

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

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

In the matter of GDR issue of Zenith Birla (India) Ltd.

In respect of:

Sr. No.	Names of the Entity	PAN
1.	Zenith Birla (India) Ltd.	AAACZ0103C
2.	Mr. P.V.R. Murthy	ABRPM1271B
3.	Mr. Yash Birla	AAJPB2505N
4.	Mr. M.S. Arora	AABPA9704C
5.	Mr. A.P. Kurias	AAHPK2699E
6.	Mr. Arun Panchariya	AEVPP6125N
7.	Vintage FZE	Not available
8.	India Focus Cardinal Fund	AABCI9518D
9.	High Blue Sky Emerging Market Fund	AADCK9460G
10.	Pan Asia Advisors Ltd.	Not Available
11.	Mr. Mukesh Chauradiya	AAVPC0966A
12.	Cardinal Capital Partners	FII Registration No. INMUFD26321
13.	European American Investment Bank AG	FII Registration No. INASFD211608

14.	Golden Cliff	Not Available
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(The aforesaid entities are hereinafter individually referred to by their respective names/*Noticee* nos. and collectively as "*Noticees*", unless the context specifies otherwise)

Background

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation into the issue of Global Depository Receipts (hereinafter referred to as "**GDR**") by Zenith Birla (India) Limited (hereinafter referred to as "*Zenith/ Company/ Noticee no. 1*").
2. It was observed that *Zenith* had issued 1.81 million GDR for USD 22.99 million on May 28, 2010. Details of the GDR issue as provided by the *Company* are tabulated below:

Table no. 1

GDR issue date	No. of GDRs issued (million)	Capital raised (USD million)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
May 28, 2010	1.81 (at USD 12.69 per GDR)	22.99	HSBC Mumbai	5,43,57,060	The Bank of New York Mellon	Pan Asia Advisors Limited	Euram Bank, Austria	Luxembourg Stock Exchange

3. During the investigation, the following facts were inter alia, revealed:

Signing of Loan and Pledge Agreement

- (i) *Noticee no. 13* viz. European American Investment Bank AG, Austria (hereinafter referred to as "**Euram Bank**") had granted loan to *Noticee no. 7* viz. Vintage FZE (hereinafter referred to as "**Vintage**") by way of a Loan Agreement dated May 12, 2010 (hereinafter referred to as the "**Loan Agreement**") to subscribe to the GDRs issued by *Zenith* and it was observed that the entire amount of the said loan was used by *Vintage* to subscribe to all the 1.81 million GDRs issued by the *Company* and the entire GDR issue was noticed to be subscribed by only one entity, i.e. *Vintage*. Further, Arun

Panchariya (*Noticee no. 6*) (for convenience "**AP**") signed the *Loan Agreement* on behalf of *Vintage* as Managing Director. It was also revealed that Mr. Mukesh Chauradiya (*Noticee no. 11*) (for convenience "**Mukesh**") served as Managing Director, Authorized Signatory and Director of *Vintage*.

- (ii) Investigation further revealed that the *Company* pledged its entire GDR proceeds with *Euram Bank* as a security against the aforesaid loan availed by *Vintage* from *Euram Bank* for subscribing to the GDRs of *Zenith*. For this purpose, the *Company* entered into a Pledge Agreement dated May 12, 2010 (hereinafter referred to as the "**Pledge Agreement**") with *Euram Bank* and the said agreement was signed by *Noticee no. 2* on behalf of *Zenith*. Investigation also found that *Noticees nos. 2, 3, 4 and 5* were not only signatories to the Board Resolution authorising the *Company* to enter into a *Pledge Agreement*, but also were Directors of *Zenith* during the relevant time of signing of the said *Pledge Agreement*. It has been noticed that *Noticee nos. 2 to 5* participated in the meeting of the Board of Directors (hereinafter referred to as "**Board**") of the *Company* dated March 03, 2010 in which a resolution was passed for opening an account with *Euram Bank* wherein, the GDR proceeds were proposed to be deposited. The *Board* further authorised *Euram Bank* to use the GDR proceeds of the *Company* as security against loans if any.

Default in Loan by Vintage

- (iii) Investigation further noticed that out of the loan of USD 22.99 million availed through aforesaid *Loan Agreement* for purpose of subscribing to GDRs of *Zenith*, *Vintage* repaid the loan amount to the tune of USD 8.53 million only to *Euram Bank* in several instalments till December 14, 2012 and thereafter defaulted on the loan payment to the extent of USD 14,505,221.62 (USD 14.50 million) (includes interest on the said loan amount). In this regard, vide letter dated September 05, 2012 (for convenience "**confirmation letter**"), signed by *Noticee no. 2*, *Zenith* confirmed the rights of *Euram Bank* to set off the pledged deposit of GDR proceeds against the outstanding loan

amount and interest. Accordingly, *Euram Bank* adjusted USD 14,505,221.62 from the GDR proceeds of *Zenith* on September 19, 2012. The above chain of events indicated that GDRs to the tune of USD 14.50 million were issued by *Zenith* to *Vintage* without any consideration.

Cancellation of GDRs, Conversion of GDRs, sale of converted GDRs and Termination of GDRs

(iv) Investigation further revealed that all the 1.81 million GDRs were cancelled and converted into equity shares. Post cancellation of the aforesaid GDRs, it was noticed that 4,77,30,000 shares of *Zenith* on conversion of 1,377,667 GDRs were sold in the Indian securities market through FII-sub account namely India Focus Cardinal Fund (for convenience "*IFCF*" / Noticee no. 8). Similarly, 1,15,06,560 shares of *Zenith* on conversion of 319,626 GDRs were sold in the Indian securities market through FII-sub account namely High Blue Sky Emerging Market Fund (for convenience "*HBS*" / Noticee no.9). Thus, it was noticed that out of total of 1.81 million GDRs to *Vintage*, an aggregate number of 1.69 million (1,697,293) GDRs of *Zenith* were converted into equity shares of *Zenith* and sold in the Indian securities market for a sum of ₹59.06 Crores, whereas the *Company* had failed to bring in GDR proceeds worth of USD 14.50 million to its bank account in India. From the details provided by the Global Depository of the GDR issue i.e. The Bank of New York Mellon (for convenience "*BNY*"), it was found that the GDR program of *Zenith* was terminated on June 03, 2014 and subsequently, *BNY* converted outstanding GDRs into equity shares. Further, post termination of GDR programme and conversion of GDRs to equity shares of *Zenith* by *BNY*, the same were sold in the Indian Securities market. Summary of the trades of *IFCF*, *HBS* and *BNY* (both pre and post termination of GDR programme) is tabulated below:

Table no. 2

Period	Name of entity	No. of shares sold		Total no. of shares sold	Trade value (₹)		Total trade value (₹)
		BSE	NSE		BSE	NSE	
Pre termination of GDR program	India Focus Cardinal Fund (IFCF)	2,17,19,873	2,60,10,127	4,77,30,000	26,94,99,828.60	30,88,61,582.00	57,83,61,410.60
	High Blue Sky Emerging Market Fund (HBS)	58,30,544	56,76,016	1,15,06,560	61,97,237.89	60,53,835.85	1,22,51,073.74
Post termination of GDR program	The Bank of New York Mellon	19,84,772	21,41,140	41,25,912	16,23,855.40	17,27,310.59	33,51,165.99
Total		2,95,35,189	3,38,27,283	6,33,62,472	27,73,20,921.89	31,66,42,728.44	59,39,63,650.33

(v) *IFCF* was registered as a sub account under FII *Euram Bank* and FII Cardinal Capital Partners (*Noticee no. 12*) (“*CCP*” for short) at different points of time. It is observed that no other sub account was registered with *Euram Bank* except *IFCF*. It was also noticed that FII *Euram Bank* (except on behalf of its sub account i.e. *IFCF*) and *CCP* (except on behalf of its sub account/s i.e. *IFCF* etc.) did not make any investment in India. Similarly, *HBS* was registered as sub account under FII KBC Aldini Capital Limited and FII Golden Cliff (*Noticee no. 14*). However, it was observed that the above noted two FIIs, namely KBC Aldini Capital Limited and Golden Cliff did not make any investment in India (except for its sub account/s i.e. *HBS* etc.)

Connection between various entities and Noticee no. 6 (Arun Panchariya) and role of the Noticees

(vi) It has been noticed that the *Company* had not disclosed to the investors about the arrangement so made by it to ensure the successful issuance/subscription/allotment of the GDR by facilitating a loan to *Vintage* in terms of the aforesaid *Loan Agreement*. It also concealed from the public that the proceeds of GDR would be kept as security with the *Euram Bank* and would not be made available for the *Company's* immediate use. There were

no fair disclosure and information sharing with the shareholders and investors of the securities market that the sole subscriber to the issue of GDRs of *Zenith* has been decided much in advance before the actual allotment. Further, it was also concealed from the public that the amount to the tune of USD 14.50 million received from GDRs was used by the *Company* to adjust the payment of outstanding loan of *Vintage* thereby practically issuing GDRs to the extent of the said sum for free. Thus, the *Company* had concealed material facts from its shareholders and investors of Indian securities market and thereby had prevented them from taking an informed decision while dealing in the shares of the *Company*. The above acts of providing partial and distorted information to the public about issuance of GDRs by the *Company* were observed to be acts falling in the category of fraudulent acts on the part of the *Noticees* to mislead the shareholders/investors at large.

- (vii) From various documents unearthed during the Investigation, it was revealed that AP was a Director in the Pan Asia Advisors Limited (*Noticee no. 9*) ((hereinafter referred to as “*Pan Asia*”) which was the Lead Manager of GDR issue of *Zenith*. Further, AP, who was connected to *Noticee nos. 7 to 14*, was the prime person in structuring the fraudulent GDR issue of the *Company*. It was noticed that AP devised and structured the GDR issue in connivance with *Zenith*, wherein AP controlled every stage of GDR issue right from the issuance of GDRs to the sale of converted shares in the Indian securities market, thereby committed fraud on shareholders of *Zenith* and Indian investors at large. Further, AP connected entities were involved at all stages of GDR issue of *Zenith*. It was an AP controlled entity *Vintage* which subscribed to the entire GDR issue by entering into a fraudulent *Loan Agreement*. AP was having close connection with *Euram Bank* and managed to have granted a loan to *Vintage* to subscribe to the aforesaid GDR issue and also a AP controlled sub-account, namely, *IFCF* was facilitated to off-load the converted equity shares of the *Company* in the Indian securities market. It was

observed that *IFCF* (an entity controlled by *AP*) and *HBS* (an entity connected to *AP*) cancelled their GDRs and off loaded converted shares, in the Indian securities market. *AP* controlled entity *Vintage* defaulted on loan payment of USD 14.50 million since *Zenith* had already pledged GDR proceeds against this loan. The above chronology of events and connection of the various entities with *AP* revealed that it was *AP* who devised the GDR scheme along with *Zenith* and its other connected entities wherein, *Zenith* misled the Indian investors by concealing the information about its act of entering into a *Pledge Agreement* and deliberately disclosed the GDR related news in a distorted manner to the stock exchanges which made investors believe that the GDRs were genuinely subscribed and in this process the *Company* has caused loss to the shareholders to the tune of USD 14.50 million by allowing its GDR proceeds to be adjusted by the *Euram Bank* against the outstanding loan defaulted by *Vintage*.

- (viii) The loan defaulted by *Vintage* to the extent of USD 14.50 million was paid to *Euram Bank* from the proceeds of GDR issue of *Zenith*. Consequently, it was observed that the shares sold by *IFCF* and *HBS* (who were allotted shares subsequent to conversion of GDRs of *Zenith*) were those shares on which GDRs were issued to *Vintage*. Since, *Vintage* has defaulted in repaying its loan because of which *Euram Bank* has recovered the said defaulted amount from the *Company's* GDR proceeds, effectively *Vintage* acquired those GDRs to the extent of USD 14.50 million without paying necessary consideration to the *Company*. Since the underlying of GDRs so issued i.e., equity shares, resulted in an increase of capital of *Zenith* without receiving proper consideration, such an arrangement was fraudulent in nature. *Mukesh* held key position in *Vintage* (was Managing Director during period when *Vintage* defaulted on loan of USD 14.50 million), facilitated GDR issue of *Zenith* in connivance with *AP* and *Zenith* in a fraudulent manner. He was *AP's* close associate and was authorized signatory of *Vintage* and facilitated the GDR issue of *Zenith*. He

collaborated with *AP*, *Zenith* and *Vintage* and performed the central role assigned to him and thus acted as a party to the fraudulent scheme. Similarly, *Pan Asia* was Lead Manager which facilitated (documentation, listing, sourcing etc.) the GDR issue of *Zenith* and was connected to *AP* and therefore, it acted as a party to the fraudulent scheme to defraud the Indian investors as well as the shareholders of *Zenith*.

- (ix) Further, as discussed aforesaid, the shares sold by *IFCF* and *HBS* were those shares which were acquired by *Vintage* and defaulted in paying the consideration. Hence, *IFCF* and *HBS* along with *AP*, *Vintage*, are responsible for the loss of ₹59.06 Crores inflicted on the shareholders of *Zenith*, jointly and severally.
- (x) *AP* is beneficial owner of *CCP*. *Euram Bank* is also connected to *AP*. It is observed that the FIIs, *CCP* and *Euram Bank* did not make investment and were registered as FII only to facilitate the *AP* connected *IFCF* in off-loading the converted equity shares of *Zenith*. Thus, by performing the facilitating role assigned to them in connivance with *AP* connected entities, *CCP* and *Euram Bank* acted as parties to the fraudulent scheme of GDR issue of *Zenith*. Similarly, as FII Golden Cliff was connected to *AP* and was registered as FII only to facilitate the *HBS* in off-loading the converted equity shares of *Zenith*, it performed the role assigned to it in facilitating and abetting the fraudulent scheme of GDR issue of the *Company*.

Issuance of Show Cause Notice

4. Based on the above narrated findings from the investigation, a common Show Cause Notice (hereinafter referred to as “**SCN**”) dated April 02, 2019 was issued to all the *Noticees*, wherein *Noticee no. 1* was charged with violations of Section 12A (a), (b) & (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, “**SEBI Act, 1992**”) read with Regulations 3 (a), (b), (c) & (d), 4(1), 4(2) (f), (k) & (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**,”

2003”) and *Notices nos. 2 to 14* were charged with the violations of Section 12A (a), (b) & (c) of the *SEBI Act, 1992* read with Regulations 3 (a), (b), (c) & (d) and 4(1) of the *SEBI PFUTP Regulations, 2003*. The SCN called upon them to show cause as to why suitable directions shall not be issued against them under Sections 11, 11B and 11(4) of the *SEBI Act, 1992* as contemplated in the SCN.

Hearing, Replies and Written Submissions

5. The SCN was delivered through post to all the *Notices* except for the *Notices nos. 6, 7, 10 and 12* (all being overseas entities) and *Notice no. 5* (wherein the SCN returned undelivered). Subsequently, the delivery of SCN for *Notice no. 5* was attempted through affixture and same was accordingly served upon the *Noticee*. With regard to the overseas entities viz. *Notice nos. 6, 7, 10 and 12*, the delivery of SCN was attempted through post which returned undelivered. Subsequently, the same were also attempted to serve through concerned overseas regulator. In this regard, foreign regulators expressed their inability to serve the SCN to overseas entities. Finally, the SCN on *Notice no. 6* was served through email. As regards *Notice nos. 7, 10 and 12*, since these entities were owned and controlled by AP, SCNs and hearing notices in respect of these *Notices* were served on the email id of AP. I note that certain *Notices* have replied to the SCN. I further note that certain *Notice no. 11* had sought an inspection of documents and the same was duly provided to them on June 17, 2019. Meanwhile, in compliance with the principles of natural justice, *Notices* were provided with an opportunity of personal hearing on June 23, 2020, which was attended by only 2 *Notices* (*Notice nos. 11 and 13*). Upon receipt of request from some of the remaining *Notices* citing personal reasons and COVID pandemic issues, etc., another opportunity of personal hearing was provided to the remaining *Notices* on August 11, 2020, which was attended only by *Notice no. 4*. Subsequently, upon receipt of request from other *Notices* another opportunity of personal hearing was provided to the remaining 11 *Notices* (*Notice nos. 1, 2, 3, 5, 6, 7, 8, 9, 10, 12 and 14*) on October 21, 2020, which was attended by *Notice nos. 1, 3, 5 and 6*. I note from the records available before me that hearing notices in all the aforementioned personal

hearing were served upon all the *Notices* except for *Noticee no. 2*. Therefore, respectfully following the principles of natural justice, another hearing opportunity was granted to *Noticee no. 2* on January 05, 2021, for which the hearing notice was attempted to be served on the last known address available with SEBI i.e. “A 601 Sun Mist Rizvi Complex, Nr Rizvi College, Bandra (W), Mumbai- 400098”, which however, returned undelivered and unserved. Therefore, hearing notice was finally served upon *Noticee no. 2* through newspaper publication Times of India, Mumbai Edition dated December 22, 2020. However, none appeared on behalf of *Noticee no. 2* on the scheduled date of personal hearing. In this regard, I note that the letter intimating the hearing notice as well as the newspaper publication, contained an email address of SEBI at which, the *Notices* could have contacted SEBI for communicating anything with respect to their attendance or inability to attend the personal hearing, however, from the materials available before me, I don’t see any request coming from any of the remaining *Notices* requesting for more time or adjournment of personal hearing on any ground whatsoever so far. Under the circumstances, in my opinion the matter is ripe enough to be proceeded with on the basis of the materials available on record, including the verbal as well as written replies to the SCN and also the post hearing submissions filed by some of the *Notices*, details of which are tabulated below:

Table no. 3: Details of reply filed by the *Notices*

<i>Noticee No.</i>	Date of Reply
<i>Noticee no. 1</i>	Letter dated February 02, 2021
<i>Noticee no. 2</i>	No reply submitted
<i>Noticee no. 3</i>	Letter dated December 30, 2020
<i>Noticee no. 4</i>	Letters dated August 04, 2020, September 11, 2020
<i>Noticee no. 5</i>	Letters August 16, 2019, October 29, 2020
<i>Noticee no. 6</i>	Letters dated October 01, 2020, November 15, 2020
<i>Noticee no. 7</i>	No reply submitted

<i>Noticee no. 8</i>	No reply submitted
<i>Noticee no. 9</i>	No reply submitted
<i>Noticee no. 10</i>	No reply submitted
<i>Noticee no. 11</i>	Letters dated April 22, 2019, July 13, 2020
<i>Noticee no. 12</i>	No reply submitted
<i>Noticee no. 13</i>	Letter dated July 24, 2020
<i>Noticee no. 14</i>	No reply submitted

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

A. *Noticee no. 1*

- (i) No adverse observations were observed by NSE vide its order dated June 02, 2020 against the *Noticee* in the matter of misuse of funds, misrepresentation of business or violation of SEBI (Listing Obligation and Disclosure Requirement) Regulations, 2015 (for short “*SEBI LODR Regulations*”).
- (ii) *Noticee* has referred to the show cause notice issued to it under Rule 4 of SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 and Rule 4 of the Securities Contracts (regulation) Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 2005, with respect to issuance of GDR proceeds by the *Company*. In this regard, *Noticee* has submitted that issuance 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 that not only causes the mental and physical trauma, but also increases the legal costs of the *Company*.

(iii) With regard to allegation of loss to its shareholders to the tune of USD 14.50 million, *Noticee* has submitted that as soon as the *Company* became aware of an arrangement by *Noticee no. 2* with the *Euram Bank*, it followed up with *Vintage* for refund of amount. After considerable follow up, in September 2013, *Vintage* sold / transfer the merchandise equivalent to USD 14.50 million to the subsidiary of *Zenith* i.e. *Zenith Middle East FZE* (for convenience "*Zenith FZE*"). Therefore, as *Zenith* has recovered the funds equivalent to USD 14.50 million from *Vintage*, no direction to bring back money ought to be issued against the *Company*. In this regards, *Noticee* has submitted a certificate from independent Forensic Auditor certifying receipt of goods equivalent to USD 14.50 million.

