafter referred to as “**the Company**”/ “**Noticee No. 1**”/ “**SOMA**”) and violations of Section 12A(a), (b) & (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d) and 4(1) of PFUTP Regulations, 2003 by Noticee No. 2 to 7. The Noticees were called upon to show cause as to why suitable directions under Sections 11(1), 11B and 11(4) of the SEBI Act, 1992 should not be issued against them. The SCN issued to the Noticees, also contained the copies of documents relied upon in the SCN, which are as detailed below:

Annexure No.	Details
1.	Soma Textiles & Industries Ltd letter dated June 27, 2015
2.	Whiteview Trading Corporation Loan Agreement dated October 18, 2006 with Banco Efisa
3.	Drawdown notice for an amount of US \$18,500,000
4.	Resolution dated October 10, 2006 passed by directors of Whiteview Trading Corporation
5.	Company’s resolution in its meeting on July 27, 2006
6	Minutes of the Board Meeting dated July 27, 2006
7.	Account Charge Agreement dated October 18, 2006 between Soma Textiles & Industries Ltd and Banco Efisa
8.	Copy of bank account statements as submitted by Banco Efisa
9.	Soma Textiles & Industries Ltd letter dated January 23, 2007

2. As can be noted from the SCN, the aforesaid SCN came to be issued against the Noticees in view of the fact that Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation into the Global Depository Receipts (hereinafter referred to as “**GDR**”) issue of Noticee no. 1 for the period October 01, 2006 to October 31, 2006 to ascertain whether shares underlying GDRs were issued with proper consideration and whether appropriate disclosures w.r.t. listing agreements, if any, were made by Noticee no. 1. The details of the said GDR issue are tabulated as below:

GDR issue date	No. of GDRs Issued (mn.)	Capital raised (US\$mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
20-Oct-2006	1.85	17.2975	ICICI Bank Ltd., Mumbai	1,85,00,000 equity shares of FV `10 (1 GDR=10 equity share)	Deutsche Bank Trust Company Americas	Pan Asia Advisors Ltd.	Banco Efisa	Luxembourg Stock Exchange

3. The initial allottees/subscribers of GDRs as submitted by Noticee no. 1 is placed below:

S. No	Name of the GDR subscriber	No of GDRs subscribed
1.	Fundabills GMBH	3,40,000
2.	Contifina SA	3,50,000
3.	Unicorn Asset Management	3,25,000
4.	Investec Bank (Switzerland) AG	5,35,000
5.	Animar Limited	3,00,000
	Total	18,50,000

4. However, the investigation revealed that the GDRs of Noticee no. 1 were subscribed by only one entity Whiteview Trading Corporation (hereinafter referred to as “**Whiteview**”), by obtaining a loan through loan agreement from the Banco Efisa, S.A. (hereinafter referred to as “**Banco**”), a bank based in Lisbon, Portugal and further the Noticee No. 1 had provided security for the loan obtained by Whiteview from Banco by pledging the GDR proceeds, through account charge agreement with the Banco.

5. The SCN contained *inter alia* the following allegations:

- a) Noticee no. 1 issued 1.85 million GDRs (amounting to US \$17.29 million) on October 20, 2006. Whiteview was the only entity to have subscribed to 1.85 million GDRs (amounting to US \$ 17.29 million) of Noticee no. 1 and the subscription amount was paid by Whiteview by obtaining loan (i.e. through loan agreement dated October 18, 2006) from Banco. The following was *inter-alia* mentioned in the said loan agreement dated October 18, 2006:

“a) Facility- Subject to the terms of this agreement, the bank agrees to make available to the borrower a Dollar term loan facility in the maximum principal amount of upto US \$18,500,000.

b) Purpose- *The borrower shall use the proceeds of the advance to subscribe for global depository receipts to the value of upto US \$18,500,000 issued by SOMA on the terms of the Listing particulars to be delivered to the Luxembourg Stock Exchange."*

- b) Mr. Sunil Patel (Noticee no. 7), Overseas Sales representative of Noticee no. 1 signed an account charge agreement with Banco. The account charge agreement dated October 18, 2006 *inter-alia* states the following:

"1. Loan agreement: *Loan agreement means the Loan agreement signed between Whiteview (as borrower) and the Bank dated on or around the date of this agreement by which the bank agreed to lend to Whiteview the maximum amount of upto US \$18,500,000.*

2. Account Charge Agreement:

Subject to the terms of this agreement, SOMA deposited in its designated account with bank (hereinafter the Account) an amount not exceeding US \$18,500,000 as security for all the obligations of Whiteview under the Loan Agreement (hereinafter the Secured Obligations) and with full title guarantee hereby assigns to and charges by way of first fixed charge in favour of the Bank all the rights, title, interest and benefit in and to the account as well as the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof. Such assignment and charge shall be a continuing security for the due and punctual payment and discharge of the secured obligations.

Upon payment of all or part of the amounts due under the Loan Agreement, SOMA may withdraw from the Account the equivalent amount.

Upon payment and final discharge in full of all the secured obligations, this agreement and the rights and obligations of the Parties shall automatically cease and terminate and the Bank shall, at the request of SOMA, release the deposit made in the Account.

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

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

SOMA hereby irrevocably appoints by way of security the Bank as the attorney of SOMA with full power in the name and on behalf of SOMA to sign, seal and deliver any deed, assurance, instrument or act in order to perfect this charge and at any time after an event of default by SOMA to sign, seal and deliver any deed assurance, instrument or act which may be required for the purpose of exercising fully and effectively all or any of the powers hereby conferred to the Bank to take all necessary action whether in the nature of legal proceedings or otherwise to recover any moneys which may be held in the Account and to give valid receipts for payment of such moneys and also for the purpose of enforcement and of the security hereby created.

SOMA hereby warrants and declares that any and all such deeds, instruments and documents executed on its behalf by or on behalf of the Bank by virtue of this Agreement shall be as good, valid and effective, to all intents and purposes whatsoever, as if the same had been duly and properly executed by SOMA itself and SOMA hereby undertakes to ratify and confirm all such deeds, instruments and documents lawfully executed by virtue of the authority and power hereby conferred.

3. It is further mentioned that each notice or other communication to be given under this agreement shall be given in writing in English and unless otherwise provided, shall be made by letter or Fax to :

SOMA Textiles & Industries Limited

Red Cross Place, Kolkata – 700001. Attention: Mr. Sunil Patel"

- c) The aforesaid charge against designated bank account of SOMA with Banco was registered with Companies House (United Kingdom's registrar of companies) and description of the charge is mentioned as follows:

- *"All obligations of Whiteview Trading Corporation (a company incorporated in the British Virgin Islands with number 683351) under a loan agreement with the Bank dated 18 October 2016 (**the secured Obligations**).*

*The Company as a continuing security for the discharge of the Secured Obligations with full title guarantee assigns to and charge by way of first fixed charge in favour of the Bank and all its right, title and interest in and to its designated account with the Bank (**the Account**), the moneys standing to the credit of the Account and all interest payable thereon (**the Deposit**).*

The Company undertakes that it will not purport to withdraw the Deposit or any part of it or sell, assign, mortgage, charge or otherwise encumber, dispose or deal with or grant or permit third party rights to arise over or against the Deposit or any part thereof or attempt or agree so to do."

- d) The account charge agreement dated October 18, 2006 was an integral part of loan agreement dated October 18, 2006 entered into between Whiteview and Banco. These agreements enabled Whiteview to avail a loan from Banco for subscribing GDRs of Noticee no. 1. However, the fraudulent arrangement of loan agreement and account charge agreement which resulted in subscription of GDR issue of the company was not disclosed to the stock exchange
- e) The GDR issue would not have been subscribed had the company not given any such security towards the loan taken by the Whiteview.
- f) From perusal of corporate announcements, it was found that Noticee no. 1 had not informed stock exchange with regard to account charge agreement entered into with Banco for subscription of GDRs and the outcomes of the board meetings dated July 27, 2006 which were price sensitive information and could have impacted the price of the scrip.
- g) From the extracts of minutes of board meeting held on July 27, 2006, investigation observed that Mr. Sunil Patel (Noticee no. 7) was authorized to sign the account charge agreement which acted as security in connection with the loan availed by Whiteview and Banco to use funds deposited in Noticee no. 1's bank account as security in connection with the loan availed by Whiteview. Relevant extracts of the resolution

passed in the aforesaid meeting of the Board of SOMA are as under:

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

“RESOLVED FURTHER THAT Mr. Sunil Patel, Overseas Sales Representative of the Company and Authorised Person be and is hereby authorised to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time as may be required by the Bank and to carry and affix common seal of the company thereon, if and when so required.”

“RESOLVED FURTHER THAT Mr. Sunil Patel, Overseas Sales Representative of the Company and Authorised Person be and is hereby authorized to draw cheques and other documents, and to give instructions from time to time as may be necessary to the said Banco Efisa, S.A. or any branch of Banco Efisa S.A. including off-shore branch, for the purpose of operation of and dealing with the said bank account and carry out other either relevant and necessary transactions and generally to take all such steps and to do all such things as may be required from time to time on behalf of this company.”

“RESOLVED FURTHER THAT the Bank be and is hereby authorized to use the funds so deposited in the aforesaid bank account as security in connection with loans for which any charge is granted as well as to enter into any escrow agreement or similar agreements if and when so required.”

- h) The company reported to the stock exchange that *“the Board of Directors of the Company at its meeting held on October 20, 2006, has approved the issue and allotment of 1,850,000 Global Depository Receipts (GDRs) worth USD 17.2975 million representing 18,500,000 underlying Equity shares of Rs 10/- each to the Depository - Deutsche Bank Trust Company Americas”* However, it did not inform stock exchange about the account charge agreement entered into between Noticee no. 1 and Banco. Information regarding signing of account charge Agreement is material information of contingent liability to the extent of GDR issues. Suppression of such material information shows that the corporate announcement was primarily meant to mislead Indian retail investors that GDRs were fully subscribed, whereas the GDR issue was indirectly funded by Noticee no. 1 itself.
- i) The corporate announcement made by the company to BSE reported misleading news which contained information in a distorted manner and might have influenced decision of investors.
- j) Directors of SOMA, namely, Mr. S. K. Somany (Noticee No. 3), Mr. A.K. Somany (Noticee No. 4), Mr. Prafull Anubhai (Noticee No. 5) and Mr. P. Bandopadhyay (Noticee

- No. 6) who attended the board meeting dated July 27, 2006 and authorized the company's authorized person to sign the agreement, acted as party to the fraudulent scheme.
- k) Whiteview had defaulted in repayment of loan to Banco to the extent of US \$ 15.67 million and loan amount of US \$ 15.67 million of Whiteview was repaid by Noticee no. 1 from its GDR proceeds. Considering the fact that Whiteview was the sole subscriber to the GDR issue and loan amount of US \$ 15.67 million of Whiteview was repaid by Noticee no. 1 from its GDR proceeds, it was therefore concluded that GDRs in turn the underlying equity shares to the extent of US \$ 15.67 were acquired by Whiteview without proper consideration.
6. A supplementary show cause notice dated August 26, 2019 (hereinafter referred to as "SSCN") was also issued to Noticee no. 1 calling upon it to show cause as to why suitable directions including direction to bring the money back to the extent of loan default should not be issued against it under Sections 11, 11B and 11(4) of the SEBI Act 1992.

INSPECTION, REPLY, HEARING AND WRITTEN SUBMISSIONS:

7. The Noticee no. 1 vide its letter dated August 18, 2017 has submitted that it was in the process of filing an application for settlement in the matter under the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014. Thereafter, Noticees no. 1, 5, 6 and 7 vide their respective letters dated September 09, 2017, September 12, 2017, August 30, 2017 and September 09, 2017 had filed their settlement applications. letter dated December 20, 2017 seeking copies of all material documents relied upon by SEBI in issuing the SCN. The Noticees were informed vide SEBI letter dated January 05, 2018 and March 25, 2019 that the SCN and all the documents relied upon in the SCN have already been provided to them. Noticee no. 2 filed its reply to the SCN vide its letter dated June 21, 2018.
8. In compliance with the principles of natural justice, the Noticees were provided an opportunity of personal hearing on April 05, 2019. However, Noticee no. 1, 3, 4, 5, 6 and

7 vide common letter dated April 03, 2019 sought for an adjournment as the company requested for an inspection of documents first. Noticee no. 2 did not appear for the hearing scheduled on April 05, 2019 and did not file any letter seeking adjournment of the same. Subsequently, SSCN dated August 26, 2019 was issued to Noticee no. 1. The Noticee no. 1 then vide its letters dated September 19, 2019 sought inspection of documents. Accordingly, the Noticee no. 1 was granted inspection of documents on October 14, 2019, wherein, the authorized representative of the Noticee no. 1 appeared and carried out inspection of documents. With regard to copies of documents sought vide letter dated April 03, 2019 by Noticee no. 1, the same was responded to by SEBI vide letter October 23, 2019. The Noticee no. 1 vide letter dated November 01, 2019 submitted that all the documents sought for inspection have not been granted to it and therefore, again sought for inspection and copies of documents. SEBI in its letter dated December 12, 2019 informed Noticee no. 1 that inspection of documents have already been carried out by its authorized representative on October 14, 2019 and that request for documents vide letters dated April 30, 2019 and September 19, 2019 have been responded to. Another opportunity of personal hearing was granted to the Noticees on February 28, 2020. The Noticees no. 1 and 3 to 7 vide a common letter dated February 20, 2020, sought for an adjournment for the hearing scheduled for February 28, 2020. Accordingly, another opportunity of personal hearing was granted to the Noticees on April 17, 2020. The Noticees no. 1 and 3 to 7 sought an adjournment for the hearing scheduled for April 17, 2020 due to the lockdown that was imposed on account of Covid-19 pandemic. In view of the same, another opportunity of personal hearing was granted to the Noticees on July 24, 2020. The Noticees no. 1 and 3 to 7 in its letter dated July 15, 2020 again sought adjournment due to the ongoing lockdown as they requested for a physical hearing and not a hearing by video conferencing as offered to them. Accordingly, a final opportunity of personal hearing was granted to the Noticees on September 23, 2020.

9. On September 23, 2020, Advocates for Noticees no. 1, 3, 4, 5, 6 and 7 appeared and made their submissions and sought for two weeks time to file their detailed reply to the SCN and SSCN. Thereafter, the Noticees no. 1, 3, 4, 5, 6 and 7 filed their replies to the SCN vide their respective letters dated October 05, 2020, October 19, 2020, October 17, 2020, October 16, 2020, October 17, 2020 and October 19, 2020.

10. The various submissions made by the Noticees vide their aforesaid replies and submissions made during the course of the hearing, are summarised as hereunder:

a) The Noticees no. 1, 3, 4, 5, 6 and 7 have made similar submissions vide their respective replies. The common submissions made by Noticees nos. 1, 3, 4, 5, 6 and 7 vide their aforesaid replies and submissions made during the course of hearing, are summarized as hereunder:

(i) *We would like to bring to your kind attention that along with the said SCN, we have also been issued SCN no. SEBI/HO/EAD-12/SM/PR/OW/1672/3/2018 January 18, 2018 under Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 [hereinafter referred to as 'Adjudication Rules'] read with Section 15-I of SEBI Act, 1992 and Rule 4 of the Securities Contracts (Regulation) Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 2005 read with Section 23-I of the Securities Contract (Regulation) Act, 1956. It is submitted that issuing two SCN's for the same offence amounts to double jeopardy, and is in gross violation of Article 20(2) of the Constitution of India.*

(ii) *Without prejudice to our above submissions and without admitting any violation of SEBI Act or any Regulations whatsoever, on our part, it is humbly submitted that the concerned GDR issue was raised/undertaken by Soma in 2006 and the instant proceedings against the same were initiated in the year 2017. It is pertinent to note that the proceedings against us were initiated after an inordinate delay of almost eleven long years. It is highly unreasonable for SEBI to expect me to keep all the documents pertaining to the transaction intact after such a long time. Human memory is fragile and its nearly impossible to remember the details of a transaction after a long time gap of 11 years. Without prejudice to the above, I request that the current proceedings may be dropped on the ground that there has been inordinate delay of around 11 years in the initiation of the current proceedings.*

(iii) *The following cases have been relied upon in regard to delay in proceedings:*

- a. Bharat J Patel vs SEBI – SAT Appeal no. 154 of 2020 dated Sept 08, 2020*
- b. ICICI Bank Ltd vs SEBI – SAT Appeal no. 583 of 2019 dated July 08, 2020*
- c. Ashok Shivilal Rupani and Ors vs SEBI – SAT Appeal no. 417 of 2018*

- d. *Ashlesh Gunvantbhai Shah & Ors vs. SEBI – SAT Appeal no. 169 of 2019 dated Jan 31, 2020*
- e. *Aditi Dalal SAT Order*
- f. *Adjudicating Officer, SEBI vs. Bhavesh Pabari (Civil Appeal No. 11311 of 2013) – SC Order dated Feb 28, 2019*

(iv) It is hereby submitted that retaining and maintaining records for such long periods is impossible and unreasonable. In view of the above, we submit that all the above observations made by the Hon'ble Supreme Court and the Hon'ble SAT in the above cases are relevant in the present proceedings initiated against the company and its directors since already more than eleven years have passed since the GDR issue of STIL, Damocles sword has been hanging over us for the last eleven years and it has really affected our morale, the electronic data maintained at our end has been effected due to the floods in Ahmedabad, due to cross border nature of transaction it has been a herculean task to collect old records etc.