(iv) With regard to charge of violation of *PFUTP Regulations, 2003*, *Noticee* has placed reliance on the judicial observations of Hon'ble Supreme Court and Hon'ble Securities Appellate Tribunal ("*SAT*" for short) in the following matters:

- Hon'ble Supreme Court in the matter of *Nandkishore Prasad vs. State of Bihar* (1978) 3 SCC 366;
- Hon'ble Supreme Court in the matter of *L.D. Jaisinghani vs. Narain das N Punjabi* (1976) 1 SCC 373;
- Hon'ble SAT in the matter of *M/s Vintel Securities Private Limited vs. SEBI* (Appeal no. 219 of 2009);
- Hon'ble SAT in the matter of *Sterlite India Ltd. vs. SEBI* (DoD: October 22, 2001);
- Hon'ble SAT in the matter of *Videocon International vs. SEBI* (2002 4 CLJ 402);
- Hon'ble SAT in the matter of *Parsoli Corporation. vs. SEBI* (Appeal no. 146/2011, DoD: August 12, 2011);
- Hon'ble SAT in the matter of *Narendra Ganatra vs. SEBI* (Appeal no. 47/2011, DoD: July 29, 2011);

- SEBI Order dated March 16, 2017 in the matter of *M/s Milkyways Mercantiles Pvt. Ltd. and M/s SPFL Securities Ltd.*

B. Noticee no. 3

- (i) *Noticee* was Non-Executive Non-Independent Director of the *Company* and his role was limited to attending the *Board* meetings and he was not involved in day to day affairs of the *Company*. *Noticee* was not involved in any discussion relating to GDR issue except to the extent whatever was presented in the *Board* meetings.
- (ii) *Noticee no. 2* and *4* were the only nodal points for the GDR issue and *Noticee no. 3* has never signed any document pertaining to the issuance of GDR by *Zenith*.
- (iii) The only allegation levelled against him in the SCN is that the *Noticee no. 3* had attended the *Board* meeting dated March 03, 2010, wherein *Noticee nos. 2* and *4* were authorized to execute any document in pursuance of GDR issue and no other allegation has been levelled against the *Noticee*. Further, the said resolution was not fraudulent and manipulative in nature.
- (iv) Regarding the role of *Noticee no. 3* as a Director of the *Company*, *Noticee* has cited the following case laws:
 - Hon'ble Supreme Court in the matter of *State of Haryana vs. Brij Lal Mittal & Ors.* (1998) 5 SCC 343;
 - Hon'ble Supreme Court in the matter of *Sham Sunder & Ors. vs. State of Haryana*, (1989) 4 SCC 630;
 - Hon'ble Supreme Court in the matter of *Municipal Corporation of Delhi vs. Ram Kishan Rohtagi & Ors.*, (1983) 1 SCC;
 - Hon'ble SAT in the matter of *Pritha Bag vs. SEBI* (Appeal no. 291 of 2017, DoD: February 14, 2019);
 - Hon'ble SAT in the matter of *Sayanti Sen vs. SEBI* (Appeal no. 163 of 2018, DoD: August 09, 2019);
 - *SEBI Order no. WTM/GM/EFD/38?2017-18 dated August 03, 2017;*

- SEBI Order no. AO/SBM/EAD-3/57/2017 in the matter of Brooks Laboratories Ltd. dated August 18, 2017;
- SEBI Order no. AO/SS/AS/2019-20/4025-4038 in the matter of Action Financial Services Ltd. dated August 21, 2019.

(v) To further his contentions, Noticee has relied upon the judicial observations of Hon'ble SAT in the following matters:

- *Adi Cooper vs. SEBI* (Appeal no. 124 of 2019, DoD: November 05, 2019);
- *Adesh Jain vs. SEBI* (Appeal no. 217 of 2020, DoD: November 19, 2020);
- *Yogendra Premkrishna Trivedi vs. SEBI* (Appeal no. 417 of 2020, DoD: November 23, 2020);

C. Common submissions by Noticee nos. 1 and 3

- (i) The list of GDR subscribers provided to SEBI by the Company vide letter dated July 31, 2015 was based on the information received from the Lead Manager i.e. *Pan Asia* (Noticee no. 10). Noticees did not have any independent mechanism to verify the same and as per secrecy laws applicable in other jurisdictions, it was not possible for the Noticees to verify the same.
- (ii) Though the Board Resolution dated March 03, 2010 states that the proceeds so deposited in the bank account can be used as security in connection with any loan, nowhere in the Board Resolution has it been specifically stated that the proceeds are pledged on account of loan availed by *Vintage*. In this regard, while placing reliance on observations of Hon'ble SAT in the matter of *Adi Cooper vs. SEBI* (Appeal no. 124 of 2019, DoD: November 05, 2019), Noticees have submitted that 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 *Vintage*. Hence, any adverse view taken by SEBI at this stage would amount to judicial insubordination.
- (iii) The Company and its Board trusted the Lead Manager (*Pan Asia*) and carried out the instructions as provided by *Pan Asia* Further, since Noticee no. 2 had

vast experience in fund raising, the *Board* relied upon his expertise. Hence, the alleged fraud has been committed by *Noticee no. 2* in connivance with *Pan Asia*. It was never informed to the *Company* and its *Board* by the *Noticee no. 2* that he has entered into the *Pledge Agreement* with the *Euram Bank*.

- (iv) The allegation that the amount kept in *Euram Bank* account was not at the free disposal of the *Company* and same was kept as collateral security for loan availed by *Vintage*, is baseless because the funds were transferred from the escrow account of *Company* to its account in India, as and when required by the *Company*. SCN has tried to relate two separate and independent events which happened separately and trying to relate unrelated transactions. Further, in any public issue/ GDR issue, the funds may not be utilized immediately.
- (v) SCN has not brought out any concrete figure of loss incurred by the Indian investors due to wrong disclosure made by the *Company* and the allegations have been made without any documentary evidence. This shows that the SCN is based on surmises and conjectures.
- (vi) Regarding the allegation pertaining to adjustment of USD 14.50 million by *Euram Bank* against the loan default by *Vintage*, *Notices* have submitted that the *confirmation letter* of the *Company* which confirmed the rights of *Euram Bank* to set off the pledge deposit with the outstanding *Loan Agreement* was signed by *Noticee no. 2* and the *Notices* were not aware about the same.

D. *Noticee no. 4*

- (i) Though the *Noticee no. 4* was acting as Managing Director in the *Company* since 27.07.2009, his job profile required him to look after the marketing, purchase and operational & technical aspects of manufacturing activities in the *Company's* plant. All financial decisions and activities of the *Company* were under direct control of *Noticee no. 2*.
- (ii) The only allegation levelled against the *Noticee no. 4* in the SCN is that he had attended the *Board* meeting dated March 03, 2010, which authorized *Noticee*

nos. 2 and 4 to execute any document in pursuance of GDR issue and no other allegation has been levelled against the Noticee no. 4.

(iii) Initially, *Noticee* along with *Noticee no. 2* was ‘jointly’ authorized by *Board* in its meeting dated October 28, 2009 to sign the documents pertaining to GDR issue. However, as the *Noticee* disagreed to sign any such document, vide *Board Resolution* dated March 03, 2010 such authorisation was changed from ‘jointly’ to ‘jointly and severally’. Consequently, all the documents pertaining to GDR issuance were signed by *Noticee no. 2* and hence *Noticee no. 4* cannot be held liable for acts of *Noticee no. 2*.

(iv) *Noticee* resigned from the *Board* of the *Company* on July 24, 2013 and the *Company* relieved the *Noticee* from all duties and liabilities as a Director. *Noticee* has referred to the observation of Hon’ble SAT in the matter of *Sayanti Sen vs. SEBI (Appeal no. 163 of 2018, DoD: August 09, 2019)* for his role as a Director in the GDR issuance by the *Company*. *Noticee* has also submitted that he cannot be made liable for the alleged violations since as per Section 56(4) of the Companies Act, 1956, a director cannot be held liable when he had no knowledge of the transaction and has not signed any related documents. *Noticee* has also referred to judicial observations in the following matters on director’s liability with his role in the *Company*:

- Hon’ble SAT in the matter of *Adi Cooper vs. SEBI (Appeal no. 124 of 2019, DoD: November 05, 2019)*;
- Hon’ble SAT in the matter of *Rahul H. Shah and Nimisha H. Shah vs. SEBI (2004 SCC online SAT 77)*;
- *M/S Vijay Remedies & Ors. Vs. SEBI (Appeal no. 49A 49B 49C & 49D/ 2003)*;
- *Shiv Kumar Jatia vs, State (NCT of Delhi) 2019 SCC online SC 1090*;
- *Sunil Bharti Mittal vs. CBI (2015) 4 SCC 609*.

E. Noticee no. 5

- (i) *Noticee* was Non-Executive Independent Director of the *Company* and he was appointed on *Board* on 27.10.1999 and resigned from the same on 18.10.2013.
- (ii) In the *Board* meetings, broad policy decisions were taken and the actual implementations of such decisions were done by Whole Time Directors along with other employees of the *Company*. The Independent and Non-Executive directors neither monitored nor were required to monitor the implementation of the decisions or interfere in the same on daily basis. So, his role was limited to attending the *Board* meetings and he was not involved in day to day affairs of the *Company*. *Noticee* was not involved in any discussion relating to GDR issue except to the extent whatever was presented in the *Board* meeting.
- (iii) The only allegation levelled against the *Noticee* in the SCN is that the *Noticee* had attended the *Board* meeting dated March 03, 2010, wherein *Noticee* nos. 2 and 4 were authorized to execute any document in pursuance of GDR issue and no other allegation has been levelled against the *Noticee*. Further, the said resolution was not fraudulent and manipulative in nature.
- (iv) Though the *Board* Resolution dated March 03, 2010 states that the proceeds so deposited in the bank account can be used as security in connection with any loan, nowhere in the *Board* Resolution has it been specifically stated that the proceeds are pledged on account of loan availed by *Vintage*.
- (v) As per the provisions of the Companies Act, it is settled law that only officers in default be held liable or can be penalized for any violation by the company. *Noticee* being a Non-Executive Independent Director of the *Company* cannot be termed as Officer in Default as per the provisions of Companies Act. In this regard, *Noticee* has referred to the observations of Hon'ble High Court of Bombay in the matter of *Nanjundiah (H.) vs. Govindan, Registrar of Companies [(1986) 59 Comp Cas 356 (Bom)]*.

(vi) Regarding the role of *Noticee* as a Director in the *Company*, reliance has been placed on the judicial observations of Hon'ble SAT in the following matters:

- *P.G. Electroplast Limited vs. SEBI* (Appeal no. 281 of 2017, DoD: August 02, 2019);
- *Dr. Uppal Devinder Kumar vs. SEBI* (Appeal no. 220 of 2017, DoD: September 25, 2019);
- *Sayanti Sen vs. SEBI* (Appeal no. 163 of 2018, DoD: August 09, 2019);
- *Pritha Bag vs. SEBI* (Appeal no. 291 of 2017, DoD: February 14, 2019)

F. Noticee no. 6

(i) *Noticee no. 6* is a Non-Resident Indian and has never carried out any activities in India. The SCN issued by SEBI to the activities of *Noticee* outside India does not come under the jurisdiction of SEBI. The commissions and omissions on part of *Noticee no. 6* as alleged in the SCN were done outside India, which is beyond the territorial jurisdiction of SEBI. Therefore, the SCN is beyond the scope and authority of SEBI and therefore provisions of SEBI Act, 1992 are not applicable.

(ii) All the entities alleged in the SCN to be connected with the *Noticee* are separate legal entities registered under different jurisdictions under relevant laws and all such entities have their own management to take decisions. *Noticee* has already resigned from such entities such as from *Vintage* (in 2009), *IFCF* (in 2010) and *Pan Asia* (in October 2011).

(iii) SCN is silent on the kind of measures / actions, SEBI is contemplating to take against the *Noticees*. To further support this contention, *Noticee* has referred to the observations by Hon'ble Supreme Court in the matter of *UMC Technologies Pvt. Ltd. vs. Food Corporation of India* (Civil Appeal 3687 of 2020).

(iv) In various earlier occasions of GDR issuances of various other companies wherein similar modus operandi was adopted, SEBI has only initiated action against the GDR issuing companies and its directors and has not taken any action against the subscribers and lead managers of the GDR issue.

(v) *Noticee* has placed reliance on Section 63 and 65(a) of the Indian Evidence Act, 1872 and has submitted that the reliance placed by SEBI on the photocopy of the documents during the course of investigation conducted by SEBI which are used for issuance of SCN's against the *Noticees*, is bad in law. *Noticee* has referred to observations by Hon'ble Supreme Court in the matter of *Smt. J. Yashoda vs. Smt. Shobha Rani* {(2007), 5 SCC 730} and has cited that it is held by the Hon'ble Apex Court that in order to enable a party to produce secondary evidence, it is necessary for such party to prove existence and execution of original document and that conditions laid down in Section 63 and 65(a) of the Indian Evidence Act, 1872, must be fulfilled before secondary evidence can be admitted. *Noticee* has further stated that the photocopies of documents have not been certified by any of the authorities from which they have been obtained and therefore, no action should be initiated against the *Noticee*. In this regard, decision of Hon'ble Supreme Court in the matter of *Hariom Agarwal. vs. Prakashchand Malaviya* {(2007), 12 SCC 49} has been referred to by the *Noticee*.

G. *Noticee no. 11*

(i) *Noticee no. 11* was never the director or Managing Director of *Vintage* as alleged in the SCN. He has tried to collect documents from Jebel Ali Free Zone Authority UAE ("JAFZA") to prove that he was never director or MD of *Vintage*, however, the authority has denied him the information without a court order. To further prove his contention, *Noticee no. 11* has submitted the following documents:

- Letter dated December 28, 2010 addressed to *Euram Bank*, JAFZA has stated that *Noticee no. 11* was a manager of *Vintage*.
- *Copy of resident permits of the Noticee*, wherein his designation was always mentioned as General Manager and not as director/ MD.
- *Copy of his employment card issued by JAFZA* where he has been mentioned as an employee not a director or MD of *Vintage*.

- *Vintage* was fully owned and controlled by *AP* which is mentioned in the SCN itself.
- An affidavit signed by *Noticee no. 11* confirming his position as Manager in *Vintage*.

(ii) *Noticee* has submitted that *AP* was the MD in *Vintage*. Under the implementing regulations number 1/92 pursuant to Law No.9 of 1992 of FZE Regulation under which *Vintage* was registered as a Free Zone Enterprise (FZE) stipulated that FZE was to have a single owner and in this case was *AP* who was beneficial and legal owner. In this regard, *Noticee no. 11* has submitted the following documents/ evidences:

- Letter dated October 1, 2009 written by *AP* on behalf of *Vintage* to Abu Dhabi Commercial Bank (“ADCB”), wherein the *Noticee* was referred as General Manager in *Vintage* since September 2005.
- Copy of the visa issued to *AP* by JAFZA valid from 12.1.2010 to 11.01.2013, it can be seen that *AP* was the MD of *Vintage*.
- The beneficial ownership of *Vintage* is also owned by *AP* who owned 99.99% of its shares.
- The administrative fine statement passed by the Dubai Financial Services Authority (for short “*DFSA*”) imposing a fine of USD 12,000 on *AP* also clearly indicates that *AP* was the licensed director in relation to *Vintage*.
- Key decision-making powers in *Vintage* such as availing loans from banks, subscribing to GDRs or other investments and repayment of loans were with the owner and director of *Vintage* which was *AP* or his brother.
- The *Loan Agreement* between *Euram Bank* and *Vintage* was signed by *AP* as MD of *Vintage*.

- (iii) *Noticee no. 11* did not get any other monetary advantage or otherwise from what has been done by him except for salary received as an employee of *Vintage*.
- (iv) The commissions and omissions on part of *Noticee no. 11* as alleged in the SCN were done in Dubai, which is beyond the territorial jurisdiction of SEBI. Therefore, the SCN is beyond the scope and authority of SEBI.

H. *Noticee no. 13*

- (i) Besides Euram Bank Asia Ltd ("*EBAL*" for convenience), which was a joint venture in Dubai between the *Noticee no. 13* and *AP*, *Noticee* had no relationship with *AP* and was not connected to *AP* in any way. *AP* exercised no control over the *Noticee* and had never held a single share in the *Noticee*. *AP* ceased to be director in *EBAL* on September 22, 2011 and *EBAL* was dissolved in December 30, 2013. The *DFSA* also undertook an investigation into *EBAL's* role and activities in *AP's* alleged wrongdoing and closed the investigation on August 8, 2012 having concluded that *EBAL* had not committed any wrongdoing.
- (ii) It may be noted that unlike *CCP*, *AP* does not hold a single share in *Euram Bank*. In light of the above, it is humbly submitted that the allegation that *Euram Bank* is "connected to *AP*" is tenuous and wholly unsubstantiated by any facts or findings.
- (iii) SCN states that as per information provided by *DFSA*, *AP* was having connections with *Pan Asia*, *Vintage* and *IFCF*. However, there is no mention by *DFSA* that *Euram Bank* was one of the entities connected to *AP*. This shows the *bonafide* that there is no connection between *Euram Bank* and *AP*.
- (iv) *Noticee's* dealings as a bank incorporated in Austria, are regulated by the Austrian regulators and as such its lending activities does not fall under the jurisdiction of SEBI. Further, subsequent to the investigation by Austrian authorities, *Noticee* has been cleared from all regulatory, civil and criminal charges.

- (v) SEBI has already investigated a similar matter and the Hon'ble Whole Time Member had addressed such issues in his order dated September 05, 2017, ruling in favour of *Euram Bank*. Placing reliance on the doctrine of *issue estoppel*, *Noticee* has further submitted that, in light of the previous decision of the Hon'ble Whole Time Member, covering essentially the same facts and addressing the same issues, here to *Euram Bank* must be granted similar relief and the charges against it be dropped.
- (vi) *Euram Bank* registered with SEBI as an FII in the year 2008 and in the same year, *IFCF* was registered with SEBI as a sub-account after due scrutiny of its background and having found *IFCF* to have satisfied its selection criteria. Before forwarding *IFCF's* application to SEBI, *Euram Bank*, as an FII, undertook the Know Your Customer check on *IFCF* as prescribed by SEBI and on such basis, forwarded *IFCF's* application to SEBI, as required under the FII Regulations. *IFCF* was granted permission to register and trade in Indian securities market by SEBI after an independent assessment of its background and qualification by SEBI. All transactions undertaken by *IFCF* in the Indian securities market were undertaken by *IFCF* on its own volition, without any assistance or advice from *Euram Bank*. The GDRs and the underlying equity shares that were the subject matter of SEBI's investigation were acquired by *IFCF* independently with funds raised by it on its own (not through *Euram Bank* as a bank), and not in its capacity as a sub-account, and it is only the sell orders in respect of such underlying equity shares (*Zenith's* shares) that were undertaken by *IFCF* through *Euram Bank*. In June 2011, *Euram Bank* decided to stop operating as an FII since the business opportunities it had anticipated did not materialize. On July 20, 2011, *IFCF* was granted permission by SEBI to transfer the sub-account to CCP. *Euram Bank* was the FII for *IFCF* only for a limited period of time till July 20, 2011 after which CCP became the FII for *IFCF*. As per details from NSE and BSE, a large chunk of the trade activities by *IFCF* happened after such transfer of

account. It may be appreciated that even prior to any adverse finding against IFCF, *Euram Bank* had suspended acting as an FII for IFCF. Therefore, it would be wholly unfair and unjust to penalize it for alleged infractions of a sub-account and persons that traded before *Euram Bank* ever got registered as an FII and continued to trade independently and with other persons well after the sub-account had been transferred.