(v) Legal Submissions have been made with reference to the following cases:

- g. *Nandkishore Prasad vs. State of Bihar (1978) 3 SCC 366*
 - h. *H.D. Jaisinghani vs. Naraindas N Punjabi (1976) 1 SCC 354*
 - i. *M/s Vintel Securities Pvt. Ltd. vs The Adjudicating Officer (SAT Appeal no. 219/2009)*
 - j. *Sterlite Industries Limited vs. SEBI (2001) 34 SCL 485*
 - k. *Videocon International vs. SEBI (2002) 4 CLJ 402 (SAT)*
 - l. *Parsoli Corporation vs. SEBI (SAT Appeal no. 146/2011 dated 12.08.2011)*
 - m. *Narendra Ganatra vs. SEBI (SAT Appeal no. 47/2011 on 29.07.2011)*
 - n. *M/s Milkyways Mercantiles Private Limited and M/s SPFL Securities Limited (AO dated 16.03.2017)*
- b) Noticee No. 1 (M/s Soma Textiles & Industries Ltd) and Noticee no. 3 (S.K. Somany) have in their respective replies dated October 05, 2020 and October 19, 2020 made similar submissions and the same are *inter alia*, submitted as under:
- (i) *I (Noticee no. 3) would like to place on record that I am the Chairman of Soma since*

April 01, 1949. I have more than seven decades experience in administration and management. My foresightedness, experience and business acumen has contributed in the progress of the Soma. I am well versed and technically well experienced in the textile industry.

- (ii) *I (Noticee no. 3) submit that I am the Chairman of Soma and at that point in time I was also the Chairman, however, at that point of time, I was not able to attend each and every board meeting wherein inter alia any discussion related to said GDRs was taken up. I submit that out of total four meetings held on June 09, 2006, July 26, 2006, October 20, 2006 and October 31, 2006 wherein inter alia any discussion took place on GDR issue, I was only present in the Board meeting held on July 27, 2006 and not any other meeting.*
- (iii) *The Board had, in the aforesaid three mentioned meeting, discussed important aspects of the GDR issue like 'issue of GDRs', 'allotment of GDRs' and 'use of GDR proceeds'. I (Noticee no. 3) was not present in the above three meetings wherein these aspects were discussed. Hence, the serious allegation of fraudulent and unfair trade practice ought not to be levelled upon me since I was not party to the alleged fraud, if any.*
- (iv) *During the time of GDR issue, following were the Directors/key officials of the company:*

Sr.No	Name	Designation
1	Shri S. K. Somany	Chairman
2	Shri. A. K. Somany	Managing Director
3	Shri P. Bandyopadhyay	Executive Director
4	Shri Prafull Anubhai	Director
5	Shri Ashok C Gandhi	Director
6	Shri Anupam Verma	Nominee Director ICICI

- (v) *With regard to Para 2 of the SCN, in so far as the list of subscribers to GDR is concerned, it is submitted that the list of subscribers to the issue is true and correct to best of my knowledge and nothing has been concealed or suppressed by us. The list of subscribers was provided to Soma by the Lead Manager PAAL and I relied upon them which has been the practice over the years. I did not have any independent mechanism to verify the same and as per the secrecy laws applicable*

- in other jurisdictions, it was not possible for me to verify the same. The company relied upon the Merchant Banker, considering the cross border nature of transactions and registration of Merchant Banker with reputed regulatory authority.*
- (vi) With regard to para 4 of the said SCN, I (Noticee no. 3) submit and reiterate that I was not present during the meeting and was granted leave of absence. Hence, I am unaware of the same and cannot be alleged to have violated SEBI Act and PFUTP Regulations. It was also decided during the course of one of the earlier Board meeting that a bank account would be opened with Banco for the purpose of receiving money in respect of GDR issue and Mr. Sunil Patel was authorized to sign and execute any application, agreement, escrow agreement etc. from time to time.*
- (vii) Soma (Noticee no. 1) informed BSE about successfully concluding the placement of 18,50,000 GDRs totaling to USD 17.2975 million. Further, SEBI has rightly pointed out that same was informed to Stock Exchanges (BSE) vide corporate announcement made by Company to BSE during the same period. With regard to para 4 of the said SCN, admittedly SEBI has rightly pointed out that Board of Directors at their meeting held on October 20, 2006 approved the issue and allotment of 18,50,000 GDRs worth USD 17.29 million equivalent to 1.85 crore equity shares of Rs. 10/- each. Pursuant to that, STIL informed BSE about successfully concluding the placement of 1,850,000 GDRs at USD 9.35 each totaling to USD 17.29 million.*
- (viii) The same relates to credit agreement entered between Whiteview Trading Corporation and Banco Efisa, SFE, SA. The credit agreement was signed between one Mr. Samuel E. Hurley on behalf of Whiteview. Further, I (Noticee no. 3) am not a signatory to the agreement. Hence, I cannot be held responsible for the same. I submit that since I am not signatory to the said credit agreement, I cannot be held liable for any averments/declaration/statements/conditions mentioned in the agreement. Hence, any liability of Whiteview and/or Banco cannot be lumbered on to me.*
- (ix) I submit that the Board of Directors had authorized Mr. Sunil with the task of carrying out the process of GDR issue and sign any agreement pursuant to GDR issue. I, along with other directors and Mr. Sunil were sensitive of the fact that this is a cross border financial transaction and therefore SOMA appointed a Merchant Banker*

registered with a foreign regulatory authority viz. UK-FCA to carry out said transaction.

- (x) I am also now very shocked, surprised and disturbed on getting to know that GDR was subscribed by only one entity by the name of Whiteview and not by five entities as informed to SOMA by PAAL. This established that PAAL has devised the scheme, artifice etc. of a farce GDR, I have been made a scapegoat and have been wrongly accused of a fraud which I have not committed.
- (xi) In so far as the allegation at para 9 and 10 that Soma had passed a resolution authorizing Banco to use the GDR proceeds as security against loan, it is submitted that it was never intention of the Board that the funds which are to be deposited to the GDR proceeds are given as security in connection with the Loan to be given for the subscription of the GDR issue itself.
- (xii) It is brought to your notice that the resolution only states that the proceeds so deposited in the bank account can be used as security "if and when so required". Nowhere in the resolution, it has been specifically stated that the proceeds are pledged on account of loan availed by Whiteview to subscribe to the GDR issue. The same is reiterated for your kind perusal:
- "...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).
- (xiii) Further admittedly the Board has authorized only one person Mr. Sunil Patel to carry out necessary formalities for which he relied upon the expertise and knowledge of the Lead Manager registered with UK Regulator. I submit that the SCN is misdirected towards me just for being part of the Board meeting which appointed Mr. Sunil Patel as Authorized Signatory. Further, Mr. Sunil and other directors of the company were dependent upon the Lead Manager considering their experience.
- (xiv) The account charge agreement was signed between Soma and Banco which allegedly creates obligation on behalf of the company towards the bank under the loan agreement. However, the said conditions of the agreement will not get activated till the time subscription money is received in the account opened for GDR issue. The company would be able to provide security against the subscription

proceeds only when subscription is received and not before that. Hence the allegation that Soma has authorized Banco Bank to use the GDR proceeds as security against loan is devoid of merit and contrary to material on record.

- (xv) In this regard, I would like to quote the observations of the Hon'ble SAT in Adi Cooper vs. SEBI (Appeal no. 124 of 2019, decided on November 05, 2019). The Hon'ble Tribunal has observed that the Board Resolution authorizing the Bank to utilize the proceeds as security in connection with a loan cannot be inferred as loan given to Whiteview. Such presumption is farfetched and cannot hold that the appellant had intention to manipulate the market or play a fraud. Further, I was only present in one of the meetings wherein the GDR was discussed and not available in other meetings which was the case in Adi Cooper. Hence, my case squarely falls under the case of Adi Cooper and same decision ought to be followed.*
- (xvi) With regard to para 12 to 14 of the said SCN stating that the Account Charge Agreement dated October 18, 2006 signed between company and Banco, I submit that the same was signed in the routine course of business relying on PAAL, which was at that point in time well reputed lead manager globally, assuming that they would be well aware of the policies/procedures in other jurisdictions.*
- (xvii) To take this analogy further, if an entity wishes to acquire loan from a bank, it is very well known that the bank prescribes a specific format for completion of the paper work and other formalities and the entity acquiring the loan acts as per the requirements of the bank. Likewise, Soma relied upon and acted as per the instructions and requirements of PAAL while dealing with various regulators. Hence, no adverse inference ought to be drawn against me in this regard.*
- (xviii) It is evident from the above that nowhere Soma has agreed to deposit an amount equivalent to GDR issue and its intention was not to give any security for the GDR issue, hence, the allegation is misplaced, flawed and misconceived. It appears that facts have been distorted and imaginary allegations have been created without any documentary evidence. The conditions of the account charge agreement are contrary to the allegations contained in the SCN. Further, Soma was not a signatory to the credit agreement entered into between Whiteview and Banco, hence, the allegation that I was aware of the loan agreement is baseless, flawed and misconceived.*

(xix) *With regard to para 16 of the SCN, it has been wrongly alleged that “Soma shall deposit in its designated account with Banco an amount not exceeding loan availed by Whiteview for subscription of GDRs of SOMA”. We submit that the said allegation is baseless and is based on surmises and conjectures since nowhere in the account charge agreement it has been stated. It is evident from the above that nowhere SOMA has agreed to deposit an amount equivalent to GDR issue and our intention was not to give any security for the GDR issue, hence, the allegation is misplaced, flawed and misconceived. It appears that facts have been distorted and imaginary allegations have been created without any documentary evidence. The conditions of the account charge agreement are contrary to the allegations contained in the SCN. Further, SOMA was not a signatory to the credit agreement entered into between Whiteview and Banco, hence, the allegation that we were aware of the loan agreement is baseless, flawed and misconceived.*

(xx) *With regard to the para 17, in so far as the observation that STIL could withdraw an equivalent amount from the bank account with Banco only upon part payment of all or part of the amounts due under the Credit agreement, it is submitted that STIL transferred the sums of money to its account in Dubai as and when it required it. Keeping the money idle at Dubai would not make business sense since it was earning interest on the amount kept with Banco. It is submitted that issuing authority is trying to show close proximity between two independent events and holding me liable for violation, if any, carried out by others. There is no requirement to utilize the funds immediately after being deposited into the account. The proximity, if any, between the repayment of loan and transfer of GDR proceeds could be by chance and not by design. Soma utilized the GDR proceeds according to the prevailing market conditions and as per the company’s requirement.*

(xxi) *With regard to allegations contained in Para 18 to 20 of the SCN, I submit as under:*

a) *Soma issued GDR of 18.5 million amounting to USD 17.2975 million. The subscription amount was received in its amount with Banco Efisa Bank and subsequently transferred to its bank account opened in Dubai to be utilized as per objects of the issue.*

b) *As alleged, the amount of USD 15,675,500 was adjusted vide Soma’s letter dated January 23, 2007 by the bank. The said letter was signed by Mr. Sunil*

Patel in good faith on the basis of trust reposed in PAAL. He only informed Soma after couple of days about the said letter and immediately taking note of the same, Soma got in touch with Whiteview.

- c) Soma had expressed the grave prejudice that the said act of Whiteview has caused to it and also impressed upon them the immediate and urgent need to return the funds,*
- d) Thereafter, Soma vigorously pursued with White View to repay the amount of USD 15,676,500 along with interest of USD 442,704 and the company successfully recovered the amount in tranches. The said amount was returned by Whiteview on multiple dates spread over the period from 26.02.2007 to 08.03.2008.*
- e) It may be noted that the amounts lying in the bank account (bearing A/c No. 628288515001 with Banco) have been utilized by the company by inter alia transferring the funds to its subsidiary company viz. Soma Textile FZE (based out of Ajman/Sharjah), which is engaged in the business of Textile and other trading. Some Textile FZE had utilized the amounts received from the company inter alia for the purposes of textile and other trading etc.*
- f) Since the bank statements involving receipt of funds by the Company and the onward transfers made by the Company to its subsidiary, are in foreign language, the Company had engaged the services of M/s Silver Oak, Auditing and Accounting Firm based out of Dubai-UAE, to provide the English translation of the bank statements and to certify the receipt of funds by the Company and onward transfer to Soma Textile FZE. Accordingly, M/s Silver Oak have vide their letter November 19, 2019, inter alia, certified, based on the examination of the bank statements, that the company has received back amount of 15,676,500 USD along with interest of 442,704 USD from Whiteview and that the company had transferred the amounts received from Whiteview to Soma Textiles FZE.*
- g) Additionally, it may be noted that the amounts arising from the GDR issue, which were transferred by the company to its subsidiary viz. Soma Textile FZE, were given for the purposes of its business, including for textile trading etc. Over a period of time, Some Textiles FZE has returned an amount of*

4,449,063 USD to the Soma on multiple dates.

(xxii) In this connection, I would like to draw your kind attention to the order No. WTM/GM/EFD/99/2018-19 dated March 12, 2019 passed by Ld. Whole Time Member of SEBI in the matter of Ravi Kumar Distilleries Ltd. (RKDL) wherein he has accepted the contention of RKDL that they were not aware of the procedures and intricacies involved in an IPO and that the BRLM, taking advantage of their naivety, had misappropriated the proceeds of the IPO. Considering the above contention, the promoters of RKDL have been given less punishment vis-à-vis directors/key managerial personnel of merchant bankers. I submit that the facts of this case are similar to the case in which the order dated March 12, 2019 has been passed by the Whole Time Member, SEBI and in view of the same no action may be taken against me.

(xxiii) In addition, the aforesaid judgments relied upon by me, I would like to draw your attention to observations made by various Hon'ble Courts over a period of time :

- a) Nandikishore Prasad vs. State of Bihar [(1978) 3 SCC 366]*
- b) H.D. Jaisinghani vs. Naraindas N. Punjabi [(1976) 1 SCC 354]*
- c) M/s Vintel Securities Pvt Ltd. vs. The Adjudicating Officer, SAT Appeal no. 219 of 2009*
- d) Sterlite Industries Ltd vs. SEBI (2001) 34 SCL 485 (SAT Mumbai)*
- e) Videocon International vs. SEBI (2002) 4 CLJ 402 (SAT)*
- f) Parsoli Corporation vs. SEBI (SAT Appeal no. 146/2011 order dated 12.08.2011)*
- g) Narendra Ganatra vs. SEBI (SAT Appeal no. 47 of 2011 decided on 29.07.2011)*
- h) M/s Milkyways Mercantiles Pvt. Ltd. and M/s SPFL Securities Limited decided on 16.03.2017*

(xxiv) It is further submitted that SCN has not brought out any concrete figure of the loss incurred by the Indian investors due to the announcement made by the company. SCN is repeating the same allegation again and again and only general allegation has been made without adducing any documentary evidence. This shows that the SCN is based on surmises and conjectures. In view of the same, I submit that I have

been roped in wrongfully to broaden the ambit of investigation.

(xxv) Without prejudice to what has been stated herein above and also in the reply filed on behalf of the Company, which is the principal noticee, it is respectfully submitted that as the matter now stands, the SEBI has not discharged the burden of proof which clearly and undisputedly lies on it. In this context, the following cases have been referred to and relied upon:

- a) Shantiprasad Jain vs. The Director of Enforcement – AIR 1962 SC 1764 (V 49 C 245)*
- b) Ramchandra Keshav Adke & Others vs. Govind Joti Chavare & Others 1973 (1) SCC 559*
- c) Hukum Chand Shyamlal vs. UOI & Ors 1996 (2) SCC 128*
- d) Nazir Ahmad v. Emperor AIR 1936 PC 253(2) Lahore*
- e) Bharjatiya Steel Industries vs. CST (2008) 11 SCC 617*
- f) Cement Marketing Co. of India Ltd. vs. Assistant Commissioner of Sales Tax, Indore & Ors. (1980) 1 SCC 71*
- g) Hindustan Steel Ltd vs. State of Orissa (1972) 83 ITR 26 (SC)*
- h) Xerox Modi Cop Ltd. vs. Special Director Enforcement Directorate [CRL.A. NOS. 58 & 300 of 2009 dated January 15, 2015]*

(xxvi) As for this Noticee, who has been impleaded as a Co-Noticee in the SCN, it is submitted that there is no separate violation of any SEBI Act or of the Regulations of whatsoever nature, committed by him independently, i.e. other than the aforesaid contraventions alleged to have been committed by the Company i.e. the 1st Noticee. He has been merely indicted on the basis of his being the Promoter – Chairman of the Company, which stands on the basis of vicarious liability, as provided in the SEBI Act. In the aforesaid backdrop of the case, this Noticee would like to refer to and rely upon the following judgements, which clearly demonstrate that all the partners, directors or managers in a firm or even the Managing Director/Chairman of the Company, as the case may be, cannot be blindly or in a routine manner made vicariously liable for the violation/offence committed by such entities.

- a) Girdhari Lal Gupta vs. D.N. Mehta (AIR 1971 SC 2162)*
- b) R. K. Khandelwal vs. State (1964) 62 All U 625 = (1465) 2 Cri 439*

- c) *Rashima Verma vs. SEBI (2009) 95 SCL- 1 (Delhi)*
- d) *Abdul Moid & Ors. Vs. The State (1977 CRI L/ J. 1325)*
- e) *Bhagwati Prasad Khaitan vs. The Special Director, Enforcement Directorate & Anr. (1977 CRI LJ. 1821)*
- f) *J.R. Grover vs. Assistant Director of Enforcement Directorate, Ministry of Finance, Jullunder City. 1987 (31) ELT 682 (P&H).*
- g) *Shashank Vyankatesh Manohar vs. Union of India and the Directorate of Enforcement*

c) Noticee No. 4 (A.K. Somany) has in his reply dated October 17, 2020 made submissions similar to Noticee no. 1 and 3 and hence, the same are not being repeated hereunder. The submissions made by Noticee no. 4 are *inter alia* as under:

- (i) *I would like to place on record that I am the Managing Director of Soma since January 22, 1988. I am a science graduate from Bombay University and completed the same in the year 1976. I have been associated with Soma as its Managing Director since 1988. My foresight, planning and hard work has contributed to the consistent growth of Soma. I was the chairman of the Ahmedabad Mill Owners Association during the year 2003-2004 and have been a member of the Indian Cotton Mills Federation and several other committees constituted by government bodies. I have a good understanding of global business issues.*
- (ii) *With regard to para 4 of the said SCN, admittedly SEBI has rightly pointed out that Board of Directors at their meeting held on October 20, 2006 approved the issue and allotment of 18,50,000 GDRs worth USD 17.29 million equivalent to 1.85 crore equity shares of Rs. 10/- each. Pursuant to that, STIL informed BSE about successfully including the placement of 1,850,000 GDRs at USD 9.35 each totaling to USD 17.29 million.*
- (iii) *In so far as the observation regarding person authorized to sign the agreement viz. that as per the minutes of the board meeting submitted vide Soma's letter dated June 26, 2015, I was authorized, however, as per extract of the minutes signed by Mr. P. Bandyopadhyay, Mr. Sunil Patel, Overseas Sales Representative of Soma was authorized, it is submitted that the Board had*

authorized Mr. Sunil to sign the agreement, however, my name crept in by mistake as some portion of the minutes was being copied from some other place. I submit that this was genuine error and no adverse inference ought to be drawn against me.

(iv) With regard to para 15 of the said SCN, it is denied that Soma furnished wrong information to SEBI by providing false list of GDR subscribers since Soma had provided the details to SEBI based on the details received from PAAL who was Lead Manager to the aforesaid GDR issue. Keeping in mind their good reputation I as a part of the Board of Directors relied upon them and appointed them as lead manager of the GDR issue and accordingly as per their advice Soma had carried out all the procedure of GDR issue. Hence I reiterate and deny that Soma had furnished wrong information to SEBI by providing false list of GDR subscribers. Further, I submit that the responsibility of marketing the GDR issue is and were always with the Lead Manager i.e. PAAL and it was their responsibility to get the Issue subscribed. As per information received from them regarding the entities who have subscribed to the issue, Soma had forwarded the said information to the stock exchanges at that point of time and now to SEBI when it was sought by SEBI. I submit that I neither had any role to play in the allotment of GDRs nor I was aware of the identity of the holders of the GDRs. Due to secrecy laws in other jurisdictions, it was not possible for me either for me or Soma to find out the identity of GDR holders.

(v) It is stated that the SCN indicates that there is no personal allegation against the Noticee of having violated any of the provisions of SEBI Act or the relevant Regulations framed thereunder. SCNs in question have been primarily issued to the Company in which, inter alia, some others, this Notice has also been routinely and mechanically imputed with the said violations, albeit for vicarious liability. There is nothing in the entire SCNs that suggests that he has been responsible personally or in his official position as the Promoter Managing Director for any of the said contraventions. Furthermore, there is nothing on record which indicates clearly that in the circumstances of the case, this Noticee is personally liable for the alleged act of any mis-feasance of law.

(vi) It is humbly submitted that this Noticee has been charged vicariously as Co-

Noticee, merely because of his official position. The SCNs do not go to spell out and record in detail the individual role played by him, as the Promoter-MD of the Company, and the respective complicity, if any, in the commission of the alleged violation. Even, the recent judicial pronouncement echoed by the Hon'ble Apex Court also reiterate and reaffirm the proposition of legal position in the aforestated decisions, starting right from Girdhari Lal's case.

d) Noticee No. 5 (Prafull Anubhai) has in his reply dated October 16, 2020 made submissions similar to Noticee no. 1 and 3 above and hence, the same are not being repeated hereunder. The submissions made by Noticee no. 5 are *inter alia* as under:

- (i) At the outset, I submit that SCN has been addressed to me as Executive Director. In this regard, I wish to clarify that I was never the Executive Director of Soma and I was only Non Executive Non Promoter Independent Director. I and my family members have no held shares in the company Soma ever. Apart from the sitting fees, I have not received any material/pecuniary benefit from Soma.*
- (ii) I submit that I was appointed as Non Executive Non Promoter Independent Director of Soma from January 24, 2004 and resigned from the Board of Directors on May 30, 2009. Considering that I was only Non Executive Non Promoter Independent Director, I submit that I was never involved in day-to-day functioning of the company and was not part of any discussion, presentation etc. relating to GDR issue except to the extent whatever was presented at the Board Meeting. I have never signed any agreement with any of the entities involved in the alleged fraud and I only attended the meeting wherein the aforesaid agenda was taken up by the board of the company and also not involved in making any kind of alleged corporate announcements to warrant serious allegation of fraudulent and unfair trade practices.*
- (iii) My role as an independent director was very limited and restricted. I was not involved in day to day management and affairs of Soma. I did not have any kind of material/pecuniary relationship as director with Soma, its promoters, directors, Senior Management or its holding Company, its subsidiaries or associates which may affect my independence as a director. I was not related to the promoters or*

partners occupying management position at the Board level or at one level below the Board and I had not been executive of Soma or any company within the group at any point of time. I was neither a partner nor an executive, nor was partner or executive in the Statutory Audit Firm associated with Soma and/or legal firms and/or consultancy firm that have a material relationship with Soma. As an independent Director, my association with the management of the company was confined to my participation at the meetings of the company. As is evident, my associated with the Company is extremely limited.

- (iv) As an independent director it was endeavor to ensure that decisions taken at the Board meetings are transparent, fair and in consonance with the applicable provisions of law and in the interests of the Company and its stakeholders. It is common knowledge that the Independent Directors are not involved in day to day affairs of the company. In the Board meetings, broad policy decisions are taken and the actual implementation at ground level is done by Whole Time Directors along with the other employees. The independent directors, do not monitor on daily basis the implementation of the decisions or interfere in the same.*
- (v) Further, I would like to reiterate that I was not part of the procedural aspect of the GDR issue for any time from the start of the issue, through its execution, till its conclusion, either for execution of agreements, receipt of funds, or any other consequential matters. Admittedly, I participated in the board meeting of the Company which authorized Mr. Sunil Patel to execute the necessary formalities in respect of GDR issue. Pursuant to the same in the Board meeting of the company, I was informed that the GDR issue had been successfully subscribed.*
- (vi) I, as an independent director was not at all involved in any of the day to day activities of Soma pertaining to the GDR issue or the Account Charge Agreement by the Company, which are the core allegations in the notice. Further, except the allegation with respect to attending the Board Meeting of the Company, nothing specific has been attributed to me in the Notice as to how I was involved in the day to day activities or that the alleged activities had my approval or I was aware of it etc. While levelling the allegations in the Notice, it has been ignored and overlooked that Independent Directors are not involved in day to day affairs of the company and they do not monitor on daily basis the day to day activities, which*

lies in the domain of whole time directors or Executives. I reiterate that I as an independent director was not even remotely involved in the alleged activities as stated in the said Notice. The fundamental distinction between the role of Whole Time Directors and Non Executive Non Promoter Independent Directors has been lost sight of while levelling allegations in the Notice to my utter detriment and prejudice.

- (vii) It may be noted that no specific allegation has been made against me in the SCN and neither my role has been specifically pointed out or explained in the SCN apart from the fact that I was part of the alleged board meeting wherein GDR issue was approved and Mr. Sunil was appointed as a person to sign some agreement etc.*
- (viii) With regard to para 2 of the SCN, in so far as the list of subscribers to GDR is concerned, it is submitted that the list of subscribers was filed by Soma to SEBI in 2015. I numbly submit that I had resigned from Soma as Independent Director way back in 2009 and hence these details were provided by Soma much after my resignation. The allegation in the concerned para neither relates to me nor is regarding any action taken while I was director at Soma.*
- (ix) With regard to Para 5 to 8 of the said SCN, it is submitted that I have no knowledge about the details mentioned therein. My role was confined to jointly authorize the GDR issue and its implementation. When we were informed that the GDR has been subscribed the matter was over as far as I was concerned. I had no knowledge of the underlying details.*
- (x) In so far as the allegation at para 9 and 10 that Soma passed a resolution authorizing Banco to use the GDR proceeds as security against loan, it is submitted as follows:*
 - a) I have only attended the meeting held on July 27, 2006 being one of the directors and have not been part of fraudulent arrangement and have not violated PFUTP Regulations and SEBI Act.*
 - b) It was never my understanding as a part of the Board that the funds which are too be deposited to the GDR proceeds are to be given as security in connection with the loan to be given for the subscription of the GDR issue itself. Such an arrangement would be a total anathema for me.*

c) *It is brought to your notice that the resolution only states that the proceeds so deposited in the bank account can be used as security “if and when so required”. Nowhere in the resolution, it has been specifically stated that the proceeds are pledged on account of loan availed by Whiteview to subscribe to the GDR issue. The same is reiterated for your kind perusal:*

“...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). It was my understanding that such provisions are routine in such documents. Hence, no adverse inference can be drawn against me in this regard.

d) *In this regard, the appellant would like to quote the observations of the Hon’ble SAT in Adi Cooper vs. SEBI (Appeal no. 124 of 2019, decided on November 05, 2019). Based on the above observation of the Hon’ble Tribunal the Board Resolution authorizing the Bank to utilize the proceeds as security in connection with a loan cannot be inferred as loan given to Whiteview. Such presumption is farfetched and cannot hold that the appellant had intention to manipulate the market or play a fraud. Hence, any adverse view taken by SEBI at this stage would amount to judicial insubordination.*

(xi) *In so far as the allegation regarding the person authorized to sign the said account charge agreement, I have now been informed by Soma that the Board had authorized Mr. Sunil to sign the agreement, however, the name of Mr. Arvind Kumar Somany crept in by mistake as some portion of the minutes were being copied from some other place. I submit that this was a genuine error and no adverse inference ought to be drawn against me due to the same. Further no specific allegation has been made against me.*

(xii) *With regard to Para 16 & 17 of the SCN, I submit that I was Non Executive Non Promoter Independent Director and had no knowledge of the details of the trail of funds and deny everything thereto.*

(xiii) *As regards the finding in point no. II, that the Board of directors of Soma, including me, had authorized Mr. Sunil, Overseas Sales Representative of Soma to execute any application/agreement/documents/forms/papers if and when required. This*

authority was given to authorized signatory prior to any GDR issue or any other fund issuance carried out by the company in the ordinary course of business. Hence, I deny any specific allegation against me in this regard.

(xiv) I submit that I had no knowledge of any loan or default thereof and therefore, cannot offer any comments. I also hereby repeat and reiterate that my role as an independent director was very limited and restricted. I was not involved in day to day management and affairs of Soma. As an Independent Director, my association with the management of the Company was confined to my participation at the meetings of the Company.

(xv) I have never indulged in any fraudulent practices relating to the securities. I have not made any gains or derived unfair advantage as a result of alleged violations. There is nothing to indicate in the Notice that I have made any gains. I have also not caused any loss to the investors or group of investors.

e) Noticee No. 6 (P. Bandopadhyay) has in his reply dated October 16, 2020 made submissions similar to Noticee no. 1 and 3 above and hence, the same are not being repeated hereunder. The submissions made by Noticee no. 6 are *inter alia* as under:

(i) At the outset, I submit that SCN has been addressed to me as Independent Director. In this regard, I wish to clarify that I was never the Independent Director of Soma and I was appointed as Whole Time Director and was designated as Executive Director. I was appointed on January 25, 2001 and resigned from the services of Soma on December 22, 2007.

(ii) At the outset, I submit that I am a professional belonging from the technical field of engineering, I neither have any knowledge nor any experience in the field of finance or securities market. I was an Executive Director in Soma and was looking after the operations of the textile manufacturing and did not have a role to play in the process of the GDR Issue. I also did not have any knowledge about the day to day process of the GDR Issue. As a technical person having no background in Finance, I acted in a bona fide manner on the basis of general consensus of the Board. I as an executive director did not have the reason to raise any doubt regarding the issue of the GDRs.

(iii) Adding the above, I was under the rightful impression that the GDR issue was

being supervised and overseen by reputed Lead Manager i.e. Pan Asia Advisors Ltd (hereinafter referred to as "PAAL") in our case. Owing to the several factors stated above, I have no reason to have any misgivings regarding the said GDR issue. I did not have the expertise or the knowledge required to pursue the matter, as the same related to core finance and I am a technical person from the field of textile.

- (iv) I submit that I was never involved in any discussion, presentation etc. relating to GDR issue except to the extent whatever was discussed during the course of various meetings. I have never signed any agreement with any of the entities involved in the alleged fraud, I only attended the meeting wherein the aforesaid agenda was taken up by the Board of the company and also not involved in making any kind of alleged corporate announcements to warrant serious allegation of fraudulent and unfair trade practices.*
- (v) Further, I would like to reiterate that I was not part of the procedural aspects of GDR issue for any time from the start of the issue, through its execution, till its conclusion, either for execution of agreements, receipt of funds, or any other consequential matters. Admittedly, I participated in the board meeting of the company which authorised Mr. Sunil Patel to execute the necessary formalities in respect of the GDR issue. Pursuant to the same, in one of the Board meeting of the company, I was informed that the GDR issue had been successfully subscribed.*
- (vi) I reiterate that I was not involved in any of the day to day activities of Soma pertaining to the GDR issue or the Account Charge Agreement by the company or making alleged corporate announcement, which are the core allegations in the notice. Further, except the allegation with respect to attending the Board meeting of the company, nothing specific has been attributed to me in the Notice as how I was involved in the day to day activities or that the alleged activities had my approval or I was aware of it to warrant serious allegation of fraudulent and unfair trade practice. While levelling the allegations in the Notice, it has been ignored and overlooked that I was related to the field of engineering and was mainly supervising the textile operations of the company and does not have any knowledge of finance.*

f) Noticee No. 7 (Sunil Patel) has in his reply dated October 19, 2020 has *inter alia* submitted as under:

- (i) *I submit that I am a British Citizen and just an acquaintance of Mr. A. K. Somany, Managing Director of Soma. My role in the whole GDR issue was very limited and restricted to being a facilitator for the same. I was present in London at the time of the GDR issue and Lead Manager Pan Asia Advisors Ltd (PAAL) was also registered with UK-FCA. Due to logistical and practical reasons, it was very difficult for the director or any representative of Soma to frequently travel outside India for facilitating the process of the GDR issue. I was thereby given authority by Soma for the said GDR issue for signing the documents related to the GDR as and when required. My role was never to oversee or supervise the process of GDR but limited to acting as a nodal point outside India for Soma just for the limited purpose of signing the documents given by PAAL. The documents were signed by me as per instructions of the Board of Directors, in good faith on the basis of trust reposed in PAAL and no adverse inference ought to be drawn against me due to the same.*
- (ii) *I submit that I have at all points of the issue and otherwise acted well within the authority given to me by STIL. The Account Charge Agreement that I had allegedly signed was done in my capacity as the authorized signatory of Soma in good faith and trust in PAAL. The signing of the agreement was not a result of my decision or understanding of the GDR issue, but just a procedural fulfilment since Soma relied upon PAAL for their expertise in GDR issue and their registration with UK Regulatory Authority.*
- (iii) *Further I would like to reiterate that I was not part of the procedural aspects of GDR issue for any time from the start of the issue, through its execution, till its execution, till its conclusion, either for execution of agreements, receipt of funds, or any other consequential matters. Admittedly, STIL had through a Board resolution, authorized me to sing certain agreements etc. in respect of GDR issue. Pursuant to the same, I acted in the manner as instructed to me to facilitate the GDR issue.*
- (iv) *As an authorized representative I was not at all involved in any of the day to day activities of Soma pertaining to the GDR issue or the Account Charge agreement*

by the Company, which are the core allegations in the notice. Further, nothing specific has been attributed to me in the Notice as to how I was involved in the day to day activities or that the alleged activities had my approval or I was aware of it etc. I reiterate that as an authorized representative I was not even remotely involved in the alleged activities as stated in the said Notice.

(v) On perusal of the SCN, the only allegation levelled against me is that I was 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 therein, if and when so required and in consequence of this I had signed the Account Charge Agreement given by PAAL to me in good faith. It is submitted that neither any specific allegation has been levelled against me nor my role has been elaborated or elucidated in the SCN.

(vi) I was under the impression that the GDR issue was being supervised and overseen by a reputed Lead Manager, i.e. PAAL in the present case. Owing to the several factors stated above, I had no reason to have any doubt regarding the said GDR issue. I did not have the expertise or the knowledge required to pursue the matter, as the same related to core finance and I am a person who has no financial background or experience.