(vii) *Euram Bank's* only pecuniary interest in the entire scheme of things was restricted to just the interest it would get from the loan made available to *Vintage*. However, *Euram Bank* lost out on that too as *Vintage* defaulted on repayment of the facility.

I. Common submissions by certain Noticees

(i) GDR were issued by the *Company* in 2010 while SEBI has issued SCN after 9 years of the GDR and such inordinate delay of around 9 years is unjustified and unfair. Human memory is fragile and its nearly impossible to remember details of a transaction after a long time gap of 9 years. In this regard, the *Noticees* have placed reliance on following case laws:

- Hon'ble SAT in the matter of *Bharat J Patel vs. SEBI* (DoD: September 09, 2020);
- Hon'ble SAT in the matter of *ICICI Bank Ltd. vs. SEBI* (Appeal no. 583 of 2019, DoD: July 08, 2020);
- Hon'ble SAT in the matter of *Ashok Shivlal Rupani & Anr. vs. SEBI* (Appeal no. 417 of 2018);
- Hon'ble SAT in the matter of *Ashlesh Gunvantbhai Shah & Ors. vs. SEBI* (Appeal no. 169 of 2019, DoD: January 31, 2020);
- Hon'ble SAT in the matter of *Aditi Dalal vs. SEBI* (Appeal no. 143 of 2011);
- Hon'ble Supreme Court in the matter of *Bhaves Pabari vs. SEBI* (Civil Appeal no. 11311 of 2013, DoD: February 28, 2019).

Issues for Consideration and Findings:

7. Before proceeding with the merits of the matter, it would be appropriate to deal with certain common preliminary contentions raised by the *Notices*. At the outset, the *Notices* have contended that the instant proceedings deserve to be dropped on account of delay and laches as the instant proceedings have been initiated after a lapse of more than nine (09) years from the date of the GDR issuance, hence have caused prejudices against them as they cannot defend themselves effectively. I also note that such *Notices* have placed reliance on various decisions viz; *Bharat J Patel vs. SEBI (supra)*, *Ashok Shivlal Rupani & Anr. vs. SEBI (supra)*, *ICICI Bank Ltd. vs. SEBI (supra)*, *Ashlesh Gunvantbhai Shah & Ors. vs. SEBI (supra)*, etc., to content that there was an inordinate delay in initiating action in the matter by SEBI. The submissions advanced by the *Notices* may give a semblance of credibility on first blush, however, after scrutiny of the records before me, I am of the view that the aforesaid observations of the *Notices* and the decisions relied upon by them would neither be applicable nor be helpful to the *Notices*, as the facts and the context of the matters referred to above are distinguishable from the facts of the present matter. For instance, the matter of *Ashok Shivpal Rupani (supra)*, pertains to the failure of disclosure required to be made and the Hon'ble SAT while quashing the SEBI order *inter alia* noted that "*It is alleged that disclosure under PIT Regulations was not made but similar disclosure was made by the appellant under SAST Regulations. Therefore, information was available on the Stock Exchange and therefore it cannot be said that the respondents were unaware of the alleged violations. Further, the purpose of disclosure was to make the market aware of the change of shareholding of the shareholders. When a disclosure was made by the company under SAST Regulations the investors became aware of the change in the shareholding*" whereas, the instant proceedings pertain to a serious charge of fraud having been perpetrated upon the investors allegedly under a pre-fabricated scheme devised to ensure successful subscription to the GDRs through an artificial medium of *Pledge and Loan Agreement* and therefore, cannot be perceived lightly and leniently. Similarly, in the matter of *Ashlesh Gunvantbhai vs. SEBI (supra)*, Hon'ble SAT had

noted that “*alleged irregularities was noticed by SEBI in August 2011 and immediately thereafter investigation was launched for the period January 4, 2010 to January 10, 2011. Based on the investigation a show cause notice was issued on November 20, 2017. Thus, there is a delay of 7 years in the issuance of the show cause notice*”. However, in the instant matter, it is noted that while investigating a few cases of GDR issues pursuant to receipt of some complaints, it was noticed by SEBI that *Noticee no. 6 (AP)*, in connivance with different issuer companies in India and their promoters/directors, had devised fraudulent schemes to help those companies to issue GDRs in certain overseas markets. While investigating those cases, information was sought from several entities including the Regulators of other countries. After analysing the information received from various sources, it was noticed that similar *modus operandi* was also followed in several other GDR issuances made by the companies listed in India. Under the circumstances, the scope of investigations was further enlarged and a scrip-wise investigation was undertaken by SEBI into a large number of GDR issues spanning over different years. Since, a large number of scrips and issues were taken up for investigation collectively for which information had to be collected from different entities, mostly from the authorities situated outside India through regulatory coordination/arrangements with different overseas Regulators, it consumed sufficient time for completion of investigation. Further constraining factor was that the approach of most of such companies was non-cooperative which also delayed the completion of investigation into such a large number of GDR cases, undertaken by SEBI and these facts cannot be ignored while considering the delay so happened in this case in issuing the SCNs to the *Noticees*. I also note that major portion of relevant information in this regard was received from Financial Market Authority, Austria (Austrian Financial Regulator) in March 2015. I further note that SEBI has passed an order dated June 16, 2016 in which it has recorded that investigation was initiated in respect of 59 GDR issues made by 51 Indian Companies during the period 2002 to 2014. It is seen that *Zenith* was also one such scrip in respect of which the investigation was also undertaken and after completion of investigation on December

18, 2018, the present SCN could be issued to the *Notices* on April 02, 2019. Therefore, the time taken for completion of collective investigation into a large number of similar cases and also for issuing SCNs to a large number of *Notices* is fairly understandable and cannot be ignored.

8. Notwithstanding the above, it is trite law that in order to ascertain as to whether there has been actually any delay in the matter, the date when the violation came to the notice of the SEBI would be the relevant point and not the date of violation itself. As already mentioned above, the violation pertaining to fraudulent GDRs issued by various companies majorly came to notice of SEBI in 2015-16 and accordingly investigation in the matter was concluded and SCN was issued on April 02, 2019. Subsequently, various efforts including publishing in the foreign newspapers were made as service of the SCN to the foreign entities was also involved in the proceedings. It is also a matter of record, as to how the *Notices* have sought adjournments on various grounds and also the fact that the onset of pandemic i.e. COVID 19 caused delay in disposal of the proceedings.

9. Again without prejudice to the aforesaid, whether a delay in a particular case is justified or not depends on the attending facts and circumstances of that specific case. In this regard, it is relevant to refer here to the observations of the Hon'ble Supreme Court in the matter of *Mahendra Lal Das vs. State of Bihar and Ors.* (2002) 1 SCC 149, wherein the Hon'ble Apex Court held that "*While determining the alleged delay, the court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused, witnesses, workload of the court concerned, prevailing local conditions etc. Every delay may not be taken as causing prejudice to the accused but the alleged delay has to be considered in the totality of the circumstances and the general conspectus of the case.*" In fact, in almost all the cases cited and relied upon by the *Notices*, it has been invariably held that each case has to be decided on its merit by taking into consideration the specific surrounding facts and circumstances.

10. Further, whether a delay in a particular case is justified or not depends on the facts and circumstances of that case. In this regard, reference and reliance is placed upon the following observations of Hon'ble SAT in the case of *Ravi Mohan & Ors. vs. SEBI* (SAT Appeal No. 97 of 2014, DoD 16/12/2015): -

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

11. Keeping the foregoing observations in view, the contentions of the Noticees with respect to delay in initiating action against them are misconceived, hence not maintainable. Additionally, the Hon'ble SAT while dealing with a similar fraudulent arrangement concerning GDR issue in the matter of *Jindal Cortex vs. SEBI*, (Appeal no. 376/2013; order February 5, 2020) have held that *"Arguments on delay in investigation and consequently affecting natural justice are also devoid of any merit in the matter since this Tribunal is aware of the complexity involved in the entire manipulative GDR issue; how long it took SEBI to gain information relating to the various entities from multiple jurisdictions in the matter of PAN Asia Advisors Limited (Supra) and Cals Refineries Limited (Supra) etc."*

12. In view of the aforesaid facts and judicial observations, I find that the contention of the Noticees with respect to delay in initiating action against them is

misconceived and misplaced on facts as well as on law, hence the same is not maintainable.

13. I note that the some of the *Noticees* have referred to various judicial orders to substantiate their arguments that the charge of violation of *PFUTP Regulations, 2003* is a serious charge and there has to be strong evidence for the same. Judgment of the Hon'ble Supreme Court in the matters of *Nandkishore Prasad vs. State of Bihar (supra)* and *L.D. Jaisinghani vs. Narain Das (supra)* has been referred to by such *Noticees*. Additionally, judicial observations of Hon'ble SAT in various matters like *Parsoli Corporation. vs. SEBI (supra)*, *Narendra Ganatra vs. SEBI (supra)*, *M/s Vintel Seucrities Private Limited vs. SEBI (supra)* have *inter alia* been relied upon by the *Noticees* to strengthen their argument. Having gone through the referred cases as cited above, I find that most of these cases are not relevant to the facts and circumstances and the proceedings connected with respect to application of *PFUTP Regulations, 2003*. As regards the relevance of some of the case laws cited by the *Noticees* with reference to the standard of proof, I find that the standard of proof in matters of fraud arising out of violation of the *SEBI Act, 1992* or the provisions of the Regulations framed thereunder, is actually the test of preponderance of probability, as has been laid down in the following judgment of the Hon'ble Supreme Court, wherein, it was held that:

SEBI vs. Kishore R. Ajmera (2016) 6 SCC 368

".....While the screen based trading system keeps the identity of the parties anonymous it will be too naive to rest the final conclusions on said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned. Prosecution under Section 24 of the Act for violation of the provisions of any of the Regulations, of course, has to be on the basis of proof beyond reasonable doubt. The conclusion has to be gathered from various circumstances like the volume of the trade affected; the period of persistence in trading

in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The fact that the broker himself has initiated the sale of a particular quantity of the scrip on any particular day and at the end of the day approximately equal number of the same scrip has come back to him; that trading has gone on without settlement of accounts i.e. without any payment and the volume of trading in the illiquid scrips, all, should raise a serious doubt in a reasonable man as to whether the trades are genuine....."

14. Therefore, the Hon'ble Apex Court while laying down the principle relating to evidentiary value has observed that in the absence of direct evidences, the attendant facts and circumstances which surround the allegations levelled (against the *Noticees*) may also form the basis of an inference to prove culpability. The Hon'ble Apex Court, in the said matter, while appreciating the purpose of *SEBI Act, 1992* and the regulations framed thereunder, have observed that the measures under the said enactments/regulations are taken to pre-empt manipulative trading and to contain the impermissible conduct so as to boost the investors' confidence in securities market. The Hon'ble Supreme Court, in yet another matter of *Kanaiyalal Baldev Bhai Patel vs. SEBI* (2017) 15 SCC 1, while analysing the import of Regulation 2 (c) of *SEBI PFUTP Regulations, 2003* have observed that irrespective of the fact that an act is done in a deceitful manner, if such an act or omission has an effect of inducing another person to act in a manner, in which he would not have acted had such inducement not been there, such act will constitute a fraudulent act. Therefore, in my opinion, the case laws cited by the *Noticees* are not squarely applicable to the instant proceedings being distinguishable both on facts and context from each other. Hence, it does not require any further consideration to entertain the claim of the *Noticees* to drop the charges made in the SCN, solely by relying upon the afore-cited case laws.

15. The *Noticees* have further contended that the charge of indulging in fraudulent activities has been levelled on surmises and conjectures and the same are far from truth. In this regard, it is pertinent to note that the records annexed with the SCN are sufficient to suggest their premeditated design to indulge in fraudulent activities,

details of which would be dealt in later part of this order. Hence, the contention that the material available on record are not sufficient to indict the *Notices* is factually erroneous and not tenable.

16. *Noticee no. 1* has referred to the show cause notice issued to it by Adjudicating Officer and has submitted that issuance 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. Admittedly, the two proceedings initiated against the *Noticee*, viz: the one before the Adjudicating Officer and the present proceedings before me, are based on the same facts and allegations. However, it is pertinent to acknowledge here that the outcome/consequences desired under law from these two separate proceedings are different. While the Adjudication Proceedings are initiated under relevant provisions of *SEBI Act, 1992* to levy monetary penalty for violation of securities law, the proceedings under section 11 of *SEBI Act, 1992* aim at issuing disciplinary directions like debarment, warning, etc. in the interest of investors and securities market. The scheme of *SEBI Act, 1992* envisages initiation of multiple proceedings and there is no prohibition in initiating an adjudication proceeding as well as proceedings under section 11 of the *SEBI Act, 1992* for the same set of offence/breach of Securities Laws. It is also trite law that each proceeding warrants to be adjudicated on its own merit. Order passed in one quasi-judicial proceeding shall not be binding on the outcome of another proceeding validly initiated under law, though the *quasi*-judicial authority may make reference to, or rely on the findings recorded in one proceeding, while adjudicating the other proceeding pending before it. Each proceeding is required to be decided and adjudged independently to serve the objective of the legislative provisions under which the proceedings have been initiated. The legislative framework under *SEBI Act, 1992* and the provisions of relevant regulations framed under the *SEBI Act, 1992*, do not envisage that the order passed by the Adjudicating Officer would abate or shall be binding on any other proceeding initiated under separate provisions of the *SEBI Act, 1992* even though both the proceedings have emanated out of same set of facts and allegations. Any

endeavour to make a contrary interpretation would render either of the proceedings as nullity/otiose, which will render the legislative framework of *SEBI Act, 1992* unenforceable. Such an interpretation as being advanced by the *Noticee Company*, if accepted, would make the proceeding before me a mere mechanical/procedural in nature leaving no outstanding issue for adjudication and would render the outcome of the pending proceeding as *fait accompli*. In other words, if an order is passed by an adjudicating officer deciding the issue against the entity in an adjudication proceeding, the same would *ipso facto* make the *Noticee* liable to be held guilty in other pending proceedings just because both the proceedings are based on same set of facts and vice versa. Under the circumstances, each proceeding needs to be decided on merit based on the facts and allegations made and after considering the reply/response advanced by the entities therein without being tied up with the decision taken in another proceeding against the entities in the same case.

17. Having dealt with the afore-discussed preliminary contentions and objections put forth by the *Noticees*, I now proceed to deal as to whether the allegations levelled against the *Noticees* in the SCN are sustainable on merit or not. Considering the factual intricacies and complexities involved in the case, in my opinion, in order to determine as to whether the *Noticees* have contravened the provisions of the *PFUTP Regulations, 2003*, and whether the charges levelled in the SCN would sustain or not, the following issues need to be determined with clarity:

- (i) *Issue no. 1: Whether the Company i.e. Noticee no. 1 has violated Section 12A(a), (b), (c) of the SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1), 4(2) (f), (k), (r) of the SEBI PFUTP Regulations, 2003?*
- (ii) *Issue no. 2: Whether the Noticee nos. 2 to 14 have violated Section 12A(a), (b), (c) of the SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI PFUTP Regulations, 2003?*

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

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

SEBI Act, 1992

12A. No person shall directly or indirectly –

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

SEBI PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive*

device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

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

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

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely: -*
 - (a)*
 - (f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;*
 - (k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors*
 - (r) planting false or misleading news which may induce sale or purchase of securities.*

19. As noted earlier, the Company had issued 1.81 million GDR on May 28, 2010 for raising USD 22.99 million and for this purpose, the Board of Zenith had passed a Resolution in its Meeting held on October 28, 2009 which was subsequently superseded by Board Resolution dated March 03, 2010, wherein, *inter alia*, a decision was taken to open an account with Euram Bank for the purpose of depositing the GDR

Proceeds therein and also to authorize *Euram Bank* to use the GDR proceeds as security against loan. Relevant extracts of the *Board Resolution* dated March 03, 2010 are as under:

“RESOLVED THAT in supersession of all the earlier resolution passed in connection with the opening of bank account with Euram Bank (“the Bank”) or any branch of Euram Bank, including the Offshore Branch, outside India for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of the Company, Shri M.S. Arora, Managing Director and Shri P.V.R. Murthy, Director be and are hereby jointly and severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.

Resolution further states that:

RESOLVED FURTHER THAT Shri M.S. Arora, Managing Director and Shri P.V.R. Murthy, Director be and are hereby jointly and severally authorized to draw cheques and other documents, and to give instructions from time to time as may be necessary to the said Euram Bank or any of branch of Euram Bank, including the Offshore Branch, for the purpose of operation of and dealing with the said bank account and carry out other relevant and necessary transactions and generally to take all such steps and to do all such things as may be required from time to time on behalf of the Company.

Resolution further states that:

“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.”

20. On a perusal of the aforesaid *Board Resolutions* (copy enclosed as annexure to the SCN), I note that the said *Resolutions* were approved by the *Board* on March 03, 2010 for, *inter alia*, opening of a bank account with *Euram Bank* for the purpose of receiving subscription money in respect of the GDR issue of the *Company*. According

to the *Board* Resolution, the *Noticee nos. 2 and 4* were authorized jointly or severally to sign, execute any application, agreement, etc., as may be required by the *Euram Bank*. Accordingly, the *Company* had opened an account no. 580013 in its name in *Euram Bank*. It was further resolved by the *Board* to authorize the *Euram Bank* to use the funds so deposited in the said bank account of the *Company* as security in connection with loans, if any. I also note that initially, *Noticee nos. 2 and 4* were 'jointly' authorized by *Board* in its meeting dated October 28, 2009 to sign the documents pertaining to GDR issue. A comprehensive reading of all the above said *Board* Resolutions suggest evidently that a decision was taken by the *Board* of the *Company* as far back as on October 28, 2009 and then again on March 03, 2010, related to the proposed issuance of GDRs, a decision that was taken at that very stage itself, to open a bank account with *Euram Bank*. Further, the *Board* had also contemplated on the date of passing of the said Resolution itself that the funds/proceeds of the proposed GDR issue to be received in their *Euram Bank* account, would be used as a security for loans by the *Euram Bank*. The said contemplation of using the GDR proceeds as security for loan was sans any reason and contrary to the commonly accepted commercial practise. I note that the *Noticee Company* has stated that though the *Board* Resolution dated March 03, 2010 states that the proceeds so deposited in the bank account can be used as security in connection with any loan, nowhere in the *Board* Resolution has it been specifically stated that the proceeds are to be pledged against the loan to be availed by *Vintage*. It is pertinent to note that putting the GDR proceeds as a security against a loan clearly suggests that the *Company* did not intend or have any urgent need for bringing the GDR proceeds into their Indian account so as to put them to immediate use for the objects for which the GDR were to be issued. On one hand, the *Company*, instead of raising funds from the domestic sources thought it commercially prudent to explore the possibility of raising funds offshore, while on the other hand, it did not seem to have any genuine intention to immediately use such funds for the business requirement of the *Company* due to which the *Board* of the *Company* was willing to park those GDR proceeds in their overseas account as

securities against loan. Apparently, this act of the *Company* gives an impression that the *Company* did not have any serious and urgent need of funds to meet its business requirement. In this regard, the SCN has brought to my notice that the information with regard to the aforesaid *Board* Resolution, particularly the resolution for keeping the GDR proceeds as a security against loan if any, was never disclosed to the Stock Exchange or to the shareholders of the *Company*, which amounted to concealing of such an important information from the knowledge of the shareholders and other domestic investors and consequently preventing them from taking an informed decision while dealing in the securities of the *Company*. Therefore, the contentions of the *Company* regarding the interpretation of the *Board* Resolution is factually incorrect and does not require further deliberation. The record before me rather suggests otherwise, that the *Company* while authorising *Noticee nos. 2 and 4* vide its Resolution dated October 28, 2009, had already conceived the proposed scheme and was knowing the *modus operandi* to be followed for ensuring the success of issuance and allotment of the proposed GDR. I find that the *Company* though has refused to accept that the presence of any fraudulent element in the aforesaid *Board* Resolution, but has preferred to remain silent and has not offered any explanation, to justify the rationale behind passing of another resolution on March 03, 2010 superseding the resolution of October 28, 2009 vide which a decision to raise money abroad through issuance of GDRs was already taken with a decision to keep the GDR proceeds as securities against loan, if any. In the absence of any justification or tangible explanation from the *Company*, the above stated *Board* Resolution clearly suggests the fraudulent motive and spurious intent of the *Noticee Company* behind raising of capital by the issuance and allotment of GDRs the way it did as detailed out in the beginning of this order.