(vii) With regard to para 9 and 10 of the SCN, wherein it has been alleged that Soma had in its meeting held on July 27, 2006, authorized Banco Bank to use the GDR proceeds as security against loan, I submit that I was not present in the meeting and I had no role in taking decision in the same. I was only authorized to sign, execute any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and papers from time to time as may be required by the Bank and to carry and affix common seal of the company therein, if and when so required. It is SEBI's own case that the Directors of Soma attended the meeting and passed the resolution. The decisions and consequences of the Board Meeting was totally out of my control and I had no role in the same.

(viii) With regard to para 11 and 13 of the said SCN, in so far as the observation that I had signed the said account charge agreement, I submit that the company had authorized me 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. I submit that the same was signed in the routine course of business on the basis of authority given to me through the resolution passed by Soma and the reliance placed on PAAL, which was at that point in time well reputed lead manager globally, assuming that they would be well aware of the policies/procedures in other jurisdictions.

- (ix) With regard to para 16 of the said SCN, in so far as the allegation that I had signed the Account Charge Agreement on behalf of Soma which was executed between Soma and Banco, I submit and reiterate that the same was signed in the routine course of business on the basis of authority given to me through the resolution passed by Soma and the reliance placed on PAAL, which was at that point in time well reputed lead manager globally, assuming that they would be well aware of the policies/procedures in other jurisdictions. I further submit that I was not required to carry out any due diligence on my part as my role was limited to signing the documents related to the GDR issue as instructed by Soma and provided to me by PAAL. Hence, I deny any specific allegation against me in this regard.*
- (x) With regard to further observations in Para 17 that all the communications were to be addressed to me, I hereby submit that I had diligently forwarded all the communications made to me under the alleged Account Agreement or otherwise related to the GDR, to Soma as and when I received the same. I had no role in the interpretation or execution of those communications. As stated above, my role was limited to acting as a facilitator to the GDR issue and nothing more. I had no role in decision making or any other aspect related to the GDR.*
- (xi) With regard to para 18 and 19, I submit that I had signed the letter dated January 23, 2007 in good faith and the trust I and other directions of Soma reposed in PAAL. I was earlier instructed to sign the documents etc. provided to me by PAAL and I signed the said letter by following that instructions only. I was just acting in the capacity of the facilitator and I signed the letter based on the authority given to me by Soma through the resolution and trust reposed in PAAL. Pursuant to signing the letter, whenever I met the director of Soma I informed them regarding the said letter. I was thereafter informed that Soma has taken steps to recover the*

money from Whiteview and same has been recovered with interest. Hence I had no role in the same and no adverse inference ought to be drawn against me.

(xii) With regard to para 20 of the said Notice, I submit that I was not present in the meeting and I had no role in taking decision in the same. I was only 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. It is SEBI's own case that the Directors of Soma attended the meeting and passed the resolution. The decisions and consequences of the Board Meeting was totally out of my control and I had no role in the same.

11. I note that the Noticees no. 1, 5, 6 and 7 had filed their respective applications vide their respective letters dated September 09, 2017, September 12, 2017, August 30, 2017 and September 09, 2017 under the Settlement Regulations to settle the present proceedings under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 as well as the pending Adjudication proceedings initiated against them. However, the applications for all the said Noticees were rejected in March 2019.

CONSIDERATION OF SUBMISSIONS AND FINDINGS:

12. I have considered the SCN dated July 21, 2017 issued to the Noticees and supplementary SCN dated August 26, 2019 issued to Noticee no. 1, along with its annexures, and the aforementioned replies filed by the Noticees and the submissions made before me during the course of hearing. The question to be determined in the present proceedings is whether the Noticees have violated the provisions of SEBI Act, 1992 and PFUTP Regulations, 2003, as alleged in the SCNs.
13. Before dealing with the issue, it would be appropriate to refer to the relevant provisions of law which are alleged to have been violated by the Noticees and relevant extract thereof is reproduced hereunder:

Relevant extract of provisions of SEBI Act, 1992

“Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

Section 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;
- (d)

Relevant extract of provisions of PFUTP Regulations, 2003:

Regulation 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.

Regulation 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;*
 - (g)...*
 - (h)...*
 -*
 - (k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;*
 - (l).....*
 - (m).....*
 -*
 - (r) Planting false or misleading news which may induce sale or purchase of securities;*
.....”

14. Before proceeding with the merits of the matter, it would be appropriate to first deal with certain preliminary contentions raised by the Noticees. The Noticees have submitted that the SCN pertains to issuance of GDR by the company in 2006, which is more than eleven years old and it is highly unreasonable for SEBI to expect them to keep all the documents pertaining to the transaction intact after such a long time. The Noticees have relied upon the observations of the Hon'ble SAT in the case of *Bharat J Patel vs. SEBI (Order dated September 09, 2020)*, *ICICI Bank Ltd. vs. SEBI (Order dated July 08, 2020 in SAT Appeal no. 583 of 2019)*, *Ashok Shivilal Rupani & Ors vs. SEBI (Appeal no. 417 of 2018)*, *Ashlesh Gunvantbhai Shah & Ors vs. SEBI (Order dated Jan 31, 2020 in Appeal no. 169 of 2019)*,

Aditi Dalal vs SEBI (Order dated November 28, 2011 in SAT Appeal no. 143 of 2011) and Order dated Feb 28, 2019 of the Supreme Court in Adjudicating Officer, SEBI vs. Bhavesh Pabari (Civil Appeal No. 11311 of 2013) to contend that there has been inordinate delay in the initiation of the proceedings. In this regard, I note that in the present case, SEBI investigated issue of GDRs in the overseas markets by the Indian companies on receipt of a complaint, in the year 2009, regarding misuse of GDR route by few companies. The investigation *prima facie* revealed that in many of the GDR issues, money for subscribing to GDR was availed as a loan by the subscribers, from an overseas Bank wherein the issuer company gave security for such loan taken by the subscribers, by pledging/creating charge on the GDR issue proceeds. It was also observed that such subscribers subscribed the GDRs without any valid consideration and sold the underlying shares in the securities market in India. Accordingly, where such *modus operandi* was *prima facie* observed such GDR issues made before the year 2009 were examined. SEBI initiated investigation as soon as SEBI came to know that such companies have adopted the *modus operandi* as referred to above. Since, the GDRs are issued abroad and related transactions were carried out outside India, SEBI had to call information from the various entities situated abroad in such large number of fraudulent GDR issues. Such information *inter alia* included seeking information on diversion of funds and subsequent tracing of proceeds from large number of entities and the details of (a) GDR issuer companies, (b) custodian of securities, (c) overseas depository, (d) overseas banks, (e) subscribers of GDR issue (mostly overseas), (f) lead manager, (g) various layers of transactions, etc. These information were not readily forthcoming. Therefore, SEBI had to collect information and documents from various sources including approaching the foreign regulators for assistance in procuring information and documents from the concerned entities situated outside India from many jurisdictions. The foreign regulators had also to collect this information from the concerned entities and then to furnish to SEBI. Thus, the process of collection of information in the matter was complex, tedious and time consuming and various dots were to be connected. It is noted from SEBI order dated June 16, 2016 that investigation was initiated in respect of 59 GDR issues made by 51 Indian Companies during the period 2002 to 2014. Soma Textiles and Industries Limited (Noticee No. 1) was one such GDR issuer where such *modus operandi* was also observed and the investigation was completed in March, 2017. I note that after completion of the

investigation, the SCN was issued to the Noticees on July 21, 2017. From the above facts and circumstances of the case, it cannot be said that there was inordinate and unnecessary delay in the matter as contended by the Noticees. It is further noted that there is no provision in the SEBI Act, 1992 which provides limitation period for taking action for the violation of the provisions of the Act or the Regulations made thereunder. In terms of Section 24(1) of the SEBI Act, 1992, any contravention to the provisions of SEBI Act and the Rules and Regulations framed thereunder is punishable with imprisonment for a term which may extend to the period of ten years and thus there is no limitation for initiating action for the same. In *Ravi Mohan & Ors. v. SEBI* and other connected appeals decided on August 27, 2013, the Hon'ble SAT while referring to its own decision in *HB Stockholdings Ltd. v. SEBI* (Appeal no. 114 of 2012 decided on August 27, 2003) and decision of Hon'ble Supreme Court in *Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India)* reported in 2003 (158) ELT 129 (S.C.), held as under:

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

15. In the facts and circumstances of the present matter, I note that the investigation has been conducted and proceedings have been initiated in reasonable time. Further, I note that none of the aforesaid cases referred to by the Noticees deals with GDR issue which involved complex investigation where numerous entities involved were situated outside India and information had to be collected with the help of overseas regulators, whereas, in the matter of *Jindal Cotex Ltd. and others Vs. SEBI* (Appeal No. 376 of 2019 decided on

05.02.2020) while dealing with an appeal emanating from the similar GDR issue wherein a plea of delay was also taken by the appellant therein, Hon'ble SAT 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.....”

Hence, in view of the aforesaid facts and circumstances of the present case, I find that there is no such delay in the present matter as alleged by the Noticees and the contention of Noticees in this regard is untenable.

16. I note that the Noticee no. 1 in its letter dated October 05, 2020 has claimed that SEBI did not provide any of the original documents as sought by it during inspection that was granted to it on October 14, 2019, and were provided only photocopies of the documents which were annexed to the SCN. Further, that the documents which they had sought for inspection vide their letters dated December 20, 2017, April 03, 2019 and September 19, 2019 have not been provided to it. In this respect, I note that copies of all documents which were relied upon by SEBI in making allegations in the SCN have been provided to the Noticee no. 1 along with the SCN dated July 21, 2017, as detailed in para 1 above and inspection of all these documents have been given to Noticee no. 1 on October 14, 2019. I find that it satisfies the requirement of principles of natural justice. However, Noticee no. 1 has requested for inspection of various other documents and my observations on the request for such various other documents sought by the Noticee no. 1 are as under:

Annexure No.	Document sought by the Noticee for inspection	Observations
1.	Copy of investigation report along with relevant annexures	The relevant findings of the investigation have been brought out in the SCN and the copies of documents relied upon in the SCN

		have already been provided to the Noticee along with the SCN as mentioned in para 1 above. The request made by the Noticee is untenable. Further, I note that inspection was granted for all the annexures to the SCN during the inspection undertaken by the Company on October 14, 2019.
2.	Statements and documents forming part of the Investigation Report	No recorded statement has been relied or referred to in the SCN. The request made by the Noticee is untenable.
3.	Rationale for selecting the period of investigation from 1 st October, 2006 to 31 st October, 2006	The request is in the form of a question without reference to a specific or particular document. The request made by the Noticee is untenable.
4.	All correspondences exchanged between SEBI and ICICI Bank Ltd, Deutsche Bank Trust Company Americas, PAN Asia Advisors Ltd, Banco Efisa	The request is omnibus and roving and without reference to a specific or particular document. The relevant findings of the investigation have been brought out in the SCN and the copies of documents relied upon in the SCN have also been provided to the Noticees. The request made by the Noticee is untenable.
5	Correspondences exchanged between SEBI and Whiteview Trading Corporation	No correspondences exchanged between SEBI and Whiteview have been relied upon in the SCN. The request made by the Noticee is untenable.
6	Copy of all statements recorded of Samuel Ernest Hurley	No statement of Samuel Ernest Hurley has been relied upon in the SCN. The request made by the Noticee is irrelevant and is untenable.
7.	Correspondences exchanged between SEBI and United Kingdom's Registrar of Companies	The request is omnibus and roving and without reference to a specific or particular document. No correspondences exchanged between SEBI and United Kingdom's Registrar of Companies have been relied upon in the SCN. The request made by the Noticee is untenable.

8.	Documentary Evidence/basis of alleging that Whiteview was the only entity to have subscribed to 1.85 million GDRs	Whiteview had entered into a loan agreement with Banco on October 18, 2006 for USD 18.50 million for subscribing to the GDR issue of SOMA and the same was transferred to the account of SOMA with Banco for subscription of the GDR issue. Further, SOMA entered into an account charge agreement with Banco to secure the loan taken by Whiteview. Upon the failure of Whiteview to repay the loan, SOMA vide its letter dated January 23, 2007 had authorized Banco to transfer an amount of USD 15.67 million (proceeds from the GDR issue) from its account to the account of Whiteview with Banco. The loan agreement dated October 18, 2006, the account charge agreement dated October 18, 2006, the bank account statements of SOMA and the letter dated January 23, 2007 of SOMA have been provided as Annexures to the SCN as mentioned in para 1 above. Further, inspection of the said documents have been granted to the Noticee no. 1 on October 14, 2019.
9.	Documentary evidence/basis of alleging that we furnished wrong information to SEBI by providing false list of GDRs subscribers.	The same observation as in respect of Sr. no. 8 above may be referred to, to show that only one entity i.e. Whiteview, had subscribed to the 1.85 million GDRs of SOMA. The letter dated June 26, 2015 submitted by Noticee no. 1 to SEBI with a list of 5 subscribers to the GDR issue is wrong information. The loan agreement dated October 18, 2006, the account charge agreement dated October 18, 2006, the bank account statements of SOMA, letter dated January 23, 2007 of SOMA and letter dated June 26, 2015 of Noticee no. 1

		have been provided as Annexures to the SCN. Further, inspection of the said documents have been granted to the Noticee no. 1 on October 14, 2019.
10.	Documentary evidence/basis of alleging that the loan amount of US\$ 15.67 million of Whiteview was repaid by us from GDR proceeds.	Noticee no. 1 vide its letter dated January 23, 2007 had authorized Banco to transfer an amount of USD 15.67 million from its account to the account of Whiteview with Banco. Copy of the said letter dated January 23, 2007 has been provided as Annexure-9 to the SCN. Further, the said transfer of USD 15.67 million to the account of Whiteview with Banco is also evident from the bank account statement of Noticee no. 1 with Banco, which has also been provided as Annexure-8 to the SCN. Inspection of the said documents have also been provided to the Noticee no. 1 on October 14, 2019.
11.	A copy of English translation of the bank account statement of account no. 628288525002, 6282855.15.001 and 628288525001.	These bank accounts pertain to Noticee no. 1 and the bank account statement of Noticee no. 1 with Banco have been provided as Annexure-8 with the SCN. Inspection of the said document has also been provided to the Noticee no. 1 on October 14, 2019.
12.	Documentary evidence/basis of alleging that GDRs and underlying equity shares to the extent of US\$ 15.67 million were acquired by Whiteview without proper consideration.	Whiteview had entered into a loan agreement with Banco on October 18, 2006 for USD 18.50 million for subscribing to the GDR issue of SOMA and the same was transferred to the account of SOMA with Banco for subscription of the GDR issue. Further, SOMA entered into an account charge agreement with Banco to secure the loan taken by Whiteview. Upon the failure of Whiteview to repay the loan, SOMA vide its letter dated January 23, 2007 had

		authorized Banco to transfer an amount of USD 15.67 million (proceeds from the GDR issue) from its account to the account of Whiteview with Banco. The loan agreement dated October 18, 2006, the account charge agreement dated October 18, 2006, the bank account statements of SOMA and the letter dated January 23, 2007 of SOMA have been provided as Annexures to the SCN. Further, inspection of the said documents have been granted to the Noticee no. 1 on October 14, 2019.
13.	Copies of all correspondences exchanged between SEBI and those entities who were holders of equity shares post-conversion of GDRs.	The request is omnibus and roving and without reference to a specific or particular document. No such correspondence or communication has been relied upon in the SCN. The request made by the Noticee no. 1 is untenable.
14.	Documentary evidence/basis of alleging that the credit agreement and account charge agreement were fraudulent in nature.	The cumulative inference drawn from all the documents which have been provided to the Noticee no. 1 as Annexures to the SCN has been dealt with in detail in the subsequent paras of the present order. Further, inspection of these documents have been provided to the Noticee no. 1 on October 14, 2019. Hence, the request made by the Noticee is untenable.
15.	Documentary evidence/basis of alleging that the loan amount of US\$ 15.67 million of Whiteview was repaid by us.	The request is identical to the request made at Sr. no. 10. Hence, the same observation in Sr. no. 10 may be referred to here.
16.	Copy of statement of Shri. A. K. Somany recorded during the course of investigation.	The said statements of Shri A. K. Somany have not been relied upon or referred to in the SCN. The request made by the Noticee is untenable.

17.	Copy of statement of all other entities/person recorded during the course of investigation.	The request is omnibus and roving and without reference to a specific or particular document. No recorded statement of any entity/person has been relied upon or referred to in the SCN. The request made by the Noticee is untenable.
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17. From the SCN and its Annexures, I find that all the relevant and relied upon documents in support of the SCN and also the findings of the investigation captured in the SCN have been forwarded to the Noticees. Therefore, the contention of the Noticee no. 1 that SEBI has not provided complete documents is untenable. Further, regarding, inspection of original copy of the Annexures, sought by the Noticee no. 1, my observations are as under:

Annexure No.	Document for which contention for inspection of Original is made and certified copies required	Observations
1.	Copy & inspection of the file notings and order thereof wherein the Investigating Authority was appointed.	Findings of the investigation report have been provided in the SCN. No other file notings have been relied upon in the SCN. The request is roving and irrelevant. Therefore, the request is untenable.
2.	Memorandum of Association, Articles of Association, Share Certificates and Ownership documents of Whiteview Trading Corporation	The said documents have not been relied upon or referred to in the SCN. Hence, the request for inspection of such original documents is untenable.
3.	Letters sent by SEBI to Financial Regulator of Portugal and Documents received from them.	The relevant data/documents provided by the Financial Regulator of Portugal as relied upon in the SCN are annexures to the SCN and have been provided to the Noticees along with the SCN as mentioned in para 1 above. Further, Noticee has not specified the particular data/documents or subject.

		Noticee has made an omnibus request without specifying the particular data/documents required. Such requests are roving and cannot be entertained. Further, documents or correspondences with foreign regulators are under agreement of confidentiality and also pertain to correspondences on other matters and entities. Hence, the request made by the Noticee is untenable.
4.	Documents showing allotment of GDR's to Whiteview	No such document or letter of allotment of GDRs by SOMA to Whiteview has been relied upon or referred to in the SCN. The allotment of GDR's to Whiteview by SOMA has been established from the loan agreement between Whiteview and Banco for subscribing to the GDR issue of SOMA, the account charge agreement between SOMA and Banco for securing the said loan of Whiteview and the letter dated January 23, 2007 wherein SOMA has authorized Banco to transfer USD 15.67 million from its account to Whiteview and this is evident from the bank account statements of SOMA. All the aforesaid documents have been provided as Annexures to the SCN, as mentioned in para 1 above. Further, inspection of these documents have been provided to Noticee no. 1 on October 14, 2019.
5	Documents to show that SEBI has complied with Clause 11 of the IOSCO MMOU	No such documents have been relied upon or referred to in the SCN in the present proceedings. Further, the IOSCO MMOU is available to the public on the SEBI website and the MMOU does not envisage any embargo/restriction with regard to the use of

		information when the same is obtained for conducting enforcement proceedings. Hence, the request made by the Noticee is untenable.
6	All documents received from Financial Regulator of Portugal or any other Regulator during the course of the investigation in the matter.	The relevant data/documents provided by the Financial Regulator of Portugal as relied upon in the SCN have been provided to the Noticees as Annexures along with the SCN as mentioned in para 1 above. Further, Noticee has not specified the particular data/documents. Noticee has made an omnibus request without specifying the particular data/documents required. Such requests are roving and cannot be entertained. The request made by the Noticee is untenable.

18. I find that the Noticees were provided with all the relevant documents as relied upon in the SCN as mentioned above. I note that the Noticee No. 1 has filed detailed replies to the SCN. I also note that the Noticee no. 1 has referred to provisions of the Indian Evidence Act, 1872 to contend that for the admissibility of secondary evidence, the conditions in Section 65 of the Indian Evidence Act, 1872 must be fulfilled, however, that none of the conditions have been fulfilled in the present case. In this regard, I note that the proceedings initiated under Section 11(4) and 11B of the SEBI Act, 1992 are in the nature of quasi-judicial proceedings, as held by the Hon'ble Supreme Court in **NSDL Vs. SEBI (2017) 5 SCC 517**. As such the provisions of Indian Evidence Act, 1872 are not strictly applicable to these proceedings. Further, Section 65 (a) of the said Act, itself allows admissibility of a document as secondary evidence when the original is in possession of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court. I, further, note that the copies of some of the documents relied upon, were obtained by SEBI during investigation, through overseas regulators. The contents of these documents have been corroborated from various other documents and transactions, which have been provided as annexures to the SCN. Many of these documents pertain to the Company itself, such as the Board Resolution dated

July 27, 2006 of the Company, the Account Charge Agreement dated October 18, 2006 signed between the Company with Banco, the bank account statements of the Company with Banco and the Company letter dated January 23, 2006, the originals of which should be in possession of the company. Copies of the said documents have been provided as Annexures to the SCN, as mentioned in para 1 above, and I note that the Company has not disputed the contents of these documents for which inspection was also provided to the Company on October 14, 2019. As copies of all the documents relied upon by SEBI in the SCNs were already provided to the Noticees in response thereto Noticees have filed detailed replies, I find that no prejudice has been caused to any of the Noticees in defending their interest and contesting the allegation made against them in the SCN. In this regard, it would be appropriate to refer to the Order of Hon'ble SAT dated February 12, 2020 in ***Shruti Vora vs. SEBI (Appeal No. 28 of 2020)*** wherein, it was observed that:

“19. The contention that the appellant is entitled for copies of all the documents in possession of the AO which has not been relied upon at the preliminary stage when the AO has not formed any opinion as to whether any inquiry at all is required to be held cannot be accepted. A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon.”

19. I note that the contention on the inspection of documents raised by the Noticee no. 1 is squarely covered by the decision of the Hon'ble SAT in the aforesaid case, as all the relevant documents relied upon in the SCN have been provided to the Noticee no. 1 as Annexures to the SCN as stated in para 1 above and inspection of the same were granted to the Noticee no. 1 on October 14, 2019. Thus, in view of the above, I find that the contention made by the Noticee no. 1 that SEBI has failed to provide inspection of all documents and inspection of original documents on which it has relied upon is untenable.

20. On the merits of the case, I note that it has been alleged in the SCN that SOMA issued GDR on October 20, 2006, the details of which are as under:

GDR issue date	No. of GDRs Issued (mn.)	Capital raised (US\$mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
20-Oct-2006	1.85	17.2975	ICICI Bank Ltd., Mumbai	1,85,00,000 equity shares of FV `10 (1 GDR=10 equity share)	Deutsche Bank Trust Company Americas	Pan Asia Advisors Ltd.	Banco Efisa	Luxembourg Stock Exchange

21. It is alleged in the SCN that Whiteview (Noticee no. 2) entered into a Loan Agreement on October 18, 2006 with Banco for payment of subscription amount of USD 18.50 million for the GDR issue of SOMA. Simultaneously, an Account Charge Agreement dated October 18, 2006 was entered into between SOMA and Banco for providing security towards the said loan obtained by Noticee no. 2 from Banco and the Account Charge Agreement was signed by Mr. Sunil Patel (Noticee No. 7), the Overseas Sale Representative, as authorized in the Board Meeting of SOMA dated July 27, 2006, wherein, a resolution was also passed authorizing the Banco to use the GDR proceeds as security against loan for which any charge is granted as well as to enter into any escrow agreement or similar agreements if and when so required. Thereafter, SOMA in its Board Meeting dated October 20, 2006, approved the aforesaid GDR issue and in its letter dated June 26, 2015 to SEBI, SOMA had submitted that there were 5 allottees/subscribers to the said GDR issue, the details of which are mentioned in para 3 above. However, during investigation, it was found that the GDR subscription money (1.85 million GDRs amounting to USD 17.29 million) was received from only one entity i.e. Whiteview (Noticee no. 2). Further, it was observed that SOMA vide its letter dated July 23, 2007, had authorized Banco to transfer an amount of USD 15.67 million from its account to the account of Whiteview (Noticee no. 2) with Banco as Whiteview had failed to repay the loan taken from Banco for the subscription of GDR issue of SOMA. Hence, it has been alleged in the SCN that Whiteview subscribed to the GDR issue of SOMA without consideration, as the subscription money was funded by SOMA. The SCN further alleges that SOMA failed to inform BSE about the account charge agreement dated October 18, 2006 and that the GDR issue of SOMA was subscribed by only one entity, i.e., Noticee no. 2 and it is alleged that SOMA has provided

incorrect information to SEBI about the list of subscribers to the issue. Further, it is alleged that this misleading information had the potential to influence the decision of investors into believing that the GDRs were fully subscribed, when in fact it was funded by SOMA itself. Based on the above, it has been alleged in the SCN that the above acts of concealing and suppressing material facts about the fraudulent arrangement of the Loan and Account Charge Agreements by SOMA and its Board of Directors are in violation of provision of SEBI Act, 1992 and PFUTP Regulations.

22. In this regard I note that SOMA in its Board Meeting dated July 27, 2006 had *inter alia* resolved to open a bank account with Banco for the purpose of receiving the subscription money in respect of GDRs issued by the company and authorized Mr. Sunil Patel (Noticee no. 7), an Overseas Sales Representative of the Company, to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration etc. as may be required by the bank. Further, it was resolved to authorize the bank to use the funds so deposited in the aforesaid bank account as security in connection with loans for which any charge is granted as well as to enter into any escrow agreement or similar agreements if and when so required. Thereafter, I note that a loan agreement dated October 18, 2006 was signed between Whiteview (Noticee no. 2) and Banco for loan of USD 18.50 million and it was *inter alia* stated in the loan agreement that the purpose of the loan was “*The borrower shall use the proceeds of the advance to subscribe for global depository receipts to the value of upto USD 18,500,000 issued by SOMA on the terms of the listing particulars to be delivered to the Luxembourg Stock Exchange*”. Hence, it is clear that the loan taken by Whiteview from Banco was for the purpose of subscribing to the GDR issue of SOMA. Simultaneously, Noticee no. 7, the authorized agent of SOMA, signed an Account Charge Agreement dated October 18, 2006 to secure the loan taken by Whiteview for subscribing to the GDR issue of SOMA. I note that it is clearly stated in the Account Charge Agreement that the “*SOMA deposited in its designated account with bank an amount not exceeding US\$ 18,500,000 as security for all the obligations of Whiteview under the loan agreement...*” I also note that the loan agreement has been defined in the Account Charge Agreement as “*Loan agreement means the Loan agreement signed between Whiteview (as borrower) and the bank dated on or around the date of this agreement by which the bank agreed to lend to Whiteview the*

maximum amount of upto US\$ 18,500,000". Hence, it is clear that the Account Charge Agreement was entered into between SOMA and Banco for the purpose of securing the loan taken by Whiteview on October 18, 2006 with Banco for the purpose of subscribing to the GDR issue of SOMA. I also find that SOMA was aware of the said loan agreement and Account Charge Agreement as Noticee no. 7, who was the authorized representative that signed the Account Charge Agreement on behalf of SOMA, has submitted in his reply to the SCN that *"....I had diligently forwarded all the communications made to me under the alleged Account Agreement or otherwise related to the GDR, to Soma as and when I received the same"*. Therefore, since the Account Charge Agreement was signed on October 18, 2006 and the GDR issue of SOMA took place on October 20, 2006, it is evident that SOMA was aware of the loan agreement and Account Charge Agreement during the time of issue of GDR. Hence, it is clear that SOMA had proceeded with the GDR issue on October 20, 2006 and informed BSE of the same with the knowledge that Whiteview would be the sole subscriber to the GDR issue. However, I find that SOMA failed to inform BSE about the Account Charge Agreement or that Whiteview was the sole subscriber to the GDR issue. This fact that SOMA was aware of the loan agreement, Account Charge Agreement and that Whiteview was the sole subscriber to the GDR issue is evident from the letter dated January 23, 2007 issued by SOMA to Banco authorizing Banco to transfer an amount of USD 15.67 million from its account to the account of Whiteview with Banco in furtherance of the loan taken by Whiteview which it failed to repay. Therefore, I find that the allegations in the SCN that the above acts of concealing and suppressing material facts about the fraudulent arrangement of the Loan and Account Charge Agreements by SOMA and its Board of Directors are tenable.

23. At the outset, I note that the Noticees have contended that the facts have been distorted and imaginary allegations have been created without any documentary evidence and that the SCN is repeating the same allegation again and again and only general allegations have been made without adducing any documentary evidence. In this regard, I find that the following relevant documentary evidence have been provided to the Noticees along with the SCN:

- a) **Company Resolution dated July 27, 2006:** I find that in the Board Meeting dated July 27, 2006, the company had resolved that a bank account will be opened with Banco

for the purpose of receiving subscription money in respect of the GDR issue. It was also resolved to authorize the bank to use the funds so deposited in the aforesaid bank account as security in connection with loans for which any charge is granted as well as to enter into any escrow agreement or similar agreements if and when so required. Further, the Board resolved to authorize Mr. Sunil Patel (Noticee no. 7) to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required. Copy of the said Resolution dated July 27, 2006 has been provided to the Noticees as **Annexure – 5** to the SCN

- b) **Minutes of Board Meeting dated July 27, 2006:** The above resolutions passed by the Company on July 27, 2006, was signed by Noticees 3, 4, 5 and 6 and was minuted on July 27, 2006. Copy of the said minutes has been provided to the Noticees along with the SCN as **Annexure – 6**.
- c) **Account Charge Agreement dated October 18, 2006:** The Account Charge Agreement was signed between Banco and SOMA pursuant to the decision taken by SOMA during the Board Meeting held on July 27, 2006. It is through this meeting, that authorization was granted to Mr. Sunil Patel to sign the Account Charge Agreement dated October 18, 2006 for securing the loan taken by Whiteview (Noticee no. 2) from Banco for subscribing the GDR issue of SOMA. I note that the said Account Charge Agreement dated October 18, 2006 has also been provided to the Noticees as **Annexure – 7** to the SCN.
- d) **Loan Agreement dated October 18, 2006:** Whiteview (Noticee no. 2) had taken a loan from Banco for the amount of USD 18.50 million for subscribing to the GDR issue of SOMA. The loan agreement dated October 18, 2006 between Whiteview (Noticee no. 2) and Banco has been provided to Noticees as **Annexure-2** to the SCN.
- e) **SOMA letter dated January 23, 2007:** SOMA through its authorized representative Mr. Sunil Patel had vide letter dated January 23, 2007, authorized Banco to transfer an amount of USD 15.67 million from its account to the account of Whiteview (Noticee no.

- 2) with Banco as Whiteview had failed to repay the loan taken from Banco for the subscription of GDR issue of SOMA. I note that the said letter dated January 23, 2007 has also been provided to the Noticees as **Annexure – 9** to the SCN.
- f) **Bank Account Statements:** These are the bank account statements of SOMA where the GDR proceeds were deposited and also from where money was transferred to the account of Whiteview with Banco pursuant to the Company letter dated January 23, 2007, and have been provided to the Noticees as **Annexure – 8** to the SCN.
24. Hence, I find that allegations in the SCN are clear and the relevant documentary evidence, *inter alia* as listed above, have been provided to the Noticees. Further, from the said documents, I find that the Company had facilitated subscription of its own GDR issue by entering into an arrangement where Whiteview (Noticee no. 2), the only subscriber to the GDR's issued by SOMA, obtained loan from Banco for subscribing the GDR issue of SOMA, and SOMA pledged the GDR proceeds with Banco for securing the loan taken by Whiteview from Banco.
25. With regard to the allegations in the SCN, SOMA has submitted that the GDR issue was done by seeking requisite approvals, complying with the applicable provisions of the law and after making proper disclosures through Pan Asia Advisors Limited (hereinafter referred to as "**PAAL**"), a UK based entity who was the Lead Manager of the GDR issue of SOMA. SOMA has submitted that the Board of Directors had decided that a Bank Account would be opened with Banco for the purpose of receiving money in respect of GDR issue and Noticee no. 7 was authorized to sign and execute any application, agreement, escrow agreement etc. from time to time. SOMA has submitted that PAAL has devised the scheme, artifice etc. of a farce GDR, and they have been made a scapegoat and have been wrongly accused of a fraud which they have not committed. SOMA has further submitted that the Board had authorized only one person i.e. Mr. Sunil Patel (Noticee no. 7) to carry out necessary formalities for which he relied upon the expertise and knowledge of the Lead Manager registered with UK Regulator. That Noticee no. 7 and other directors of the company were dependent upon the Lead Manager considering their experience.

26. In this regard, I note that the Account Charge Agreement signed by Noticee no. 2 *inter alia* states as under:

“1) **Loan agreement:** *Loan agreement means the Loan agreement signed between Whiteview (as borrower) and the Bank dated on or around the date of this agreement by which the bank agreed to lend to Whiteview the maximum amount of upto US \$18,500,000.*

2) **Account Charge Agreement:**

Subject to the terms of this agreement, SOMA deposited in its designated account with bank (hereinafter the Account) an amount not exceeding US \$18,500,000 as security for all the obligations of Whiteview under the Loan Agreement (hereinafter the Secured Obligations) and with full title guarantee hereby assigns to and charges by way of first fixed charge in favour of the Bank all the rights, title, interest and benefit in and to the account as well as the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof. Such assignment and charge shall be a continuing security for the due and punctual payment and discharge of the secured obligations.

.....”

27. Hence, I note that it has been expressly given in the Account Charge Agreement that SOMA would be depositing in its account an amount not exceeding USD \$18,500,000 as security for all the obligations of Whiteview (Noticee no. 2) under the loan agreement. I also note that this “loan agreement” has been defined in the Account Charge Agreement as the Loan agreement signed between Whiteview (as borrower) and the Bank dated on or around the date of this agreement by which the bank agreed to lend to Whiteview the maximum amount of upto US \$18,500,000. Further, I note that this loan agreement between Whiteview and the Bank states that “*Purpose - The borrower shall use the proceeds of the advance to subscribe for global depository receipts to the value of upto US \$18,500,000 issued by SOMA on the terms of the Listing particulars to be delivered to the Luxembourg Stock Exchange*”. Hence, it is clear that SOMA who had authorised and instructed Noticee no. 7 to sign the Account Charge Agreement, as submitted by Noticee no. 7, was well aware of the Account Charge Agreement and the loan agreement. I note that SOMA have not denied that Noticee no. 7 was authorized to sign the Account Charge Agreement or taken the stand that they are not responsible for the actions of Noticee no. 7 in signing the Account Charge Agreement or that Noticee no. 7 has gone beyond the role or responsibility that he was authorized for in the said Board meeting dated July 27, 2006. In this regard, I note that Noticee no. 7 in his reply dated October 19, 2020 has *inter*

alia submitted as under:

"I was thereby given authority by Soma for the said GDR issue for signing the documents related to the GDR as and when required. My role was never to oversee or supervise the process of GDR but limited to acting as a nodal point outside India for Soma just for the limited purpose of signing the documents given by PAAL. The documents were signed by me as per instructions of the Board of Directors, in good faith on the basis of trust reposed in PAAL and no adverse inference ought to be drawn against me due to the same.