21. As noted in the beginning, *Vintage* had signed a *Loan Agreement* dated May 12, 2010 with *Euram Bank* for availing a loan of up to USD 22.99 million so as to be in a position to subscribe to the full amount of the GDR issue of *Zenith* worth of USD 22.99 million. It is also observed that *Noticee no. 1* has not furnished any documents to rebut

the allegations made in the SCN, and to show that the said sole subscriber, i.e. *Vintage* was otherwise, even in the absence of the said loan that it got from *Euram Bank*, was financially capable to subscribe to the entire GDR issue. In this regard it is pertinent to note some of the relevant clauses of the said *Loan Agreement*, which are cited as under:

1. "Nature and purpose of facility:

- a) *To provide funding enabling Vintage FZE to take down GDR issue of 580013 Luxembourg public offering and may only be transferred to EURAM 580013, Zenith Birla (India) Limited."* This account is same where ZBIL deposited its GDR proceeds.

6. Security

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

- *Pledge of certain securities held from time to time in the Borrower's account no. 540012 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*
- *Pledge of the account no. 580013 held with the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement."*

22. From the above, I can observe that apparently on the strength of the authorization given by the Board to that effect to "use the funds so deposited in the aforesaid bank account as security in connection with loans if any", the Noticee no. 2 (Mr. P.V.R. Murthy), had signed a *Pledge Agreement* with *Euram Bank* dated May 12, 2010 therein giving an undertaking on behalf of *Zenith*, to deposit in the designated account of *Zenith* with *Euram Bank*, an amount not exceeding the loan availed by *Vintage* for subscribing to the GDR of *Zenith* and further to keep the deposited amount as a security against the loan obligations of *Vintage* under the above mentioned *Loan Agreement*. Some of the relevant clauses of the *Pledge Agreement*

signed by Noticee no. 2 on behalf of the Company with Euram Bank are extracted as under:

1. Preamble

"By loan agreement K120510-005 (hereinafter referred to as the "Loan Agreement") dated 12 May 2010, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates (the "Borrower") in the amount of USD 22,993,036.38. The Pledgor has received a copy of the Loan Agreement No. K120510-005 and acknowledges and agrees to its terms and conditions."

2. Pledge

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

2.1.1 all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount of USD 22,993,036.38 existing from time to time at present or hereafter on the securities account(s) no. 580013 held with the Bank (hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein.

2.1.2 all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 580013 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and all amounts

credited at any particular time therein. The interest rate on deposit in the amount of the facility amount of the Loan Agreement will be fixed at 1.00% p.a.

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

2.2 The Pledgor agrees to deposit with the Bank all dividends, interest and other payments, distributions of cash or other property resulting from the Pledged Securities and funds.

2.3 The Bank herewith accepts the pledges established pursuant to section 2.1 hereof."

6. Realisation of the Pledge:

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

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

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

23. The *Noticee Company* has submitted that the allegation that the amount kept in *Euram Bank* account was not at the free disposal of the *Company* and same was kept as collateral security for loan availed by *Vintage*, is baseless because the funds were transferred from the escrow account of *Company* to its account in India, as and when required by the *Company*. It has also been contended by the *Company* that the *Board Resolution* dated March 03, 2010 does not specify that the GDR proceeds are to be pledged against the loan availed by *Vintage*, hence, no adverse inference should be drawn against them. The aforesaid arguments advanced by the *Company* are however, found to be neither backed by factual evidence nor are carrying any plausible reasoning to merit any favourable consideration. On a careful and combined examination of the contents of the relevant clauses of the "*Loan Agreement*" signed by *Vintage* with *Euram Bank* and the "*Pledge Agreement*", signed by *Zenith* with *Euram Bank*, following observations are made in respect of the aforesaid contentions of the *Noticee Company*: -

- (i) The *Pledge Agreement* was executed mainly to secure the obligations of the borrower i.e. *Vintage*, which was granted a loan for USD 22.99 million by the *Euram Bank*. The preamble of the *Pledge Agreement* mentions that the Pledgor (*Zenith*) received a copy of the *Loan Agreement* and acknowledges the terms of the *Loan Agreement*. Further, the *Pledge Agreement* also mentions that the Pledgor (*Zenith*) pledges to *Euram Bank*, all the rights, title and interest in the securities deposited and balance of funds up to USD 22.99 million in the account number 580013 maintained with *Euram Bank* (hereinafter referred to as "*Pledged Accounts*"). I note that the account no. 580013 was the account opened by the *Company* where the GDR proceeds of *Zenith* were to be deposited and it is the same account whose deposits were pledged by *Zenith* to *Euram Bank* as security against the loan taken by *Vintage*, vide the said *Pledge Agreement* dated May 12, 2010 executed by *Zenith* much before the actual GDR issue took place on May 28, 2010.

- (ii) In terms of the clause 6 of the *Pledge Agreement* (pertaining to realization of the Pledge), *Zenith* had given consent to the *Euram Bank* to apply the funds / deposits in the Pledged Accounts in the event of default of repayment by the borrower, i.e. *Vintage* for settling their loan obligations as a borrower.
- (iii) As a consequence, to such pledge terms, I note that even after the GDR issue, *Zenith* could not get the GDR proceeds at its disposal for utilization until and unless repayment of the loan was made by *Vintage*.
- (iv) Further, I note from the SCN that *Vintage* has partly repaid its loan in several instalments from August, 2010 to December, 2012 i.e. over a period of more than two years. From the details of facts unearthed during the course of investigation, it is also noticed that immediately after repayment of each loan instalment by *Vintage*, almost an identical sum of money was permitted to be released from *Zenith's Euram Bank* account to its Indian Bank account or other entities. Details of repayment of loan by *Vintage* and transfer of almost equal amounts of funds (as repaid by *Vintage* to *Euram Bank*) by *Zenith* into its bank account in India are tabulated below:

Table no. 4: Details of part repayment of loan by *Vintage*

Date of transfer of funds	Amount repaid by <i>Vintage</i> (USD)	Amount of funds transferred from <i>Zenith's Euram Bank</i> a/c to 1) <i>Zenith's Indian bank account</i> and 2) other entities
05.08.2010	103,000.00	100,000.00
06.08.2010	1,000,000.00	1,000,000.00
10.08.2010	1,000,000.00	1,000,000.00
13.08.2010	1,000,000.00	1,000,000.00
18.08.2010	1,000,000.00	1,000,000.00
23.08.2010	1,000,000.00	1,000,000.00
25.08.2010	1,000,000.00	1,000,000.00
27.08.2010	1,000,000.00	1,000,000.00
30.08.2010	1,000,000.00	1,000,000.00

Date of transfer of funds	Amount repaid by <i>Vintage</i> (USD)	Amount of funds transferred from Zenith's <i>Euram Bank</i> a/c to 1) Zenith's Indian bank account and 2) other entities
20.09.2010	413,000.00	400,000.00
21.09.2010		10,496.00
22.09.2010		2,373.68
05.01.2011	15,000.00	13,396.73
14.12.2012		216,889.65
Total	8,531,000.00	8,743,156.06

- (v) I note from the table no. 4 above that the manner in which GDR proceeds were received by the *Company* into its Indian bank account/subsidiary bank account in instalments, depending on the instalments of loan repayments made by *Vintage* to *Euram Bank*, shows how the utilisation of GDR proceeds by the *Company* was conditionally attached to the repayments to be made by *Vintage*, which was the sole subscriber of GDRs issued by the *Company*.
- (vi) It is noted that although both the agreements (viz. the *Loan Agreement* and the *Pledge Agreement*) are dated May 12, 2010, the *Pledge Agreement* was incorporated in the *Loan Agreement* and was annexed to the *Loan Agreement*, indicating that the *Euram Bank* signed the *Loan Agreement* with *Vintage* only after the *Company* signed the *Pledge Agreement* with it, thereby committing to pledge the GDR proceeds as a security against the loan to be sanctioned to *Vintage*. Accordingly, the *Pledge Agreement* contains suitable clauses and stipulations fastening the liability on the *Company* as a pledger against the borrowing by *Vintage*.
- (vii) As per the *Loan Agreement*, the said loan was sanctioned only for the purpose of subscribing to the GDRs issue of *Zenith* and the sanctioned amount could be transferred only to the designated account of *Zenith* with *Euram Bank* bearing account number 580013 towards GDR proceeds. Further, clause 6 of the *Pledge Agreement* authorized the *Euram Bank* to apply the said

proceeds lying in the account of *Zenith* to settle the loan liability of *Vintage*, in the event of default by the borrower. The clause further authorized the *Euram Bank* to realize the said GDR proceeds lying as security in the account of the *Company* even in the event when the Bank has a reason to believe that the payment by borrower/subscriber is contestable. Thus, the *Noticee Company* has, by signing the *Pledge Agreement* authorized that in all eventuality, in case of any default or possibility of default by the borrower i.e. *Vintage*, the security including proceeds of GDRs to be deposited in its designated account, can be applied by *Euram Bank* to satisfy its outstanding loan advanced to the borrower entity, i.e. *Vintage*, purportedly unrelated to both *Euram Bank* and to the *Company*. The *Loan Agreement* and *Pledge Agreement* were inextricably connected in a manner that clearly points out that the *Noticee Company, Zenith* (the Pledgor) had consciously facilitated the loan to *Vintage* so as to ensure sure success of issuance of GDR so as to create a good market impact about the stock of the *Company*, knowing well that the GDR proceeds cannot be put to its business use, until and unless the repayment is made by the borrower.

24. The execution of *Loan Agreement* and *Pledge Agreement* on the same day i.e. on May 12, 2010 and well before the issuance of GDR, which took place on May 28, 2010, clearly shows that *Vintage* was already pre-decided to be the sole subscriber to the GDR issue and the *Company* was well aware about its would-be subscriber before the actual issuance of GDR. The *Company* was also aware that the proceeds to be realized against the issuance of GDR would be kept as security towards the loan amount availed by *Vintage* and by executing the *Pledge Agreement*, *Company* had consciously restrained itself from using the proceeds of the issuance of GDR.

25. The aforesaid facts grossly repudiate the superficial contention of the *Company* that the *Board Resolution* did not contain any fraudulent element whereby it can be inferred that *Euram Bank* was authorised to retain the GDRs proceeds as a security against the loan proposed to be granted by *Euram Bank* to *Vintage* so as to ensure the

success of issuance and allotment of GDRs. The *Company* on the contrary had blatantly conceded to *Euram Bank* that the GDR proceeds would be realised by them subjected to the repayment of loan by *Vintage*; and in the event of failure of repayment by *Vintage*, the proceeds can be forfeited by the *Euram Bank*. As it so happened, the events that rolled over subsequent to the failure of repayment of loan by *Vintage*, exposed completely the intention of the *Company* behind the passing of the aforesaid Board Resolution, as *Euram Bank* not only forfeited and adjusted the outstanding loan amount defaulted by *Vintage* against the balance GDR proceeds lying to the credit of the *Company* in its account with *Euram Bank* (in terms of *Pledge Agreement*), but also the *Company* quietly accepted the forfeiture and adjustment of its GDR proceeds by *Euram Bank* without taking any action whatsoever against the *Euram Bank*. The aforesaid deliberate inaction on the part of the *Company* shows that the said Board Resolution was passed with no other purpose but to only stand as a guarantee for the subscriber & borrower *Vintage* and authorising *Euram Bank* to forfeit its GDR proceeds in the event of failure by the *Vintage* to repay the loan amount availed by it to subscribe to the GDRs of the *Company*. In this respect, the *Company*, through the *Noticee no. 2* had issued a letter dated September 05, 2012 permitting thereby *Euram Bank* to forfeit the GDRs proceeds.

26. It may be recalled here that the *Company* had informed BSE on May 28, 2010 that “at the meeting of the committee of the Board of Directors of the *Company* duly convened and held on May 28, 2010, the *Company* has allotted to 'The Bank of New York Mellon' in its capacity as Depository, 5,43,57,060 fully paid equity shares of Rs. 10/- each of the *Company* to be represented by a global master GDR certificate representing 18,11,902 Global Depository Receipts.” However, despite being aware about the specific entity who would be subscribing to whole of its GDR issue as per its premeditated arrangement with the entity, the crucial material facts surrounding the *Loan* and *Pledge Agreements* and also about the would be single subscriber, were knowingly concealed from the investors. The investors were never allowed to know that the GDR proceeds would be kept as a security against the loan taken by the sole subscriber and in case of

default by the subscriber, the proceeds would be eventually utilized by *Euram Bank* to settle the loan obligations of the borrower/subscriber. Under the extant domestic securities laws, a *Company* listed in India is required to make true, fair and proper disclosures of all material information about its affairs to the shareholders and to the securities market at large. It is now amply clear that the *Noticee Company* has not made its disclosure to the Stock Exchange in a fair manner and has rather concealed the very crucial material information pertaining to its actions & transactions with *Euram Bank* and *Vintage* in connection with the GDR issue, from its shareholders and the public at large.

27. With regard to the allegation of causing loss to its shareholders to the tune of USD 14.50 million on payment of loan defaulted by *Vintage*, I note that *Company* has submitted that its after considerable follow ups with *Vintage*, goods equivalent to USD 14.50 million were received by its overseas subsidiary, viz: *Zenith FZE* (subsidiary of *Zenith*) in September 2013 from *Vintage* and therefore has pleaded that as *Zenith* has recovered goods equivalent to USD 14.50 million from *Vintage*, no direction to bring back money ought to be issued against the *Company*. I also note that the *Noticee Company* has submitted a certificate from an independent accountant certifying receipt of goods / merchandise by *Zenith FZE*. I have perused the submissions of the *Company* and the aforesaid certificate and note that such contentions will not be of any help to the *Noticee Company* since, apart from the aforesaid certificate from the independent accountant, *Noticee* has not furnished any underlying / supporting documents pertaining to the receipt of goods such as Invoice, shipping documents, bank account statements, etc. Similarly, the aforesaid certificate states that the goods worth USD 14.50 million received by *Zenith FZE* from *Vintage* were sold to 5 different entities, however no supporting documents (Invoices, shipping documents, bank account statements, etc.) have been furnished by the *Company*. I further note that the certificate by independent accountant states that goods were sold by *Zenith FZE* to 5 different entities on credit and were shown as trade receivables. It is pertinent to note that even if the goods received by *Zenith FZE*

from *Vintage* were sold to 5 different entities in 2013, till today the *Company* has not been able to demonstrate actual receipt of funds from such 5 entities. Therefore, the argument of the *Noticee Company* regarding bringing back of USD 14.50 million in the form of some goods purportedly received by its overseas subsidiary from *Vintage*, is just an afterthought frivolous exercise to evade outcome of this proceedings hence, requires no further consideration. The said certificate of independent accountant neither contains any details or break up with respect to the receipt of the said outstanding amount, nor has been corroborated by *Vintage* by furnishing any details to specify as to what kind of goods worth USD 14.50 million were supplied by it to the *Company* or its subsidiary company. There are no independently verifiable documents made available including exchange of communication in any form between the *Company* and *Vintage* to throw more details about those goods worth of USD 14.50 million that have been supposedly transferred by *Vintage* so as to provide some satisfactory explanation to the claim of the *Company* that the amount outstanding against the allotment and subscription of GDR stands satisfied and that neither of the parties owes any amount towards each other.

28. *Company* in its submissions has also referred to an order / circular dated June 02, 2020 issued by NSE (for short "*NSE Circular*") and has taken a plea that the stock exchange after examination has observed no adverse observations against the *Company* in the matters pertaining to misuse of funds, misrepresentation of business or violation of *SEBI LODR Regulations*. I have perused the *NSE Circular* and in my opinion, the *Noticee Company* may not be able to take a shelter under it, as same was issued by NSE after examination of violation of *SEBI LODR Regulations*, while the instant proceedings have been initiated for their alleged violation of *PFUTP Regulations, 2003*. Further, from the perusal of *NSE Circular*, it is understood that the exchange has observed no negative inference related to misuse of funds, misrepresentation of business, etc., while the instant proceedings have been initiated on the basis of allegedly fraudulent issuance of GDRs, wherein the *Company* pledged its own GDRs amounting to USD 22.99 million as security in the *Euram Bank* by

signing the *Pledge Agreement* in order to ensure that the subscriber to its entire issue of GDRs (*Vintage*) avails a loan of equivalent amount of USD 22.99 million from the *Euram Bank* on the basis of the said *Pledge Agreement*. Therefore, the contention of the *Noticee Company* that no negative findings have been observed against the *Company* by NSE and hence no action should be initiated against it, has to be rejected in *limine* and does not require further consideration.

29. It has also been submitted that the *Noticee no. 2* had never informed the *Company* and its *Board* that he had entered into a *Pledge Agreement* with the *Euram Bank*. Further, the *confirmation letter* of the *Company* which confirmed the rights of *Euram Bank* to set off the pledged deposits of GDR Proceeds with the outstanding loan of *Vintage* in terms of the *Loan Agreement*, was signed by *Noticee no. 2* and the *Noticee Company* was not aware about the same. It has also been submitted that since *Noticee no. 2* had vast experience in fund raising, the *Board* relied upon his expertise. In this regard, at the outset I note that *Zenith* has not refused to acknowledge the existence of the *Loan Agreement* as well as the *Pledge Agreement*, both signed on May 12, 2010, but has merely stated that it was not aware about such Agreements. I find that the *Noticee Company* has only tried to shift the blame regarding failure to disclose true and correct facts as per the regulatory norms on to the *Noticee no. 2* who has signed the *Pledge Agreement* and the *confirmation letter* on behalf of the *Company*. Admittedly, the *Pledge Agreement* and the *confirmation letter* were signed by *Noticee no. 2*, however, irrespective of who signed those documents, there cannot be two opinions that being a company listed on the Indian stock exchange, it was also the responsibility of the *Noticee Company* and its *Board* of Directors to ensure that the GDRs of the *Company* are issued in compliance with all the regulatory rules and regulations. Further, the *Noticee Company* has not produced any piece of evidence to demonstrate that after the issuance of GDRs or subsequent to knowing about the charge of fraud as alleged against them in the SCN, they have raised any concerns over these issues against *Noticee no. 2* before any authority if they felt that the *Noticee no. 2* has actually failed to do his duty or has misled the *Company* in the matter or had acted beyond his

authority and resorted to acts which were detrimental to the interest of the *Company*. If *Zenith* was aggrieved it should have taken the appropriate step in this regard at the earliest opportunity before the appropriate forums which it has not done, hence no such claim of ignorance of action of *Noticee no. 2* can be entertained at this stage in these proceedings. Therefore, such submissions made by the *Noticee Company* so as to pass on the entire responsibility to the *Noticee no. 2* in the matter of issuance of GDRs is merely an afterthought strategy in vain, to evade the adverse outcome of the present proceedings. The facts on records rather unmistakably indicate that the *Company* was aware of the existence of *Pledge Agreement* since its inception as borne out from the fact that the *Company* itself passed a resolution in its Board meeting with regard to the same, much before the actual issuance of GDRs as already discussed earlier in this order. Thus, by its own conduct and intent as displayed through its *Board Resolution* it can be safely concluded that the *Noticee Company* was already aware of its intention to execute the *Pledge Agreement* as on the date of passing of *Board Resolution*.