.....in so far as the allegation that I had signed the Account Charge Agreement on behalf of Soma which was executed between Soma and Banco, I submit and reiterate that the same was signed in the routine course of business on the basis of authority given to me through the resolution passed by Soma and the reliance placed on PAAL, which was at that point in time well reputed lead manager globally, assuming that they would be well aware of the policies/procedures in other jurisdictions. I further submit that I was not required to carry out any due diligence on my part as my role was limited to signing the documents related to the GDR issue as instructed by Soma and provided to me by PAAL."

(Emphasis added)

28. From the aforesaid statement of Noticee no. 7, I note that Noticee no. 7 has submitted that he has signed the Account Charge Agreement as per the instructions of the Board of Directors of SOMA and that he was not required to carry out any due diligence on his part as his part was only limited to signing the documents related to the GDR issue as instructed by SOMA and provided to him by PAAL. I find that Noticee no. 7, as submitted by him, has acted and signed the Account Charge Agreement on the basis of the instructions and authority given by SOMA. I find that a company has to be held responsible for all resolutions passed by the board of directors of the Company for actions taken to implement such decisions and the company also reaped the benefit of such GDR issue/subscription money. A company cannot wriggle out of its obligations with respect to resolutions passed by it in its board meetings, agreements entered into by it with banks and transactions made by them pursuant to such agreements, and simply throw the entire obligation and liability of the company and its directors on the Merchant Banker/Lead Manager.
29. Further, I find that Noticee no. 7 is an authorized Representative of SOMA and has acted in the capacity authorized by the Company to him through the resolution dated July 27, 2006. I note that SOMA has not made any contention that Noticee no. 7 has acted in a

fraudulent manner. Even if for argument sake if it was PAAL who provided the Account Charge Agreement to Noticee no. 7, it was the responsibility of Noticee no. 7 as the authorized representative to know what he was signing and he cannot have blindly signed every document given to it by PAAL. Further, SOMA in its capacity as a principal to its agent Noticee no. 7 is responsible for the actions of Noticee no. 7. I note that the Account Charge Agreement was signed between SOMA and Banco on October 18, 2006, which is before the date of approval of the Board in its meeting held on October 20, 2006 for the issue and allotment of 18,50,000 GDRs worth USD 17.29 million representing 1,85,00,000 underlying equity shares of Rs. 10/- each, as informed to BSE. Since, the Account charge agreement which was signed by Noticee no. 7 (the authorized representative of the company) as per the instructions of the Board, on October 18, 2006 i.e. before the Board Meeting approval for issue of GDRs on October 20, 2006, it is evident that SOMA was aware of the loan agreement of USD 18.50 million from Banco by Noticee no. 2 for subscription of GDRs of SOMA. This is clear from the fact that Noticee no 7 has submitted in his reply to the SCN that *"I hereby submit that I had diligently forwarded all the communications made to me under the alleged Account Agreement or otherwise related to the GDR, to Soma as and when I received the same"*. In view of the above, I find the submissions of SOMA that the Lead Manager was wholly responsible as untenable, as it is established that SOMA was aware of the loan agreement and Account Charge Agreement prior to the issue of GDRs itself.

30. In this regard, I note that SOMA has relied upon the Order dated November 05, 2019 of the Hon'ble SAT in the matter of ***Adi Cooper & Anr. Vs. SEBI (SAT Appeal No. 124 of 2019)*** to contend that the resolution dated July 27, 2006 passed by the Company cannot be inferred to mean that it was passed to authorize Banco to utilize the GDR proceeds as security in connection with a loan given to Whiteview. In this regard, I note that SOMA have quoted certain paras of the said order passed by the Hon'ble SAT without properly appreciating the complete facts and circumstances under which the said order came to be passed. I note that the Hon'ble SAT while dealing with the interpretation of the board resolution, observed that *"the resolution could also mean that the proceeds would be utilized by the bank as security in connection with a loan taken by the company itself"*. Thus, as per Hon'ble SAT also, the interpretation canvassed by the Noticees is a possible

interpretation and it is not the only interpretation and the expression “*with loans for which any charge is granted*” in the resolution, is open to interpretation. Subsequently, Hon’ble SAT has upheld the orders passed by SEBI in Transgene Biotek Ltd. and Jindal Cortex matters involving similar resolutions and proceeded with the similar interpretation on which the present SCN is premised. Further, in the present case, I note that Board Resolution states that “*the Bank be and is hereby authorized to use the funds so deposited in the aforesaid bank account as security in connection with loans for which any charge is granted..*”. I note that the Account Charge Agreement dated October 18, 2006, signed by the Authorized Representative (Noticee no. 7) on behalf of SOMA, was for the purpose of securing the loan taken by Whiteview from Banco. In this regard, I also note that Noticee no. 7, the authorized representative who had signed the Account charge agreement dated October 18, 2006 on behalf of SOMA, had *inter alia* submitted in his reply to the SCN that “*I hereby submit that I had diligently forwarded all the communications made to me under the alleged Account Agreement or otherwise related to the GDR, to Soma as and when I received the same*” and “*I had signed the Account Charge Agreement on behalf of Soma which was executed between Soma and Banco, I submit and reiterate that the same was signed in the routine course of business on the basis of authority given to me through the resolution passed by Soma...*”. Hence, it is evident that Noticee no. 7 has acted as per the authorization given to him in the Board Resolution dated July 27, 2006 and signed the Account Charge Agreement dated October 18, 2020, prior to the issue of GDRs on October 20, 2006. It shows that SOMA was well aware of the Account Charge Agreement and the loan agreement. Therefore, from the said act and submissions of Noticee no. 7, the interpretation of the Board Resolution dated July 27, 2006 becomes clear. I also note that SOMA has not made any contention that Noticee no. 7 acted beyond the authorization given to him or that he acted in a fraudulent manner in this regard. Thus, ratio sought to be derived by SOMA from the aforesaid order passed by Hon’ble SAT to the present case is not correct.

31. With regard to the allegations on submitting the incorrect list of subscribers to the GDR issue to the Investigating Authority of SEBI, SOMA has contended that PAAL, a very reputable firm in UK, was the lead manager of the GDR Issue and as per their advice, they carried out all the procedure of GDR issue. Hence, they deny that they were having

knowledge that GDR Issue was subscribed by only one entity. In this regard, on perusal of the bank account statement of SOMA with Banco, I note that the entire GDR proceeds were received by SOMA on October 30, 2006 in its bank account bearing A/c. no. 6282855.15.001 held with Banco from only one entity for USD 17,297,500/-. I also note that vide letter dated January 23, 2007, SOMA had authorized Banco to transfer an amount of USD 15.67 million from its account to the account of Whiteview with Banco, as Whiteview had failed to repay the loan taken from Banco for the subscription of GDR issue of SOMA. Further, since it is established in the aforesaid paras that SOMA was aware of the loan agreement of USD 18.50 million from Banco by Noticee no. 2 for subscription of GDRs of SOMA before the issue of GDR's on October 20, 2006, I find the submissions of SOMA that they had no knowledge that the GDR issue was subscribed by only one entity as untenable, and I also find that the only corporate announcement made by the Company on the GDR Issue on October 20, 2006 on BSE, which stated “*“...Soma Textiles & Industries Ltd has informed BSE that the Board of Directors of the Company at its meeting held on October 20, 2006, has approved the issue and allotment of 1,850,000 Global Depository Receipts (GDRs) worth USD 17.2975 million representing 18,500,000 underlying Equity shares of Rs 10/- each to the Depository - Deutsche Bank Trust Company Americas.”*” was misleading as it gave the false impression of a successful GDR issue.

32. SOMA has also contended that the loan agreement entered between Whiteview and Banco was signed by one Mr. Samuel E. Hurley on behalf of Whiteview for subscription of GDR's of SOMA. That their name is not there in the agreement and therefore they cannot be held liable for any averments/ declaration/ statements/ conditions mentioned in the agreement since they are not party to the agreement. Hence, any liability of Whiteview and Banco cannot be lumped upon them. In this regard, I find that the allegations in the SCN are not based solely on the said loan agreement between Whiteview and Banco. I note that the loan agreement dated October 18, 2006 *inter alia* states that:

“a) Facility- *Subject to the terms of this agreement, the bank agrees to make available to the borrower a Dollar term loan facility in the maximum principal amount of upto US \$18,500,000.*

b) Purpose- *The borrower shall use the proceeds of the advance to subscribe for global depository receipts to the value of upto US \$18,500,000 issued by SOMA on the terms of the Listing particulars to be delivered to the Luxembourg Stock Exchange."*

33. From the above excerpts of the loan agreement, it is clear that the purpose of the loan is for subscribing to the GDR issued by SOMA. The loan agreement dated October 18, 2006 is being read along with the Account Charge agreement dated October 18, 2006 signed between SOMA and Banco (provided as **Annexure – 7 to SCN**). In this regard, I note that the Account Charge Agreement *inter alia* states as under:

"Loan agreement: *Loan agreement means the Loan agreement signed between Whiteview (as borrower) and the Bank dated on or around the date of this agreement by which the bank agreed to lend to Whiteview the maximum amount of upto US \$18,500,000.*

Account Charge Agreement:

Subject to the terms of this agreement, SOMA deposited in its designated account with bank (hereinafter the Account) an amount not exceeding US \$18,500,000 as security for all the obligations of Whiteview under the Loan Agreement (hereinafter the Secured Obligations) and with full title guarantee hereby assigns to and charges by way of first fixed charge in favour of the Bank all the rights, title, interest and benefit in and to the account as well as the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof. Such assignment and charge shall be a continuing security for the due and punctual payment and discharge of the secured obligations.

Upon payment of all or part of the amounts due under the Loan Agreement, SOMA may withdraw from the Account the equivalent amount.

Upon payment and final discharge in full of all the secured obligations, this agreement and the rights and obligations of the Parties shall automatically cease and terminate and the Bank shall, at the request of SOMA, release the deposit made in the Account."

34. From the above excerpts of the Account Charge Agreement between SOMA and Banco, I note that there is reference to the Loan agreement of Whiteview with Banco and it also clearly states that SOMA shall deposit an amount of USD 18,500,000 as security for all the obligations of Whiteview under the said Loan agreement and with full title guarantee has assigned and charged by way of first fixed charge in favour of the Bank all the rights, title, interest and benefit in and to the account as well as the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof. Therefore, the bank account in which GDR proceeds were deposited was in the name of SOMA but the amount deposited in the account was not at the free disposal of the SOMA as the same was kept as collateral prior to issuance of GDRs for the loan availed by Whiteview for subscribing to the GDR issue. Hence, I note that SOMA had pledged the GDR proceeds of USD 17.29 million with Banco before issuance of the GDRs to secure

the rights of Banco against the loan of USD 18.50 million given by Banco to Whiteview for subscription of GDR issue of SOMA. In view the above, I find the contention of SOMA that they are not party to the loan agreement between Whiteview and Banco and any liability of Whiteview and Banco cannot be lumbered upon them as erroneous and untenable. At the time of passing the board resolution dated July 27, 2006, SOMA was aware that a bank account would be opened with Banco for the purpose of receiving subscription money in respect of the GDR issue and that the bank is authorized to use the funds deposited in the said bank account as security in connection with loans, if any. Further, the Noticees had authorized Mr. Sunil Patel (Noticee no. 7) to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration etc. as maybe required by the bank. From the above, it is abundantly clear that the liability of Whiteview (Noticee no. 2) in the event that it is unable to repay its loan with Banco, is being secured by SOMA through the said Account Charge Agreement.

35. SOMA has further submitted that the SCN has not brought out any concrete figure of the loss incurred by the Indian investors due to the announcement made by the company. In this regard, I note that the disclosure made by SOMA to the BSE vide its corporate announcement dated October 20, 2006 did not mention about execution of 'Account Charge Agreement' dated October 18, 2006 by SOMA securing the loan availed by Whiteview for subscribing of its GDR issue or that the GDR issue was subscribed by only one entity. Instead, SOMA in its corporate announcement dated October 20, 2006 stated that, *"...Soma Textiles & Industries Ltd has informed BSE that the Board of Directors of the Company at its meeting held on October 20, 2006, has approved the issue and allotment of 1,850,000 Global Depository Receipts (GDRs) worth USD 17.2975 million representing 18,500,000 underlying Equity shares of Rs 10/- each to the Depository - Deutsche Bank Trust Company Americas."* This announcement conveys that there was considerable demand for its GDR in the overseas market and the same were successfully subscribed. Thus, the investors in India were made to believe that the issuer company i.e. SOMA has acquired a good reputation in terms of investment potential and, therefore, foreign investors have successfully subscribed to the GDR issue. Such statements had the potential to induce the investors in India to remain invested in the company or to invest in the shares of the company. In fact there was only one subscriber i.e. Whiteview which

had subscribed to the GDR issue of SOMA by obtaining loan from Banco and that loan was further secured by the SOMA itself by securing the GDR proceeds. I find that all these events were price sensitive information and could have impacted the scrip price of SOMA. Thus, I find that the corporate announcements made by SOMA on October 20, 2006 regarding allotment of GDR issues may have misled the investors and/ or created a false impression in the minds of the investors that the GDR issue was fully subscribed and that the GDRs will be infused in the Company and utilized for the growth of the Company and also that many foreign investors have subscribed the shares and therefore, it is a good Company to remain invested or to invest in the Company.

36. In this regard, it would be appropriate to refer to the Order of the Hon'ble SAT dated October 25, 2016 in ***Pan Asia Advisors Limited vs. SEBI (Appeal No. 126 of 2013)*** wherein, while interpreting the expression of 'fraud' under the PFUTP Regulations, 2003, it was observed that:

"From the aforesaid definition (of 'fraud') 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. In other words, under the PFUTP Regulations, SEBI is empowered to take action against any person if his act constitutes fraud on the securities market, even though no investor has actually become a victim of such fraud. In fact, object of framing PFUTP Regulations is to prevent fraud being committed on the investors dealing in the securities market and not to take action only after the investors have become victims of such fraud."

37. Further, Hon'ble SAT in ***Jindal Cortex Ltd. Vs. SEBI (Appeal No. 376 of 2019 decided on February 05, 2020)*** observed as under:

"9..... Such judgements include PAN Asia Advisors Limited and Anr. vs.

SEBI (Appeal No. 126 of 2013 decided on 25.10.2016) and Cals Refineries Limited vs. SEBI (Appeal No. 04 of 2014 decided on 12.10.2017). The modus operandi adopted in all such cases have been similar i.e. the subscriber to the GDR issue (Whiteview here) taking a loan from a foreign bank/ investment bank (Banco here) enabled by a Pledge Agreement signed between the issuer company (JCL here) and the loaner bank. This arrangement itself vitiates the entire issue of GDR as it is through an artificial arrangement supported by the company itself which enables the subscription to the GDR.....”

38. Similarly, in the matter of **SEBI v. Kanaiyalal Baldevbhai Patel (2017) 15 SCC 1**, the Hon’ble Supreme Court has observed as under:

“if Regulation 2(c) of the 2003 Regulations was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or not, by any person while dealing in securities to induce another person to deal in securities would amount to a fraudulent act. The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities”.

39. In view of the above, I find that the act of SOMA in making misleading announcements regarding its GDR issue has resulted in ‘fraud’ as defined under the PFUTP Regulations, 2003 and SEBI is empowered to take action against any person if his act constitutes fraud on the securities market, even though it may not be possible to identity individual investors who have become the victim of such fraud. Hence, I find the submissions of SOMA that the SCN has not brought out any concrete figure of the loss incurred by the Indian investors due to the announcement made by the company as untenable.
40. Further, upon examining the bank account statement of SOMA held with Banco (where GDR proceeds were deposited) it was observed that GDR proceeds of an amount of USD 17,297,5000 was credited to bank account (Account no: 6282885.15.001) of SOMA

Textiles with Banco on October 30, 2006 and the same has been credited to its deposit account no: 628288525001 on October 30, 2006. Further, it was observed that SOMA vide letter dated January 23, 2007 (**Annexure- 9 to the SCN**) had authorized Banco to transfer an amount of USD 15.67 million from its account to the account of Whiteview with Banco. SOMA's letter dated January 23, 2007 to Banco *inter alia* states as follows:

"This is with reference to our deposit account with you presently for USD 15,676,500. We kindly request you to close the same and credit the proceeds to our current account with you. Furthermore we request you to transfer the same amount of USD 15,676,500 from our account towards closure of deposit, to the account of White View Trading Corporation with Banco Efisa S.F.E., S.A. We hereby also authorise the bank to transfer from our current account the necessary amounts to face payment of interests and fee's due in the referred company account resulting from the loan granted by the bank."

41. It was observed from the company's deposit account (a/c no: 628288525002) with Banco that an amount of USD 15.67 million was transferred to its current account with Banco (a/c no: 6282885.15.001) on January 24, 2007 and the deposit account showed nil balance as on January 24, 2007. Thereafter the amount of USD 15.67 million was transferred from current account of SOMA to the account of Whiteview (Noticee no. 2) with Banco. From the above, it was alleged that loan amount of USD 15.67 million of Whiteview was repaid by SOMA from its GDR proceeds. Considering the fact that Whiteview was the sole subscriber to the GDR issue and loan amount of USD 15.67 million of Whiteview was repaid by SOMA from its GDR proceeds, it was therefore alleged that GDRs and in turn the underlying equity shares to the extent of USD 15.67 million were acquired by Whiteview without proper consideration.
42. In this regard, SOMA has submitted that the amount of USD 15,676,500 was adjusted by the Bank vide their letter dated January 23, 2007. That the said letter was signed by Mr. Sunil Patel (Noticee no. 7) in good faith on the basis of trust reposed in PAAL and that Noticee no. 7 only informed them after couple of days about the said letter and immediately taking note of the same, they got in touch with Whiteview (Noticee no. 2). SOMA has submitted that they expressed great prejudice that the said act of Whiteview had caused them and impressed upon them the immediate and urgent need to return the funds. That

thereafter, they vigorously pursued with Whiteview to repay the amount of USD 15,676,500 along with interest of USD 442,704 and the company successfully recovered the amount in tranches. SOMA has submitted that the said amount was returned by Whiteview on multiple dates spread over the period from February 26, 2007 to March 08, 2008. Further, SOMA has submitted that they had engaged the services of M/s Silver Oak, Auditing and Accounting Firm based out of Dubai-UAE to provide English translation of the bank statements and to certify the receipt of the funds by the company and onward transfer of funds to its subsidiary company viz Soma Textiles FZE (based out of Ajman/Sharjah). That M/s Silver Oak, have vide their letter dated November 19, 2019 *inter alia* certified, based on the examination of the bank statements that the company has received back the amount of USD 15,676,500 alongwith interest of USD 442,704 from Whiteview and that the company had transferred the amounts received from Whiteview to its subsidiary Soma Textiles FZE. Further, that the said interest has been accounted for in two financial years viz. 2006-07 and 2007-08 on accrual basis.

43. With regard to these submissions made by SOMA, I note that SOMA vide their Board Resolution dated July 27, 2006 had authorized Mr. Sunil Patel (Noticee no. 7) to *“sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time as may be required by the Bank and to carry and affix common seal of the company thereon, if and when so required”*. I note that SOMA was already aware of the Account Charge Agreement dated October 18, 2006 signed by the authorized representative Mr. Sunil Patel (Noticee no. 7). Further, Noticee no. 7 has submitted that he has signed the letter dated January 23, 2007 pursuant to the authorization given to him by the Board Resolution dated July 27, 2006. Hence, I note that upon Whiteview defaulting in the repayment of its loan to Banco, Noticee no. 7 on behalf of SOMA, had vide letter dated January 23, 2007 authorized Banco to transfer an amount of USD 15.67 million from its account to the account of Whiteview with Banco. I find that Whiteview had defaulted in repayment of loan to Banco to the extent of USD 15,676,500 and the said amount was repaid by SOMA from its GDR proceeds as stipulated in its Account Charge Agreement with Banco. Further, considering the fact that Whiteview was the sole subscriber to the GDR issue and loan amount of USD 15.67 million of Whiteview was repaid by SOMA from its GDR proceeds, I find that the GDRs to the extent

of USD 15.67 million were acquired by Whiteview without proper consideration.

44. In view of the above, I find that the arrangement of SOMA, in allotting GDR issue to only one entity i.e. Whiteview which subscribed to the GDR issue of SOMA by obtaining loan from Banco and the same was again secured by SOMA by pledging its GDR proceeds, seen along with the misleading corporate announcements made by SOMA on October 20, 2006, lead to conclusion that the same were done in a fraudulent manner which had the potential to mislead or induce the investors to sale or purchase of its scrip. Therefore, I find that Noticee No. 1 has violated the provisions of Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1), (2)(f), (k), (r) of PFUTP Regulations, 2003.
45. With regard to the liability of Noticees no. 3 to 6, I note that the directors of the Company i.e. Mr. S. K. Somany (Noticee No. 3), Mr. A. K. Somany (Noticee No. 4), Mr. Prafull Anubhai (Noticee No. 5) and Mr. P. Bandyopadhyay (Noticee No. 6), during the Board Meeting dated July 27, 2006, had *inter alia* passed the following resolutions:

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

“RESOLVED FURTHER THAT Mr. Sunil Patel, Overseas Sales Representative of the Company and Authorised Person be and is hereby authorised to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time as may be required by the Bank and to carry and affix common seal of the company thereon, if and when so required.”

“RESOLVED FURTHER THAT Mr. Sunil Patel, Overseas Sales Representative of the Company and Authorised Person be and is hereby authorized to draw cheques and other documents, and to give instructions from time to time as may be necessary to the said Banco Efisa, S.A. or any branch of Banco Efisa S.A. including off-shore branch, for the purpose of operation of and dealing with the said bank account and carry out other either relevant and necessary transactions and generally to take all such steps and to do all such things as may be required from time to time on behalf of this company.”

“RESOLVED FURTHER THAT the Bank be and is hereby authorized to use the funds so deposited in the aforesaid bank account as security in connection with loans for which any charge is granted as well as to enter into any escrow agreement or similar agreements if and when so required.”

46. I note that pursuant to the above Board Resolution dated July 27, 2007, Mr. Sunil Patel (Noticee no. 7), as the authorized representative, had signed the Account Charge Agreement dated October 18, 2006 for the purpose of securing the loan taken by

Whiteview with Banco for subscribing to the GDR issue of SOMA. Further, Mr. Sunil Patel, had also signed the Company letter dated January 23, 2007, authorizing Banco to transfer an amount of USD 15.67 million from its account to the account of Whiteview with Banco, pursuant to the authorization granted to him by the Board Resolution dated July 27, 2006. Hence, it is alleged that the Noticees no. 3 to 6, by signing the Board Resolution dated July 27, 2006 have acted as party to the fraudulent scheme of SOMA in violation of the provisions of the SEBI Act and PFUTP Regulations.

47. In this regard, I note that Noticee No. 3 vide his reply dated October 19, 2020 submitted that he is the Chairman of SOMA since April 01, 1949, and that he was not able to attend each and every board meeting wherein *inter alia* any discussion related to said GDRs was taken up. He has submitted that out of total four meetings held on June 09, 2006, July 27, 2006, October 20, 2006 and October 31, 2006 wherein *inter alia* any discussion took place on GDR issue, he was only present in the Board meeting held on July 27, 2006 and not any other meeting. He has submitted that he was not present during the meeting on October 20, 2006 and was granted leave of absence. Noticee no. 4 in his reply dated October 17, 2020 has submitted that he is the Managing Director of SOMA since January 22, 1988. Noticee no. 5 in his reply dated October 16, 2020 has submitted that the SCN has been addressed to him as Executive Director, however, he clarifies that he was never the Executive Director and was only the Non-Executive Non Promoter Independent Director and he has not received any material/pecuniary benefit from SOMA. Noticee no. 5 has submitted that he was appointed as Non-Executive Non Promoter Independent Director of Soma from January 24, 2004 and resigned from the Board of Directors on May 30, 2009. Noticee no. 6 in his reply dated October 16, 2020 has submitted that the SCN has addressed him as the Independent Director, however, he has clarified that he was never the Independent Director of SOMA and as was appointed as Whole Time Director and was designated as Executive Director. He was appointed on January 25, 2001 and resigned from the services of SOMA on December 22, 2007. He has submitted that he is a professional belonging from the technical field of engineering and neither does he has any knowledge nor any experience in the field of finance or securities market. That he was an Executive Director in Soma and was looking after the operations of the textile manufacturing and did not have a role to play in the process of the GDR Issue. Noticees

no. 3 to 6 have submitted that the Board has authorized only one person Mr. Sunil Patel (Noticee no. 7) to carry out necessary formalities for which they relied upon the expertise and knowledge of the Lead Manager registered with UK Regulator. Further, they have submitted that there is no separate violation of any SEBI Act or of the Regulations of whatsoever nature, committed by them independently, i.e. other than the aforesaid contraventions alleged to have been committed by the Company.

48. In this regard, I note that none of the Directors (Noticees no. 3 to 6) of SOMA have denied that they were part of the Board Meeting on July 27, 2006 when the resolution was passed for opening of Bank account with Banco, authorizing Banco to use the GDR proceeds as security against loan if and when so required and also authorizing Mr. Sunil Patel (Noticee no. 7) 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 therein, if and when so required. In this regard, I note that the Board of directors play a key role in balancing the interests of managements and shareholders and the directors including independent directors are expected to, *inter alia*, ensure fairness and transparency in dealings of the Company. Where an act or omission occurs through board processes, then directors including such non-executive directors can be held liable for such acts/omissions of company, if such directors had participated in the relevant board meetings and did not act diligently. In the present case, I note that Noticees No. 3 to 6 had attended the board meeting dated July 27, 2006 of the Company wherein resolution was passed for opening a bank account with Banco and authorizing Banco to use the GDR proceeds as security against loan, if any. Thus, Noticees No. 3 to 6 were aware of authorization for pledge as the board resolution dated July 27, 2006 clearly mentioned 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...*” and the Noticees no. 3 to 6 did not raise any question as to whether any loan had been taken or proposed to be taken by the Company as the resolution authorised pledging of the funds kept in the bank account of the Company as a security in connections with loans. On the contrary, the Noticees had authorized the opening of bank account with Banco for the purpose of receiving subscription money in respect of the GDR issue and also authorized the bank to use the funds deposited in the

said bank account as security in connection with loans. Further, the Noticees had authorized Mr. Sunil Patel (Noticee no. 7) 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 therein, if and when so required. Thus, I find that Mr. Sunil Patel (Noticee no. 7) had acted in furtherance of the resolution passed by the Noticees no. 3 to 6 and the contention of the Noticees no. 3 to 6 that it was entirely the responsibility of the Lead Manager is erroneous and untenable. Accordingly, I find that Noticee No. 3, 4, 5 and 6 are liable for the violations alleged in the SCN, particularly Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1) of PFUTP Regulations, 2003.

49. With regard to the Noticees no. 3 to 6 contentions that they have not made any gains or caused any loss to the investors, I note that there is no allegation in the SCN that the said Noticees have gained from the said fraud and hence the contention is irrelevant. Further, with regard to the loss caused to any investors, as already discussed in the foregoing paras, reference has been made to the Order of the Hon'ble SAT dated October 25, 2016 *in Appeal No. 126 of 2013 (Pan Asia Advisors Limited vs. SEBI)* wherein, while interpreting the expression of 'fraud' under the PFUTP Regulations, 2003, it was held that "*SEBI is empowered to take action against any person if his act constitutes fraud on the securities market, even though no investor has actually become a victim of such fraud*". Further, Hon'ble Supreme Court in *SEBI Vs. Rakhi Trading & Others (2018) 13 SCC 753* observed as under:

".....36. Respondent-Rakhi Trading and Kasam Holding on facts are found to have been engaged in non-genuine transactions creating appearance of trading. If the factum of manipulation is established, it will necessarily follow that the investors in the market have been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so widespread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and the Board cannot be imposed with a burden which is impossible to be discharged....."

Hence, I find the above contention of the Noticees no. 3 to 6 that they have not caused

any loss to investors is untenable.

50. Further, I note that the Noticee no. 3 to 6 have also relied upon the Order dated November 05, 2019 of the Hon'ble SAT in the matter of ***Adi Cooper & Anr. Vs. SEBI (SAT Appeal No. 124 of 2019)*** to contend that the resolution dated October 19, 2007 passed by the Company cannot be inferred to mean that it was passed to authorize Banco to utilize the GDR proceeds as security in connection with a loan given to Whiteview. I note that the said contention has also been taken by the Company and has been dealt with in para 30 above. Further, Noticee no. 3 has also relied upon the case of *Adi Cooper* to contend that he was only present in one of the meetings wherein the GDR was discussed and not available in other meetings which was the case in *Adi Cooper* and hence, his case squarely falls under the case of *Adi Cooper* and the same decision ought to be followed. In *Adi Cooper's* case, Hon'ble SAT found that the Appellant therein had only attended the board meeting dated January 30, 2008 wherein the resolution was passed by the concerned company to open an account with the EURAM bank for the purpose of deposit of the GDR proceeds. The Appellant therein had ceased to be a director of the company at the time when the actual taking of loan by the subscriber and pledging of GDR proceeds for such loan, took place. Thus, having regard to such facts and circumstances of the case, Hon'ble SAT observed that appellant therein cannot be said to be actively involved in the manipulation of the market through the fraudulent scheme. However, I note that Noticee no. 3 is the Chairman of the Company since April 01, 1949 till date. Hence, Noticee no. 3 has been the Chairman of the company not only at the time of passing of resolution dated July 27, 2006 authorizing opening of bank account with Banco and pledging the GDR proceeds with Banco for the loans taken, but also at the time of taking of loan by Whiteview (Noticee no. 2) from Banco and the Account Charge Agreement between SOMA and Banco securing the loan of Whiteview. Further, Noticee no. 3 was also the Chairman of the company at the time of making of wrong disclosures by the Company to the stock exchanges regarding subscription of GDRs and also when the Company had issued letter dated January 23, 2007 to Banco authorizing Banco to transfer USD 15.67 million from the Company's account to the account of Whiteview with Banco. Hence, it is evident that Noticee no. 3 has been with the Company through the entire fraudulent period and thus, the contention of Noticee no. 3 that his case squarely falls under the case of *Adi Cooper*

is untenable.

51. Further, the Noticees no. 3 to 6 have also relied upon the SEBI order dated March 12, 2019 in the matter of Ravi Kumar Distilleries Ltd. (hereinafter referred to as “RKDL”) wherein the contention of RKDL has been accepted that they were not aware of the procedures and intricacies involved in an IPO and that the BRLM, taking advantage of their naivety, had misappropriated the proceeds of the IPO. That at Para 69 of the order, it has been observed that *“the main plea of RKDL and Ravi Kumar is that they were not aware of the procedures and intricacies involved in an IPO and that the BRLM, taking advantage of their naivety, had misappropriated the proceeds of the IPO. It is their case that Mr. Ravikumar was induced by Mr. Anil Agrawal to part with several blank signed papers and cheques of a newly opened bank account of RKDL and that it was these blank signed papers and cheques which Mr. Anil Agrawal used to defraud the company and its promoters”*. The Noticees have submitted that considering the above contention, the promoters of RKDL have been given less punishment vis-à-vis directors/key managerial personnel of merchant bankers and hence, they submit that the facts of the present case are similar to the case in which the order dated March 12, 2019 has been passed by SEBI and in view of the same no action may be taken against them. In this regard, I note that the facts of the present case are different from the facts of the case in the matter of RKDL in SEBI Order dated March 12, 2019. I note that Noticee no. 7, who was authorized by SOMA had submitted that he signed the Account Charge Agreement and the SOMA Letter dated January 23, 2007 transferring money from the account of SOMA to Whiteview as per the instructions of SOMA. Further, Noticee no. 7 has submitted in his reply that *“I hereby submit that I had diligently forwarded all the communications made to me under the alleged Account Agreement or otherwise related to the GDR, to Soma as and when I received the same”*. Hence, it is clear that SOMA and its directors were aware of the alleged loan agreement and account charge agreements. I also note that SOMA nor the directors (Noticees no. 3 to 6) or Noticee no. 7 (authorized representative of SOMA) have made any contentions or allegations that Noticee no. 7 was induced to part with blank signed papers or cheques etc. by the Lead Managers. Further, SOMA nor the directors (Noticees no. 3 to 6) have submitted any documents/letters of any proof of communication to prove that the Lead Manager had misled them. In view of the above, I find the reliance

placed by the Noticees on the matter of Ravi Kumar Distilleries Ltd in SEBI Order dated March 12, 2019 as erroneous and untenable, as being factually distinguishable.