30. *Noticee Company* has further submitted that the *Company* and its *Board* trusted the Lead Manager (*Pan Asia / (Noticee no. 10)*) and carried out the instructions as provided by *Pan Asia*. Further, the list of GDR subscribers provided to SEBI by the *Company* was based on the information received from the *Noticee no. 10* (Lead Manager), and the *Noticee* did not have any independent mechanism to verify the same and as per secrecy laws applicable in other jurisdictions, it was not possible for the *Noticee* to verify the same. The submission of the *Noticee* that it trusted the Lead Manager does not convince me as there is nothing before me to lend credence to such a submission. The *Noticee* has not produced any correspondence, email or any other tangible effort made by it to contact the Lead Manager nor has it produced any communication with the *Euram Bank* so as to verify the antecedent of the *Pledge Agreement* or the Lead Manager. The *Company* had the choice and discretion to open a bank account in any other bank and to have consultants of its own choice for assisting it in executing the GDR issue since, in case of any default on the part of any

of its consultants/intermediaries, statutorily it is the *Company* that will be held liable and it can't escape from its responsibility on the ground that it has acted in good faith or trust reposed by it on the advice given by the intermediaries and consultants. The *Company* has not submitted any documents to substantiate its claim as to how it got persuaded by the said intermediaries against its wish to open an escrow account with the *Euram Bank* only and under what circumstance, it thought it fit and proper to execute the *Pledge Agreement*, which, *inter alia*, fastened on it, the liabilities of the borrower (*Vintage*) in terms of the said borrower's *Loan Agreement* with *Euram Bank*. If the contention of the *Noticee* that it was unaware of the *Pledge Agreement* as well as about the subscriber to its GDR issue and that it has signed the said *Pledge Agreement* on good faith trusting the Lead Manager is to be believed, then it was duty bound to take stringent legal action against the Lead Managers for such criminal breach of trust. In my view, instead of projecting themselves as a victim, it is expected that the *Noticee* should have taken strong action against the Lead Manager so as to show their *bonafide*, if the Lead Manager has deceptively fastened a huge liability on them by subjecting its GDR proceeds to be held as securities against the loan taken by an unrelated third party, with which the *Noticee* claims to have had no connection. However, to my surprise, no action has been initiated by the *Company* or other *Noticees* against any of the intermediaries/consultants so far. Under the circumstances, the explanation furnished by the *Noticee* pleading therein to shift its culpability on to other entities who have acted as their intermediaries so as to avoid any likely enforcement actions against it for wrongful disclosure to the public at large and for resorting to fraudulent acts against its shareholders as alleged in the SCN, would not be tenable. It is the responsibility of the issuer *Company* and its directors to verify the genuineness of any material information before disseminating the same to the public at large and it is not permissible to take shelter under the excuse that the disclosures made by the *Company* was based on the information received from a third person i.e. Lead Manager in this case. When I consider the passing of the *Board Resolution* dated March 03, 2010 and consequent signing of the *Pledge Agreement*

followed by receipt of GDR proceeds into the *Company's* Indian account in tranches corresponding to the tranches of repayment made by *Vintage*, I find it extremely improbable to accept the contentions of the *Noticee* that it had not knowingly executed the *Pledge Agreement* or that the *Board Resolution* did not intend to pledge the GDR proceeds for securing the loan sanctioned to *Vintage* by *Euram Bank*. I find the aforesaid submissions made by the *Noticee* to be self-contradictory in nature and to be merely an afterthought exercise to evade the adverse consequences of the present proceedings.

31. It is also observed that soon after their issuance to the single subscriber (*Vintage*), the GDRs were converted into equity shares and sold in the Indian Securities Market even though a bulk of GDR proceeds could not be realised by the *Company* due to the default in loan repayment by *Vintage* who was allotted the entire issuance of GDRs. The factual matrix surrounding the successful GDR issuance by the *Company* suggests that it is the *Company's* acts of resorting to a *modus operandi* through the above discussed *Pledge Agreement* and *Loan Agreement* which has led to misleading inferences and false positive expectations about the shares of the *Company* in the Indian securities market. Further, by concealment of actual material facts and the arrangement made by the *Noticees* in connivance with *Euram Bank* and *Vintage* to ensure the successful subscription to its issue of GDRs from the knowledge of its stakeholders, the investors were kept in dark about the artifice created by the *Company* through which it enforced the so called successful subscription to its GDRs in overseas market. The disclosure made by the *Company* on the platform of the Stock Exchange about the successful subscription of GDRs issue without disclosing the behind-the-scene arrangement undertaken by it with the subscriber/borrower to ensure full subscription to its GDRs by facilitating a loan to the said subscriber, has given an ostensible impression to the domestic investors and the market about the strong potential of the *Company* because of which investors outside India had shown overwhelming interest in subscribing to the securities issued by the *Company*, which was otherwise patently false and misleading.

32. I note that the corporate announcements made by the *Company* were not only false and misleading but at the same time, the following material information were also suppressed from the investors viz. (i) execution of *Loan Agreement* dated May 12, 2010 by *Noticee no. 2* for obtaining loan from *Noticee no. 13* for subscribing to the GDR issue of *Zenith*, (ii) execution of *Pledge Agreement* dated May 12, 2010 between *Zenith* and *Noticee no. 13*, for pledging the GDR proceeds to provide security for the loan taken by *Noticee no. 7*, and (iii) that *Noticee no. 7* was the only subscriber of 1.81 million GDR issued by *Zenith*. I find that all these events were critical information for the investors to take an informed decision regarding their investment in the securities of *Zenith*. I, thus, find that the corporate announcements made by *Zenith* on May 28, 2010 regarding allotment of GDR issues had the potential to mislead the investors and/or influence the price of the scrip of *Zenith* and has created a false impression in the minds of the investors that the GDR issue was fully subscribed, whereas the *Zenith* itself had facilitated successful subscription to its GDR issue wherein, the subscriber i.e. *Noticee no. 7* obtained loan from *Noticee no. 13* for subscribing to the GDR issue of *Zenith*, and *Zenith* ensured that loan is granted to *Vintage* by pledging the GDR proceeds with *Noticee no. 13* and, in this process, *Zenith* could not receive GDR proceeds to the extent of USD 14.50 million from *Noticee no. 13* since the *Noticee no. 7* defaulted on the repayment of its loan as a consequence of which, *Noticee no. 13* invoked its pledge on the remaining GDR proceeds of *Zenith*. I also find that in addition to make misleading disclosures, *Zenith* failed to make material disclosures regarding execution of *Loan Agreement* and *Pledge Agreement* dated May 12, 2010.

33. The above discussed acts of the *Company* represent a spurious fraudulent and unfair trade practice, inflicted on its Shareholders and also on the innocent investors in the Securities Market at large. The investors including its own Shareholders, were made to believe that the shares of the *Company* have a good market abroad and have been very well received by the investors abroad, hence, the *Company* has a great value for investment in India as well. Such misleading inferences and deceptive positive expectations about the shares of the *Company* were caused by the *Company's* own acts

by devising and arranging a scheme through which, it ensured a successful issuance of GDR beyond the knowledge of its Shareholders. The investors were not aware about the artifice created by the *Company* through which it enforced the successful subscription to its GDR. Under the circumstances, identifying or ascertaining the actual figure of loss suffered by the investors in the Securities Market is neither relevant nor can it be insisted upon as a pre-condition to issue a SCN for violation of SEBI PFUTP Regulations, 2003, as argued by the *Noticee*.

34. In this context, I further find it proper to refer to the observation of Hon'ble Supreme Court of India dated 06.07.2015 in *SEBI vs. PAN Asia Advisors Ltd & anr.*, (2015) 14 SCC 71, wherein Hon'ble Supreme Court, while dealing with issue of GDR by way of a similar arrangement of *Loan and Pledge Agreement*, observed the following;

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

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

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

35. I also find it appropriate to refer to a decision by the Hon'ble SAT (DoD 25.10.2016) in the case of *PAN Asia Advisors Ltd. & anr. vs. SEBI*, wherein the Hon'ble Tribunal observed the following:

"The expression 'fraud' is defined under the PFUTP Regulations.....

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

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

36. In view of the aforesaid judicial observations and the discussions in the preceding paragraphs based on the appreciation of material available on record, I find that the entire scheme created by the *Company (Zenith)* starting with passing of *Board Resolution*, followed by entering into the *Pledge Agreement* to permit use of the funds deposited in its account with *Euram Bank* as a security against a loan, making an announcement on May 28, 2010 that the GDR have been successfully allotted and then not disclosing to the Public about the relevant *Board Resolutions*, details of *Pledge Agreement* and its arrangement with the sole subscriber to secure the obligation of its loan liability, etc. have cumulatively resulted in misleading the investors at large.

Such a scheme and arrangement has in it, all the ingredients that comprise a fraudulent activity in the Securities Market. In view of the above, I hold that by its acts of concealing and suppressing vital material facts about the arrangement of the *Loan Agreement* and *Pledge Agreement*, the *Noticee Company* has committed a fraudulent act upon its own existing Shareholders and also upon all the investors of the Securities Market who might have been induced to deal in the shares of the *Company* due to the artificially created positive outlook that the *Company* had created about performance. Under the circumstances, the acts of engaging in such practices, scheme and concealing material information from Shareholder are held to be in violation of provisions of Section 12A(a), (b), (c) of the *SEBI Act, 1992* and Regulations 3(a), (b), (c), (d), 4(1), 4(2) (f), (k), (r) of *SEBI PFUTP Regulations, 2003*.

Issue no. 2: Whether the Noticee nos. 2 to 14 have violated Section 12A(a), (b), (c) of the SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI PFUTP Regulations, 2003?

37. I note that various submissions and case laws cited by the *Noticee Directors* of the *Company* (*Noticee nos. 2 to 5*) such as delay in initiating the proceedings, dependence on Lead Manager, interpretation of the *Board Resolution*, etc. are similar to the preliminary submissions made by the *Company*, which I have already dealt with while dealing Issue no. 1 of this Order and for the sake of brevity, I am not repeating the same. Now moving on to the issues pertaining to the respective *Noticees*, who were associated as *Directors* of the *Company* (*Noticee nos. 2 to 5*), I note that some of *Noticee Directors* have relied on the findings of Hon'ble SAT in the case of *Adi Cooper vs. SEBI*, (Appeal no. 124/2019, Order dated November 5, 2019) to impress upon their claim that no fraud can be logically inferred from the reading of the contents of the *Board Resolutions*, hence basing the entire allegations of fraud as being founded and built upon the said *Board Resolution* is not correct. In this regard, I find that the reliance on the findings of Hon'ble SAT in the *Adi Cooper (supra)* would not be helpful to the *Noticees*, as in the said case of *Adi Cooper*, the Hon'ble SAT has also found

another Independent Director guilty of the violations as alleged in the same SCN. It is further observed that similar contentions and arguments came up for consideration before the Hon'ble SAT in the matter of *Cals Refineries Limited vs. SEBI* (Appeal No 04 of 2014; Date of Decision 12.10.2017), wherein the company and directors had claimed that from the contents of the *Board* Resolutions, it would not be justified to allege and conclude that loan mentioned in the *Board* Resolution was ever intended for third party loan as alleged in the SCN. The Hon'ble SAT after having heard the parties at length, was pleased to find their submission as unsustainable. Relevant observations of Hon'ble SAT in the *Cals Refineries (supra)* are as under:

“.....(f) Fact that the minutes as per the minute book of Cals does not contain any resolution to open a bank account with Banco cannot be a ground to infer that Cals had not intended to open an account with Banco because, firstly, on the basis of the Board resolution dated 30/10/2007 certified by Sundararajan, director of Cals, an account was in fact opened in the name of Cals with Banco for depositing the GDR subscription amount. Secondly, on issuance of GDRs, the GDR subscription amount was in fact deposited in the said account of Cals with Banco. Thirdly, apart from the Board resolution dated 30/10/2007 certified by Sundararajan, there is no other resolution passed by Cals to open an account for depositing the GDR subscription amount. Fourthly, the GDR subscription amount deposited in the said bank account with Banco has been withdrawn by Cals in instalments from time to time which is in consonance with the Account Charge Agreement executed by Cals. Without opening a bank account, Cals could not have opened the GDR issue. Very fact that Cals operated the account opened with Banco on the basis of resolution dated 30/10/2007 certified by Sundararajan clearly falsifies the case put up by Cals that it had not authorized any one to open an account with Banco for depositing the GDR subscription amount.

(g) Similarly, argument that Cals had never authorized any person to sign any Account Charge Agreement is also without any merit, because, the Account Charge Agreement was signed by Goorha promoter-director of Cals. The Account Charge

Agreement provides that all communications in relation thereto should be addressed either to Goorha or Sundararajan as they were the two authorized signatories to operate the Bank account of Cals with Banco. It is relevant to note that Goorha was the founder, promoter, director of Cals, whereas, Sundararajan was the director of Cals nominated by the Spice Energy group which had taken over Cals with a view to implement its refinery project through Cals by raising funds through issuance of GDRs. Admittedly, Sundararajan was in-charge of the entire GDR process. Thus, the bank account with Banco for depositing the GDR subscription amount was opened by Sundararajan, director representing the Spice Energy group and the Account Charge Agreement was signed by Goorha, director representing the promoter group of Cals. In these circumstances, the conclusion drawn by SEBI that opening a bank account with Banco and executing the Account Charge Agreement were the acts done by Cals through its directors to finance Honor for subscribing the GDRs issued by Cals in gross violation of Section 77(2) of the Companies Act, 1956 and the provisions contained in the SEBI Act and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for convenience), cannot be faulted."

38. Further, it has been brought to my notice that the fraudulent arrangement indulged in by the *Company* to ensure successful completion of GDR issue was not a solitary case dealt with by SEBI. While dealing with the contention of delay in initiating action, I have already noted that SEBI had found that as many as 51 Indian companies had made 59 GDR issues over a period of about 12 years and in all such GDR issues, companies were found resorting to almost identical arrangements wherein, even the contents/text of the *Board* Resolution passed by the respective companies pertaining to keeping GDR proceeds as securities against loan, were found to be worded in identical manner. It has been brought to my notice that although the outcome of many of such investigation has been contested before the judicial forums, the allegations and findings pertaining such identical fraudulent schemes have been well recognised and upheld in many of those forums. Therefore, in the present case, considering the background and conduct of *Company* and its *Board*

members having indulged themselves in conceiving a similar scheme and making similar arrangement to ensure successful subscription of GDR by passing necessary enabling *Board Resolutions*, I find the GDR issuance of the *Company* has all the ingredients that comprise a fraudulent activity in the Securities Market.

39. Based on the above, I find that like in all other cases wherein different listed companies have issued GDR in overseas territories following an unique but similar process, in the instant matter also the *Company* has followed identical *modus operandi*, viz. it has opened a bank account for receiving / depositing GDR proceeds, executed a *Pledge Agreement* with the same Bank and facilitated the execution of a *Loan Agreement* so as to secure subscription to its entire GDR issue solely by one entity i.e. *Vintage*. Further, the above cited observations of Hon'ble SAT have been affirmed in other appeals involving GDR cases as well. I find the facts of the aforesaid case of *Cals Refineries (supra)* and the observations made by the Hon'ble SAT therein as cited above are squarely applicable to the facts of the present case involving the *Company* and its Directors. Moreover, with respect to the observation made in the case of *Adi Cooper (supra)*, I am also informed that an appeal has already been preferred by SEBI against the said Order, before Hon'ble Supreme Court, and the Hon'ble Supreme Court after having been satisfied with the case advanced by SEBI, have been pleased to issue a notice vide its order dated February 20, 2020. As the said order passed by the Hon'ble SAT is now sub-judice, the *Notices'* attempt to rely upon the same to seek exoneration would not be proper at this stage.

40. Without prejudice to the aforesaid, in my view, the authorization given by the *Board* of Directors to the *Company* to use the GDR proceeds as security for loan was the starting point of the fraudulent arrangement through which the *Company* facilitated the financing of GDR subscription by *Vintage*. Moreover, neither such an arrangement with the would-be sole subscriber to the GDR nor the Resolution passed by the *Board* authorizing such an arrangement to be made by the *Company*, was ever disclosed to the Shareholders of the *Company* or to the investors of the Securities Market. There is no explanation available as to why any *Company* or its Directors

would at all decide at the time of planning to raise funds through an issue of GDR, to keep the same GDR proceeds as a security for any loan, when the thought of availing any loan against the GDR proceeds to be received in future, was apparently not at all existing in anybody's mind in the *Board*. By passing such a Resolution, the *Board* has however exposed the hidden interest of the *Company* and has explicitly indicated at the very planning stage itself, that the GDR proceeds were not meant to be brought in to India but to be kept as a security against a loan the details of which was not intended to be disclosed to anyone at that time. Therefore, the *Noticee* Directors on the *Board* of the *Company* cannot absolve themselves fully from the burden of adverse consequences of the said Resolutions which were passed in a cryptic manner with their consent, even though they had resigned subsequently.

41. I note that reliance has been placed by *Noticees* on the decisions of *Adi Cooper (supra)*, *Yogendra Premkrishna Trivedi (supra)*, etc., to argue that from the text of the *Board* Resolution, it would not be proper to draw inference that the said resolution contained elements of fraud. *Noticees* have also submitted that the contents of the *Board* Resolution were plain and simple and from the reading thereof, it would not be possible to decipher that the *Board* had contemplated at the time of passing the *Board* Resolution, that proceeds of GDRs would be kept as security for the loan to be taken by the subscriber of the GDRs. In this respect, I have already observed above that the materials on record sufficiently indicate that the *Board* was very much aware of the subscriber way back in October 28, 2009 itself, when it decided to authorise the *Noticee nos. 2 and 4* to sign and execute the necessary documents jointly. Subsequently, for the reason best known the *Noticee Company* and its Directors, the said authorisation was modified from 'jointly' to 'jointly and severally'. The records further show that as far as on May 12, 2010, when *Pledge and Loan Agreements* were executed, it was very much obvious from those documents that the *Company* and the *Noticee no. 2* were knowing that *Vintage* would be lone subscriber to the GDRs proposed to be issued by the *Company*, which was allotted on May 28, 2010. It is also not disputed by any of the *Noticee* Directors that after *Vintage* committed default in making repayment

of its outstanding loan, *Euram Bank* had forfeited the balance proceeds of GDR by relying on the clauses of the *Pledge Agreement* executed by the *Company* through its authorised Director i.e. *Noticee no. 2*. In view of the above stated glaring facts & events surrounding the issuance of GDRs, it is not tenable to argue that the *Board Resolution* passed by the *Company*, which was attended by the *Noticee nos. 2 to 5* in the capacity of Directors of the *Company*, had not authorised or not intended to authorise the *Euram Bank* to forfeit the GDRs proceeds lying deposited with in the *Company's* escrow account. Therefore, the reliance on the observations made by Hon'ble SAT in the matter of *Adi Cooper (supra)*, etc. by the *Noticees* seeking parity is misplaced on facts as well as in law.

42. The *Noticee Directors* have also relied on the observations made in the matter of *Pritha Bag vs. SEBI (supra)* to highlight the role and responsibility of *Noticees* as Directors in the *Company*. In this respect, I note that the observations made in the said matter could not be extended and made applicable to the *Noticees* in the instant case as the facts and the context of the aforesaid case are distinguishable from the facts of the present matter. For instance, in the *Pritha Bag(supra)* matter, the Hon'ble SAT had an occasion to deal with the responsibility of a Director within the realm of 'Officer in default' as defined under Section 5 (c) of the Companies Act, 1956 while determining the liability to refund to the investors, whereas the instant matter pertains to the allegation of fraud committed on the stakeholders of the *Company* and on the investors at large. Hence, the role of the *Noticees* is not exactly covered under the observations made by the Hon'ble SAT in the case of *Pritha Bag (supra)*. Similarly, in the matter of *Dr. Uppal Devinder Kumar vs. SEBI (supra)*, Hon'ble Tribunal in the matter pertaining to Collective Investment Scheme while quashing the SEBI order, inter alia, stated that "in our opinion there is no finding that he was responsible either for sponsoring the scheme or for carrying out the scheme", whereas in the instant matter the as discussed earlier, the loan was availed by *Vintage* on the basis of *Pledge Agreement* signed by *Noticee no. 2* on behalf of the *Company*, who was authorised to execute the said *Pledge Agreement* by the *Board Resolution* dated March 03, 2010 that was

approved by the *Noticee Directors*.” Similarly, in the matter of *Sayanti Sen vs. SEBI (supra)*, SEBI *inter alia*, had directed the appellant to refund money collected by the *Company* during the respective period of Directorship of the appellant. Hon’ble SAT while the dealing with the facts of the referred matter made the observations that “The mere fact that a person is a Director would not make him automatically responsible for refund of monies under Section 73(2) of the Companies Act” and quashed the SEBI Order against the appellant to the extent of refund of monies collected by the company. However, as already discussed above, the charge on the *Noticee Directors* in the instant proceedings pertains to signing of the *Board Resolution* dated March 03, 2010 which authorized *Noticee no. 2* to sign the documents for opening escrow account with *Euram Bank* and keeping GDR proceeds as security in connection with loans, signature on the said *Board Resolution* has admittedly not been denied by any of the *Noticee Directors* who took part in the *Board* meeting to pass the said resolution. Therefore, reliance on various judicial observations on the role of Directors will not be of any help to the *Noticee Directors* and the instant proceedings against them have to be dealt with on the basis of the facts and circumstances specific to this proceeding.

43. In the present case, the *Board* meeting dated March 03, 2010 of the *Company* was undeniably attended by the *Noticee nos. 2 to 5*, in their respective capacities as Directors and in the said *Board* meeting, the proposal to open an account with *Euram Bank* was approved by the Board apart from approving the proposal to pledge the GDR proceeds to be deposited in the said Bank account so as to secure the loans taken, if any. The *Company* while disclosing to the world at large about the success of its GDR issue had simultaneously concealed the material facts about its indulgence in a scheme to ensure successful subscriptions of its GDR issue by a single Subscriber. This arrangement had a strong hidden agenda to “induce” or to mislead the investors to trade in the securities of the *Company*, since it had all the material to create a false and misleading impression about the financial prospects and excellent future of the *Company*. I note that the allegations have been made on sufficiently strong evidence by relying upon the *Board Resolutions, Pledge Agreement, Loan Agreement, disclosure*

made to the stock exchanges by the *Company*, bank statements of the *Company*, etc., which in contrast to the unsubstantiated protestations of the *Notices*, clearly demonstrate a higher degree of probability of causing inducement to or misleading the investors in the matter of dealing in the securities of the *Company*. Therefore, I find that the evidence available on record and the inferences drawn from such evidence show higher degree of probabilities of commission of fraud by the *Notices* on the innocent investors and are in accordance with the principles settled through various judicial decisions. It has been observed by the Hon'ble Supreme Court of India in the case of *SEBI vs. Kishore Ajmera* (2016) 6 SCC 366 that *"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the courts can't be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion...."*

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

45. Having dealt with the preliminary objections raised by the *Noticee* Directors, I proceed to deal with the role of respective *Notices* Directors during the relevant period. I note that during the relevant time of issuance of GDRs, the *Noticee* no. 4 was the Managing Director, *Noticee* nos. 2 and 3 were Non-Executive and Non-Independent Directors while the *Noticee* no. 5 was Non-Executive and Independent Director of the *Company*. I note from the SCN and materials annexed therewith that

the *Notices nos. 2 to 5* attended the *Board Meeting* held on March 03, 2010. Accordingly, on the basis of the authorization given by the *Board* by passing the enabling resolutions on the said date, the *Noticee no. 2* has signed the *Pledge Agreement* on behalf of the *Company*, which provided *inter alia*, for GDR proceeds to be kept as a security against the loan availed by *Vintage* for subscription to the GDR of *Zenith*. I also note that none of these Directors has disputed to his attendance in the aforesaid meeting.

46. As per the *Board Resolution* dated March 03, 2010, the GDR proceeds were authorized/permitted to be kept as a security against the loans if any, and in this case the said loan was not availed by the *Company* but by the sole subscriber i.e. *Vintage*. In conformity with the above *Board Resolution*, I find that an amount of USD 22.99 million, which were raised through GDR issue were pledged with the *Euram Bank* and was not made available to the *Company* for its immediate utilisation. Nothing has been brought in defence to support that the intent of the aforesaid *Board Resolution* was something else and not to ensure subscription to the GDRs through a fraudulent scheme. Therefore, in the absence of any other contingency or business exigency demonstrated by the *Notices* and keeping in view the observations made by Hon'ble SAT in the matter of *Cals Refineries (supra)* as well as my observations as recorded in preceding paragraphs, I don't see there could be any reason to keep the GDR proceeds as a security for any loan that was proposed to be availed by the *Company* itself. I also note that the *Pledge Agreement* signed and executed by the *Noticee no. 2* incorporates provisions about the *Loan Agreement* and accordingly in the clauses of the *Pledge Agreement*, suitable stipulations have been made, whereby the *Noticee Company* has undertaken to discharge the liability of the borrower, in the event the Borrower defaults in paying the loan availed by it from *Euram Bank* to subscribe to the GDR of the *Company*. It becomes clear that *Noticee no. 2*, was very much seized of the intent behind the *Board Resolution* passed on March 03, 2010 pursuant to which he has signed the *Pledge Agreement* to ensure and secure the loan taken by *Vintage* for subscribing to the GDR of *Zenith* and therefore, having considered the allegations

and the evidence available on record, in my view charges made in the SCN against *Noticee no. 2* are found to be established.

47. Moving on to the *Noticee no. 4* who, as Managing Director of the *Company* during the relevant period of issuance of GDRs by the *Company* has claimed that his job profile required him to look after the marketing, purchase, operational & technical aspects of manufacturing activities in the *Company's* plant and all financial decisions and activities of the *Company* were under direct control of *Noticee no. 2*. Admittedly, *Noticee no. 4* was the Managing Director of the *Noticed Company* and was in-charge of the day to day management of the affairs of the *Company*. As such, it is abundantly clear that as on May 12, 2010, when the *Loan and Pledge Agreements* were signed, the *Noticee no. 4* being the Managing Director and in charge of the day to day affairs of the *Company*, knew very well that the GDR subscription amount was liable to be kept as a security against the loan taken by the sole subscriber of the GDR (*Vintage*) from *Euram Bank*. Hence, contrary to the submissions made by the *Noticee no. 4*, the question of his being innocent and not guilty of the violation alleged made in the SCN does not survive. I also note that *Noticee no. 4* has taken a plea that initially he along with *Noticee no. 2* were 'jointly' authorized by the *Board* in its meeting dated October 28, 2009, to sign the documents pertaining to GDR. However, as the *Noticee no. 4* disagreed to sign, vide *Board Resolution* dated March 03, 2010 such authorisation was changed from 'jointly' to 'jointly and severally'. Consequently, all the documents pertaining to GDR issuance were signed by *Noticee no. 2*. It is a matter of fact that the *Noticee no. 4* was also authorised by the *Board* to sign the documents on behalf of the *Company* pertaining to GDR. Such a decision *albeit* indicates that the *Noticee no. 4* was having prior knowledge about the fraudulent scheme of the GDR issue and hence decided to stay away from the signature on such documents. In such circumstances, as *Noticee no. 4* was the Managing Director of the *Company*, it was certainly his primary duty to come out completely clean before the *Board* with all the facts, strategy, steps to be followed and compliances to be made with respect to the proposed GDR issue, before moving a Resolution before the *Board*. Being the

Managing Director, it was he, who was statutorily required to drive, guide and manage the affairs of the *Company*. He, in his capacity as the Managing Director during the relevant period was indeed in the driving seat of the *Company* in the eyes of world at large and was expected to perform the role of the Managing Director and was required to steer the proposed GDR issuance and therefore ought to have clarified to the stakeholders about his pre-arrangement with the subscriber and about the proposed *Pledge Agreement* that was devised to be executed with the *Euram Bank*. *Noticee no. 4* being Managing Director was answerable to the *Board* for not sharing or disclosing the true implications behind moving the aforesaid *Board Resolution* and the intention behind getting the *Pledge Agreement* executed pursuant to the *Board Resolution* without disclosing the same to the stakeholders and to the Public. All these facts in the case clearly indicate that the *Noticee no. 4* was actively involved in the fraudulent arrangement for ensuring a successful issue of GDR of the *Company* and therefore, all the charges made against him in the SCN are also found be established, more particularly, considering the undisputed facts that he was occupying the post of Managing Director. Therefore, his submission that though he was holding the post of Managing Director but was not exercising the power and function of Managing Director is neither borne out of facts nor can be an acceptable explanation without any supporting and strong evidence to prove his innocence as claimed by him.

48. With regard to other *Noticee Directors*, who have claimed to be associated as Non-Executive Directors of the *Company* during the relevant time (*Noticee nos. 3 and 5*), I note that the allegation against these Directors is that they have facilitated and authorised the *Noticee nos. 2 and 4* by passing the afore stated *Board Resolution* for opening of an account with *Euram Bank* and for the execution of a *Pledge Agreement* and thereby, have allegedly indulged in a fraudulent arrangement with the *Company* to ensure successful subscription to the GDR issue of the *Company*. From the documents on record and submissions made by these *Noticees* to rebut the allegations, it can be seen that these *Noticee Directors* were undeniably involved and have

facilitated the fraudulent arrangement for allotment of GDR to a single subscriber and have not raised voice objecting the passing of such *Board* Resolution.

49. The *Noticees nos. 3 and 5* have submitted that they were functioning as Non-Executive Directors in the *Company* during the relevant time. It is pertinent to note that persons like *Noticees nos. 3 and 5* who even though were not actively involved in the day to day affairs of a company, nevertheless, the kind of posts they occupied bound them with more onerous duty that not only required them to be diligent and to act in adherence of the rules and regulations, but also expected them to desist from adopting or permitting the adoption of any unfair means, which would be detrimental to the interest of the Indian securities market, even though their action per se may not lead to any unjust profit to them or any quantifiable loss to the investors. The *Noticees* ought to realise that the Securities Market is not a platform for adopting or allowing the practice of any fraudulent or unfair trade practice in whatsoever manner that obstructs dissemination of true and fair disclosures to the Public. Further, it is well settled that actual inducement to any person to buy or sell securities is not the essential precondition to find someone guilty of fraudulent and/or manipulative charges. It is sufficient that once the fact of fraudulent act is established, the consequence of inducement to the investors at large cannot be ruled out and for that matter no additional evidence is required to establish the actual inducement and loss to the investors.

50. Further, I note that no evidences have been provided by these two *Noticee Directors* to demonstrate that they have actually exercised considerable due diligence while dealing with *Board* processes pertaining to the GDR issue of the *Company*, *inter alia*, by raising any pertinent questions in the *Board* Meetings or by not signing the *Board* Resolution or by objecting to the proposed fraudulent scheme being conceived by the *Company*, by bringing the same to the notice of regulator. Further, by not raising any concern over non receipt of the GDR proceeds for *Company's* utilisation immediately after the issue, these *Noticees* have not exhibited any good conduct either by raising a suspicion before the *Board* or Management or by protesting against the

inaction of the *Company* to bring the GDR proceeds for *Company's* use. Such inaction and misconduct on the part of the *Noticee nos. 3 and 5* not only show how these two *Noticees* behaved in a casual manner but also have consciously turned a blind eye to the fraudulently acts of the *Company* thereby allowing something to be done in gross disregard of the duties of a Director which can't be considered as a mere omission, but do indicate their active collusion with the *Company* and other Directors to execute a pre-designed arrangement for ensuring a successful GDR issue by the *Company*.

51. As regards the argument of the *Noticee no. 5* that he was an Independent Director in the *Company* and was associated with *Zenith* only for participating in the *Board* Meetings and was not involved in any financials of the *Company*, I agree with this fact, however, it is important to understand that the Independent Directors who comprise the *Board*, apart from providing their key functional expertise to the company, also play a key role in balancing the interests of managements and shareholders and such Independent Directors are expected to, *inter alia*, ensure fairness and transparency in the dealings of the company. Where an act of omission or commission occurs through *Board* processes, then such Non-Executive Directors can be held liable for such acts/omissions of company, if such Independent Directors had participated in the relevant *Board* meetings and did not act diligently, which in the instant matter remains undisputed. The *Noticee no. 5* has not only failed to bring any documents on record to justify his act in the capacity of an Independent Director in the *Board*, but on the contrary his participation in the *Board* Meeting wherein the crucial decisions about the GDR issue were taken and those GDR related resolutions were passed, justifies his deliberate intent and active support to the *Company* in perpetrating the fraud upon the investors of Securities Market. In this regard, I prefer to rely on the observations made by the Hon'ble Supreme Court of India, in the matter of *K.K Ahuja vs. V.K Vora* (2009) 10 SCC 48; *National Small Industries vs. Harmeet Singh Paintal* (2010) 3 SCC 330 and *S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and Anr* (2005) 8 SCC 89, wherein the Hon'ble Supreme Court have upheld the position that the liability of any director in a company is restricted to actions of omission or

commission committed by the company which had taken place with the knowledge and consent, whether explicit or implied, of such director. Therefore, the *Noticee nos. 3 and 5* are found to be liable since they had attended the crucial *Board* meeting dated March 03, 2010 and did not raise any objection/question to the resolutions passed therein including the resolution that authorised the *Company* to keep the GDR proceeds as securities against loan, and thereby have failed to show that they have indeed acted diligently.

52. In my view, in a listed company, the Board of Directors including the Independent Directors, should take all such steps and measures as may be necessary in furtherance of the interest of shareholders and should demonstrate highest standards of governance. Ignorance of law or knowledge is no excuse. The *Noticee Directors (Noticee nos. 2 to 5)* have not produced any evidence or any submission to support that they had actually acted responsibly or that they had raised all the pertinent issues and had asked relevant questions to the management before the *Board*, before agreeing to pass such a resolution. There is no material or evidence on records to suggest that they had made due enquiries with or have confronted the management by questioning them as to why GDR proceeds should be kept as security for any loan in an overseas bank and how the GDR proceeds are proposed to be used in terms of the objects of issue. They have never raised any question on the actual utilization of the GDR proceeds in terms of the objects of the issue. Their claim of holding a position of Independent Non-Executive Director on the *Board* cannot *suo moto* absolve them from their expected duties and responsibilities during their tenure as a Director of the *Company*, which bestowed a statutory responsibility on them to act diligently in the interest of the *Company* and the Shareholders. Therefore, I am of the view that the way these two Directors have conducted themselves as Directors of the *Board* and have agreed to pass those *Board* Resolutions pertaining to the GDR issue, as suggested by the aforesaid facts of the matter, they have clearly allowed themselves to be a part of the fraudulent scheme and hence, do not deserve exoneration on that account only. Therefore, in my view, apart from the Issuer

Company (Zenith) i.e. Noticee no. 1, and the Noticee Directors (Noticee nos. 2 to 5), have also undoubtedly concealed the actual factual information from the knowledge of the shareholders about the hidden transactions/agreements that happened prior to issue of GDR and have also failed to advance any credible explanation supported by any evidence to prove their innocence, and accordingly have acted fraudulently alongwith the Company, in breach of the provisions of 12A(a), (b), (c) of SEBI Act, 1992 read with regulation 3(a),(b),(c),(d) and 4(1) of SEBI PFUTP Regulations, 2003.

53. Now, with regard to the allegations in the SCN made against the other *Noticees* (*Noticee nos. 6 to 14*), I note that the allegation against these *Noticees* as alleged in the SCN is that *Noticee no. 6 (AP)* is a part of scheme devised along with *Zenith* and its other connected entities (*Noticee nos. 7 to 14*) wherein *Zenith* misled the Indian investors by concealing the information about its act of entering into a *Pledge Agreement* and disclosing the GDR related news in a distorted manner to Stock Exchanges which made its shareholders as well as the investors believe that the GDRs were genuinely subscribed while it actually caused loss to the shareholders to the tune of USD 14.5 million. Before proceeding to deal with the said allegations and the contentions of these *Noticees* (*Noticee nos. 6 to 14*), I find it proper to reiterate the role of these *Noticees* in terms of the allegations made in the SCN, which are listed below:

- (i) The sole subscriber to the GDRs of *Zenith* i.e. *Noticee no. 7 (Vintage)*, whose beneficial owner was *Noticee no. 6 (AP)*, obtained loan from *Noticee no. 13 (Euram Bank)*, an entity connected with *Noticee no. 6*, for subscription of GDR issue for which security was provided by *Zenith* by pledging its GDR proceeds. *Noticee no. 11 (Mukesh)*, a close associate of *AP* was the Managing Director and authorized signatory in *Vintage*. *AP* signed the *Loan Agreement* on behalf of *Vintage*. *Pan Asia* (*Noticee no. 10*) was the Lead Manager which facilitated (documentation, listing, sourcing etc.) the GDR issue of *Zenith* and *AP* was Director in *Pan Asia*. *Vintage* defaulted on repayment of loan to *Euram Bank* to the extent of USD 14.50 million, thereby GDR proceeds to that extent were adjusted by *Euram Bank* from the proceeds of GDRs.

- (ii) It is seen that after the allotment of GDRs, *Vintage* started conversion of GDRs into equity shares of *Zenith* and *Notices* connected to *AP* i.e. *IFCF* (*Noticee no. 8*) and *HBS* (*Noticee no. 9*) off loaded the converted equity shares in the Indian securities market. *Noticee no. 8* was also the sub-account of *Noticee no. 12* and *13*. Similarly, *Noticee no. 9* was also a sub-account of *Noticee no. 14*. Further, the shares sold by *IFCF* and *HBS* were those shares which were acquired by *Vintage* and for which, consideration was effectively not paid, as *Vintage* defaulted on its loan repayment to *Euram Bank* as a result of which, the GDR proceeds paid by *Vintage* and kept in *Company's* account to the extent of such defaulted amount was forfeited by *Euram Bank* and adjusted against the defaulted outstanding loan of *Vintage*, in terms of the *Pledge Agreement* signed by the *Company* with *Euram Bank*. Hence, by converting the GDRs into equity shares and selling them in the Indian securities market, *IFCF* and *HBS* along with *AP*, *Vintage*, are allegedly responsible jointly and severally, for causing the loss of ₹59.06 crore inflicted on the shareholders of *Zenith*.
- (iii) *Pan Asia* was the Lead Manager which facilitated (documentation, listing, sourcing etc.) the GDR issue of *Zenith* and was connected to *AP*
- (iv) *AP* is the beneficial owner of *CCP*. It is also revealed that as *FII*s, *CCP* and *Euram Bank* did not have prior exposure to the Indian Securities Market, except for indulging in off-loading the equity shares of *Zenith* after conversions of GDRs of *Zenith*. The aforesaid facts show that they have allegedly acted in co-ordination with the fraudulent actions of the *Company* and other *Notices* with respect to the GDR issue of *Zenith* and were therefore allegedly a part of the fraudulent scheme involving the GDR issue of *Zenith*.

54. I note that out of the *Noticee nos. 6 to 14*, only *Noticee nos. 6, 11 and 13* have replied to the SCN and have also made submissions before me during their personal hearing. Therefore, the remaining *Notices* viz. *Noticee nos. 7, 8, 9, 10, 12 and 14* have chosen not to file any reply to the SCN and even have preferred to abstain from personal hearing. In this regard, the observation of Hon'ble SAT in the matter of

Sanjay Kumar Tayal & Ors. vs. SEBI (in appeal No. 68/2013) decided on February 11, 2014, is relevant to be referred to hereunder: -

“ 29. We see no merit in above contentions. As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices.....”