52. I note that Noticee no. 7 in his reply dated October 19, 2020 has submitted that he is a British Citizen and just an acquaintance of Noticee no. 4 (Mr. A. K. Somany, Managing Director of SOMA). He has submitted that his role was never to oversee or supervise the process of GDR but limited to acting as a nodal point outside India for SOMA just for the limited purpose of signing the documents given by PAAL. That the documents were signed by him as per instructions of the Board of Directors, in good faith on the basis of trust reposed in PAAL and no adverse inference ought to be drawn against him due to the same. The Noticee has submitted that the Account Charge Agreement signed by him was done in his capacity as the authorized signatory of Soma in good faith and trust in PAAL. Further, that the only allegation levelled against him is that he was 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 therein, if and when so required and in consequence of this he had signed the Account Charge Agreement given by PAAL to him in good faith. Further, that it is SEBI's own case that the Directors of Soma attended the meeting and passed the resolution and that the decisions and consequences of the Board Meeting was totally out of his control and he had no role in the same.
53. With regard to the submissions of Noticee no. 7 who has primarily contended that he has signed documents and acted purely on the instructions of SOMA, I note that Noticee no. 7 has not denied that he had signed the Account Charge Agreement dated October 18, 2006 and the SOMA letter dated January 23, 2007. Hence, I find the submissions of the Noticee that he is not liable as untenable as he was the signatory to the said agreement and letter and hence cannot escape liability merely on the basis that he has acted as an authorized representative. Accordingly, I find that Noticee No. 7 is liable for the violations alleged in the SCN, particularly Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1) of PFUTP Regulations, 2003.
54. With regard to the allegations in the SCN against Noticee no. 2, I note that Noticee no. 2

vide its letter dated June 21, 2018 has submitted that it had applied for a credit facility of up to a maximum of USD 18,500,000 with Banco and eventually subscribed to GDRs of SOMA. Further, that during the whole application process for the said credit facility and subscription to the respective GDRs, it liaised only with Banco and was never in contact with SOMA and it was never knowingly a party to the alleged fraudulent scheme of SOMA. The Noticee has also submitted that it was struck off the BVI companies register by way of formal dissolution, on October 01, 2010. In this regard, I note that Whiteview had taken the loan of USD 18,500,000 from Banco for subscribing to the GDRs of SOMA and when it failed to repay the loan to Banco, the amount of USD 15.67 million was transferred from the account of SOMA to Whiteview to repay the amount. I also note that the Noticee no. 2 has been alleged to have played similar role in other matters too relating to the issue of GDR and the Hon'ble SAT has taken cognizance of the same. In this regard, reference is placed on the Order dated October 09, 2020 of the Hon'ble SAT in the matter of *Mr. Venkitaraman Iyer Subramonian vs. SEBI (Appeal No. 610 of 2019)*, wherein, in the similar facts relating to issue of GDR by M/s G.V. Films Ltd, the Hon'ble SAT held that *"it is crystal clear that the entire transaction was a fraudulent transaction wherein a single entity Whiteview has subscribed to the GDRS by availing loan from Banco bank and in turn the company had pledged entire GDR proceeds for securing the said loan."* Therefore, I find that Noticee no. 2 has a history of being part of such fraudulent conduct in the issue of GDRs. Further, I note that Noticee no. 2 has not provided any submissions with regard to the transfer of USD 15.67 million to its account from SOMA for failure to repay the loan that it had taken from Banco. In view of the above, I find the submission of Noticee no. 2 that it was never knowingly a party to the alleged fraudulent scheme of SOMA as untenable. Further, since SOMA had transferred USD 15.67 million to the account of Whiteview with Banco, I find that the GDRs to the extent of USD 15.67 million were acquired by Whiteview without proper consideration. Accordingly, I find that Noticee No. 2 is liable for the violations alleged in the SCN, particularly Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1) of PFUTP Regulations, 2003.

55. I note that the Noticees no. 1 and 3 to 7 have also contended that along with the SCN, they have been issued a show cause notice dated January 18, 2018 under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer)

Rules, 1995 and Rule 4 of the Securities Contracts (Regulation) Procedure and imposing penalties by Adjudicating Officer) Rules, 2005. They have submitted that issuing of two show cause notices for the same offence amounts to double jeopardy, and is in gross violation of Article 20(2) of the Constitution of India. In this regard, I note that the Adjudicating proceedings initiated vide show cause notice dated January 18, 2018, although borne out of the same set of facts, have been initiated *inter alia* under the provisions of Chapter VIA of the SEBI Act. The SEBI Act enables the Board to initiate parallel proceedings on the same set of facts against a person under Sections 11 and 11B or under Section 11D, as the case may be, on the one hand and adjudication proceedings under Chapter VIA for the imposition of monetary penalties on the other hand. Further, directions under Sections 11 and Section 11B or an Order under Section 11D are passed by the Board whereas, the proceedings under Chapter VIA are conducted by an Adjudicating Officer who adjudicates and imposes monetary penalty. Reliance is also placed on the Order of the Hon'ble SAT in the matter of **Dipak J. Panchal vs. SEBI**, Appeal No. 198 of 2011 (Order dated November 12, 2012), wherein, it had observed: "There is no bar under the Act in taking all the three actions (under Chapter IV, Chapter VIA and Section 24 of the SEBI Act) simultaneously or taking only one of the actions as the Board may deem fit..." In view of the aforesaid, I find the contention raised by Noticees is untenable.

56. I note that Noticees have also referred to orders passed by the Hon'ble Supreme Court and Hon'ble SAT to substantiate their arguments on the level of evidence required for establishing serious charges of fraud. Judgment of Hon'ble Supreme Court in **Nandkishore Prasad vs. State of Bihar** (1978) 3 SCC 366 and judgements of Hon'ble SAT in **M/s Vintel Securities Pvt. Ltd. vs The Adjudicating Officer** (SAT Appeal no. 219/2009), **Sterlite Industries (India) Ltd. Vs. SEBI** (2001) 34 SCL 485 (SAT), **Videocon International vs. SEBI** (2002) 4 CLJ 402 (SAT) **Parsoli Corporation Vs. SEBI** (Order dated August 12, 2011 in Appeal No. 146/2011) and **Narender Ganatra Vs. SEBI** (Order dated July 29, 2011 in Appeal No. 47/2011) have *inter alia* been relied upon by the Noticees to contend that fraud is a serious charge and hence, must be supported by higher degree of proof. Regarding the higher degree of proof, as observed in the aforesaid orders relied on by the Noticees, reference may be made to the recent Judgment of the Hon'ble

Supreme Court in **SEBI Vs. Kanaiyalal Baldevbhai Patel (2017) 15 SCC 1**, wherein it was observed, “.....the definition of fraud which is an inclusive definition and therefore has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly the definition expands beyond what can be normally understood to be a fraudulent act or a conduct amounting to fraud.....” In the Kanaiyalal matter, Hon’ble Supreme Court further observed that “.....the difference between inducement in criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient. No element of dishonesty or bad faith in the making of the inducement would be required.....” In the present case, in the board meeting dated July 27, 2006 of the Company attended by the Noticees No. 3, 4, 5 and 6 the opening of account with Banco was approved along with authorization to pledge the GDR proceeds to be deposited in it to secure the loans taken, if any. The said account charge agreement was not disclosed to the investors and a wrong disclosure was made to the stock exchanges regarding subscription of GDRs. This arrangement had the potential to “induce” or to mislead the investors to remain invested or to invest in the securities of the Company. I note that the evidence available on record in the form of board resolutions, account charge agreement, loan agreement, disclosure made to the stock exchanges by the Company, bank statements of the company, etc. shows higher degree of probability, of bringing out of such inducement or misleading investors to deal or abstain from dealing in the securities of the company and consequential fraud committed, in the present matter. Therefore, I find that evidence available on record and inferences drawn from such evidence show higher degree of probabilities and is in accordance with observations made by the Hon’ble Supreme Court and Hon’ble SAT, in the cases, relied upon by the Noticees.

57. In light of the above, I note that the Noticees no. 3 to 6 had attended the Board meeting

dated July 27, 2006, wherein, the Noticees no. 3 to 6 had authorized the opening of bank account with Banco for the purpose of receiving subscription money in respect of the GDR issue and also authorized the bank to use the funds deposited in the said bank account as security in connection with loans, if any. Further, the Noticees had authorized Mr. Sunil Patel (Noticee no. 7) to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration etc. as maybe required by the bank. Further, none of the Noticee Nos. 3 to 6 have produced any material or record reflecting objections raised by them on the proposal that Banco will use the amounts deposited in its bank account as security to loan which ultimately facilitated Whiteview to obtain loan from Banco for subscribing the GDR issue of the Company. In respect of allegation against the Noticee No. 7 who had signed the 'Account Charge Agreement' dated October 18, 2006 on behalf of SOMA, I note that he was not only having the knowledge but also played an active role and by execution of said 'Account Charge Agreement' dated October 18, 2006, actually facilitated the subscription of GDR issue of SOMA and also authorized Banco to use the GDR proceeds of SOMA as security to the loan obtained by Whiteview.

58. Further, in respect of liability of the directors for the fraud committed by a Company, the Hon'ble Supreme Court, in the matter of ***N Narayanan v. Adjudicating Officer, SEBI (2013) 12 SCC 152*** has observed a sunder:

"33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."

59. In view of the above, I find that the Noticees No. 3 to 6 had participated in the Board meeting of SOMA on July 27, 2006, wherein, approvals were made to, among others, authorizing the Banco to use the GDR proceeds as security in connection with the loan and the same was acted upon by SOMA (Noticee No. 1) in which the Noticee No. 7 had

signed and executed the account charge agreement dated October 18, 2006 on behalf of SOMA (Noticee No.1). Thus, the Noticees No. 3 to 6 were part of the arrangement which resulted in facilitating the subscription of GDR issue of SOMA wherein Noticee no. 2 obtained loan from Banco for subscribing the GDR issue of SOMA and, SOMA pledged the GDR proceeds with the Banco securing the loan taken by Noticee no. 2. Further, I note that the Noticees No. 3 to 6 were also directors of the SOMA during the period when the corporate announcement were made by SOMA, which were false and misleading to the extent that its GDR issue was successfully allotted whereas the same was subscribed by only one entity i.e. Noticee no. 2 by obtaining loan from the Banco which was again secured by the SOMA (Noticee No.1) by pledging the GDR proceeds. Thus, I find that the directors of SOMA (Noticee No. 1) namely; Mr. S. K. Somany (Noticee No. 3), Mr. A. K. Somany (Noticee No. 4), Mr. Prafull Anubhai (Noticee No. 5) and Mr. P. Bandopadhyay (Noticee No. 6) have violated the provisions of Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1) of PFUTP Regulations, 2003. Further, I find that Whiteview Trading Corporation (Noticee no. 2) as the lone subscriber of the GDRs was part of the fraudulent scheme and acquired GDRs of SOMA to the extent of USD 15.67 million without proper consideration, and has thus, violated the provisions of Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1) of PFUTP Regulations, 2003 and Mr. Sunil Patel (Noticee no. 3) who had signed the account charge agreement as the authorized representative of SOMA (Noticee no. 1) has violated the provisions of Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1) of PFUTP Regulations, 2003.

60. I note that a supplementary show cause notice dated August 26, 2019 has been issued calling upon SOMA (Noticee no. 1) to show cause as to why suitable directions including direction to bring the money back to the extent of loan default should not be issued against it. In this regard, I note that SOMA has submitted that the amount of USD 15,676,500 was adjusted by the Bank vide their letter dated January 23, 2007. That the said letter was signed Mr. Sunil Patel (Noticee no. 7) in good faith on the basis of trust reposed in PAAL and that Noticee no. 7 only informed them after couple of days about the said letter and immediately taking note of the same, they got in touch with Whiteview. SOMA has submitted that they expressed great prejudice that the said act of Whiteview had caused them and impressed upon them the immediate and urgent need to return the funds. That

thereafter, they vigorously pursued with Whiteview to repay the amount of USD 15,676,500 along with interest of USD 442,704 and the company successfully recovered the amount in tranches. SOMA has submitted that the said amount was returned by Whiteview on multiple dates spread over the period from February 26, 2007 to March 08, 2008. Further, SOMA has submitted that they had engaged the services of M/s Silver Oak, Auditing and Accounting Firm based out of Dubai-UAE to provide English translation of the bank statements and to certify the receipt of the funds by the company and onward transfer of funds to its subsidiary company viz Soma Textiles FZE (based out of Ajman/Sharjah). That M/s Silver Oak, have vide their letter dated November 19, 2019 *inter alia* certified, based on the examination of the bank statements that the company has received back the amount of USD 15,676,500 alongwith interest of USD 442,704 from Whiteview and that the company had transferred the amounts received from Whiteview to its subsidiary Soma Textiles FZE. Further, that the said interest has been accounted for in two financial years viz. 2006-07 and 2007-08 on accrual basis.

61. Further, SOMA has submitted that the amounts arising from GDR issue, which were transferred by the company to its subsidiary viz. Soma Textiles FZE, were given for the purposes of its business, including for textile trading etc. and over a period of time, Soma Textiles FZE has returned an amount of USD 4,449,063 to the company on multiple dates as follows:

Inward Remittance Certificate No.	Date	Inward Remittance (USD)	Bank Name	Amount in INR
551997	27/12/2007	999957	HDFC A/c No. 00012210000463	39268311.39
393SXR4599208	21/02/2008	499965	ICICI Bank A/c No. 000405018348	19831112.00
393SX5563008	04/03/2008	499965	ICICI Bank A/c No. 000405018348	20093593.00
1609161049900988	19/09/2016	50000	HDFC A/c No. 00012210000463	3307000.00
0111161049901898	02/11/2016	136017	----- do -----	9019287.27
0411161049900045	04/11/2016	91592	----- do -----	6069801.84

1105171049900081	12/05/2017	265127	----- do -----	16994628.52
2006171049900119	20/06/2017	261118	----- do -----	16784690.75
0607171049905295	07/07/2017	615565	----- do -----	39722409.45
2007171049900017	20/07/2017	404665	----- do -----	25963306.40
8108171049900055	31/08/2017	156645	----- do -----	10009615.50
3110171049900080	30/10/2017	91365	----- do -----	5904006.30
0802191049900186	08/02/2019	66957	----- do -----	4763990.55
1804191049904618	18/04/2019	4970	----- do -----	344172.50
0108191049900306	02/08/2019	39960	----- do -----	2749647.60
0908191049900228	09/08/2019	49960	----- do -----	3516684.40
2808191049900318	28/08/2019	49960	----- do -----	3571140.80
1109191049901909	11/09/2019	49995	----- do -----	3581641.80
1010191049900214	10/10/2019	49960	----- do -----	3538167.20
0901201049902594	09/01/2020	49960	----- do -----	3562148.00
0602201049900203	06/02/2020	15360	----- do -----	1091788.80
Total		4,449,063		239687144.07

62. SOMA have submitted that the factum of receipt of said amount of USD 4,449,063 by the company from Soma Textiles FZE is borne out by the Foreign Inward Remittance Certificates received from the respective bank as stated in the above table. That the Foreign Inward Remittance Certificates state that the equivalent Indian Rupees credited to the current account no. 00012210000463 maintained by the company in HDFC Bank and current account no. 000405018348 maintained by the company in ICICI Bank. SOMA have submitted that since all the funds i.e. USD 15,676,500 alongwith interest of USD 442,707 have been recovered by the Company from Whiteview during February 26, 2007 to March 08, 2008, the solitary basis for issuance of directions as contemplated vide supplementary SCN does not survive.

63. In this regard, I note that SOMA has submitted that M/s Silver Oak, Auditing and Accounting Firm based out of Dubai-UAE, have vide their letter dated November 19, 2019 *inter alia* certified, based on the examination of the bank statements that the company has received back the amount of USD 15,676,500 alongwith interest of USD 442,704 from Whiteview and that the company had transferred the amounts received from Whiteview to

its subsidiary Soma Textiles FZE (based out of Ajman/Sharjah) and that the said interest has been accounted for in two financial years viz. 2006-07 and 2007-08 on accrual basis. Further, I note that SOMA has submitted that the amounts arising from GDR issue, which were transferred by the company to its subsidiary viz. Soma Textiles FZE, were given for the purposes of its business, including for textile trading etc. and over a period of time, Soma Textiles FZE has returned an amount of USD 4,449,063 to the company on multiple dates to the current account no. 00012210000463 maintained by the company in HDFC Bank and current account no. 000405018348 maintained by the company in ICICI Bank as mentioned in the aforesaid table. Unlike other GDR matters wherein the amount was transferred by the subsidiary to other entities and never received by the company, I note that in the present case, the subsidiary has received the proceeds of the GDR and has also returned an amount of USD 4,449,063 to SOMA over a period of time. In terms of Section 177(4) (viii) of the Companies Act, 2013, the audit committee has to monitor the end use of funds raised through public offers and, therefore, the audit committee of the Company may look into the correctness of information submitted by the Noticees and report the same to the Board of Directors of SOMA for taking appropriate corrective action, if any.

DIRECTIONS:

64. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992, hereby direct that:
 - a. Soma Textiles & Industries Limited (Noticee no. 1) is hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 3 years from the date of this order.

- b. Mr. S. K. Somany (Noticee No. 3), Mr. A. K. Somany (Noticee No. 4) and Mr. P. Bandopadhyay (Noticee No. 6) are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 2 years from the date of this order.
 - c. Mr. Prafull Anubhai (Noticee No. 5) is hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 1 year from the date of this order.
 - d. Whiteview Trading Corporation (Noticee No. 2) and Mr. Sunil Patel (Noticee no. 7), are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 2 years from the date of this order.
65. During the period of restraint, the existing holding of securities including units of mutual funds of the Noticees shall also remain frozen. However, the obligation of the Noticees, restrained/prohibited by 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, are allowed to be discharged irrespective of the restraint/prohibition imposed by this Order. Further, all open positions, if any, of the Noticees, restrained/prohibited in the present Order, in the F&O segment of the recognised stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.
66. This Order shall come into force with immediate effect.
67. A copy of this Order shall be forwarded to the Noticees, recognized stock exchanges,

depositories and Registrars and Transfer Agents (RTA) of mutual funds for information and necessary action.

68. A copy of this order may also be sent to the RBI, Enforcement Directorate and Ministry of Corporate Affairs for information and necessary action, if any.

Place: Mumbai

Date: Feb 08, 2021

**Sd/-
ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**