55. Some of the *Notices* have submitted that the commissions and omissions on part of the *Notices* as alleged in the SCN were done outside India, which is beyond the territorial jurisdiction of SEBI and hence the SCN is beyond the scope and authority of SEBI and therefore, provisions of *SEBI Act, 1992* are not applicable to them. In this regard, the *Notices* appears to have overlooked the fact that the scrip of *Notice no. 1* has been listed on BSE and NSE even prior to the issue of GDR by it. If any listed company issues further securities for raising more capital through public offer, such as preferential allotment, rights issue, etc., it has to comply with the applicable provisions of the Companies Act, 2013 (previously Companies Act, 1956), securities laws including SEBI Act, 1992 and rules & regulations made thereunder. The listed Companies are required to make true and complete disclosure about its business and commercial decisions for the consumption of investors at large, so as to enable them to make informed decision about investing in the scrip of the company. The same regulatory standards are also equally applicable to the issue of GDRs by an already existing publicly listed company. As regards to the jurisdiction of SEBI over GDR issue is concerned, the same is no more a *res integra*. In this respect, I note that similar issue came for consideration of the Hon'ble Supreme Court in the matter of *Pan Asia* matter (*supra*) wherein the issue was discussed in detail. The relevant portion of the judgment of Hon'ble Supreme Court is reproduced as under:

“80. It is true that the creation of GDR and its trading in the global market are governed by the respective laws of the country in which they are dealt with. But one special feature to be borne in mind is that in the case on hand, the

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

81.

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

(emphasis supplied)

56. As may be observed from the above cited paragraphs, at para 80 and 82 of the aforesaid referred order of *Pan Asia* matter (*supra*), the Hon’ble Supreme Court has settled the Jurisdictional disputes over GDR issue and have emphasised on the special feature of the case which involved connivance of the issuer company with the respondents therein, which created a make belief world about a genuine issue of GDR which were fully subscribed by the foreign investors on the date of its issuance as a result of which, the investors in India were lured/induced to make investments in the securities of the issuer company whereas, in reality it was the issuer company which itself had facilitated the subscription of its GDR issue. Further, it is not in

dispute that with the advent of liberalisation, the economy has since been made open for global investments and in the process, entities across globe have become eligible to make investment, either directly or indirectly, by subscribing to the equity capital of a company. In such a scenario, it may not be erroneous to submit that merely because an entity is located outside India, it would not be amenable to be acted upon, even though, it acts in connection with dealing in Indian securities markets including making investment and/or buying and selling in the Indian Securities Market.

57. In the present matter, *Zenith* issued 1.81 million GDR (amounting to USD 22.99 million), on May 28, 2010, which were subscribed by *Vintage* on the same day by obtaining a loan through a *Loan Agreement*, from *Euram Bank*. *Zenith* had signed a *Pledge Agreement* with *Euram Bank* which was also an integral part of *Loan Agreement* entered into between the subscriber (*Vintage*) and *Euram Bank* and only because of the aforesaid *Pledge Agreement*, the subscriber could be able to avail a loan of USD 22.99 million from *Euram Bank* for subscribing to the GDR of *Zenith*. As such, *Zenith* practically financed the subscription of its own GDR issue due to which, GDR issue proceeds worth USD 22.99 million was not available at the disposal of *Zenith* at the time of GDR issue even though it made those boastful disclosures to the Stock Exchanges about the successful and fair subscription to its GDR issue, thereby making the innocent investors in India to believe that *Zenith* has indeed successfully raised USD 22.99 million abroad through its GDR issue and to that extent the finances of the *Company* have become more strengthened. The crux of the allegations summed up by the Hon'ble Supreme Court in *Pan Asia's (supra)* matter is applicable *pari passu* to the issuer *Company (Zenith)* in this case, which facilitated subscription of its own GDR issue and also resorted to activities misleading the public to believe that the GDR issue was genuinely subscribed by foreign investors. Thus, the allegations made in the present matter are almost identical to those involved in the matter of *Pan Asia (supra)*. This being so, in terms of observations made by the Hon'ble Supreme Court at paragraphs 80 and 82 of the aforesaid *Pan Asia (supra)* order, I find no dispute to the submission that SEBI has the jurisdiction to proceed *inter alia* against the issuer

company in the matter of the GDRs issued by it in the overseas markets involving entities located outside India, more particularly in cases, where it is noticed that the entire process has been done under a fraudulent scheme and the suffer in the shareholders in India. Under the circumstances, the contentions raised by the *Noticees* with regard to jurisdiction of SEBI over GDR issue have to rest in peace as the same is not tenable in facts or under law.

58. I note that *Noticee no. 6* has relied on Section 63 and 65 of Indian Evidence Act, 1872, stating that reliance on the photocopies of certain documents for issuance of SCN, is bad in law. In this regard, I note that the instant proceedings are in the nature of *quasi-judicial* proceedings and the provisions of Indian Evidence Act, 1872 are not strictly applicable to such proceedings. Further, the principle under Section 65 (a) of the said Act, itself provides for admissibility of a document as a secondary evidence under certain condition *inter alia*, when the original is in possession of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to the process of the Court. As stated in the beginning, the copies of the documents relied upon in the SCN to prove the allegations, were actually obtained during investigation through the help of overseas securities market regulators and the copies of all such documents relied upon in the SCN have been duly made available to the *Noticees*. The *Noticees* have filed their written replies to the SCN by referring to those documents, hence the objection to the reliability on those documents at this stage is without any reason and does not explain as to how these copies of documents have caused prejudice in defending their interest and contesting the allegations made against in the SCNs. I also note that most of the documents relied upon in the SCN were in fact originated by the *Noticees* themselves viz; *Board Resolution*, *Minutes of the Board Meeting*, *Pledge Agreement* etc., and therefore, without assailing the credential and contents of such documents which are very well known to the *Noticees*, mere objection on the ground of reliance upon photocopies of documents, is not maintainable, when none of the *Noticees* has disputed the authenticity and contents of such documents.

59. I further note that *Noticee no. 6* has also relied on the judgment of the Hon'ble Supreme Court in the matter of *UMC Technologies Pvt. Ltd. (supra)*, to contend that SCN must disclose the specific penalty/ action which is proposed to be taken against the *Noticee*. I find that the case of *UMC Technologies Pvt. Ltd. (supra)* is factually distinguishable from the present case and not applicable to the present proceedings. Grounds of differentiation between the referred matter and the instant matter is tabulated below:

Table no. 5

<i>UMC Technologies Pvt. Ltd (supra)</i>	Instant Matter
The matter pertained to blacklisting of a contractor by Food Corporation of India (for convenience "<i>Corporation</i>"), which resulted in depriving the contractor from entering into any public contracts with <i>Corporation</i>, thereby violating the fundamental rights of equality of opportunity in the matter of awarding a public contract to such person.	The present SCN has been issued for breach of provisions of law pertaining to Indian Securities Market. Further, the provisions of law under which directions are contemplated to be issued, confer discretion to SEBI to take such measure as it thinks fit in the interest of investors and securities market
The Hon'ble Apex Court, inter alia, stated that "<i>The action of blacklisting in the present case was neither expressly proposed nor could it have been inferred from the language employed by the Corporation in its show cause notice</i>"	The SCN in the present case, clearly brings out the charges levelled against the <i>Noticee</i> including the disgorgement as well as the Sections of the SEBI Act, 1992 under which directions are proposed to be issued in the instant proceedings
The blacklisting was imposed by way of penalty.	The purpose of issuing directions, if found necessary, would be preventive and remedial in nature.

In view of the foregoing discussions, the reliance placed by the *Noticee no. 6* on *UMC Technologies (supra)* challenging the validity of the SCN is not tenable.

60. *Noticee no. 6* has contended that the entities involved in the GDR issuance of *Zenith* are separate legal incorporated against whom action should be initiated and

not against him. In this regard, I note that the SCN has been issued against all the concerned and related entities, who have been involved in the entire matter of GDR issuance of *Zenith*. *Noticee no. 6* should understand that the instant proceeding is an inquisitional proceeding where an entity is required to offer comments / replies in response to the allegation levelled in the SCN. It is not an adversarial proceeding i.e. a dispute resolution proceeding where respective counter parties present their respective claims to a third neutral party, or an adjudicator for deciding the dispute. Unlike an adversarial proceeding, misjoinder or non-joinder of parties would not cause the inquisitional proceeding a redundant one. *Noticee* should also note that the allegations made in the SCN against different entities have been made on the premise that all the entities have acted individually as well as in concert with each other, so as to reflect a scheme for fraudulent issuance of GDR. Admittedly, the instant proceedings are conducted by following the principles of natural justice where adherence to the principles and rules of Civil Procedure Code is not strictly required. Further, the decision in such proceedings are taken following the principles of preponderance of probability after considering the materials on record. Further, *Noticee no. 6* should also note that the allegations made in the SCN against different entities have been made on the premise that all the entities have acted individually as well as in concert with each other, so as to reflect a scheme for fraudulent issuance of GDR. Hence, the contention of the *Noticee no. 6* is not tenable and he is expected to only confine his submissions in rebutting the allegations made against him in the SCN.

61. With regard to allegation in the SCN regarding connection of other *Noticees* with *Noticee no. 6 (AP)*, it is important to look at the connection made out in the table no. 6 of SCN. I observe the following connection of *AP* with *Noticee nos. 7 to 14* after the perusal of table no. 6 of SCN and documents referred to in the SCN in support of the same:

- (i) According to an Administrative Fine Statement available on *DFSA* website, *AP* held positions with *Pan Asia*, *Vintage* and *IFCF*.

- (ii) During the period January 2009 to May 31, 2010, CCP held 100% shares of IFCF and AP held 100% shares of CCP. Thus, AP was in control and command of IFCF being 100% shareholder of IFCF. AP also served as Chief Investment Officer of CCP in 2010.
- (iii) Pan Asia had a joint venture with the Euram Bank namely EBAL (incorporated on August 23, 2009, dissolved in December 30, 2013) in which AP was director and president. AP resigned as president and member of Board of the EBAL on September 22, 2011.
- (iv) Euram Bank was also registered as Foreign Institutional Investor (FII) in India (during the period November 21, 2008 to November 20, 2011). IFCF was the only sub-account (during the period December 12, 2008 to July 19, 2011) of Euram Bank.
- (v) On the basis of the KYC documents of HBS, it is observed that it was having registered address at – C/O Auriss International Ltd, 2nd Floor, Wing A, Cybertower 1, Ebene, Cybercity Ebene, Mauritius. E-mail address is mentioned as fundadmin@aurisse.com and contact no. is mentioned as +2304640077. As per records available with SEBI, the company has mentioned its e-mail id as saleem@aurisse.com. Google search reveals that Aurisse International Limited is based out of Mauritius and it was earlier known as Al Jabha (Mauritius) Limited wherein Mukesh was director and CFO in 2011. Examination of website of Aurisse International Limited reveals that it shares common address and contact number with HBS.
- (vi) Golden Cliff is 100% shareholder of HBS since April 21, 2014. A summary of connection of one Mr. Anant Kailash Chandra Sharma (for convenience “Anant”) with Golden Cliff and HBS is tabulated below:

Table no. 6

Connection with <i>HBS</i>	Connection with <i>Golden Cliff</i>
• Director since August 11, 2014 till date • Beneficial owner (100% shareholder) since September 09, 2014 (by virtue of being beneficial owner of <i>Golden Cliff</i> since September 09, 2014 which in turn is beneficial owner of <i>HBS</i> since April 21, 2014) till date	• Director since July 16, 2014 • Beneficial owner (100% shareholder) since September 09, 2014 till date

(vii) *Anant* and *AP* are connected to each other as both were directors in Sai Sant Advisory (India) Private Limited during a common period. *Anant* was a director from December 01, 2009 to March 18, 2016 and *AP* was director from August 31, 2007 to October 20, 2010.

(viii) *Anant* and *Mukesh* are also connected to each other on the basis of common Directors in a company. *Anant* served as Additional Director of Alka India Limited (from December 01, 2009 till date) and *Mukesh* served as a Director of Alka India Limited from January 31, 2006 till June 01, 2010. Further, in Ramsai Investment Holdings Private Limited, *Mukesh* and *Anant* served as a Director from August 17, 2010 to March 17, 2016 and from September 01, 2015 to March 18, 2016 respectively. Further, *AP* was 99.98% shareholder in Ramsai Investment Holdings Private Limited (for the period 2009-2013) and a Director from February 04, 2008 to August 18, 2010.

(ix) Summary of connection of one Ms. Reema Narayan Shetty (in short "*Reema*") with *HBS* and *Golden Cliff* is tabulated below:

Table no. 7

Connection with <i>Golden Cliff</i>	Connection with <i>HBS</i>
• Director from May 16, 2013 to August 01, 2014 • Beneficial owner (100% shareholder) from September 12, 2013 to September 09, 2014	• Beneficial owner (100% shareholder) from April 21, 2014 to September 09, 2014 (by virtue of being beneficial owner of <i>Golden Cliff</i> from September 12, 2013 till September 09, 2014 which in turn is beneficial owner of <i>HBS</i> since April 21, 2014)

(x) Account Opening Form of *IFCF* available with *Euram Bank* was examined and it was observed that *Reema* was authorized signatory of *IFCF* for the bank account held with *Euram Bank*.

(xi) Anant who worked with *AP*, and *Reema* who worked with *AP* connected entity (*IFCF*), are associated with *HBS* as beneficial owners. From the above examination and analysis of sale of converted shares of *Zenith* on BSE/ NSE by *HBS*, it is observed that *HBS* acted as conduit to *AP* for sale of shares of *Zenith*.

62. I find from the aforesaid that *AP* (*Noticee no. 6*) enjoys an irresistible connection with *Noticee no. 6 to 12* and was further related with *Noticee nos. 13 and 14* at each stage of the fraudulent transactions which ultimately resulted in the loss of USD 14.50 million to *Zenith*. Most importantly, I note that there was an increase in the capital of *Zenith* through issue of GDRs for which *Zenith* did not receive complete commensurate consideration. The GDRs were subscribed by *Vintage* (*Noticee no. 7*) which was a wholly owned entity of *AP* (*Noticee no. 6*) and the funds for the same was obtained, as a loan from *Euram Bank* (*Noticee no. 13*) based on a pledge of the GDR proceeds by *Zenith* thereby facilitating the subscription of GDRs to *Vintage* through execution of *Pledge Agreement*. I further note that similar arrangement resorted by entities in the matter of *Jindal Cotex (supra)* had come up for consideration before the Hon'ble SAT, wherein it has held that such arrangement itself vitiates the entire issue of GDR as it is through an artificial arrangement supported by the company itself which enabled the subscription to the GDR. I note that entire GDR proceeds did not reach the Indian bank account of the *Zenith* against those GDRs issued. In this case, the beneficiary of this scheme, in the first stage was *Vintage* (*Noticee no. 7*) who received allotment of 1.81million GDRs of *Zenith* for which subscription was managed and facilitated through *Pledge and Loan Agreements*. Subsequently, *Vintage*, the lone subscriber to the GDR issue defaulted on payment of the loan to the extent of USD 14.50 million and based on the *Loan Agreement* and *Pledge Agreement* dated

May 12, 2010 the outstanding loan amount was realized from GDR proceeds lying to credit of *Zenith* in its bank account with *Euram Bank* by forfeiting the same against the default by the subscriber. Therefore, *Vintage* (Noticee no. 7) did not have to pay full consideration for the GDRs, at least for the GDRs worth USD 14.50 million. I have already found that *AP* (Noticee no. 6) was the beneficial owner of *Vintage* (Noticee no. 7). Thereafter, *Vintage* (Noticee no. 7) transferred the GDRs to certain entities which included *IFCF* (Noticee no. 8) (which was also wholly owned by *AP*) and *HBS* (Noticee no. 9) (which was connected to *AP*), which sold the converted equity shares in the Indian market and made money. I note that in the matter of the *Pan Asia* (*supra*) the Hon'ble SAT has discussed the role of *AP* (Noticee no. 6) in six GDR matters wherein the *modus operandi* adopted was similar to the present matter and in those matters also, *Pan Asia* (an *AP* owned entity) was the lead manager. Having considered the role of *Pan Asia* and *AP* in conducting successful subscription of issuance of GDR by companies, it has been observed by the Hon'ble Tribunal that:

"Even though all GDRs were not converted and sold, it is apparent that the modus operandi adopted by the appellants was not only to create an artificial impression that the GDRs have been subscribed by foreign investors, but also to create an impression that after the GDR issue, investors in India have started subscribing to the shares of issuer companies when in fact the shares were sold and acquired by the entities controlled by AP. In these circumstances inference drawn by SEBI that at every stage of the GDR issue, the acts committed by the appellants constituted fraud on the investors in India cannot be faulted."

63. I find that afore-said scheme of issue of GDRs of *Zenith* constitutes 'fraud' and Noticee no. 6 has conspicuously connived with *Zenith* and its Board of Directors to structure the said fraudulent issue of GDRs in a manner whereby the shareholder of *Zenith* had to suffer a loss to the tune of USD 14.50 million. The records available clearly suggest that Noticee no. 7 was also a wholly owned entity of Noticee no. 6 and was part of the said fraudulent scheme through which, without paying adequate consideration/subscription money, it had received allotment of entire issue of GDRs

in violation of law. Under these compelling facts and circumstances, I have to conclude that *Noticee nos. 6 and 7* have violated Section 12A(a), (b), (c) of *SEBI Act, 1992* read with regulation 3(a),(b),(c),(d) and 4(1) of *SEBI PFUTP Regulations, 2003*.

64. As already noted above, *HBS* was connected to *AP*. I also observe that, *IFCF* and *HBS* being funds which invests money of foreign corporate and institutional investors, should have exercised utmost due diligence in taking investment decisions. Both *IFCF* and *HBS* have not provided any reason for their decision to invest in GDRs of *Zenith* and thereafter, converting and selling those equity shares. I note that the connection between *AP* and *IFCF* and *HBS*, coupled with the fact that these *Noticees* sold equity shares on conversion of GDRs issued without any consideration, and their inability to provide any rationale for the conversion and sale, leads to a reasonable inference that *IFCF* and *HBS* were also part of the fraudulent scheme of issuance of GDRs of *Zenith* without any consideration and subsequent sale of those converted equity shares in the Indian securities market. I have noted that *Noticee nos. 7 to 10* have preferred to not file any response to the allegations made in the SCN. Although the SCN does not specifically deal with the details of transfer of GDRs converted equity shares of *Zenith* to *Noticee no. 8* and *9*, in whose hands those GDRs converted equity shares were notices to sold in the Indian securities market, having found that these entities i.e. *Noticee nos. 6 to 10* enjoyed an inseparable connection amongst themselves and they have failed to submit with sufficient supporting documents rebutting the allegations of the connections enjoyed by them, I am constrained to record from the observations made above that the acts of these two *Noticees* i.e. *IFCF* (*Noticee no. 8*) and *HBS* (*Noticee no. 9*) have also violated Section 12A(a), (b), (c) of *SEBI Act, 1992* read with regulation 3(a),(b),(c),(d) and 4(1) of *SEBI PFUTP Regulations, 2003*. As noted above, some of such GDRs after conversion into underlying shares of *Zenith*, were sold in the Indian securities market by *Noticee nos. 8 and 9* and thus made the profit. In this regard, it is pertinent to look at the summary of trades undertaken by *IFCF* and *HBS* in the scrip pf *Zenith*:

Table no. 8

Name of entity	No. of shares sold		Total no. of shares sold	Trade value (₹)		Total trade value (₹)
	BSE	NSE		BSE	NSE	
IFCF	2,17,19,873	2,60,10,127	4,77,30,000	26,94,99,828.60	30,88,61,582.00	57,83,61,410.60
HBS	58,30,544	56,76,016	1,15,06,560	61,97,237.89	60,53,835.85	1,22,51,073.74
Total	2,75,50,417	3,16,86,143	5,92,36,560	27,56,97,066	31,49,15,418	59,06,12,484

65. As already observed above that *IFCF* and *HBS* were recipients of GDRs of *Zenith* (from *Vintage*, which was owned by *AP*) which had been issued under a fraudulent scheme and for which the *Noticee no. 7* defaulted in paying the consideration, even after selling the converted equity shares subsequently through *IFCF* and *HBS*, in the Indian market thereby making gains by pocketing the defaulted amount. I find that in the process, *IFCF* has made an illegal gain of ₹57,83,61,410.60/- and *HBS* has made an illegal gain of ₹1,22,51,073.74/- by selling underlying equity shares that were obtained by converting GDRs, which were initially allotted to *Vintage* under a scheme, as part of an artificial arrangement as discussed in the foregoing paragraphs of this Order. On the basis of close connection of *IFCF* and *HBS* with *AP* and the role played by the *AP*, *Vintage*, *IFCF* and *HBS* in implementing the fraudulent scheme of GDR issue of *Zenith*, it is the call of justice that all these entities should be made jointly and severally liable to disgorge the said illegal gains earned by *IFCF* and *HBS*. Therefore, in my considered view, the gains made by these *Noticees* by selling such shares are liable to be disgorged since the underlying shares of those GDRs for which no consideration was paid by *Vintage*, were sold and unlawful gains were made out of such sale by these *Noticees*.

66. Regarding the role of *CCP* (*Noticee no. 12*) I note that the SCN states that *IFCF* was registered as a sub account of FII- *Euram Bank* from December 12, 2008 to July 19, 2011 and *IFCF* was granted transfer from *Euram Bank* to another FII (FPI) i.e. *CCP* (*Noticee no. 12*) on July 20, 2011 and was registered as a sub account of FII- *CCP* for the period July 20, 2011 to June 19, 2017. Underlying shares of GDRs of *Zenith* were sold to Indian investors during the period August 12, 2010 to October 31, 2012 by

IFCF. I also note that the beneficial owner of *CCP* was *AP* and therefore, it was an extension of *AP* himself. The aforesaid facts coupled with the fact that *IFCF* was the only sub account which *CCP* ever registered and *IFCF* and *CCP* were registered on the same date, it leaves no doubt in my mind that *CCP* was also part of the fraudulent scheme of issue of GDRs of *Zenith* wherein *AP* owned entities were used at every stage and it was incorporated solely for the purpose of acting as FII to *IFCF*. Similarly, I note from the records that *HBS* was registered as a sub account of FII- KBC Aldini Capital Limited and was transferred to *Golden Cliff* with effect from 22 October, 2012. Further, the underlying shares of GDRs of *Zenith* were sold to Indian investors during the period March 2013 to January 2014 by *HBS*. I also note that *Golden Cliff* was connected to *AP* and *HBS* was the only sub account which *Golden Cliff* ever registered. The aforesaid details coupled with the fact that *Golden Cliff* has not submitted any reply to the SCN, clearly indicates the *malafide* intention of *Golden Cliff* in the whole fraudulent scheme involving GDR issuance by *Zenith*. In my opinion, without the role & support of *CCP* and *Golden Cliff*, the said fraudulent scheme conceived by the *Company* pertaining to the issuance of GDRs followed by loan default by *Vintage*, forfeiture of GDR proceeds by *Euram Bank* and unlawful gains made by *IFCF* and *HBS* out of the underlying equity shares of those GDRs of *Zenith* which were allotted to *Vintage* for inadequate consideration, could not have been completed and those underlying equity shares of *Zenith* could not have been dumped in the Indian securities market. Therefore, I am of the view that *CCP* *Golden Cliff* have also acted in concert with the other *Noticees* in fructifying the aforesaid fraudulent scheme in violation of sections 12A(a), (b), (c) of *SEBI Act, 1992* read with regulation 3(a),(b),(c),(d) and 4(1) of *SEBI PFUTP Regulations, 2003*.

67. From the records available before me, I note that *Zenith*, *Pan Asia* and *Euram Bank* had entered into an Escrow Agreement dated May 12, 2010. The Escrow Agreement inter-alia states that “..The Lead Manager has entered into a placing agreement dated on or about the date hereof (the “Placing Agreement”) with the Company to procure investors (the “Placees”) for the subscription of up to 1,811,902 global depository receipts ...”

I note that the aforesaid Escrow Agreement specified the role of Lead Manager (*Pan Asia*) for procuring subscribers for the GDR issue. Further, it is also on records that AP was a director in *Pan Asia*. Therefore, the connection between *Pan Asia* and AP, is well established. In the *Pan Asia matter (supra)* the Hon'ble SAT has examined the role of a lead manager in a GDR issue and has observed as follows:

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

68. Thus, *Pan Asia* being part of the fraudulent scheme devised by AP, provided a false list of GDR subscribers to *Zenith* and misled the Indian investors with respect to the demand for the GDRs issued by *Zenith* in the foreign market whereas the truth was that *Vintage* was the only pre-determined single subscriber to the entire GDR issue of *Zenith*. Therefore, I find that *Pan Asia* (Noticee no. 10) has clearly violated Section 12A(a), (b), (c) of SEBI Act, 1992 read with regulation 3(a), (b),(c),(d) and 4(1) of SEBI PFUTP Regulations, 2003.

69. Regarding the role of Noticee no. 11 (Mukesh) in the GDRs issuance by *Zenith*, I note that Noticee no. 11 has submitted that he was never the director or Managing Director of *Vintage*, as alleged in the SCN and was only an employee of *Vintage*. He has also submitted that *Vintage* was fully owned and controlled by AP. He has further stated that after AP set up EBAL in Joint Venture with *Euram Bank*, there were concerns with respect to conflict of interest raised by *Euram Bank* while signing the *Loan Agreement* and therefore, on account of the above conflict, Noticee no. 11 was instructed by AP to sign certain documents. I note that the Noticee no. 11 has

submitted various documents including residence permits, employment card, affidavit, etc. to confirm his position as an employee and not as a Director in *Vintage*. However, I cannot lose sight of the fact that *Noticee no. 11* acted as aid to *AP* and facilitated *AP*'s scheme by executing the requests for redemption of loan amount for GDR issue of *Zenith* in the capacity of Authorized Signatory of *Vintage*. Also, *Noticee no. 11* was working in the capacity of Managing Director of *Vintage* when *Vintage* stopped repaying the loan. I further note that *Mukesh* was connected to *AP* through various other entities owned by *AP* such as Ramsai and Alka India Ltd. wherein he was a director. I also note that the KYC documents of *Vintage* state that *Mukesh* was an Authorized Signatory of *Vintage*. Further, as per records available before me, I also observe that, *Mukesh* signed the loan agreements for GDR issuance of other listed companies viz: Vikash Metal & Power Ltd. and Rasoya Proteins Ltd., wherein similar fraudulent scheme of GDR issuance was devised by *AP*. In this regard, I would like to rely on the observations of Hon'ble SAT in the matter of *Mukesh Chauradiya vs. SEBI (Appeal no. 260 of 2020, DoD: 07.01.2021)*, wherein the Hon'ble Tribunal had dealt with similar contentions of the *Noticee no. 11* who was an appellant in the matter referred to above. The Hon'ble Tribunal observed *inter alia*, as under:

.....“ It is an undisputed fact that the appellant has signed as Managing Director as we also note at page 94 of the Memo of appeal. It is not that he signed “for managing director” or “on behalf of managing director” etc. Therefore, irrespective of the dispute relating to the designation as contended by the appellant, the appellant was undoubtedly having the power to sign as managing director. In the certificate given by the JAFZA only 3 names [and 4 designations, with the sole Director, being named as the Secretary also] are indicated who are responsible people in *Vintage FZE* and appellant was one of them. Therefore, the dispute as to what was the exact designation of the appellant is irrelevant in the context that admittedly the appellant signed as Managing Director of Vintage FZE. It is also important to clarify here that using a designation in other jurisdictions, such as UAE in the instant case, or elsewhere, for comparison to similar designations in India is also not relevant because designations vary widely even with respect to

similarly placed officials across multiple jurisdictions. What is relevant is only whether the appellant was holding a position in which he could put his signature, that too in a loan agreement for USD 13.24 million with a bank under the designation of Managing Director. In any case designation of a person and whether a person is “an officer in default” in an organization etc are irrelevant when the charge is that of aiding and abetting fraud under the PFUTP Regulations, which is the case herein.

“.....It is also held in the impugned order that the appellant was also a director of Ramsai Investment Holdings P. Ltd. wherein Arun Panchariya was also a director holding 99.98% of shares through Vintage FZE. This clearly demonstrates appellant’s strong connection with Panchariya. Appellant’s stated lack of awareness relating to details of the loan or other operations of Vintage is clearly feigning ignorance as the appellant has been working at senior level since 2005 and is admittedly signatory to many such agreements. In the instant matter the loan agreement clearly spells out that it is for the purpose of subscribing to the Winsome GDR and the amount of GDR issue and the amount of loan matches indicating that Vintage is going to be the sole subscriber of the GDRs in question. Pledge Agreement was annexed to the loan agreement, as given in the impugned order quoted in para 2 of this Order.”

“.....This Tribunal is fully aware of the modus operandi, as in the impugned matter, used by various entities in the manipulation of several GDR issues by Indian Companies as held in various orders passed by us such as in Pan Asia Advisors Ltd. (another Panchariya entity), Cals Refineries etc.”

Emphasis Supplied

70. In the light of the aforementioned judicial observations and the strong preponderance of probabilities that emerges out of the entire set of facts and circumstances, it becomes succinctly clear that even though *Mukesh* was not part of the *Company* but was certainly a part of the fraudulent plan drawn up in connivance with the *Company* to issue GDR abroad in a deceptive manner. From his directorship

in various entities controlled by AP and the fact that he was an Authorized Signatory for *Vintage*, I find that *Mukesh* was not a mere employee but was a close associate of AP and as such *Mukesh* was aware of as well as actively associated with the scheme devised by AP for various GDR issues of Indian listed companies including the fraudulent scheme related to the GDR issue of *Zenith*. I note that *Mukesh* has been alleged to be involved in 14 GDR issues involving fraudulent schemes orchestrated by AP and he has already been debarred in one such case for a period of 1 year vide order dated February 20, 2020 passed in the matter *Visu International Ltd.* Therefore, from the consideration of materials available on record including the submissions made by him, it is clearly discernible that by his various acts & deeds with respect to the instant matter, *Mukesh* (Noticee no. 11) has certainly violated Section 12A(a), (b), (c) of SEBI Act, 1992 read with regulation 3(a), (b), (c), (d) and 4(1) of SEBI PFUTP Regulations, 2003.

71. With regard to the role of *Euram Bank* (Noticee no. 13), it is noted that it had provided loan to *Vintage* for subscribing to the issue of GDRs of *Zenith*, in terms of *Loan Agreement* and *Pledge Agreement* both dated May 12, 2010. Interestingly, the security for said loan was provided by the *Company* and no collateral or security (even not in the form of GDRs which were subscribed by *Vintage* by using the said loan taken from *Euram Bank*) was provided by the borrower i.e. *Vintage* for the said loan nor was insisted upon by the lending bank on *Vintage*. Curiously, the security against the loan granted by *Euram Bank* to *Vintage* was obtained from the GDR issuer (*Zenith*) by way of a pledge on the subscription proceeds receivable by it against issuance of the GDRs to *Vintage*. Further the loan was so structured that only upon repayment of the loan by *Vintage*, the amount of GDR proceeds lying in the account of *Zenith* (maintained with *Euram*) would be released for utilization by *Zenith*, only to the extent of repayment of loan so made by *Vintage*. Admittedly, *Vintage* repaid apart of the loan only after offloading the equity shares of *Zenith* pursuant to conversion of the GDRs allotted to it. The structure of the said loan transaction speaks volume for itself, wherein a lender provides a loan to the borrower without taking any security

from the principal borrower and instead accepts entire security from a third party (*Zenith*) to guarantee the said loan. The said structure of the loan transaction clearly indicates that *Euram Bank* played a major part in the fraudulent scheme of issue of GDR of *Zenith* by structuring the loan transaction in such a peculiar manner thereby fastening the loan liability of an unrelated entity (*Vintage*) with the GDR issuing *Company* which provided an easy escape route to the borrower entity to default its repayment obligations to *Euram Bank* and at the same time corner unlawful gains by selling the underlying shares of those GDRs which were allotted to it against grossly inadequate consideration. It would not be out of place to mention here that *Euram Bank* has been found involved in various other GDR issues of Indian listed companies investigated by SEBI. Regarding the allegation of connection of *Euram Bank* with *AP* through a joint venture *EBAL*, I note that though *Euram Bank* has not denied the existence of the said joint venture, it had submitted that *AP* was not an owner / shareholder in *Euram Bank* but was merely a Director in *EBAL*. It has also contended that the said joint venture with *EBAL* was dissolved in December 30, 2013. Given the facts and circumstances as stated above, it cannot be denied that *AP* and *Euram Bank* were related in one way or the other, since, entering into a joint venture implies that the two entities knew each other well enough to trust each other so as to pursue common business interests. Further, as has been observed from the above facts, it is also incomprehensible that a bank which had advanced loan to *Vintage* did not ask for any security from the said borrower but readily agreed to give loan to it on the security entirely provided by a third party i.e. *Zenith* on the basis of their future receivables against GDR which were yet to be issued and such receivables were not in the possession of *Zenith*, as on the date of entering into the *Pledge Agreement* i.e. on May 12, 2010. As stated earlier, the *Loan Agreement* provided that *Euram Bank* shall disburse the loan amount only into the bank account of *Zenith* (towards the GDRs subscriptions from *Vintage*), on which it had created a pledge by virtue of the *Pledge Agreement* entered into with *Zenith*. All this indicates that *Euram Bank* was well aware of and itself a central part of the fraudulent scheme.

72. Regarding the role of *Euram Bank* as a registered FII, I note that *it* was registered as a FII with SEBI during the period November 20, 2008 to November 20, 2011 and during this time it had only one sub account, i.e. *IFCF*, which undertook the role of offloading the converted shares of the GDRs issued by *Zenith* in the Indian market as already discussed in the preceding paragraphs of this Order. In this regard, *Euram Bank* has, *inter alia*, submitted that *IFCF* was registered with SEBI as a sub-account after due scrutiny of its background by SEBI and having found *IFCF* to have satisfied its selection criteria, SEBI granted permission to register it as a sub-account and to trade in Indian securities market. *Noticee no. 13* has further submitted that a large chunk of the trading activities by *IFCF* in the scrip of *Zenith*, happened only after the *IFCF* was transferred by *Euram Bank* as its sub account to *CCP* and such transfer of *IFCF* as a sub account to *CCP* was undertaken with the permission of SEBI. Therefore, it would be wholly unfair and unjust on part of SEBI to penalize *Euram Bank* for the alleged infractions of law by *IFCF*. First of all, for getting a registration of a sub account under an FII in the erstwhile FII Regulations, the primary responsibility regarding KYC verification of the said sub account lies with the respective FII which is proposing the said sub account to SEBI for registration. In the instant matter also, as admitted by the *Noticee no. 13*, it was *Euram Bank*, as a registered FII who had forwarded the application of *IFCF* to SEBI for registration of *IFCF* as a sub account. Therefore, *Noticee no. 13* cannot run away from its onerous responsibility regarding introducing the *IFCF* as its sub account to the Indian securities market. Further, the role of *Euram Bank* as a FII in the whole scheme of GDRs issuance, has to be looked from the lens of the strong connection existing between *IFCF*, *AP* and *Euram Bank* FII has and the fact that after its registration as a sub-account on the basis of KYC verification and proposal made by the *Euram Bank* FII, sale of shares by the sub account viz. *IFCF* in the scrip of *Zenith* was noticed. Thus, without the active role of *Euram Bank* as the FII backing *IFCF* as its sub-account, the fraudulent scheme could not have been completed and the shares of *Zenith* underlying those fraudulently allotted GDRs could not have been sold in the Indian securities market. Therefore, in

the light of the dubious role played by *Euram Bank* as a bank while granting a fraudulently structured loan to *Vintage* and as a FII on behalf of its sub account *IFCF* which sold the underlying shares of those GDRs issued by *Zenith*, I am of the view that the *Noticee no. 13* cannot be stated to have acted fairly in the entire matter pertaining to the issuance of GDRs by *Zenith*. On the contrary, a holistic consideration of all the materials available on records burden me with sufficient reasons to hold that the acts of the *Noticee no. 13* also amounted to transgression of sections 12A(a), (b), (c) of *SEBI Act, 1992* read with regulation 3(a), (b),(c),(d) and 4(1) of *SEBI PFUTP Regulations, 2003*. However, at the same time I am cognizant of the fact that the *Euram Bank* has already taken corrective steps including removing *AP* as a Director from its joint venture *EBAL*, dissolving *EBAL* and transferring its sub account *IFCF* to *CCP*. Therefore, in my opinion, though the acts of the *Noticee no. 13* are in violation of the provisions alleged in the SCN, taking cognizance of the aforesaid mitigating measures taken by it as a bank and as a FII, the matter needs to be considered accordingly.

Directions:

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

- (i) *Noticee no. 1*, the *Company* is restrained from accessing the Securities Market including by way of issuing prospectus, offer document or advertisement soliciting money from the public and is further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner, for a period 03 years from the date of this order. Further. *Noticee no. 1*, shall continue to pursue all the measures to bring back the outstanding GDR

proceeds amounting to USD 14.50 million into its bank account in India and after bringing the aforesaid outstanding GDR proceeds into its Indian Bank account, it shall furnish a Certificate from a peer reviewed Chartered Accountant of ICAI along with necessary documentary evidences to SEBI, certifying the compliance of this direction.

(ii) *Noticee nos. 6, 7, 8 and 9* are further directed to disgorge, jointly and severally, illegal gains of ₹59,06,12,484.34/- made by way of sale of equity shares (after conversion of GDRs) of *Zenith* by *IFCF* (₹57,83,61,410.60/-) and *HBS* (₹1,22,51,073.74/-) as sub-accounts in the Indian securities market, along with interest of 6% per annum from the date of sale of those equity shares, within a period of 45 days from the date of this order. The amount, as directed shall be paid to SEBI by way of a Demand Draft favouring "Securities and Exchange Board of India" payable at Mumbai. In case, *Noticee nos. 6, 7, 8 and 9* fail to comply with the said direction, they shall be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in the securities market, till the actual payment of disgorgement amount or till the completion of the debarment directed at sub-paragraph (iii) below, whichever is later. This direction is without prejudice to any other action including action for recovery of such amounts from these *Noticees* which may be initiated by SEBI.

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

Names of the <i>Noticee</i>	PAN	(Period In Years)
Mr. P.V.R. Murthy	ABRPM1271B	02
Mr. Yash Birla	AAJPB2505N	01

Mr. M.S. Arora	AABPA9704C	01
Mr. A.P. Kurias	AAHPK2699E	01
Mr. Arun Panchariya	AEVPP6125N	03
Vintage FZE	Not available	03
India Focus Cardinal Fund	AABCI9518D	02
High Blue Sky Emerging Market Fund	AADCK9460G	02
Pan Asia Advisors Ltd.	Not Available	02
Mr. Mukesh Chauradiya	AAVPC0966A	02
Cardinal Capital Partners	FII Registration No. INMUFD26321	01
Golden Cliff	Not Available	01

(iv) Obligation of the aforesaid *Noticees*, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange (s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order, only in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the aforesaid *Noticees* in the F&O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

(v) It is clarified that during the period of restraint, the existing holding of securities of the aforesaid *Noticees* including units of mutual funds, shall remain frozen.

(vi) In light of my findings at paragraph 72 above, *Noticee no. 13* is hereby warned to ensure that all its future dealings in the Indian securities market be done strictly in accordance with law.

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

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

-Sd-

DATE: MARCH 30, 2021

S. K. MOHANTY

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA