

WTM/AB/EFD/DRA-I/19/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

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

In respect of:

Sr. No.	Name of the Noticees	PAN
1.	Aqua Logistics Limited	AADCA0603M
2.	Rajesh G. Uchil	AAAPU1152D
3.	M. S. Sayad	AFMPS3047J
4.	Harish G. Uchil	AAAPU1153C
5.	Arun Panchariya	AEVPP6125N
6.	Vintage FZE (now known as Alta Vista International FZE)	NA
7.	Mukesh Chauradiya	AAVPC0966A
8.	Prospect Capital Limited	NA
9.	John Behar	NA
10.	India Focus Cardinal Fund	AABCI9518D
11.	Cardinal Capital Partners	FII Registration No. INMUFD263211
12.	Sanjay Aggarwal	AAFPA4428F

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

In the matter of Aqua Logistics Limited

1. Present proceedings have emanated from a show cause notice dated October 01, 2018 (hereinafter referred to as “**the SCN**”) issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) to the Noticees, alleging violations of Section 12A(a), (b) & (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, “**SEBI Act, 1992**”) read with Regulations 3(a), (b), (c) & (d) and 4(1), (2)(f), (k) & (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as ‘**PFUTP Regulations**’) by Aqua Logistics Limited (hereinafter also referred to as “**the Company**” or “**AQUA**”) and violations of Section 12A(a), (b) & (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d) and 4(1) of PFUTP Regulations, 2003 by Noticee No. 2 to 12. The Noticees were called upon to show cause as to why suitable directions under Sections 11(1), 11B and 11(4) of the SEBI Act, 1992 should not be issued against them. The SCNs issued to the Noticees, also contained the copies of documents relied upon in the SCNs, which are as detailed below:

Annexure No.	Details
1.	ICICI Bank email dated June 02, 2016
2.	Corporate announcements
3.	BSE email dated November 14, 2017
4.	Copy of loan Agreement dated February 03, 2011
5.	KYC Documents of Vintage
6	Aqua’s Board Resolution dated September 09, 2010
7.	Page no. 16 of Annual Report 2010-11
8.	Pledge Agreement dated February 03, 2011
9.	Aqua Retail Account statement
10.	Escrow account statement of Aqua

11.	Vintage Loan Account Statement
12.	Aqua letter dated July 09, 2012
13.	EURAM Banks letter dated August 14, 2012
14.	Details of GDR transactions
15.	Copy of Certificate of Incorporation of IFCF and CCP
16.	ICICI Bank letter dated November 16, 2017
17.	Copy of termination notice provided by ICICI Bank
18.	Copy of Administrative Fine Statement
19.	India Focus Cardinal Fund Letter dated April 02, 2012 and AP's email dated July 12, 2010
20.	Mr. Sanjay Aggarwal written submission dated July 23, 2015
21.	Copy of the list of signatory details of Aqua from MCA website
22.	Mr. Sanjay Aggarwal's written submission dated November 08, 2018
23.	Bank of New York Mellon (BNY) email dated October 26, 2016
24.	KYC documents of Sanjay Aggarwal's account with Julius Baer and relevant account statement
25.	Copy of Escrow Agreement dated February 03, 2021
26.	Prospect Capital Limited's email dated December 23, 2015
27.	Pan Asia Advisors Limited's letter dated February 25, 2016.

2. As can be noted from the SCN, the aforesaid SCN came to be issued against the Noticees in view of the fact that SEBI conducted an investigation into the Global Depository Receipts (hereinafter referred to as “**GDR**”) issues of Noticee no. 1, for the period January 15, 2011 to February 28, 2011 (hereinafter also referred to as ‘investigation period’) to ascertain whether shares underlying GDRs were issued with proper consideration and whether appropriate disclosures, if any, were made by Noticee no. 1. The details of the said GDR issues by Noticee no. 1 are tabulated as below:

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
10 Feb, 2010	4.112 (at USD 15.17 per GDR)	62.38	ICICI Bank	9,45,76,000	Deutsche Bank Trust Company Americas, NY, USA	Prospect Capital Limited	EURAM Bank, Austria	Luxembourg Stock Exchange
	21.24 (at USD 2.52 per GDR)	53.53		1,06,21,92,350				

- Noticee No. 1 issued 41,12,000 GDRs (amounting to USD 62.38 million) on February 10, 2010. From a perusal of the corporate announcements made by AQUA to BSE Ltd. (hereinafter referred to as “**BSE**”) during the period September, 2010 to February, 2011, it was observed that members of the Company at the Annual General Meeting held on September 03, 2010, had approved the issuance of GDRs. It was further observed that the Company reported to the BSE on February 10, 2011 that *“the Board of Directors of the Company at its meeting held on February 10, 2011 has concluded the placement of 4,112,000 Global Depository Receipts (GDR) at US\$ 15.17 per Global Depository Receipt (Representing 94,576,000 Equity Shares of Rs. 1/- each) totaling to USD 62.379 million. Further the Board has also approved and allotted 94,576,000 underlying Equity Shares of Rs. 1/- each (representing 4,112,000 GDRs). The GDRs will be Listed on the Luxembourg Stock Exchange”.*
- BSE vide email dated November 14, 2017, provided the list of subscribers to the GDR issue of Noticee no. 1 made on February 10, 2010, as submitted by AQUA to BSE, and the details of subscribers are tabulated as under:

Sl. No.	Name of the subscriber	Address of subscriber	No. of GDRs allotted	No of shares underlying
1	Calculus Capital Ltd.	Suite 901, The Hong Kong Club Building, 3A Chater Road, Central Hong Kong	4,10,000	94,30,000
2	Comet Group Holdings Ltd.	140 William Street, Melbourne, VIC 3000 Australia	4,30,000	98,90,000
3	Icon Holdings Ltd.	4, Building B Al Mamoura, Mohammed Bin Khalifa Street (15th St), Abu Dhabi, UAE	3,95,000	90,85,000
4	Micromax Corporation	Nagoya Nikko Shoken Building 3-2-3 Sakae, Nakaku, Nagoyashi, Aichi, Japan	4,15,000	95,45,000
5	Prism International Holdings Ltd.	Suite 9, Ariake Frontier Building Tower B, 3-7-26 Ariake, Kototzu, Tokyo	3,00,000	69,00,000
6	Quantum Capital Ltd.	Unit 1202 Level 12, 1 Peking Road,	4,10,000	94,30,000

		Tsimshatsui, Kowloon, Hong Kong		
7	Ribber Partners Ltd.	7, Dashwood House, 69, Old Broad Street, London EC2M 1 QS, United kingdom	4,75,000	1,09,25,000
8	Santis Family Holdings Inc.	41, Emirates Towers, Sheikh Zayed Road, Dubai, UAE	4,52,000	1,03,96,000
9	Tieze Group Holdings Ltd.	Het Poortgebouw, Beech Avenue 54-80, Schiphol-Rijk, 1119 PW, Netherlands	4,05,000	93,15,000
10	Ying Yang Finances Ltd.	9, Edabori Center Building, 2-1-1 Edobori, Nishiku, Osaka 5500002, Japan	4,20,000	96,60,000
TOTAL			41,12,000	9,45,76,000

5. However, investigation revealed that the GDRs of the Company were subscribed by only one entity Vintage FZE (hereinafter referred to as “**Vintage / Noticee no. 6**”), now known as Alta Vista International FZE. Vintage opened loan account (a/c no. 540012-025-4) with European American Investment Bank AG (hereinafter referred to as “**EURAM Bank**”), a bank based in Vienna, Austria and obtained loans of USD 62.379 million by entering into Loan Agreement dated February 03, 2011 (Annexure – 4 to the SCN) with EURAM Bank. The Company had provided security for the loan obtained by Vintage from EURAM Bank by pledging the GDR proceeds, through pledge agreement dated February 03, 2011 with the EURAM Bank.
6. The SCN contained *inter alia* the following allegations:
 - (i) AQUA issued 41,12,000 GDRs (amounting to USD 62.38 million) on February 10, 2011. AQUA submitted a list of 12 subscribers to the GDR issue. However, it was observed that Vintage was the only entity to have subscribed to GDR issue and the subscription amount was paid by Vintage by obtaining loan, i.e. through loan agreement dated February 03, 2011, from EURAM Bank. The Loan Agreement was signed by Mukesh Chauradiya (Noticee No. 7) in the capacity of Managing Director of Vintage for subscription of GDRs of AQUA. It was observed from examination of KYC documents that Arun Panchariya (Noticee No. 5) was the beneficial owner and Managing Director of Vintage as on June 06, 2007.
 - (ii) Loan Agreement dated February 03, 2011, states that “*Nature and purpose of*

facility” is “To provide funding enabling Vintage FZE to take down GDR issue of 4,112,000 Luxembourg public offering and may only be transferred to Euram account nr. 580035, Aqua Logistics Ltd.” It was observed that this account was the same account where AQUA deposited its GDR proceeds for its GDR issue.

(iii) It was further observed that with regard to securities for the loan, the Loan Agreement read as under:

“....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:

- 1) Pledge of certain securities held from time to time in the Borrower's a/c 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.*
- 2) Pledge of the account no. 580035 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.”*

(iv) From the above loan agreement, it was observed that Vintage had availed of loan facility to the extent of USD 62.379 million from EURAM Bank to subscribe to the GDRs of AQUA. The loan amount was same as the GDR size of AQUA.

(v) It was noted that the Pledge Agreement dated February 03, 2011 were entered into between AQUA (as Pledgor) and EURAM Bank (as Bank). The Pledge Agreement was signed by Mr. M. S. Sayad (Whole Time Director of AQUA) (Noticee No. 3). The pledge agreement dated February 03, 2011 *inter-alia* states the following:

The preamble of the Pledge Agreement states:

“By Loan Agreement K021210-002 (hereinafter referred to as the “Loan Agreement”) dated 03 February 2011 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 K021210-002 and acknowledges and agrees to its terms and conditions.”

The pledge created in the Pledge Agreement is as below:

"2. Pledge

2.1 In order to secure any and all obligations, present and future, whether conditional or unconditional of the Borrower towards the Bank under the Loan Agreement and any and all respective amendments thereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the Loan Agreement- including those limited as to condition or time or not yet due-irrespective of whether such claims have originated from the account relationship, from 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 USD 62,379,040 existing from time to time at present or hereafter on the securities account(s) no. 580035 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. 580035 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and all amounts credited at any particular time therein....

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

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 pledge established pursuant to section 2.1 hereof."

"6. Realisation of the Pledge

6.1 In the case that the Borrower fails to make payment on any due amount, or defaults in accordance with the Loan Agreement, the Pledgor herewith grants its express consent and the Bank is entitled to apply the funds in the Pledged Account 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, a 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."

(vi) The pledge agreement dated February 03, 2011 was an integral part of loan agreement dated February 03, 2011 entered into between Vintage and EURAM

Bank. These agreements enabled Vintage to avail loan from EURAM Bank for subscribing to the GDRs of Noticee no. 1. However, the fraudulent arrangement of loan agreement and pledge agreement which resulted in subscription of GDR issue of the Company was not disclosed to the stock exchange in India.

- (vii) The GDR issue would not have been subscribed had the Company not given any such security towards the loans taken by the Vintage.
- (viii) From perusal of corporate announcements made by AQUA to the stock exchanges in India, it was found that AQUA had not informed with regard to pledge agreement entered into with EURAM Bank for subscription of GDRs and the outcomes of the board meeting dated September 09, 2010 which was price sensitive information could have impacted the price of the scrip.
- (ix) From the extracts of minutes of board meeting of AQUA held on September 09, 2010, investigation observed that Mr. M. S. Sayad (Noticee No. 3) was authorized to sign the pledge agreement which acted as security in connection with the loan availed by Vintage from EURAM Bank, to use funds deposited in AQUA's bank account as security in connection with the loan availed by Vintage. Relevant extracts of the resolution passed in the aforesaid meeting of the Board of AQUA are as under:

"RESOLVED THAT a bank account be opened with EURAM Bank ("the Bank"), Palais Esterhazy, Wallnerstrasse 4, 1010 Vienna, Austria 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."

Resolution also states that:

"RESOLVED FURTHER THAT the Company hereby authorises Mr. S.Sayad Director

1) 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.

2) 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 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 to do all such things as may be required from time to time on behalf of the Company,
AND

3) 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.”

- (x) The Company has been ordered to be wound up by Hon'ble Bombay High Court vide order dated Jan 04, 2013, and vide order dated November 12, 2013 Official Liquidator has been appointed. No information was received from AQUA and Official Liquidator with regard to minutes of board meeting dated September 09, 2010. It was observed from the examination of Annual Report of AQUA for the FY 2010-11 that 12 board meetings of AQUA were held in the FY 2010-11 and three directors namely Mr. Rajesh G Uchil (Noticee No. 2), Mr. M. S. Sayad (Noticee No. 3) and Mr. Harish G Uchil (Noticee No. 4) attended all the 12 board meetings of AQUA held in FY 2010-11. Therefore, it was observed that three directors namely Mr. Rajesh G Uchil, Mr. Harish G Uchil and Mr. M. S. Sayad had attended the AQUA's board meeting dated September 09, 2010 and authorized EURAM Bank to use the GDR proceeds in connection with loan, if any and also authorized Mr. M. S. Sayad to sign the agreement related to GDR issue of the AQUA.
- (xi) Therefore, it was observed that subscription of GDRs of AQUA was done through loan availed by Vintage from EURAM Bank. The GDR issue was managed and structured by Arun Panchariya (Noticee No. 5) through the Loan Agreement (signed between EURAM Bank and Vintage) and Pledge Agreement (signed between EURAM Bank and AQUA). It was observed that all 4.112 million GDRs of AQUA (amounting to USD 62.379 million) were subscribed by only one entity, i.e., Vintage. It was also observed that AQUA submitted a false list of subscribers to the stock exchange.
- (xii) Mr. M. S. Sayad (Noticee no. 3) executed the Pledge Agreement with EURAM Bank on February 03, 2011 and pledged GDR proceeds as collateral against loan availed by Vintage from EURAM Bank. Further, the company's authorization to EURAM Bank to use the funds so depicted in the said bank account as security in connection with loan, if any, shows that the said board resolution dated September 09, 2010 was to provide security in connection with loan. It was further observed that the Pledge Agreement was an integral part of Loan Agreement and vice versa and both were executed concurrently. It was observed that Mr. M.S. Sayad

(Noticee no. 3) had complete knowledge about the subscriber to GDR issue, as well as source of funding, Pledge Agreement and the Loan Agreement and had understanding with Vintage but the same has not been informed to the shareholders/ investors of AQUA.

- (xiii) GDR proceeds were deposited in AQUA's account no. 580035 (Annexure 9) held with EURAM Bank. Details of receipt of GDR proceeds in the AQUA's bank a/c maintained with EURAM Bank in Austria are as given below:-

Date of credit of funds	Credit amount (US\$)
09/02/2011	62,379,040

- (xiv) The details of realization of funds by AQUA out of GDR proceeds of US\$ 62.379 million is tabulated below:

Date of transfer of funds	Amount of funds transferred from AQUA's EURAM Bank a/c to AQUA HK BANK a/c (USD)	Amount of funds transferred to other entities (USD)
09/02/2011		2,500 Escrow Fee GDR Issue
22/02/2011		1,871,371 Payment to Premier Management Consultancy Ltd
04/05/2011	195,000	
01/07/2011	400,000	
20/07/2011	2,000,000	
21/07/2011	2,000,000	
28/07/2011	2,000,000	
03/08/2011	2,500,000	
11/08/2011	2,000,000	
30/08/2011	1,290,000	
07/09/2011	1,250,000	
15/09/2011	2,385,000	
03/11/2011	1,250,000	
07/12/2011	3,000,000	
13/12/2011	2,500,000	
10/01/2012	2,500,000	
13/01/2012	2,500,000	
17/01/2012	2,500,000	
20/01/2012	2,500,000	
27/01/2012	2,500,000	
31/01/2012	2,400,000	
03/02/2012	2,500,000	
TOTAL	40,170,000	1,873,871

- (xv) It was observed that out of the GDR proceeds of USD 62.379 million, AQUA had transferred USD 40.17 million to AQUA HK and USD 1.87 million was used as GDR Issue expenses. Out of USD 40.17 million received by AQUA HK, it had transferred an amount of USD 26.68 million back to Sanjay Aggarwal (Noticee No. 12).
- (xvi) With regard to repayment of loan by Vintage, it was observed that Vintage repaid loan amount of USD 41.64 million and thereafter defaulted on the repayment of balance loan amount of USD 20.79 million (includes interest on loan amount). It was observed that EURAM Bank vide letter dated August 14, 2012 has informed AQUA that it has realized an amount of USD 20.76 million from AQUA's pledged deposit account in order to repay part of the outstanding loan of Vintage. It was observed that an amount of USD 20.76 million was adjusted by EURAM Bank against loan account of Vintage. It was further observed that GDRs to the extent of USD 47.44 million were issued without consideration to Vintage/ Mr. Sanjay Aggarwal.
- (xvii) It was observed from the examination of AQUA's Annual Report for FY 2012-13 that AQUA did not mention about the loan default by Vintage. It was observed from the Annual Report of AQUA for FY 2012-13 that AQUA didn't write off the loan amount of USD 20.76 million defaulted by Vintage. It was further observed from the examination of the corporate announcements made by AQUA to Stock Exchanges during the period August 13, 2012 to March 31, 2013 that AQUA did not inform stock exchanges regarding loan default by Vintage and adjustment of GDR proceeds to the extent of USD 20.76 million against the loan default by Vintage.
- (xviii) It was further observed that from the corporate announcements made by AQUA during the period September 2010 - February 2011 that AQUA did not inform stock exchange about Pledge Agreement/collateral security. Further, it was observed that loan default by Vintage to the extent of USD 20.76 million was paid from the proceeds of GDR issue of AQUA.

- (xix) All GDRs were subscribed by Vintage. GDRs were converted into equity shares and these shares were sold in the Indian Capital Market. Cancellation of GDRs started from June 24, 2011 and continued till January 06, 2012. On perusal of the details of GDR transactions provided by EURAM Bank, it was observed that Vintage had transferred 40,000 GDRs to India Focus Cardinal Fund and 4, 44,500 GDRs to ALBULA. During the period a total 4,84,500 GDRs (11.78% of total 41,12,000 GDRs issued) were converted.
- (xx) IFCF (Noticee no. 10) was registered as sub account of FII-EURAM Bank from December 12, 2008 to July 19, 2011 and IFCF was granted transfer from EURAM Bank to Cardinal Capital Partners (Noticee No. 11) on July 20, 2011 and was registered as sub account of FII- Cardinal Capital Partners for the period July 20, 2011 to June 19, 2017. It was further observed that IFCF and CCP were incorporated on August 22, 2008 in Mauritius.
- (xxi) IFCF was registered as sub-account under FII-EURAM and FII-CCP. It was observed that no other sub account was registered with EURAM Bank except IFCF. As FIIs, both EURAM Bank and CCP did not make investment in India except its sub account IFCF which sold shares of AQUA in the market. It was further observed that CCP was registered as FII only to facilitate IFCF become its subaccount and to sell the converted shares of AQUA in the Indian securities market.
- (xxii) IFCF and Albula Investment Fund Ltd. sold the equity shares (which they received post cancellation of GDRs) in Indian securities market. By September 26, 2012, IFCF sold all the shares which it had received post conversion of GDRs i.e., 9,20,000 equity shares.
- (xxiii) Further, it was observed from ICICI Bank's (Custodian to the GDR Issue) email dated November 16, 2017 that GDR program was terminated on November 12, 2015. It was observed that AQUA did not inform stock exchange (BSE and NSE) about termination of GDR program.

(xxiv) According to an Administrative Fine Statement available on Dubai Financial Services Authority (DFSA) website, Arun Panchariya (Noticee No. 5) held positions with Pan Asia Advisors Ltd. (now known as Global Finance and Capital Ltd.), Vintage (now known as Alta Vista International FZE) and India Focus Cardinal Fund (Mauritius).

(xxv) During the period January 2009 to May 31, 2010, CCP held 100% shares of IFCF. Arun Panchariya (Noticee No. 5) held 100% shares of CCP. Thus Arun Panchariya was 100% shareholder of IFCF. Arun Panchariya also served as Chief Investment Officer of CCP in 2010. IFCF letter dated April 02, 2012 and Arun Panchariya's email dated July 12, 2010 providing details of the same are placed at Annexure 19 of the SCN. Among the two FII sub-accounts which received the converted equity shares of AQUA, Arun Panchariya connected entity IFCF sold the converted equity shares to the tune of Rs. 88.15 lakhs on Indian stock exchanges (BSE and NSE).

(xxvi) EURAM Bank was also registered as Foreign Institutional Investor (FII) in India and IFCF was the only sub-account of EURAM Bank.

(xxvii) From the above, it is alleged that IFCF (Noticee No. 10), CCP (Noticee No. 11), Prospect Capital Ltd (Noticee No. 8), John Behar (Noticee No. 9), Mukesh Chauradiya (Noticee No. 7) and Sanjay Aggarwal (Noticee No. 12) are connected to Arun Panchariya (Noticee no. 5). In collusion with these entities and AQUA, Arun Panchariya (Noticee no. 5) devised the GDR issue in fraudulent manner and subsequent sale of shares in Indian market.

INSPECTION, REPLY, HEARING AND WRITTEN SUBMISSIONS:

7. The SCN dated October 01, 2018 was delivered by speed post to all the Noticees except Noticees no. 5, 6, 10 and 11, as the letters to the overseas addresses of the Noticees no. 5, 6, 10 and 11, as available on record, returned undelivered. Since it was learnt that Noticee No. 5 was then an Honorary Consulate General of Liberia stationed in Argentina, the SCN was delivered to Noticee no. 5 at the address of the

Liberian Consulate in Argentina on August 28, 2019 through Speed Post. Further, since Noticee no. 5 was the co-founder of Pan Asia Advisors Ltd (now known as Global Finance & Capital Ltd), the address of Pan Asia Advisors Ltd was obtained from the website of the Companies House, UK. Accordingly, letter dated January 14, 2020 was issued and delivered via Speed Post to Noticees no. 5 and 10 at the address of Pan Asia Advisors Ltd. with regard to the issue of show cause notices in respect of 13 matters including the captioned matter, informing them that the show cause notices were available on the SEBI website. Since Noticee no. 5 was the Managing Director and beneficial owner of Noticee no. 6, the delivery of letter dated January 14, 2020 to Noticee no. 5 was taken as due intimation to Noticee no. 6 as well. As regards Noticee No. 11, SCN was sought to be served via FSC Mauritius. The FSC Mauritius vide letter dated January 24, 2020 confirmed that the SCN was delivered through Noticee's management Company and acknowledged by the Compliance Officer of the management Company. In this regard, I note that Noticees no. 5 who is the beneficial owner of Noticee's no. 6, 10 and 11 has replied to the SCN vide letter dated November 24, 2020.

8. Upon delivery of the SCN, Noticee no. 12 vide letter dated November 15, 2018 sought for copies of certain documents in the matter. Accordingly, vide SEBI letter dated January 08, 2019, the Noticee no. 12 was informed that all the documents relied upon in the proceedings have been provided to him as Annexures to the SCN. Thereafter, vide letter dated February 08, 2019, Noticee no. 12 sought for inspection of documents and copies thereof. Accordingly, vide SEBI letter dated February 26, 2019, the Noticee no. 12 was granted inspection of documents on March 29, 2019, wherein, the authorized representative of the Noticee no. 12 appeared and carried out inspection of documents and further sought inspection of the investigation report and certain annexures. SEBI vide its letter dated April 22, 2019 informed the Noticee no. 12 that with respect to his requests for the investigation report, the SCN contains relevant extracts of the findings of the investigation report with regard to the charges levied against him and that all documents relied upon in the proceedings have been provided to him while issuing the SCN. Pursuant to completion of inspection of documents by Noticee no. 12, the matter was placed before me on June 13, 2020 for

hearing in the matter and accordingly, an opportunity of personal hearing was granted to the Noticees on September 04, 2020. I note that notice of hearing vide letter dated July 16, 2020 was also served upon the Official Liquidator of Bombay High Court as the Company has been directed to be wound up vide Order dated January 04, 2013 of the Hon'ble Bombay High Court. On September 04, 2020, the respective authorized representatives appeared for Noticees no. 7, 8 and 9 via video conferencing and made submissions. Noticee no. 7 then filed his reply to the SCN vide his letter dated September 09, 2020 and Noticees no. 8 and 9 also filed their joint reply to the SCN vide letter dated October 02, 2020. Noticees no. 5 and 12 vide their respective emails, sought adjournment for the hearing scheduled on September 04, 2020. However, Noticees no. 1, 2, 3, 4, 6, 10 and 11 did not appear for the hearing on September 04, 2020, nor did they file any letter/email seeking adjournment.

9. Following the principles of natural justice, another opportunity was granted to Noticees no. 1, 2, 3, 4, 5, 6, 10, 11 and 12 on November 18, 2020. I note that the hearing notice dated October 28, 2020 for the hearing scheduled on November 18, 2020 was served upon all the concerned Noticees. On November 18, 2020, the Official Liquidator appeared for Noticee no. 1 appeared and made submissions. Noticee no. 12 vide its email dated November 18, 2020 sought for an adjournment. Further, Noticee no. 5 vide email dated November 16, 2020 stated that he will not be availing the personal hearing and sought time till November 21, 2020 to file his reply to the SCN. Subsequently, Noticee no. 5 filed his reply to the SCN vide letter dated November 24, 2020. However, Noticees no. 2, 3, 4, 6, 10 and 11 did not appear for the hearing on November 18, 2020 or seek adjournment. A final opportunity was granted to Noticee no. 12 on January 19, 2021. On January 19, 2021, the advocate for the Noticee no. 12 appeared and made submissions. Further, as requested by Noticee no. 12, he was granted one week's time to file his written submissions. Thereafter, vide letter dated January 25, 2021, Noticee no. 12 filed his written submissions.
10. The various submissions made by the Noticees vide their aforesaid replies and in the written submissions filed, are summarized as hereunder:

a) Noticee No. 5 (Arun Panchariya) in his reply dated November 24, 2020 has *inter alia* submitted as under:

- (i) At the further outset, I submit respectfully that I am a non-resident Indian for the last more than 20 years and has certifications in finance and has been in the financial service industry in Middle East and Europe. I have never registered with the SEBI or RBI or any other regulatory agency in India and never had a place of business in India and has not carried out any activities within India, being the jurisdiction of SEBI. Therefore, SEBI cannot be said to have jurisdiction over my business activities or me in my personal capacity. Hence the said show cause notice has been issued without jurisdiction and ought to be recalled immediately. The provisions of SEBI Act do not have extra territorial operation qua me in my individual or personal capacity, since all alleged acts of commission or omission like the loan agreement with EURAM Bank for subscribing to the GDRs, notwithstanding the fact that the security for the loan was the pledge of GDR proceeds, are acts were outside the territory of India and therefore, provisions of SEBI Act are not applicable.*
- (ii) I repeat and reiterate that I am a non-resident Indian for over 20 years. I had established an independent entity Vintage FZE in the UAE, which is a limited liability company duly incorporated under the relevant laws of the UAE. Vintage was the subscriber to the GDR issue. I submit that I had also established Cardinal Capital Partners as a company in Mauritius. Cardinal Capital partners established India Focus Cardinal Fund (IFCF) wherein the capital to the extent of USD 1 only was held by Cardinal Capital. IFCF was licensed to operate a collective investment scheme and pursuant thereto IFCF issued different classes of Shares. I submit that I do not have any office or business in India. The activities of Vintage and IFCF and Cardinal Capital were wholly outside India. The subscription of Vintage was a purely commercial arrangement outside India, under the relevant laws and the SEBI has no jurisdiction to question this arrangement under the provisions of the SEBI Act and PFUTP Regulations. I humbly submit therefore that the SCNs could not been issued under the provisions of the SEBI Act, against me i.e. Mr. Arun Panchariya as these entities are different from me.*
- (iii) It is also pertinent to note that the mandates/arrangements/role in relation to the GDR issues outside India are granted/played by various entities like Vintage FZE, IFCF, Pan Asia. All this entity has a distinct and separate legal entity, which has its own management and decision making. I have already resigned from Vintage FZE*

(Resigned year 2009), IFCF (Resigned year 2010) and Pan Asia (year October 2011) and since then I was not part of its management team.

- (iv) The SCN is also very vague as it does not disclose the kind of measures SEBI is contemplating to take after 10 years. The Noticees are completely in the dark about what exactly SEBI has in mind, as regards the consequences, and are unable to address SEBI on the same not only that I also found that SEBI officials set a negative frame of mind against me in passing order against me. This can be evident and seen from the different decisions in SEBI's order which reflects in similar cause/event of transaction of other cases of GDR. Further, we have made submissions in this regard at the time of the hearing. We are aware that SEBI has enormous powers under various provisions of the SEBI Act, but the impugned show cause notice do not specify what action SEBI proposed to take. Therefore, it is reiterated that the SCNs do not meet the principles of natural justice and need to set aside on this ground alone.*
- (v) Assuming there is violation of Section 12 of the Act and PFUTP Regulations, that by itself does not justify to issue Show Cause Notice in my name Arun Panchariya in my personal capacity ignoring the existence of corporate entities and transactions executed by and between with executions of legal and binding agreement in place with obligations to respective jurisdictions.*
- (vi) I repeat and retrieve that SEBI has no such powers to lift the corporate veil and hold the myself as beneficiary. SEBI is ignoring key roles of Issuing Corporate company and its beneficial nature to execute the same. It is also submitted that the entities whose veil is lifted are not entities incorporated in India and hence the assumption of powers by the SEBI to lift the corporate veil and issue a SCN in my personal capacity is beyond the scope of the powers of the SEBI under the SEBI Act.*
- (vii) It is submitted that despite conducting the investigations for a long period, SEBI failed to provide original or certified copies of the documents relied upon. Merely photocopies have been provided as annexures and unfortunately the SCNs relies on such legally invalid documents. I further state and submit that the SCN issued is exclusively based on the Xerox/Photostat copy of the documents, the original of which are not available with SEBI. Since the allegations in the SCNs are based on the documents which are not originals, the conditions precedent laid down in Section 63 and 65(a) of the Evidence Act, 1872 are not satisfied and as such the Photostat copy of the documents relied upon by the SEBI cannot be and should not be admissible as*

evidence in the present proceedings. I further state and submit that even Photostat copies of documents have not been certified by any of the authorities from which they have been obtained. Section 35 of the Indian Stamp Act, 1899 provides that document which was not properly stamped shall not be admitted in evidence. I therefore state and submit that on the basis of Xerox and/or Photostat copies of documents, neither any action can be taken against me.

- (viii) Further, the SCN proceeds on the basis that on account of such alleged connection, I exercised unilateral control over the parties allegedly involved in the 'scheme' purported by the SCN and thereby allegedly upon the alleged 'scheme' itself. In this regard, it is pertinent to note that assuming whilst denying that there was indeed such connection between the entities mentioned in the said SCN and me, the same does not and cannot imply that the decisions of such entities were controlled by me. Further, it is also pertinent to note that the SCN or investigation report or any document provided to me does not indicate in any manner the exercising of such control by myself. The allegations in this regard are therefore based merely on surmises, conjectures and incorrect assumptions.
- (ix) In relation to the Vintage FZE, I have already resigned and I was director till 2007. All the decisions of Vintage FZE including loan default was taken on the going circumstances in the best interest of the company by its management. In relation to India Focus, it is alleged that I was one of the directors of India Focus until October 2010. However, the same does not mean in any manner that I exercised any control over India Focus. In this regard, I submit that at the point of time when I was a director, the investment decisions of India Focus were taken collectively by its Board of Directors and accordingly the orders for the trades would be placed with the brokers. I was neither the whole time director nor the managing director of India Focus. Further, in relation to the other FII's/sub-accounts, there is no document or evidence provided to me in support of the allegation that they are connected to or controlled by myself except showing few connections which are totally independent Business relationships. It is respectfully submitted therefore that there is therefore no question of my being illegally or improperly connected to or being in control of the entities.
- (x) I say and submit that I have in my personal capacity has not role at all in the GDR issue. The economic interest of the GDRs always remained with EURAM Bank, which gave the loan, held the pledge of the GDRs and issue funds, purchased the GDRs, sold the GDRs to IFCF towards the class of shares held by EURAM Bank, and finally

received the distribution proceeds arising out of share sale in India.

(xi) I say and submit that the SCN fails to bring out the correct facts relating to the GDR issue, and the conversion of GDRs as per RBI Guidelines and sale of shares in the Indian markets as per RBI Guidelines and has wrongly held myself as the perpetrator of the alleged irregularities and a beneficiary of the alleged fraud though the truth is that Issuer Company of GDR was the beneficiary in first place and EURAM Bank was on the second place who controlled the whole transaction through execution of Pledge and loan agreement separately with both entities.

b) Noticee No. 7 (Mukesh Chauradiya) in his replies dated October 31, 2018 and September 09, 2020 has inter alia submitted as under:

(i) Since 1999 to about 2005, I was involved in trading of surgical items such as infusion disposable products, surgical medical gloves, catheters, surgical suture etc. while I was at Ahmedabad. Somewhere in the year 2005, Mr. Arun Panchariya offered me an employment in his trading company Vintage FZE which was a single person company owned and controlled by Mr. Arun Panchariya set up in Jebel Ali Free Zone Area (Jafza), Dubai. Vintage FZE had a total of about three employees other than Mr. Arun Panchariya.

(ii) I was only a authorized signatory in relation to the Bank account held by Vintage FZE with EURAM Bank, Austria. All along during my stay in Dubai and association with Vintage FZE, I was a Manager/General Manager of Vintage FZE working under the direction of Mr. Arun Panchariya, the ultimate owner and beneficiary of Vintage FZE. Beside the salary an employee, I have not received any other payments/benefits from Vintage FZE.

(iii) I was never the director or the Managing Director of Vintage FZE or held any beneficial interest in Vintage FZE. Somewhere in 2010, under instruction and direction from Mr. Arun Panchariya, I was made to sign certain documents, sign loan redemption request etc. which were hither to being signed/carried out by Mr. Arun Panchariya.

(iv) Mr. Arun Panchariya used to authenticate/verify signatures on behalf of EURAM Bank Asia, where he was a 50% owner, Director and President. He was also signing the loan agreement with EURAM Bank, Austria as the Managing Director of Vintage FZE. On account of such conflict of interest, Mr. Arun Panchariya replaced my name in certain documents signed on behalf of Vintage FZE.

- (v) *The loan agreement in relation to Aqua was signed by me for and on behalf of Vintage FZE as its Authorised Signatory in relation to its bank account with EURAM Bank. Such agreement was signed by me as per the instruction and direction of Mr. Arun Panchariya, the ultimate owner and beneficiary of Vintage FZE.*
 - (vi) *Inadvertently, the designation of "Managing Director" continued to appear in such standardized loan agreement while Mr. Arun Panchariya's name was replaced by my name in the second loan agreement.*
 - (vii) *I signed the loan redemption request for repayment of the above and as an authorized signatory of Vintage FZE as per the instruction and direction of Mr. Arun Panchariya, the ultimate owner and beneficiary of Vintage FZE and as and when he arranged funds for such redemption. I had no financial or any other interest in the loan availed by Vintage FZE, subscription to the GDRs or in the repayment of loans availed by Vintage FZE.*
- c) Noticees No. 8 (Prospect Capital Ltd) and 9 (John Behar) have in their joint reply dated October 02, 2020 have inter alia submitted as under:
- (i) *That between 2006-07, Prospect Capital provided third party consultancy services to a merchant banking company called Pan Asia Advisors Limited (PAA), whose promoter was Mr. Arun Panchariya. The services were for the preparation of an application to the FCA to register PAA for regulated corporate finance advisory activities and subsequently to oversee compliance reporting and other ongoing compliance responsibilities. These consultancy services were carried out on a day to day basis on behalf of Prospect Capital primarily by Mr. John Behar who was registered as a part time Director of PAA in this context. Neither Mr. Panchariya nor any of his companies have ever had any ownership interest in Prospect Capital which is, and remains, an entirely independent UK regulated company wholly owned by Mr. John Behar. As such there is no "connection" between Mr. John Behar, Prospect Capital and Mr. Arun Panchariya beyond the provision of professional services.*
 - (ii) *Thereafter in 2010, Prospect Capital was once again approached by Mr. Panchariya, with whom Mr. John Behar had maintained a cordial professional relationship, this time to lead manage a series of GDR issues on the Luxembourg Stock Exchange for Indian Companies. It is understood that Prospect Capital was just one of several FCA regulated lead managers which Mr. Panchariya approached at this time. It is submitted that the typical role model of the lead manager in Lux GDR issue is obtain*

commitments from investors and then manage the technical documentary process of creating and listing the GDRs on the Luxembourg stock exchange, and then finally obtain signed subscription agreements from the investors who decide to proceed. However, in the present case Prospect was not responsible for finding investors, since Mr. Sanjay Agarwal, Noticee no. 12, the Indian advisor for Aqua's GDR issue, who had been introduced to Prospect Capital by Mr. Panchariya in the context of this issue to provide end to end project management of the listing process, informed Prospect that this GDR issue was pre-sold i.e. that investors willing to subscribe were already identified. Therefore, the job of Prospect was strictly limited to the documentary process of working with legal counsel to create the prospectus and provide other documents required by the Luxembourg Stock Exchange in order to complete a listing of GDRs with the extensive assistance of Mr. Aggarwal. Thereafter, Prospect Capital in good faith sent subscription letters to the investors which Mr. Aggarwal had identified after he provided their details.

- (iii) It is further stated that neither Prospect Capital nor Mr. John Behar had any knowledge that the subscribers to the issue were not genuine subscribers. Prospect Capital and Mr. Behar were only sent subscription agreements at the time of the issue which they duly completed in the normal way. There was nothing to suggest anything untoward was occurring. That at no point there "connivance" between Prospect Capital and or Mr. John Behar with Mr. Arun Panchariya or any of the other knowing parties to the manipulation as described. Both prospect Capital and Mr. John Behar acted in good faith, and in a manner compliant with the relevant regulations, to execute specific professional tasks.*
- (iv) In view of the above it is submitted that Ld. Board does not have jurisdiction to adjudicate upon the actions of Noticee no. 8 (citizen of United Kingdom) and Noticee no. 9 (registered in United Kingdom), regarding listing of the GDRs of Aqua in Lux Stock Exchange. It is relevant to reiterate herein that Noticee no. 9 is not a registered Foreign Institutional Investor in India, and has never held any registration in India permitting capital market activity, it has never undertaken any activity regulated by SEBI, or any other Indian Regulatory body, and has no intention of doing so in future.*
- (v) Therefore, notwithstanding that Noticee herein denies the claim of alleged wrongdoing in the present matter, it is submitted that the pursuit of Noticee no. 8 and 9 by Ld. Board in the captioned matter will not serve any public interest, moreover the same is also beyond the scope of statutory jurisdiction of the Ld. Board. Furthermore,*

it should be noted that where Noticee no. 8 acted in the course of the listing he did so wholly in the context of the Limited Company i.e. Noticee no. 9's role as mandated Lead Manager. Therefore, a priori it is submitted that an individual, acting on behalf of the Limited Company, bears no personal regulatory liability for the matter hence, no allegation against Noticee no. 8 per se can be sustained as he was acting on behalf of Noticee no. 9. Pertinently, in no other similar GDR issue matter being investigated by the Ld. Board, had an individual acting in the natural line of listing work been personally singled out from the company he/she represents, in the way Noticee no. 8 has been in the present case.

(vi) During the course of the hearing Ld. Board questioned the mandated Counsel for Noticee no. 8 and 9 regarding any underlying agreement between the merchant bankers involved in the present case. In this regard it is submitted that the General Rules on record-keeping published by Financial Conduct Authority, UK under SYSC 9.1.2 provides as follows: "A common platform firm must retain all records kept by it under this chapter in relation to its MiFID business for a period of at least five years." Since as a matter of policy FCA does not mandate requirement of keeping record for more than past 5 years, neither Prospect Capital nor Mr. Behar possess documents for GDR issues which are a decade old, including agreement, if any, with other Merchant Bankers in relation to listing of GDR of Aqua.

d) Noticee No. 12 (Sanjay Aggarwal) in his reply dated October 20, 2020 and written submissions dated January 25, 2021, has inter alia submitted as under:

(i) I had made request seeking certain documents to enable me to file a suitable vide my letter dated November 15, 2018 which was rejected by stating that "all the documents relied upon in the proceedings have been provided to you while issuing the SCN in the captioned matter as Annexures". I, once again, vide letter dated February 08, 2019 requested for inspection of documents which was provided on March 29, 2019. Through minutes of proceedings once again had made request for inspection of Investigation Report along with certain annexures which was replied vide letter dated April 22, 2019 by stating that "all the documents relied upon in the proceeding have been provided to you while issuing the SCN in the captioned matter as Annexures".
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(ii) As regards transfer of an amount of USD 26.68 million to me from Aqua HK, it is reiterated that same was received in the company by the name and style of Sea

Dragons controlled by my employer and nearly eight months after GDR issue and was used for business purposes. The SCN is trying to show close proximity between 2 events happened after a long gap of nearly eight months which is unreasonable, defies logic and is based on surmises and conjectures.

- (iii) I am not director of Prospect Capital Limited and further deny that I have used/created/owned/operated any email ID by the name and style of sa@prospectcapital.com ever.*
- (iv) I have already submitted evidence from UK Company Law website and UK-FCA website vide by letter dated November 11, 2016 during the course of some other investigation carried out by same investigating authority that I was neither director nor shareholder no decision maker in Prospect Capital. However, neither any cognizance of the same has been taken by the investigating authority nor any reason has been assigned for not taking any cognizance. This, in itself, is in gross violation of principles of natural justice and established legal jurisprudence. I am once again providing the following documents which collectively clearly establishes my contention that I was neither a director nor shareholder nor decision maker in Prospect Capital.*
 - a) Annual Return dated 26.11.2009, 26.11.2010, 26.11.2011, 26.11.2012 and 26.11.2013.*
 - b) List of directors and other people associated with Prospect Capital Ltd. during the investigation period and thereafter since its incorporation.*
 - c) Printout containing details of registration of Prospect Capital Ltd. and other people associated from UK-FCA website.*
- (v) The same has been confirmed by Mr. John Behar vide his reply to UK-FCA, which was forwarded to SEBI and annexed as Annexure 26 of the SCN. In response to Q No. 8, Mr. John Behar has stated that "Prospect Capital Ltd.... since inception has been wholly owned and managed by Mr. John Behar. It is a boutique advisory firm and there are no other beneficial owners, directors or key management personnel." It is also surprising that the submissions of the PCL has also not been considered while framing the charges and connecting me with them. This shows complete non application of mind by the Investigating Authority. In view of the above, I deny that I was a director of PCL ever and also connected/related to PCL directly or indirectly to warrant any allegation.*
- (vi) As regards being a beneficial owner in Sea Dragons, it is submitted that during that time I was working for Earthstone group based out of Indonesia. For some tax*

planning and local (Indonesia) company law purposes, a company was formed by my employer. I, being a senior team member, was made authorized signatory of that company in bank accounts, although the daily matters were handled by my employer and the same company was being controlled by my employer. My employer used to carry out some transactions in that company for some tax planning purposes. In view of the above, I deny that I am directly or indirectly connected/related to AP, Prospect Capital Ltd., Mr. John Behar, IFCF, Vintage and any other entity/person mentioned in para 31 and in collusion with these entities devised the fraudulent GDR issue of AQUA. It is further denied that I colluded with AP who devised the GDR issue in fraudulent manner and subsequent sale of shares in Indian Market.

(vii) I am owner of La Richesse Advisors Private Limited. As stated earlier, I was assigned various tasks related to GDR issue which includes preparation of various documents formats such as offering circular, documents/undertaking/declaration for trading on Luxembourg Stock Exchange, etc. and was nowhere involved in decision making process.

(viii) I am engaged in the business of advising and consulting, I have carried out many projects and there is not even a single complaint against me in the past. Further, till date there has been no action by SEBI, against me save and except for the proceedings in the case of Farmax India Ltd. and the instant proceedings.

(ix) Further, during the process of coordinating and assisting in the GDR issue, nowhere I came across the loan and pledge agreement. Neither AQUA nor AP discussed with me or sought my advice on executing the loan agreement and pledge agreement. I came to know about loan and pledge agreement only when I saw it as Annexure of this SCN. This clearly shows that I was not involved in executing loan and pledge agreement.

(x) I submit that the findings in the SCN and evidence adduced thereto do not establish even an iota of the serious allegation that I acted in connivance with AP and his connected entities and acted as party to the alleged fraudulent scheme of GDR issue of AQUA.

(xi) It is within knowledge of SEBI that AP has carried out many GDR issues, which are on record, with same modus operandi and hence to allege that I acted in connivance with AP and his connected entities and acted as party to the alleged fraudulent scheme of GDR issue of AQUA would be contrary to factual position on record and legally untenable and unsustainable.

(xii) Euram Bank, in its letter dated August 14, 2012, has stated that "According your instructions we have transferred 890350 GDRs Aqua Logistics Ltd. (ISIN: US03837W1027) with trade date 13 August 2012 and value date 16 August 2012 to Bank Julius Baer & Co. Singapore, Euroclear Account no. 13469 for further credit to account no. 3104410 Sea Dragon Worldwide Web Ltd". In this connection I submit that as per table provided at Para 28(b) read with table at Para 29(a) of the SCN, the GDRs converted by IFCF upto 24.06.2011 were sold in the Indian Securities Market for total sale value of Rs. 88.15 lakh. Whereas admittedly, as per SEBI's own case the GDRs were received by Sea Dragons in and around the month of August 2012. I did not have any role in the shares converted by IFCF upto 24.06.2011 and hence, cannot be liable to disgorge any profits arisen out of this. In view of the above, it cannot be alleged that shares sold by IFCF are the shares which were acquired by Sanjay Aggarwal without consideration and there is no evidence to establish that. Therefore, I cannot be held responsible for inflicting loss of Rs. 88.15 lakh on shareholders of AQUA and deny everything contrary thereto.

(xiii) In so far as the allegation that I have transferred funds from by bank account no. 3104410 with Julius Baer to Vintage's Bank account no. 540012 with EURAM Bank which have been subsequently used by them for repayment of loan etc. it is submitted that during the financial year 2004 to 2013 (except financial year 2009-10), I was Non Residential Indian (NRI). The investigation period from January 15, 2011 to February 28, 2011 is one of the period under the said Financial Years. Hence, the receipt of funds by me out of India from any source is not violation of any Indian Laws. As regards transfer of funds from AQUA HK to me, it is reiterated that same were received in the company by the name and style of Sea Dragons controlled by my employer and that too nearly eight months after GDR issue which were used for business purposes. The SCN is trying to show close proximity between two events happened after a long gap of nearly eight months which is unreasonable, defies logic and is based on surmises and conjectures.

(xiv) Further, Sea Dragons has received the funds from AQUA HK and AQUA of India came out with the GDR issue, hence, there is no connection between GDR issue of AQUA India and the receipt of funds by me from AQUA HK. I reiterate that Sea Dragons, controlled by my employer, received the funds from AQUA HK in different tranches starting from September, 2011 nearly eight months after the GDR issue. As regards the observation that the funds have been transferred by AQUA to AQUA HK

and then to me, it is submitted that I have not received any funds. It is only Sea Dragons, controlled by my employer, which has received the funds from AQUA HK which were used for business purposes. Hence, violation if any carried out by Sea Dragons and/or my employer cannot be saddled on to me.

- (xv) I was never signatory/ owner/ proprietor/ director and/or connected to Vintage directly/indirectly apart from the professional arrangement with AP/Prospect, hence to attach my name with Vintage is baseless and without any evidence. The SCN has also not adduced any evidence to show my connection with Vintage. As per the SCN, it has been concluded that Vintage is owned and/or controlled by AP, hence to connect me to Vintage at this late stage in the proceedings without adducing any evidence to that effect is self-contradictory.*
- (xvi) Admittedly at para 29 of the SCN, it is observed that the shares converted from GDRs by IFCF were sold to Indian Investors during the period September 24, 2012 to February 05, 2013 for a total amount of Rs. 88.15 lakh. It has been alleged that the said amount of Rs. 88.15 lakh received is liable to be disgorged from me along with other entities. In this regard, I submit that the SCN does not adduce any evidence to establish that I am in receipt of even a single penny out of the said Rs. 88.15 lakh to warrant any kind of action under SEBI Act including disgorgement.*
- (xvii) As regards findings at the table at Para 33(h) of the SCN, at the outset, I submit that funds were received by Sea Dragons, controlled by my employer, and not me. Without prejudice, I submit that funds were received by me from Aqua HK from September 16, 2011 to February 28, 2012. It is therefore submitted that the transfer of funds to me happened around seven months after the GDR issue. From the said table, it is SEBI's own case that I received a total of USD 26.685 mn from Aqua HK and amount transferred to vintage was USD 29.253 MN. Hence, it is established that not a single penny out of funds received has been retained by me to Vintage is more than the amount received from Aqua HK, thereby establishing that both of them are different and independent transactions without any material connection to each other. Therefore, the two transfers cannot be equated or compared with each other and the allegation that the two transactions are related is baseless, holds no merit and is based on surmises and conjectures.*
- (xviii) In furtherance of the above, it is hereby submitted that the inflow and outflow of funds to and from account of Sea Dragons to the entities in the table mentioned above has no relation to the funds received by India Focus Cardinal Fund (IFCF) after the sale*

of underlying shares of the GDR. The funds that IFCF had received were not a part of the pool of funds from the inflow or outflow from the account of Sea Dragons, as the same were not even in existence or within my possession during transactions of Sea Dragons with Vintage or the other entities. Therefore, it is submitted that the transaction entered into by Sea Dragons, controlled by my employer, were independent and unrelated of the alleged ill-gotten gains from the sale of underlying GDR.

CONSIDERATION OF SUBMISSIONS AND FINDINGS:

11. I have considered the SCN dated October 01, 2018 issued to the Noticees, along with its annexures, the aforementioned replies filed by the Noticees, the submissions made before me during the course of hearing and the written submissions filed thereafter. The question to be determined in the present proceedings is whether the Noticees have violated the provisions of SEBI Act, 1992 and PFUTP Regulations, as alleged in the SCN.
12. Before dealing with the issue, it would be appropriate to refer to the relevant provisions of law which are alleged to have been violated by the Noticees and relevant extract thereof is reproduced hereunder:

Relevant extract of provisions of SEBI Act, 1992

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

Section 12A: No person shall directly or indirectly, -

- (a) *use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

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

Relevant extract of provisions of PFUTP Regulations:

Regulation 3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

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

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

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—
 - (a).....
 - (b).....

- ...
- (f) *publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;*
- (g)...
- (h)...
-
- (k) *an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;*
- (l).....
- (m).....
-
- (r) *Planting false or misleading news which may induce sale or purchase of securities;*
-”

13. Before proceeding with the merits of the matter, it would be appropriate to first deal with certain preliminary contentions raised by some of the Noticees. The Noticee no. 12 vide its reply dated October 20, 2020, has submitted that inspection of the investigation report along with certain annexures sought for by the Noticee including have not been furnished/given to the Noticee. The Noticee no. 12 has submitted that SEBI is privy to certain information which is not being provided to him to enable him to adequately defend himself. In this respect, I note that copies of all documents which were relied upon by SEBI in making allegations in the SCN have been provided to the Noticee no. 12 along with the SCN dated October 01, 2018, as detailed in para 1 above and inspection of all these documents have been given to Noticee no. 12 on March 29, 2019. I find that it satisfies the requirement of principles of natural justice. Further, I note that the relevant findings of the investigation report have been provided for and captured in the SCNs that have been issued to the Noticees. Inspection of the SCN and Annexures have also been provided to the Noticee no. 12. Therefore, the request for inspection of the investigation report is untenable. From the SCN and its Annexures, I find that the relevant and relied upon documents in support of the SCN and also the findings of the investigation as captured in the SCN have been provided to the Noticees. Therefore, the contention of the Noticee no. 12 that SEBI has not provided complete documents is untenable.

14. I find that the Noticees were provided with all the relevant documents as relied upon in the SCN as mentioned above. I note that the Noticee No. 12 has filed detailed replies to the SCN. I, further, note that the copies of some of the documents relied upon, were obtained by SEBI during investigation, through overseas regulators. The contents of these documents have been corroborated from various other documents and transactions, which have been provided as annexures to the SCN, as mentioned in para 1 above, and I note that Noticee no. 12 has not disputed the contents of these documents for which inspection was also provided to him on March 29, 2019. As copies of all the documents relied upon by SEBI in the SCNs were already provided to the Noticee no. 12 in response thereto Noticee no. 12 has filed detailed replies, thus, I find that no prejudice has been caused to Noticee no. 12 in defending his interest and contesting the allegation made against him in the SCN. In this regard, it would be appropriate to refer to the Order of Hon'ble SAT dated February 12, 2020 in ***Shruti Vora vs. SEBI (Appeal No. 28 of 2020)*** wherein, it was observed that:

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

15. I note that the contention on the inspection of documents raised by the Noticee no. 12 is squarely covered by the decision of the Hon'ble SAT in the aforesaid case, as all the relevant documents relied upon in the SCN have been provided to the Noticee no. 12 as Annexures to the SCN as stated in para 1 above and inspection of the same was also granted to the Noticee no. 12 on March 29, 2019. Thus, in view of the above,

I find that the contention made by the Noticee no. 12 that SEBI has failed to provide inspection of all documents on which it has relied upon is untenable.

16. Further, Noticee no. 5 in his letter dated November 24, 2020, has submitted that merely photocopies have been provided as annexures and the SCN relies on such legally invalid documents. Noticee no. 5 has submitted that the SCN issued is exclusively based on the Xerox/Photostat copy of the documents, the original of which are not available with SEBI and since the allegations in the SCNs are based on the documents which are not originals, the conditions precedent laid down in Section 63 and 65(a) of the Evidence Act, 1872 are not satisfied and as such the Photostat copy of the documents relied upon by the SEBI cannot be and should not be admissible as evidence in the present proceedings. In this regard, I note that Noticee no. 5 has filed a single reply dated November 24, 2020 for 4 matters including the present matter, i.e. in the matters of Texmo Pipes and Products Ltd, Winsome Yarn Limited, Winsome Textiles Industries Ltd and the present matter Aqua Logistic Limited. Hence, I note that his submissions have been generally made without specifying any particular document in this regard. Further, I note that he has not sought inspection of documents in the present matter. I note that the copies of some of the documents relied upon, were obtained by SEBI during investigation, through overseas regulators. The contents of these documents have been corroborated from various other documents and transactions, which have been provided as annexures to the SCN, as mentioned in para 1 above, and I note that Noticee no. 5 has not disputed the contents of these documents and neither has he sought inspection of these documents. I also note that the Noticee no. 5 has referred to provisions of the Indian Evidence Act, 1872 to contend that for the admissibility of secondary evidence, the conditions in Section 65 of the Indian Evidence Act, 1872 must be fulfilled, however, that none of the conditions have been fulfilled in the present case. In this regard, I note that the proceedings initiated under Section 11(4) and 11B of the SEBI Act, 1992 are in the nature of quasi-judicial proceedings, as held by the Hon'ble Supreme Court in ***NSDL Vs. SEBI (2017) 5 SCC 517***. As such the provisions of Indian Evidence Act, 1872 are not strictly applicable to these proceedings. Further, Section 65 (a) of the said Act, itself allows admissibility of a document as secondary evidence when the original is in

possession of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court. As copies of all the documents relied upon by SEBI in the SCN were already provided to the Noticees as annexures to the SCN and Noticee no. 5 has not disputed the contents of these documents and neither has he sought inspection of these documents, I find that no prejudice has been caused to Noticee no. 5 in defending his interest and contesting the allegation made against him in the SCN. Thus, in view of the above, I find that the contention made by the Noticee no. 5 that the documents submitted as annexures to the SCN should not be admissible as evidence in the present proceedings as they are merely photocopies, is untenable.

17. On the merits of the case, I note that it has been alleged in the SCN that AQUA issued GDR in the year 2011, the details of which are as under:

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
10 Feb, 2010	4.112 (at USD 15.17 per GDR)	62.38	ICICI Bank	9,45,76,000	Deutsche Bank Trust Company Americas, NY, USA	Prospect Capital Limited	EURAM Bank, Austria	Luxembourg Stock Exchange
	21.24 (at USD 2.52 per GDR)	53.53		1,06,21,92,350				

18. It is alleged in the SCN that Noticee No. 6 entered into Loan Agreement with EURAM Bank on February 03, 2011 for amount of USD 62.379 million for subscribing to GDR issue of AQUA. Simultaneously, Pledge Agreement dated February 03, 2011 was entered into between AQUA and EURAM Bank for providing security towards the said loan obtained by Noticee No. 6 from EURAM Bank whereby AQUA pledged all its GDR proceeds with EURAM Bank and the Pledge Agreement was signed by Mr. M. S. Sayad (Noticee No. 3) Whole Time Director of AQUA and, as authorized in the Board Meeting of AQUA dated September 09, 2010, wherein, a resolution was also passed authorizing the EURAM Bank to use the GDR proceeds as security against loan if any as well as to enter into any escrow agreement or similar agreements if and when so required. AQUA submitted a list of 10 subscribers to the GDR issue to BSE, as mentioned in para 4 above. While making disclosure about its GDR issue to BSE, AQUA did not inform stock exchange about the Pledge Agreement entered into by it

with EURAM Bank by virtue of which the GDR issue was subscribed and the GDR proceeds were not at its disposal because of pledge agreement signed by it with EURAM Bank for the loan taken by Noticee No. 6 i.e. sole subscriber to the GDR issue of AQUA. During investigation, it was found that the GDR subscription money (USD 62.379 million) was received from only one entity i.e. Noticee No. 6. The SCN further alleges that AQUA failed to inform the stock exchanges about the Pledge agreement dated February 03, 2011 and that the GDR issue of AQUA was subscribed by only one entity, i.e., Noticee No. 6 and it is alleged that AQUA has failed to provide correct information to the stock exchanges about the list of subscribers to the issue. It is alleged that Noticee No. 6 repaid the loan availed from EURAM Bank to the tune of USD 41.64 million and defaulted on the loan thereafter. An amount of USD 20.76 million was adjusted by EURAM Bank from GDR proceeds of AQUA against the loan taken by Noticee No. 6 since AQUA pledged its GDR proceeds as security for Noticee No. 6's loan. It was alleged that an amount of USD 29.25 million was transferred by Sanjay Aggarwal (Noticee no. 12) to Noticee No. 6 during the period August 29, 2011 to February 02, 2012. Pursuant to receipt of USD 29.25 million from Noticee No. 12, Noticee No. 6 repaid the loan amount of USD 28.96 million during the period August 30, 2011 to February 03, 2012. Subsequent to receipt of repayment of loan by Noticee No. 6, an amount of USD 29.07 million was transferred from AQUA's bank account with EURAM Bank to AQUA Hong Kong bank account with HSBC during the period August 30, 2011 to February 03, 2012. Further, an amount of US 26.68 million was received by Noticee No. 12 from AQUA HK's bank account during the period September 16, 2011 to February 28, 2012. Thereby, it was alleged that GDRs to the extent of USD 47.44 million were issued without consideration to Noticee No. 6/ Noticee No. 12. Further, it is alleged that this misleading information had the potential to influence the decision of investors into believing that the GDRs were successfully subscribed, when in fact it was funded by AQUA itself. Based on the above, it has been alleged in the SCN that the above acts of concealing and suppressing material facts about the fraudulent arrangement of the Loan and Pledge Agreements by AQUA and its Board of Directors are in violation of provision of SEBI Act, 1992 and PFUTP Regulations. Further, that Arun Panchariya (Noticee No. 5) and connected entities i.e. Vintage (Noticee No. 6), Mukesh Chauradiya (Noticee No. 7), Sanjay Aggarwal

(Noticee No. 12), Prospect Capital Ltd. (Noticee No. 8), John Behar (Noticee No. 9), IFCF (Noticee No. 10) and Cardinal Capital Partners (Noticee No. 11) acted as conduit to Noticee No. 5, in furtherance of common intention to commit fraud on Indian investors of AQUA by way of subscribing to GDRs in fraudulent manner, defaulting on loan repayment, converting GDRs into equity shares and subsequently selling converted equity shares in the Indian securities market, in violation of provision of SEBI Act, 1992 and PFUTP Regulations.

19. In this regard I note that AQUA in its Board Meeting dated September 09, 2010 had *inter alia* resolved to open a bank account with EURAM Bank for the purpose of receiving the subscription money in respect of GDRs issued by the Company and authorized Mr. M. S. Sayad (Noticee No. 3), Whole Time Director of AQUA, to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration etc. as may be required by the EURAM bank. Further, it was resolved to authorize Noticee No. 3 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 agreements, if and when, so required. Thereafter, I note that loan agreement dated February 03, 2011 was signed between Noticee No. 6 and EURAM Bank for loan of USD 62.379 million and it was *inter alia* stated in the loan agreement dated February 03, 2011 that the purpose of the loan was “*To provide funding enabling Vintage FZE to take down GDR issue of 4,112,000 Luxembourg public offering and may only be transferred to EURAM account nr. 580 035, Aqua Logistics Ltd.*”. Hence, it is clear that the loan taken by Noticee No. 6 from EURAM Bank was for the purpose of subscribing to GDR issue of AQUA. Simultaneously, Noticee No. 3, signed a Pledge Agreement dated February 03, 2011 to secure the loan taken by Noticee No. 6 for subscribing to the GDR issue of AQUA. I note that it is clearly stated in the Pledge Agreement dated February 03, 2011 that the “*By Loan Agreement K021210-002 (hereinafter referred to as the “Loan Agreement”) dated 03 February 2011 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 K021210-002 and acknowledges and agrees to its terms and conditions.*”. Hence, it is clear that the Pledge Agreement was entered into between AQUA and EURAM Bank for

the purpose of securing the loan taken by Noticee No. 6 on February 03, 2011 from EURAM Bank for the purpose of subscribing to the GDR issue of AQUA, and that copy of the loan agreement was received by AQUA. Since the Pledge Agreement was signed on February 03, 2011 and the GDR issue of AQUA took place on February 10, 2011, it is evident that AQUA was aware of the loan agreement and Pledge Agreement during the time of issue of GDR. Hence, it is clear that AQUA had proceeded with the GDR issue on February 10, 2011 with the knowledge that Noticee No. 6 would be the sole subscriber to the GDR issue. However, I find that AQUA failed to inform the stock exchanges about the Pledge Agreement or that Noticee No. 6 was the sole subscriber to the GDR issue. This fact that AQUA was aware of the loan agreement, Pledge Agreement and that Vintage was the sole subscriber to the GDR issue is evident from AQUA's EURAM Bank account statement and Noticee No. 6's loan account statement, wherein, it was observed that only after Noticee No. 6 repaid loan instalments, on same day or later equal/ less amount of money was transferred from AQUA's EURAM Bank account to AQUA's Hong Kong bank account having number 400762217838 with HSBC bank in Hong Kong. Therefore, I find that the Company and its Board of directors who attended Board meeting dated September 09, 2010, had devised a fraudulent scheme of issue of GDRs.

20. At the outset, I find that the following relevant documentary evidence have been provided to the Noticees along with the SCN:

- a) **Company Resolution dated September 09, 2010:** I find that in the Board Meeting dated September 09, 2010, the Company had resolved that a bank account will be opened with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issues. It was also resolved to authorize Noticee No. 3 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 agreements if and when so required. Further, the Board resolved to authorize Noticee No. 3 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 EURAM Bank and to carry and affix,

Common Seal of the Company thereon, if and when so required. Copy of the said Resolution dated September 09, 2010 has been provided to the Noticees as **Annexure – 6** to the SCN

- b) **Pledge Agreement dated February 03, 2011:** The Pledge Agreement was signed between EURAM Bank and AQUA pursuant to the decision taken by AQUA during the Board Meeting held on September 09, 2010. It is through this meeting, that authorization was granted to Noticee No. 3 to sign the Pledge Agreement dated February 03, 2011 for securing the loan taken by Noticee No. 6 from EURAM Bank for subscribing the GDR issue of AQUA. I note that the said Pledge Agreement dated February 03, 2011 has also been provided to the Noticees as **Annexures – 8** to the SCN.
- c) **Loan Agreements dated February 03, 2011:** Noticee No. 6 had taken loans from EURAM Bank for the amount of USD 62.379 million for subscribing to the GDR issue of AQUA. The loan agreement dated February 03, 2011 between Noticee No. 6 and EURAM Bank has been provided to Noticees as **Annexure – 4** to the SCN.
- d) **Bank Account Statements:** These are the bank account statements of AQUA's EURAM Bank account and Noticee No. 6's loan account statement for the loan taken from EURAM Bank, wherein, it was observed that only after Noticee No. 6 repaid loan instalments, on same day or later equal/ less amount of money was transferred from AQUA's EURAM Bank account to AQUA's Hong Kong Bank account. The loan account statement of Noticee No. 6 have been provided to the Noticees as **Annexure – 11** to the SCN and the account statements of AQUA have been provided to the Noticees as **Annexure – 9 and 10** to the SCN.
- e) **Extracts of Annual Report of AQUA for FY 2010-11:** The details of the number of Board meetings that took place in the FY 2010-11 and the number of Board meetings that each director had attended in the FY 2010-11 is mentioned in the Annual Report of AQUA for FY 2010-11. The extracts of the Annual Report of AQUA for FY 2010-11 where the aforesaid details have been mentioned have

been provided as **Annexure – 7** to the SCN.

21. Hence, I find that allegations in the SCNs are clear and the relevant documentary evidence, *inter alia* as listed above, have been provided to the Noticees. Further, from the said documents, I find that the Company had facilitated subscription of its own GDR issue by entering into an arrangement where Noticee No. 6, the only subscriber to the GDRs issued by AQUA, obtained loan from EURAM Bank for subscribing the GDR issue of AQUA, and AQUA pledged the GDR proceeds with EURAM Bank for securing the loan taken by Noticee no. 6 from EURAM Bank.
22. With regard to the allegations against the Company in the SCN, I note that AQUA has not filed any reply to the SCN as the Company is under liquidation. I note that vide Order dated January 04, 2013, Hon'ble Bombay High Court directed that AQUA should be wound up and vide Order dated November 12, 2013 appointed Official Liquidator of Bombay High Court as the liquidator to AQUA. I note that the personal hearing for AQUA on November 18, 2020 before me was attended by the Official Liquidator, wherein, he submitted that if there are any claims arising from the present proceedings, the same may be made before the Liquidator. I note that no submissions have been made with regard to the allegations against the Company in the SCN. Hence, I find that no reply or written submissions have been filed by the Company or on behalf of the Company with regard to the allegations in the SCN. Further, I note that the Whole Time Directors of AQUA i.e. Mr. Rajesh G Uchil (Noticee No. 2) and Mr. M.S. Sayad (Noticee No. 3) and its Managing Director, Mr. Harish G Uchil (Noticee No. 4) have also not filed any reply to the SCN or availed the opportunity of personal hearings granted to them, as detailed in paras 7 to 9 above.
23. Since the Company or its directors have not filed any reply to the allegations made against them in the SCN, I shall proceed to consider the matter on the basis of the documents/material available on record before me. In this regard, I note that in the Board Meeting dated September 09, 2010, details of which have been mentioned in para 6(ix) above, the Company had resolved that a bank account will be opened with EURAM Bank for the purpose of receiving subscription money in respect of the GDR

issues and authorized Noticee No. 3 to use the funds deposited in the said bank account as security in connection with “*loans if any*”. Further, the Board resolved to authorize Noticee No. 3 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 EURAM Bank and to carry and affix, Common Seal of the Company thereon, if and when so required. I note that Noticee no. 6 obtained loan of USD 62.379 million by entering into a Loan Agreement dated February 03, 2011 with EURAM, details of which have been mentioned in paras 6(ii) & (iii) above, to subscribe to the GDRs of AQUA. Further, a Pledge Agreement dated February 03, 2011, details of which have been mentioned in para 6(v) above, was entered into between AQUA and EURAM Bank to keep the GDR proceeds of AQUA as a security for the loan availed by Noticee no. 6 and Noticee No. 3 had signed the Pledge Agreement on behalf of AQUA as authorized by AQUA in its Board Resolution dated September 09, 2010. I note that AQUA pledged GDR proceeds before issuance of GDRs to secure the rights of EURAM Bank against the loan given by EURAM Bank to Noticee no. 6 for subscription of GDR issue of AQUA. From the above Loan Agreement, Pledge Agreement and also the ESCROW account statement and Loan account statement, I note that all 4.112 million GDRs of AQUA (amounting to USD 62.379 million) was subscribed by only one entity, i.e., Noticee no. 6. However, I note that AQUA submitted a false list of subscribers to the stock exchange, as mentioned in para 4 above, and did not inform the stock exchange that there was only one subscriber. Further, from the Pledge Agreement and Loan Agreement, I note that issuance and subscription of GDRs was done through loan availed by Noticee no. 6 from EURAM Bank. I also note that the bank account in which GDR proceeds were deposited, was in the name of the AQUA but the amount deposited in the account was not at the free disposal of the AQUA as the same was kept as collateral even prior to issuance of GDRs for the loan availed by Noticee no. 6. Hence, I find that AQUA failed to inform the stock exchanges about the execution of its Pledge Agreement dated February 03, 2011 securing the loan availed by Noticee no. 6 for subscribing to its GDR issue and that the GDR issue was subscribed by only one entity, i.e. Noticee no. 6.

24. I note that AQUA had made disclosure to BSE about its issuance of GDRs on February 10, 2011 vide its corporate announcement dated February 10, 2011. However, the corporate announcement did not mention about execution of 'Pledge Agreement' dated February 03, 2011 by AQUA securing the loan availed by Noticee no. 6 for subscribing of its GDR issue or that the GDR issue was subscribed by only one entity. Instead, I note that AQUA reported to the BSE on February 10, 2011 that *"the Board of Directors of the Company at its meeting held on February 10, 2011 has concluded the placement of 4,112,000 Global Depository Receipts (GDR) at US\$ 15.17 per Global Depository Receipt (Representing 94,576,000 Equity Shares of Rs. 1/- each) totaling to USD 62.379 million. Further the Board has also approved and allotted 94,576,000 underlying Equity Shares of Rs. 1/- each (representing 4,112,000 GDRs). The GDRS will be Listed on the Luxembourg Stock Exchange"*, and thereafter, submitted a false list of 10 subscribers to the GDR issue to BSE, as mentioned in para 4 above. This announcement conveys that there was considerable demand for its GDR in the overseas market and the same were successfully subscribed. Thus, the investors in India were made to believe that the issuer company i.e. AQUA has acquired a good reputation in terms of investment potential and, therefore, foreign investors have successfully subscribed to the GDR issue. Such statements had the potential to induce the investors in India to remain invested in the Company or to invest in the shares of the Company. In fact there was only one subscriber i.e. Noticee no. 6 which had subscribed to the GDR issue of AQUA by obtaining loans from EURAM Bank and that the loans were further secured by the AQUA itself by pledging the GDR proceeds. I find that all these events were price sensitive information and the potential to impact the scrip price of AQUA. Thus, I find that the corporate announcements made by AQUA on February 10, 2011 regarding allotment of GDR issues had the potential to mislead the investors and/ or create a false impression in the minds of the investors that the GDR issue was fully subscribed and that the funds are infused in the Company and utilized for the growth of the Company. Further, that many foreign investors have subscribed the shares and therefore, it is a good Company to remain invested or to invest in the Company.

25. I also note that an amount of USD 29.25 million was transferred by Noticee no. 12 to

Noticee no. 6 during the period August 29, 2011 to February 02, 2012. Pursuant to receipt of USD 29.25 million from Noticee no. 12, Noticee no. 6 repaid the loan amount of USD 28.96 million during the period August 30, 2011 to February 03, 2012. Subsequent to receipt of repayment of loan by Noticee no. 6, an amount of USD 29.07 million was transferred from AQUA's bank account with EURAM Bank to AQUA Hong Kong bank account with HSBC during the period August 30, 2011 to February 03, 2012. Further, an amount of USD 26.68 million was received by Noticee no. 12 from AQUA Hong Kong bank account during the period September 16, 2011 to February 28, 2012. From the above, it can be seen that AQUA, Noticee no. 6 and Noticee no. 12 were hand in glove with each other as money was being transferred between the 3 entities during the same period for the purpose of repayment of the loan taken by Noticee no. 6 for the subscription of AQUA's GDRs, out of the GDR proceeds of AQUA. Such an arrangement and also the payment from AQUA's Hong Kong bank account to Noticee no. 12 was also not informed to the stock exchanges.

26. In view of the above, I find that aforesaid scheme of issue of GDRs by AQUA was a fraudulent scheme and has resulted in 'fraud' as defined under the PFUTP Regulations, 2003 and SEBI is empowered to take action against any person if his act constitutes fraud on the securities market, even though it may not be possible to identify individual investors who have suffered losses as result of such fraud. I find that the arrangement of AQUA, in allotting GDR issue to only one entity i.e. Noticee no. 6 which subscribed to the GDR issue of AQUA by obtaining loan from EURAM Bank and the same was secured by AQUA by pledging its GDR proceeds, seen along with the misleading corporate announcements made by AQUA on February 10, 2011, lead to reasonable inference that the same were done in pursuance of a fraudulent scheme which had the potential to mislead or induce the investors to sale or purchase of its scrip. Therefore, I find that Noticee No. 1 (Aqua Logistics Ltd) has violated the provisions of Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1), (2)(f), (k), (r) of PFUTP Regulations, 2003.

27. With regard to the liability of the directors of the Company i.e. Noticees no. 2, 3 and 4, I note that from the Annual Report of AQUA for the FY 2010-11, that 12 board

meetings of AQUA were held in the FY 2010-11 and three directors namely Mr. Rajesh G Uchil (Noticee No. 2), Mr. M.S. Sayad (Noticee No. 3) and Mr. Harish G Uchil (Noticee No. 4) attended all the 12 board meetings of AQUA held in FY 2010-11, details of which have been provided to the Noticees as Annexure 7 to the SCN. Noticee no. 3 was also the person who was authorized by the board of directors of AQUA to deal with the Bank account of AQUA with EURAM Bank and he was the person who signed the pledge agreement. Therefore, I find that three directors Noticees no. 2, 3 and 4 had attended AQUA's board meeting dated September 09, 2010 and authorized Noticee no. 3 to use the GDR proceeds in connection with loan, if any and also authorized Noticee no. 3 to sign the agreements related to GDR issue of the AQUA.

28. I note that Noticees no. 2, 3 and 4 have neither filed any reply to the SCN nor availed the opportunity of hearing granted to them. However, from the documents and material available before me as discussed in the aforesaid para, I note that Noticees no. 2, 3 and 4 were directors of AQUA in the FY 2010-11 and attended the board meeting held on September 09, 2010, wherein, Noticee no. 3 was authorized by the board to *inter alia* enter into such agreements with EURAM Bank, as discussed in para 22 above. Further, Noticee no. 3 has signed the Pledge Agreement dated February 03, 2011 on behalf of the Company and also the letter dated July 09, 2012 to EURAM Bank authorizing EURAM Bank to set off the pledged cash deposit with the outstanding loan amount of USD 20,737,040, that Noticee no. 6 had defaulted in repaying, and therefore, liable for the fraudulent issue of GDRs on February 10, 2011 by AQUA. Thus, I find that Noticees no. 2, 3 and 4 were part of the fraudulent scheme which resulted in facilitating the subscription of GDR issue of AQUA wherein Noticee no. 6 obtained loan from EURAM Bank for subscribing the GDR issue of AQUA and, AQUA pledged the GDR proceeds with the EURAM Bank for securing the loans taken by Noticee no. 6. Further, I note that the Noticees no. 2, 3 and 4 were also directors of the AQUA during the period when the corporate announcement were made by AQUA, which were false and misleading to the extent that its GDR issue was successfully allotted whereas the same was subscribed by only one entity i.e. Noticee no. 6 by obtaining loans from the EURAM Bank which was again secured by the

AQUA by pledging the GDR proceeds. Thus, I find that the directors of AQUA namely; Mr. Rajesh G Uchil (Noticee No. 2), Mr. M.S. Sayad (Noticee No. 3) and Mr. Harish G Uchil (Noticee No. 4) have violated the provisions of Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1) of PFUTP Regulations.

29. Further, I note that it is alleged in the SCN that Noticee no. 6 repaid the loan availed from EURAM Bank to the tune of USD 41.64 million and defaulted on the loan thereafter. An amount of USD 20.76 million was adjusted by EURAM Bank from GDR proceeds of AQUA against the loan taken by Vintage FZE since AQUA pledged its GDR proceeds as security for Noticee no. 6's loan. It was alleged that an amount of USD 29.25 million was transferred by Noticee no. 12 to Noticee no. 6 during the period August 29, 2011 to February 02, 2012. Pursuant to receipt of USD 29.25 million from Noticee no. 12, Noticee no. 6 repaid the loan amount of USD 28.96 million during the period August 30, 2011 to February 03, 2012. Subsequent to receipt of repayment of loan by Noticee no. 6, an amount of USD 29.07 million was transferred from AQUA's bank account with EURAM Bank to AQUA HK's bank account with HSBC during the period August 30, 2011 to February 03, 2012. Further, an amount of US 26.68 million was received by Noticee no. 12 from AQUA HK's bank account during the period September 16, 2011 to February 28, 2012. Thereby, it was alleged that GDRs to the extent of USD 47.44 million were issued without consideration to Noticee no. 6/Noticee no. 12 because GDRs were subscribed by Noticee no. 6 by taking loan which was secured by pledging the GDR proceeds of AQUA and the repayment of loan by Vintage to EURAM Bank was also made from the GDR proceeds.
30. In this regard, I note that it has been alleged in the SCN that Mr. Arun Panchariya (Noticee no. 5) is key person in structuring the GDR issue of AQUA who devised and structured the GDR issue in connivance with AQUA. It has been alleged that Noticee no. 5 connected entities were involved at all stages of the GDR issue of AQUA. Noticee no. 5 was connected to Noticee no. 8 who was Lead Manager to GDR issue. Noticee no. 5 who was also connected to Noticee no. 6 who subscribed to GDR issue by entering into Loan Agreement with EURAM Bank for which AQUA pledged its GDR proceeds as security. Noticee no. 5 connected IFCF (Noticee no. 10) converted GDRs

and sold converted equity shares of AQUA. Noticee no. 5 connected FII namely Cardinal Capital Partners (Noticee no. 11) facilitated Noticee no. 10 in conversion of GDRs and sale of converted equity shares on Indian stock exchanges. Noticee no. 6 subsequently defaulted on repayment of balance loan amount of USD 20.76 million. It is alleged that GDR proceeds to the extent of USD 26.68 million which was transferred by AQUA from its EURAM Bank account to AQUA's Hong Kong Account was transferred back to Noticee no. 12. Therefore, it was alleged that GDRs to the extent of USD 47.44 million were issued without consideration to Noticee no. 6/ Noticee no. 12. Thus, it was alleged that Noticee no. 5 devised GDR scheme along with AQUA wherein AQUA misled the Indian investors by concealing the information of entering into Pledge Agreement and informing GDR related news in a distorted manner to stock exchange which made investors believe that GDRs were genuinely subscribed and caused loss to the shareholders to the tune of USD 47.44 million. Noticee no. 5 connected Noticee no. 10 received 40,000 GDRs from Noticee no. 6, converted them and sold converted shares worth Rs. 88.15 lakhs. It is alleged that shares sold by Noticee no. 10 are the shares which were acquired by Noticee no. 6/ Noticee no. 12 without consideration. Hence, it was alleged that Noticee no. 5 and connected entities i.e. Noticee no. 6, Noticee no. 7, Noticee no. 12, Noticee no. 8, Noticee no. 9, Noticee no. 10 and Noticee no. 11 acted as conduit to Noticee no. 5, in furtherance of common intention to commit fraud on Indian investors of AQUA by way of subscribing to GDRs in fraudulent manner, defaulting on loan repayment, converting GDRs into equity shares and subsequently selling converted equity shares in the Indian securities market, in violation of provision of SEBI Act, 1992 and PFUTP Regulations. Summary of the connection/ association of Noticee no. 5 with Noticees no. 6 to 12 is tabulated below:

Sl. No.	Name of Noticees	Connection/association of Noticee no. 5 (Arun Panchariya) with other Noticees
1	Pan Asia Advisors Ltd. (now known as Global Finance and Capital Ltd.)	Noticee no. 5 was director (April 24, 2006 to September 29, 2011) and 100% shareholder (July 01, 2008 to January 20, 2012). Pan Asia Advisors is now known as Global Finance and Capital Ltd

Sl. No.	Name of Noticees	Connection/association of Noticee no. 5 (Arun Panchariya) with other Noticees
2	Vintage FZE (now known as Alta Vista International FZE)	Noticee no. 5 was beneficial owner and Managing Director as on June 07, 2010. Alkarni Holdings Limited was shareholder of Vintage as on December 28, 2010 and Noticee no. 5 was sole director of Alkarni as on April 21, 2014.
3	India Focus Cardinal Fund (IFCF)	Noticee no. 5 was director from August 22, 2008 to October 28, 2010, Investment Officer (100% shareholder) and beneficial owner.
4	Cardinal Capital Partners	Noticee no. 5 was beneficial owner and 100% shareholder.
5	EURAM Bank, Austria	Noticee no. 5 connected Pan Asia Advisors Ltd. had joint venture with EURAM Bank, namely, EURAM Bank Asia Limited.
6	EURAM Bank Asia Limited	Noticee no. 5 was director and president (resigned on September 22, 2011).
7	Mr. Mukesh Chauradiya	Noticee no. 5 was beneficial owner of Vintage FZE in which Noticee no. 7 served as Managing Director and director. In Ramsai Investment Holdings Private Limited, where Noticee no. 6 was holding 99.98% shares (for the period 2009-2013) and was director for the period from February 04, 2008 to August 18, 2010 wherein Noticee no. 7 was director in the same company (first appointment from February 04, 2008 and second appointment from August 17, 2010 till March 17, 2016).
8	Mr. John Behar	Noticee no. 5 and Noticee no. 9 were directors in Pan Asia Advisors Ltd., wherein Noticee no. 5 was promoter/ director (April 24, 2006 to September 29, 2011)- Noticee no. 9 was director (April 24, 2006 to September 29, 2011) of Pan Asia Advisors Ltd. Noticee no. 9 provided professional advice to Noticee no. 5 regarding Pan Asia Advisors Ltd.
9	Prospect Capital Limited	Noticee no. 8 is wholly owned and managed by Noticee no. 9. Noticee no. 9 is connected to Noticee no. 5. Noticee no. 12 represented himself as director of Noticee no. 8 before BNY and held email id with a domain name prospect capital in the name of sa@prospectcapital.com .
10	Sea Dragons Worldwide Ltd.	Noticee no. 12 is the beneficial owner of Sea Dragons. Noticee no. 12 has represented before BNY as director of Noticee no. 8
11	Sanjay Aggarwal	

31. From the above, it is noted that Noticees no. 6 to 12 are connected to Noticee no. 5 and are alleged to have acted as conduits to Noticee no. 5, in furtherance of common intention to commit fraud on Indian investors of AQUA by way of subscribing to GDRs

in fraudulent manner, defaulting on loan repayment, converting GDRs into equity shares and subsequently selling converted equity shares in the Indian securities market. I shall now proceed to deal with the role and allegations against Noticees no. 5 to 12 in the SCN and submissions made therein.

32. Role of Vintage FZE (Noticee no. 6)

- (i) Noticee no. 6 entered into Loan Agreement with EURAM Bank on February 03, 2011 for amount of USD 62.379 million for subscribing to GDR issue of AQUA. Simultaneously, Pledge Agreement dated February 03, 2011 was entered into between AQUA and EURAM Bank for providing security towards the said loan obtained by Noticee no. 6 from EURAM Bank. Noticee no. 6 was the sole subscriber to the GDR issue of AQUA on February 10, 2011 and the same was not disclosed by AQUA to the stock exchanges. I note that Noticee no. 5 was the beneficial owner and Managing Director of Noticee no. 6. Further, Noticee No. 7 was also the Managing Director of Noticee no. 6 who signed the loan agreement dated February 03, 2011 between Noticee no. 6 and EURAM Bank.

- (ii) I note that Noticee no. 6 had entered into Loan agreement with EURAM Bank as per which Noticee no. 6 was provided a loan only for the purpose of subscribing to the GDRs of AQUA. In terms of pledge agreement between AQUA and EURAM Bank, GDR proceeds were pledged with EURAM Bank as a security for the loan given to Vintage and could only be released to AQUA equal to the amount loan repaid by Vintage to EURAM Bank. Noticee no. 6 repaid loan to the tune of USD 41.64 million and defaulted on the loan thereafter. I note that the outstanding loan amount of USD 20.76 million was adjusted by EURAM Bank from AQUA's EURAM Bank account. I note that an amount of million was transferred by Noticee no. 12 to Noticee no. 6 during the period August 29, 2011 to February 02, 2012. Pursuant to receipt of USD 29.25 million from Noticee no. 12, Noticee no. 6 repaid the loan amount of USD 28.96 million during the period August 30, 2011 to February 03, 2012. Subsequent to receipt of repayment of loan by Noticee no. 6, an amount of USD 29.07 million was transferred from AQUA's bank account with EURAM Bank to AQUA HK's bank account with HSBC during the period August 30, 2011 to

February 03, 2012. Further, an amount of USD 26.68 million was received by Noticee no. 12 from AQUA HK's bank account during the period September 16, 2011 to February 28, 2012. Therefore, I find that Noticee no. 6 repaid loan of USD 28.96 million on receipt of USD 29.25 million from Noticee no. 12 which were in turn , subsequently, received by Noticee no. 12 from AQUA HK subsidiary (USD 26.68 million) which had received USD 29.07 million from AQUA. As USD 28.96 repaid by Noticee no. 6 to EURAM Bank was received from AQUA only, therefore, in effect, Noticee no. 6 repaid loan of USD 14.96 million only and amount of USD 47.44 million remain unpaid.

(iii) Further, I note that Noticee no. 6 had transferred 40,000 GDRs to Noticee no. 10 who converted them and sold the converted shares for Rs. 88.15 lakh. I note the shares sold by Noticee no. 10 are the shares which were acquired by Noticee no. 6 without consideration. Hence, I find that Noticee no. 6 along with Noticee no. 5 and his connected entities are jointly and severally responsible for the loss of Rs. 88.15 lakhs. Such an act of Noticee no. 6 (where Noticee no. 5 was the beneficial owner and Managing Director of Noticee no. 6) and Noticee no. 5 connected entities resulted in a fraudulent scheme on the investors in the securities market and it acted as party to fraudulent scheme of AQUA.

33. Role of Mukesh Chauradiya (Noticee no. 7)

- (i) It is alleged in the SCN that Noticee no. 7 was the Managing Director and authorized signatory of Noticee no. 6 when it had entered into Loan Agreement with EURAM Bank for subscription of GDR issue of AQUA and defaulted on loan of USD 20.76 million. Noticee no. 7 was also a director in the company Ramsai Investment Holdings Private Limited, where Noticee no. 6 was holding 99.99% shareholding through its director Noticee no. 5. Hence, it has been alleged that Noticee no. 7 is a close associate of Noticee no. 5.
- (ii) Noticee no. 7 vide his replies dated October 31, 2018 and September 09, 2020

has submitted that he is the authorized signatory in relation to the Bank account held by Noticee no. 6 with EURAM Bank, Austria. He has submitted that he was never the director or the Managing Director of Noticee no. 6 or held any beneficial interest in Noticee no. 6. Noticee no. 7 has submitted that the loan agreement in relation to AQUA was signed by him for and on behalf of Noticee no. 6 as its Authorised Signatory in relation to its bank account with EURAM Bank. That the agreement was signed by him as per the instruction and direction of Noticee no. 5, the ultimate owner and beneficiary of Noticee no. 6.

(iii) In this regard, I note that Noticee no. 7 has submitted that he has signed the Loan Agreement dated February 03, 2011 on behalf of Vintage. Even though he claims that he has signed the Loan Agreement as per the instructions of Noticee no. 5, I note that as per the Loan Agreement dated February 03, 2011, Noticee no. 7 has signed the same as the Managing Director of Noticee no. 6 for obtaining loan of USD 62.379 million from EURAM Bank for subscribing to the GDR issue of AQUA and therefore, cannot escape any liability for the same as he has been instrumental in signing the Loan Agreement that has facilitated the subscription of GDRs by Noticee no. 6. Therefore, I find that Noticee no. 7 has acted as party to the fraudulent scheme of AQUA in connivance with Noticee no. 5 and his connected entities that has resulted in a fraudulent scheme on the investors in the securities market.

(iv) Further, I also note that Noticee no. 7 has 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 Noticee no. 5. 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. 7 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.”

(v) In light of the aforementioned Order of the Hon'ble SAT, it becomes clear the present matter is not the only matter where Noticee no. 7 has signed loan agreements on behalf of Noticee no. 6. His strong connection with Noticee no. 5 has also been upheld by the Hon'ble SAT in the aforesaid Order. Further, from his directorship in various entities controlled by Noticee no. 5 and the fact that he was an authorized signatory for Noticee no. 6, I find that Noticee no. 7 was not merely an employee but was a close associate of Noticee no. 5 and as such Noticee no. 7 was aware of the scheme devised by Noticee no. 5 for various GDR issues and was a party to the fraudulent scheme related to the GDR issue of AQUA. I also note that Noticee no. 7 has been alleged to be involved in 14 GDR issues involving fraudulent schemes orchestrated by Noticee no. 5 and he has already been debarred in multiples cases for his involvement in fraudulent GDR schemes orchestrated by Noticee no. 5, such as in the matters of Visu International Ltd (Order dated February 20, 2020), Farmax India Ltd (Order dated July 14, 2020) and Zenith Birla (India) Ltd. (Order dated March 30, 2021).

34. Role of Prospect Capital Ltd (Noticee no. 8) and John Behar (Noticee no. 9):

(i) Noticee No. 8 was the Lead Manager to GDR issue of AQUA. AQUA, Noticee no. 8 and EURAM Bank had entered into an Escrow Agreement dated February 03, 2011. It was observed from the email dated December 23, 2015 of Noticee no. 8 that it was incorporated in November 2004 and is wholly owned and managed by Noticee No. 9. With respect to its connection with Noticee no. 5, Noticee no. 9 submitted that he provided professional advice to Noticee no. 5 in applying for Financial Services Authority (FSA) UK (predecessor of Financial Conduct Authority UK) for authorization of Noticee no. 5's company Pan Asia Advisors Limited. Subsequently Noticee no. 9 was contracted to provide in-house compliance oversight for Pan Asia Advisors Limited from October 17, 2006 to November 09, 2007, which is owned by Noticee no. 5. Further, it was observed from Pan Asia Advisors Limited's letter dated February 25, 2016 that Noticee no. 5 was director in Pan Asia Advisors Limited during the period August 30, 2006 to September 29, 2011 and Noticee no. 9 was also director in Pan Asia Advisors Ltd.

during the period April 24, 2006 to April 01, 2008. Vide letter dated February 20, 2012, Pan Asia Advisors Ltd. submitted that Noticee no. 5 held 100% shareholding in the company during the period July 2008 to January 2012. In view of the above, it was alleged that Noticee no. 9 was connected to Noticee no. 5 since 2006 and in connivance with Noticee no. 5 and his connected entities, had facilitated GDR issue of AQUA.

(ii) Noticees no. 8 and 9, vide their joint letter dated October 02, 2020, have *inter alia* submitted that in the present case Noticee no. 8 was not responsible for finding investors, since Noticee no. 12, the Indian advisor for AQUA's GDR issue, who had been introduced to them by Noticee no. 5 in the context of this issue to provide end to end project management of the listing process, informed them that this GDR issue was pre-sold i.e. that investors willing to subscribe were already identified. Therefore, that the job of Noticee no. 5 was strictly limited to the documentary process of working with legal counsel to create the prospectus and provide other documents required by the Luxembourg Stock Exchange in order to complete a listing of GDRs with the extensive assistance of Noticee no. 12. That Noticee no. 8 in good faith sent subscription letters to the investors which Noticee no. 12 had identified after he provided their details.

(iii) With regard to submissions of Noticees no. 8 and 9, I note that the submission that its role was confined to only documentary process of working with legal counsel to create the prospectus and provide other documents required by the Luxembourg Stock Exchange in order to complete a listing of GDRs with the extensive assistance of Noticee no. 12, cannot be accepted as the records say otherwise. I note that the Escrow Agreement dated February 03, 2011 entered into among AQUA (as the Company), Noticee no. 8 (as the Lead Manager) and EURAM Bank (as the Escrow Agent), stated that the Noticee no. 8 had entered into a Placing Agreement with AQUA to procure investors for the subscription of 4,112,000 GDRs of AQUA. I note that Noticees no. 8 and 9 have submitted that Noticee no. 12 informed them that the GDR issue was pre-sold i.e. that investors willing to subscribe were already identified. However, I note that Noticee no. 12 has

submitted that he has no knowledge about the pledge or loan agreement. In this regard, I note that Noticees no. 8 and 9 have not submitted any documents/evidence to substantiate their claim that Noticee no. 12 had informed them that the investors were already identified. Therefore, in the absence of any evidence to prove that Noticee no. 12 had informed them that the GDR issue was pre-sold, I find that the submissions of Noticee no. 8 and 9 are untenable, as the responsibility to procure investors for the subscription of GDRs of AQUA was with Noticee no. 8 as per the Placing Agreement between Noticee no. 8 and AQUA as noted in the Escrow Agreement dated February 03, 2011. Further, Noticee no. 8 and 9 have submitted that they had sent subscription agreements at the time of the issue and this shows that Noticee no. 8 and 9 were aware that the issue was subscribed by one subscriber and they deliberately provided a list containing name of 10 subscribers to AQUA which was not correct, as a part of the fraudulent scheme. Moreover, as mentioned above, Noticee no. 5 and Noticee no. 9 were directors in Pan Asia Advisors Ltd. wherein Noticee no. 5 was promoter/ director (April 24, 2006 to September 29, 2011) and Noticee no. 9 was director (April 24, 2006 to September 29, 2011) of Pan Asia Advisors Ltd. Also, Noticee no. 9 provided professional advice to Noticee no. 5 regarding Pan Asia Advisors Ltd. Thus, Noticee no. 9 was closely connected to Noticee no. 5 who devised the whole fraudulent scheme of issue of GDR of AQUA. At the time of the GDR issue of AQUA when the Escrow Agreement dated February 03, 2011 was signed, which is also the same day when the Pledge Agreement between AQUA and EURAM and Loan Agreement between Noticee no. 6 and EURAM were signed, Noticee no. 9 was also a director of a company owned by Noticee no. 5 and Noticee no. 8 was wholly owned by Noticee no. 9, at that time. Therefore, the connection between Noticees no. 8 and 9 with Noticee no. 5 is well established. In the Order dated October 25, 2016 in ***Pan Asia Advisors Limited vs. SEBI (Appeal No. 126 of 2013)***, the Hon'ble SAT has examined the role of a lead manager in a GDR issue and 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.”

(iv) Thus, I find that Noticees no. 8 and 9 are connected to Noticee no. 5 and as the Lead Manager to the GDR Issue of AQUA, have facilitated the GDR issue (documentation, sourcing of subscribers etc.) in connivance with Noticee no. 5 and his connected entities. I find that Noticees no. 8 and 9 have provided the false list of GDR subscribers to AQUA as part of the fraudulent scheme devised by Noticee no. 5 and misled the Indian investors regarding the demand for the GDRs issued by AQUA in the foreign market.

35. Role of India Focus Cardinal Fund (Noticee no. 10):

- (i) During the period January 2009 to May 31, 2010, Noticee no. 11 held 100% shares of Noticee no. 10 and Noticee no. 5 held 100% shares of Noticee no. 11. Hence, it was alleged that Noticee no. 5 was 100% shareholder of Noticee no. 10. Noticee no. 5 also served as Chief Investment Officer of Noticee no. 11 in 2010. It is alleged that Noticee no. 5 is the beneficial owner of Noticee no. 10.
- (ii) From the details of GDR transactions provided by EURAM Bank, it was observed that Noticee no. 10 had received 40,000 GDRs from Noticee no. 6, which it then converted into underlying equity shares of AQUA and sold the equity shares for Rs. 88.15 lakhs, in the Indian stock market. It is alleged that the shares sold by Noticee no. 10 had resulted from the conversion of GDRs which were acquired by Noticee no. 6/ Noticee no. 12 at free of cost. Further it was observed that Noticee no. 10 was registered as sub-account under FII-EURAM and FII-CCP. It was observed that no other sub account was registered with EURAM Bank except Noticee no. 10. As FIIs, both EURAM Bank and Noticee no. 11 did not make investment in India except its sub account IFCF (Noticee no. 10) which sold shares of AQUA in the market. It was further alleged that Noticee no. 11 was registered

as FII only to facilitate Noticee no. 10 to become its subaccount and to sell the converted shares of AQUA in the Indian securities market.

(iii) I note that Noticee no. 10 has not filed any reply to the SCN or availed the opportunity of personal hearing granted to it. Hence, from the documents and material available on record, I find that Noticee no. 10, which was controlled by Noticee no. 5, converted the 40,000 GDRs given to it by Noticee no. 6 and sold 9,20,000 converted equity shares in the Indian securities market amounting to Rs. 88.15 lakh. Thereby according to the fraudulent scheme perpetrated, I find that Noticee no. 5 arranged loan for the subscription to GDRs, subscribed to GDRs through Noticee no. 6 (where Noticee no. 5 was the beneficial owner and Managing Director), and sold the GDRs to FII-Sub accounts which, in turn, sold the converted equity shares in the Indian securities market.

(iv) Hence, I find that Noticee no. 10 along with Noticee no. 5 and his connected entities, were responsible for the loss of Rs. 88.15 lakhs inflicted on the shareholders of AQUA jointly and severally. Such an act of Noticee no. 10 in connivance with Noticee no. 5 and his connected entities resulted in a fraudulent scheme on the other investors in the securities market and it acted as party to fraudulent scheme.

36. Role of Cardinal Capital Fund (Noticee no. 11):

(i) Noticee no. 5 is beneficial owner of Noticee no. 11 and held 100% shares of Noticee no. 11. I note that Noticee no. 11, as an FII, did not make any investment and appears to have registered as FII only to facilitate the Noticee no. 5 connected FII sub-account India Focus Cardinal Fund (Noticee no. 10) in selling the converted equity shares of AQUA. Such act of Noticee no. 11 in connivance with Noticee no. 5 and his connected entities resulted in a fraudulent scheme on the other investors in the securities market and it acted as party to fraudulent scheme. As FIIs, both EURAM Bank and Noticee no. 11 did not make investment in India except its sub account IFCF (Noticee no. 10) which sold shares of AQUA in the market. It was alleged that Noticee no. 11 was registered as FII only to facilitate

Noticee no. 10 to become its subaccount and to sell the converted shares of AQUA in the Indian securities market.

(ii) I note that Noticee no. 11 has not filed any reply to the SCN or availed the opportunity of personal hearing granted to it. Hence, as discussed in para above with regard to role of Noticee no. 10, I find that Noticee no. 10, which was the FII sub-account of Noticee no. 11, wherein, Noticee no. 11 held 100% shares, converted the 40,000 GDRs given to it by Noticee no. 6 and sold 9,20,000 converted equity shares in the Indian securities market amounting to Rs. 88.15 lakh. Thereby according to the fraudulent scheme perpetrated, I find that Noticee no. 5 arranged loan for the subscription to GDRs, subscribed to GDRs through Noticee no. 6 (where Noticee no. 5 was the beneficial owner and Managing Director), and sold the GDRs to Noticee no. 10 who was FII-Sub account of Noticee no. 11 which, in turn, sold the converted equity shares in the Indian securities market.

(iii) Hence, I find that Noticee no. 11 along with Noticee no. 5 and his connected entities, were responsible for the loss of Rs. 88.15 lakhs inflicted on the shareholders of AQUA jointly and severally. Such an act of Noticee no. 10, which is 100% held by Noticee no. 11, in connivance with Noticee no. 5 and his connected entities resulted in a fraudulent scheme on the other investors in the securities market and it acted as party to fraudulent scheme.

37. Role of Sanjay Aggarwal (Noticee no. 12):

(i) It has been alleged in the SCN that from the offer document of GDR issue of AQUA, it shows that La Richeesse Advisors Private Limited (herein after referred to as "**La Richeesse**") was the Indian advisor to AQUA for its GDR issue. Noticee no. 12 in his written submission dated July 23, 2015 submitted that he was the owner of La Richeesse. It was observed from the MCA website that Noticee no. 12 was the director of La Richeesse from June 10, 2009 and continued to remain director as on the date of the SCN. Further, it was observed from the offering circular of

GDR issue that La Richeesse is mentioned as Indian advisor to the company, while Noticee no. 5 connected Noticee no. 8 was the Lead Manager for the GDR issue of AQUA. Further, it is alleged that from the statement submitted by Noticee no. 12 dated November 08, 2018, it was observed that La Richeesse prepared offering circulars for GDR issues of various companies and post scrutiny of GDR issuer companies' financial statements and that La Richeesse submitted the relevant documents to Noticee no. 8 and Noticee no. 5. Noticee no. 12 further submitted that he coordinated with Noticee no. 8 for GDR issue of AQUA Logistics Ltd. It is also alleged in the SCN that from the business card provided by the Overseas Depository Bank i.e. The Bank of New York Mellon (BNY) vide email dated October 26, 2016, Noticee no. 12 represented himself as director of Prospect Capital Ltd. before BNY.

- (ii) It was observed from the KYC Documents of a/c no. 3104410 of Sea Dragon Worldwide Limited that Noticee no. 12 was the authorized representative of the bank account and beneficial owner of Sea Dragons Worldwide Limited. The SCN alleges that Noticee no. 12 has transferred amount from bank account no: 3104410 of Sea Dragon Worldwide Limited with Julius Baer to Noticee no. 6's bank account no: 540012 with EURAM Bank for repayment of loan availed by Noticee no. 6 for subscription of GDRs of AQUA. Subsequent to receipt of money from Noticee no. 12, Noticee no. 6 repaid part of the loan and an amount was transferred from AQUA's account with EURAM Bank (account no: 580035) to AQUA HK's bank account having number 400762217838 with HSBC bank in Hong Kong and thereafter, transferred to Noticee no. 12's bank account (3104410) with Juluis Baer. The flow of funds from Noticee no. 12 to Noticee no. 6, Noticee no. 6 to Euram Bank, AQUA's EURAM account to AQUA HK and AQUA HK to Noticee no. 12 is tabulated below:

Final Order in the matter of Aqua Logistics Limited

Date of transfer by Sea Dragons	Amount transferred by Sanjay Aggarwal to Vinatge (USD)	Date of credit to Vinatge Bank account no 540012 with EURAM	Amount credited to Vintage's bank account no 540012 with EURAM	Date of repayment of Loan by Vinatge	Loan amount repaid by Vinatge (USD)	Date of transfer of GDR proceeds from AQUA EURAM a/c to AQUA HK	Amount transferred from AQUA's EURAM a/c to AQUA HK (USD)	Date of transfer by AQUA HK to Sea Dragons	Amount transferred by AQUA HK to Sanjay Aggarwal subsequent to receipt of funds from AQUA EURAM a/c
29/08/2011	1,250,275.00	30/08/2011	1,250,116.58	30/08/2011	1,250,000.00	30/08/2011	1,290,000.00	-	-
07/09/2011	1,250,200.00	07/09/2011	1,250,044.61	07/09/2011	1,250,000.00	07/09/2011	1,250,000.00	-	-
15/09/2011	2,350,250.00	15/09/2011	2,350,098.98	15/09/2011	2,350,000.00	15/09/2011	2,385,000.00	16/09/2011	1,249,975.00
								20/09/2011	1,099,975.00
02/11/2011	1,250,200.00	03/11/2011	1,250,048.10	03/11/2011	1,250,000.00	03/11/2011	1,250,000.00	04/11/2011	1,274,975.00
07/12/2011	3,000,000.00	07/12/2011	2,999,852.14	07/12/2011	3,000,000.00	07/12/2011	3,000,000.00	09/12/2011	1,249,975.00
								09/12/2011	1,249,975.00
								12/12/2011	499,975.00
13/12/2011	2,500,200.00	13/12/2011	2,500,052.78	13/12/2011	2,500,000.00	13/12/2011	2,500,000.00	14/12/2011	1,249,975.00
								15/12/2011	1,249,975.00
09/01/2012	2,500,248.00	10/01/2012	2,500,107.99	10/01/2012	2,500,000.00	10/01/2012	2,500,000.00	11/01/2012	1,249,975.00
								12/01/2012	1,249,975.00
12/01/2012	2,500,400.00	13/01/2012	2,500,260.10	13/01/2012	2,500,000.00	13/01/2012	2,500,000.00	17/01/2012	1,249,975.00
								17/01/2012	1,244,975.00
17/01/2012	2,650,290.00	17/01/2012	2,650,149.52	17/01/2012	2,465,000.00	17/01/2012	2,500,000.00	18/01/2012	1,249,975.00
								19/01/2012	1,249,975.00
19/01/2012	2,500,525.00	20/01/2012	2,500,383.86	20/01/2012	2,500,000.00	20/01/2012	2,500,000.00	25/01/2012	1,249,975.00
								26/01/2012	1,249,975.00
27/01/2012	2,500,355.00	27/01/2012	2,500,212.64	27/01/2012	2,500,000.00	27/01/2012	2,500,000.00	30/01/2012	1,249,975.00
								30/01/2012	1,249,975.00
30/01/2012	2,500,525.00	31/01/2012	2,500,380.40	31/01/2012	2,400,000.00	31/01/2012	2,400,000.00	01/02/2012	1,249,975.00
								02/02/2012	1,149,975.00
02/02/2012	2,500,525.00	03/02/2012	2,500,380.97	03/02/2012	2,500,000.00	03/02/2012	2,500,000.00	06/02/2012	1,249,975.00
								06/02/2012	1,249,975.00
								09/02/2012	152,725.00
								28/02/2012	13,225.00
TOTAL	29,253,993.00		29,252,088.67		28,965,000.00		29,075,000.00		26,685,400.00

- (i) It was observed from the above table that an amount of USD 29.25 million was transferred by Noticee no. 12 to Noticee no. 6 during the period August 29, 2011 to February 02, 2012. Pursuant to receipt of USD 29.25 million from Noticee no. 12, Noticee no. 6 repaid the loan amount of USD 28.96 million during the period August 30, 2011 to February 03, 2012. Subsequent to receipt of repayment of loan by Noticee no. 6, an amount of USD 29.07 million was transferred from AQUA's bank account with EURAM Bank to AQUA HK's bank account with HSBC during the period August 30, 2011 to February 03, 2012. Further, an amount of USD 26.68 million was received by Noticee no. 12 from AQUA HK's bank account during the period September 16, 2011 to February 28, 2012. It was further observed from EURAM's letter dated August 14, 2012 that according to AQUA's instructions, EURAM Bank has transferred 890350 GDRs of AQUA to Bank Julius Baer & Co., Singapore for further credit to account no. 3104410 Sea Dragon Worldwide Limited.

- (ii) From the above, it was alleged that Noticee no. 12 facilitated GDR issue of AQUA as an advisor to GDR Issue. He transferred funds to Noticee no. 6 for repayment of loan with EURAM Bank and AQUA had transferred GDR proceeds to AQUA HK which in turn transferred to Noticee no. 12. Further Noticee no. 12 received GDRs from EURAM Bank pursuant to default in repayment of balance loan amount by Vintage. Hence, it is alleged that Noticee no. 12 was acting hand in glove with entities connected to Noticee no. 5.
- (iii) With regard to the aforesaid allegations, Noticee no. 12 vide letters October 20, 2020 and January 25, 2021, has *inter alia* submitted that he is the owner of La Richeesse. He has submitted that neither AQUA nor Noticee no. 5 discussed with him or sought his advice on executing the loan agreement and pledge agreement and he came to know about the loan and pledge agreement only when he saw it as Annexure to the SCN. In so far as the allegation that Noticee no. 12 had transferred funds from by bank account no. 3104410 with Julius Baer to Noticee no. 6's Bank account no. 540012 with EURAM Bank which have been subsequently used by Noticee no. 6 for repayment of loan etc., Noticee no. 12 has submitted that during the financial year 2004 to 2013 (except financial year 2009-10), he was a Non Residential Indian (NRI) and the receipt of funds by him out of India from any source is not violation of any Indian Laws. Further, with regard to transfer of funds from AQUA HK to him, Noticee no. 12 has submitted that same were received in the company by the name and style of Sea Dragons controlled by his employer and that too nearly eight months after GDR issue which were used for business purposes. He has submitted that the SCN is trying to show close proximity between two events that happened after a long gap of nearly eight months which is unreasonable, defies logic and is based on surmises and conjectures.
- (iv) With regard to the contention of Noticee no. 12 that neither AQUA nor Noticee no. 5 discussed with him or sought his advice on executing the loan agreement and pledge agreement and he came to know about the loan and pledge agreement

only when he saw it as Annexure to the SCN, I note that La Richesse was the Indian Advisor to the GDR Issue and that La Richesse was owned by Noticee no. 12. I note that the Lead Manager was Noticee no. 8 and Noticee no. 12 has submitted that he was only coordinating between AQUA and Noticee no. 8/Noticee no. 5 and he had no idea of any fraudulent arrangement/scheme of GDR Issue of AQUA in connivance with Noticee no. 5 and his connected entities. In this regard, I note that it has already been established in the above paras, that Noticee no. 8 (which was wholly owned and managed by Noticee No. 9) were connected entities of Noticee no. 5, and as the Lead Manager to the GDR Issue of AQUA, have facilitated the GDR issue (documentation, sourcing of subscribers etc.) in connivance with Noticee no. 5 and his connected entities. It has been alleged in the SCN that Noticee no. 12 had represented himself as director of Noticee no. 8 before the Bank of New York Mellon. Noticee no. 12 in his submissions vide letter dated October 20, 2020 has denied that he was a director of Noticee no. 8 or connected/related to Noticee no. 8 directly or indirectly to warrant any allegation. However, in his statement dated November 08, 2016 before SEBI, I note that Noticee no. 12 has stated as under:

“For marketing purposes, I may have represented myself as a director of Prospect Capital Limited before BNY Mellon/Issuer Company. However, I was not actually a director of Prospect Capital Limited, UK. The purpose of this representation was to give an additional comfort to the Issuer Companies and the Global Depository i.e. BNY Mellon, Mumbai for dealing in matter relating to the GDR Issue.”

- (v) Hence, I note that during the statement made before SEBI on November 08, 2016, Noticee no. 12 had accepted that he had represented himself as a director of Noticee no. 8 to given an additional comfort to the issuer companies and Global Depository. Further, I note that Bank of New York Mellon vide its letter dated October 26, 2016 has submitted the business card of Noticee no. 12, representing himself as director of Noticee no. 8 before Bank of New York Mellon. In view of the above statements and the business card, I find that Noticee no. 12 is clearly known to Noticee no. 8, who he represented before Bank of New York Mellon for the purpose of the GDR Issue. Such actions to falsely represent oneself are fraudulent

in nature and goes on to clearly show that Noticee no. 12 was part of the fraudulent scheme orchestrated by Noticee no. 5 along with Noticee no. 8 and other connected entities.

(vi) Further, with regard to the allegations on transfer of money by Noticee no. 12 to Noticee no. 6 and the subsequent transfer of money from AQUA to Noticee no. 12, I note that Notice no. 12 has submitted that during the course of his employment in India with Earthstone, a company was formed by his employer by the name and style of Sea Dragons Worldwide Ltd (hereinafter referred to as "Sea Dragons") for some tax planning and local company law purposes. Since he was a senior team member, he was made authorised signatory of that company in bank accounts and also the beneficial owner, although the daily matters were handled by his employer. In this regard, I note that Noticee no. 12 has not submitted any documents/letter from his employer of such an arrangement or any other evidence to substantiate his claim that he was merely appointed authorised signatory and beneficial owner of Sea Dragon by his employer. Whereas, from the bank account documents of Sea Dragons submitted by Bank Julius Baer & Co., Singapore to SEBI, I note that Noticee no. 12 is stated to be the authorised signatory and the beneficial owner of the bank account no. 3104410 of Sea Dragon with the bank Juluis Baer & Co. Singapore. Since there is no material on record to show that the beneficial owner or final beneficiary was someone else, I find the submission of the Noticee no. 12 is untenable. Further, Noticee no. 12 has not provided any reason or documents to explain why the amount the amount of USD 29.25 million were transferred to Noticee no. 6 and the amount of USD 26.68 million was received from AQUA's Hong Kong account. What is certain is that the bank account from which the amounts were transferred to Noticee no. 6 and received from AQUA HK, was an account in which Noticee no. 12 was the authorized signatory and beneficial owner. Hence, I find that the amount of USD 29.25 million transferred from the account of Sea Dragon to the account of Noticee no. 6 with EURAM Bank was transferred by Noticee no. 12 and the amount of USD 26.68 million transferred by AQUA HK to the account of Sea Dragon was received by Noticee no. 12, as part of the fraudulent scheme orchestrated by Noticee no. 5.

- (vii) With regard to the contention that he was an NRI during the said period and therefore, he was not in violation of any Indian Law, I note that said transfer of funds from Sea Dragon Worldwide Limited to Noticee no. 6 was part of fraudulent scheme, as alleged in the SCN, and has also resulted into violation of the provisions of SEBI Act, 1992 and PFUTP Regulations. I note that while making such contention Noticee no. 12 has conveniently avoided to provide explanation of transfer of funds made by him to Noticee no. 6 which could have shown that such transfer of funds was not a part of the fraudulent scheme, as alleged in the SCN. In view of the above, I find that Noticee no. 12 has played a prominent role in the fraudulent scheme orchestrated by Noticee no. 5 in the GDR Issue of AQUA in connivance with other connected entities of Noticee no. 5.

38. Role of Arun Panchariya (Noticee no. 5):

- (i) It has been alleged in the SCN that Noticee no. 5 is key person in structuring the GDR issue of AQUA who devised and structured the GDR issue in connivance with AQUA. As discussed in the aforesaid paras with respect to Noticees no. 6 to 12, it has been found that how each Noticee was part of the GDR Issue and was connected to Noticee no. 5. Noticee no. 5 was the beneficial owner and Managing Director of Noticee no. 6, which was the sole subscriber of GDR issue of AQUA and the subscription was arranged through a loan availed from EURAM Bank to the extent of USD 62.379 million for which security was provided by AQUA by pledging its GDR proceeds. Noticee no. 8 was the Lead Manager for GDR Issue of AQUA and Noticee no. 9, who wholly owned and managed Noticee no. 8 was well connected to Noticee no. 5 through business relations and as a director in one of Noticee no. 5's company. Noticee no. 7 who had signed the Loan Agreement dated February 03, 2011 on behalf of Noticee no. 6, was the Managing Director of Noticee no. 6 which belonged to Noticee no. 5. Further, Noticee no. 10 had received 40,000 GDRs from Noticee no. 6, which it then converted and sold for Rs. 88.15 lakhs. Noticee no. 11 held 100% shares of Noticee no. 10 and Noticee no. 5 held 100% shares of Noticee no. 11. Hence, I note that Noticee no. 5 was

100% shareholder of Noticee no. 10. Further, Noticee no. 12, had falsely represented himself as a director of Noticee no. 8 to the overseas Depository Bank and had also transferred USD 29.25 million to Noticee no. 6 to repay its loan and received US 26.68 million from AQUA. Hence, I note that Noticee no. 12 was also connected to Noticee no. 5 through Noticee no. 6 and Noticee no. 8.

(ii) I note that Noticee no. 5 has filed a single reply dated November 24, 2020 for 4 matters including the present matter, i.e. in the matters of Texmo Pipes and Products Ltd, Winsome Yarn Limited, Winsome Textiles Industries Ltd and the present matter Aqua Logistic Limited. Hence, I note that his submissions have been generally made without making any specific reply to the allegations in the SCN in the present matter. Noticee no. 5 has *inter alia* submitted that the mandates/arrangements/role in relation to the GDR issues outside India are granted/played by various entities like Vintage FZE, IFCF, Pan Asia and that all these entities have a distinct and separate legal entity, which has its own management and decision making. Further, that he has already resigned from Noticee no. 6 (Resigned year 2009) and Noticee no. 10 (Resigned year 2010) and since then he was not part of its management team. However, I note that Noticee no. 5 has not submitted any document/evidence to prove that he has resigned from Noticee no 6 or Noticee no. 10 or that he is no longer the beneficial owner of these Noticees. From the material available on record, I find that Noticee no. 5 was the beneficial owner and Managing Director of Noticee no. 6 and also the beneficial owner and 100% shareholder of Noticee no. 10. Therefore, I find the contention of Noticee no. 5 that he is not responsible for the actions of Noticees no. 6 and 10, as untenable.

(iii) Noticee no. 5 has also submitted that he is a non-resident Indian for the last more than 20 years and has never registered with SEBI or RBI or any other regulatory agency in India and never had a place of business in India and has not carried out any activities within India, being the jurisdiction of SEBI. Therefore, Noticee no. 5 has submitted that the provisions of SEBI Act do not have extra territorial operation qua him in his individual or personal capacity, since all alleged acts of commission

or omission like the loan agreement with EURAM Bank for subscribing to the GDRs, notwithstanding the fact that the security for the loan was the pledge of GDR proceeds, are acts were outside the territory of India and therefore, provisions of SEBI Act are not applicable. In this regard, I note that the Hon'ble Supreme has already dealt with this issue when it came for consideration of the Hon'ble Supreme Court in the matter of *Pan Asia* matter (*supra*) wherein the issue was discussed in detail and pertained to submission of Noticee no. 5 himself who was the main accused in the matter of *Pan Asia*. 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.....”

(iv) In view of the aforesaid judgment, I find that the submissions of the Noticee no. 5

with regard to SEBI not having any jurisdiction is untenable. Further, in view of the above paras, I note that Noticee no. 6 was the sole subscriber of GDR issue of AQUA and subscription was arranged through a loan availed from EURAM Bank to the extent of USD 62.379 million for which security was provided by AQUA by pledging its GDR proceeds. I also note from the Pledge Agreement dated February 03, 2011 that Noticee no. 5, as the director of EURAM Bank Asia, had verified the signatures of the Pledge Agreement between AQUA and EURAM Bank. Hence, I find that Noticee no. 5 was very much aware of the Pledge Agreement dated February 03, 2011 being signed between AQUA and EURAM Bank which was to provide security for the loan taken by Noticee no. 6 (where Noticee no. 5 was the beneficial owner and Managing Director) from EURAM Bank. Further, Noticee no. 6 defaulted on repayment of loan to EURAM Bank to the extent of USD 20.76 million, thereby GDR proceeds to that extent were adjusted by EURAM bank. Noticee no. 5 connected FII-sub account i.e. Noticee no. 10, converted the GDRs and sold 9,20,000 converted equity shares in the Indian securities market amounting to Rs. 88.15 lakh. Thereby according to the fraudulent scheme perpetrated, Noticee no. 5 arranged loan for the subscription to GDRs, subscribed to GDRs, and sold the GDRs to FII-Sub accounts which, in turn, sold the converted equity shares in the Indian securities market. Therefore I find that Noticee no. 5 in connivance with the GDR issuer company devised and structured fraudulent scheme through his connected entities like Vintage FZE (Noticee no. 6), Prospect Capital Ltd (Noticee no. 8), Sanjay Aggarwal (Noticee no. 12), Mr. Mukesh Chauradiya (Noticee no. 7), IFCF (Noticee no. 10) and Cardinal Capital Partners (Noticee no. 11).

39. From the above, I note that Noticee no. 5, appears to be the common thread which runs through Noticee no. 6 to 12 and each stage of the fraudulent transactions which ultimately resulted in the loss of USD 62.379 million to AQUA. I note that there was an increase in the capital of AQUA through issue of GDRs for which AQUA did not receive commensurate consideration. The GDRs were subscribed by Noticee no. 6 which was a wholly owned entity of Noticee no. 5 and the funds for the same was obtained, as a loan from EURAM Bank based on a pledge of the GDR proceeds by

AQUA to EURAM Bank. In the case of *Jindal Cortex Ltd. Vs. SEBI (Appeal No. 376 of 2019 decided on February 05, 2020)* the Hon'ble SAT held that:

“9..... The modus operandi adopted in all such cases have been similar i.e. the subscriber to the GDR issue (Vintage here) taking a loan from a foreign bank/ investment bank (EURAM Bank here) enabled by a Pledge Agreement signed between the issuer company (JCL here) and the loaner bank. This arrangement itself vitiates the entire issue of GDR as it is through an artificial arrangement supported by the company itself which enables the subscription to the GDR.....”

40. Even in the present case, similar *modus operandi* has been adopted and the Hon'ble SAT has held that this arrangement itself vitiates the entire issue of GDR as it is through an artificial arrangement supported by the company itself which enables the subscription to the GDR. I note that entire GDR proceeds did not reach the Indian bank account of the company (AQUA) against those GDRs issued. In this case, the beneficiary of this scheme appears to be, in the first stage, Noticee no. 6 who received allotment of 4.112 million GDRs of AQUA but defaulted on the loan taken from EURAM Bank to the extent of USD 20.76 million and based on the Loan Agreement and Pledge Agreement dated February 03, 2011 the outstanding loan amount was realized from GDR proceeds. Therefore, Noticee no. 6 did not have to pay full consideration for the GDRs and received GDRs of AQUA worth USD 47.44 million for free. I note that Noticee no. 5 was the beneficial owner of Noticee no. 6. Thereafter, Noticee no. 6 transferred the GDRs to certain entities which included Noticee no. 10 (which was also wholly owned by Noticee no. 5) which sold the converted equity shares worth Rs. 88.15 lakhs in the Indian market. I note that in the Order of the Hon'ble SAT dated October 25, 2016 in Appeal No. 126 of 2013 (*Pan Asia Advisors Limited vs. SEBI*), the Hon'ble SAT has discussed the role of Noticee no. 5 in six GDR matters wherein the modus operandi adopted was similar. In the said matter the Hon'ble Tribunal has held as follows:

“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.”

41. I find that said scheme of issue of GDRs of AQUA constitutes ‘fraud’ and I find that Noticee no. 5 connived with AQUA to structure the fraudulent issue of GDRs wherein the shareholders of AQUA suffered a loss to the tune of USD 62.379 million. I note that Noticee no. 6 was also a wholly owned entity of Noticee no. 5 and was part of the fraudulent scheme wherein without paying consideration/subscription money, it received allotment of GDRs in violation of law. Some of such GDRs were transferred by Noticee no. 5 to Noticee no. 10 (registered as sub account of Noticee no. 11) who after converting them into underlying shares of AQUA, sold the 9,20,000 converted equity shares in the Indian securities market and thus made the profit of Rs. 88.15 lakhs. Therefore, in view of the above, I find that Noticees no. 5 to 12 have violated Sections 12A (a) of SEBI Act, 1992 read with Regulation 3(b) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.
42. I note that the SCN has called upon Noticee no. 1 to show cause as to why suitable directions under Sections 11, 11B and 11(4) of the SEBI Act, 1992 including the direction to bring back an amount of USD 47.44 million should not be issued against them. In this regard, I note that Noticee no. 6 had taken a loan of USD 62.379 million from EURAM Bank to subscribe to the GDRs of AQUA by entering into a loan agreement dated February 03, 2011 with EURAM Bank. I note that Noticee no. 6 repaid the loan availed from EURAM Bank to the tune of USD 41.64 million and defaulted on the remaining loan thereafter. In view of the Pledge Agreement dated February 03, 2011 between AQUA and EURAM Bank, wherein, AQUA had pledged GDR proceeds to secure the rights of EURAM Bank against the loan given by EURAM Bank to Noticee no. 6 for subscription of GDR issue of AQUA, an amount of USD 20.76 million was adjusted by EURAM Bank from GDR proceeds of AQUA against

the loan taken by Noticee no. 6 since AQUA pledged its GDR proceeds as security for Noticee no. 6's loan. I also note that an amount of USD 29.25 million was transferred by Noticee no. 12 to Noticee no. 6 during the period August 29, 2011 to February 02, 2012. Pursuant to receipt of USD 29.25 million from Noticee no. 12, Noticee no. 6 repaid the loan amount of USD 28.96 million to EURAM during the period August 30, 2011 to February 03, 2012. Subsequent to receipt of repayment of loan by Noticee no. 6, an amount of USD 29.07 million was transferred from AQUA's bank account with EURAM Bank to AQUA's Hong Kong bank account with HSBC during the period August 30, 2011 to February 03, 2012 and an amount of USD 26.68 million was received by Noticee no. 12 from AQUA's Hong Kong bank account with HSBC during the period September 16, 2011 to February 28, 2012. Therefore, it was alleged that GDRs to the extent of USD 47.44 million were issued without consideration to Noticee no. 6 and Noticee no. 12.

43. In this regard I note that AQUA nor the directors of the Company i.e. Noticees no. 2, 3 and 4 have not file their reply/objections to the SCN. Since, the Company or its directors and Managing Director have not filed any reply to the allegations made against them in the SCN, I shall proceed to consider the matter on the basis of the documents/material available on record before me. As detailed in the aforesaid para, I note that GDRs to the extent of USD 47.44 million were issued without consideration to Noticees no. 6 and 12. I note that Noticee no. 6 had repaid USD 41.64 million of the loan amount to EURAM and defaulted on an amount of USD 20.76 million, which was adjusted by EURAM Bank from GDR proceeds of AQUA against the loan taken by Noticee no. 6 since AQUA pledged its GDR proceeds as security for Noticee no. 6's loan. I also note that GDR proceeds to the extent of USD 26.68 million which was transferred by AQUA to AQUA HK was transferred back to Noticee no. 12. Therefore, GDRs to the extent of USD 47.44 million (USD 20.76 + USD 26.68 million) were issued without consideration to Noticee no. 6.
44. In view of the above, I find that GDRs to the extent of USD 47.44 million were issued by AQUA to Noticee no. 6 without any consideration and thus, has caused loss to the shareholders to the tune of USD 47.44 million. Accordingly, I find that AQUA has to

bring back that amount of USD 47.44 million to the Company. In this regard, I note that vide Order dated January 04, 2013, Hon'ble Bombay High Court directed that AQUA should be wound up and vide Order dated November 12, 2013, appointed Official Liquidator of Bombay High Court as the liquidator to AQUA and thus, AQUA is under liquidation. In this regard, I find that since AQUA has been ordered to be wound up, directions under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992, against AQUA, at this juncture would not serve any purpose. However, having regard to the nature of violations and conduct of the directors (Noticees no. 2, 3 and 4), issue of regulatory directions under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992, against Noticees no. 2, 3, and 4 are called for in the present matter.

45. Further, I also note that the SCN calls upon Noticees no. 5, 6, 10 and 12 as to why suitable directions under sections 11, 11B and 11(4) of the SEBI Act, 1992 including the direction for disgorgement of Rs. 88.15 lakh should not be issued against them. In this regard, I note that SCN alleges that Noticee no. 6 had transferred 40,000 GDRs to Noticee no. 10 who converted them and sold the 9,20,000 converted equity shares for Rs. 88.15 lakh. It is alleged that the shares sold by Noticee no. 10 are the shares which were acquired by Noticee no. 6 and Noticee no. 12 without consideration. Hence, it has been alleged in the SCN that Noticee no. 6 along with Noticees no. 5, 10 and 12 are jointly and severally responsible for the loss of Rs. 88.15 lakhs inflicted on the shareholders of AQUA.

46. In this regard, I note that it has been alleged in the SCN that Noticee no. 6 had transferred 40,000 GDRs to Noticee No. 10 which were converted into equity shares and sold in the Indian Capital Market. Summary of the conversion of the GDRs is as given below:

Date of conversion of GDRs	No. of GDRs converted	No. of equity shares issued on conversion of GDRs	Entity becoming holder of equity shares post conversion of GDRs
24/06/2011	40,000	9,20,000	IFCF

47. SCN alleges that Noticee no. 10 sold the equity shares (which they received post cancellation of GDRs) in Indian securities market. By September 26, 2012, Noticee no. 10 sold all the shares which it had received post conversion of 40,000 GDRs i.e., 9,20,000 equity shares. Summary of sell trades of Noticee no. 10 in the scrip of AQUA on BSE and NSE, as mentioned in the SCN, is as given below:

Name of entity	No. of shares sold		Total no. of shares sold	Trade value (₹)		Total trade value (₹)
	BSE	NSE		BSE	NSE	
IFCF	4,60,000	4,60,000	9,20,000	44,07,500	44,07,500	88,15,000

48. From the above, it was observed that 40,000 GDRs were transferred by Noticee no. 6 to Noticee no. 10 who then converted the GDRs to 9,20,000 equity shares and sold them on NSE and BSE for Rs. 88.15 lakhs.

49. I note that Noticees no. 5, 6 and 10 have not replied/objected to these allegations. With respect to Noticees no. 5, 6 and 10, I note that Noticee no. 5 was the beneficial owner of Noticee no. 6 and Noticee no. 10. The SCN alleges that Noticees no. 5, 6, 10 and 12 are jointly and severally responsible for the loss of Rs. 88.15 lakhs inflicted on the shareholders of AQUA. In this regard, I note that it was Noticee no. 6 who had transferred the 40,000 GDRs to Noticee no. 10, who then converted them into 9,20,000 equity shares and sold them for Rs. 88.15 lakh in the Indian securities market. Since both Noticees no. 6 and 10 are controlled by Noticee no. 5, it is clear that Noticee no. 5 had orchestrated the entire transfer, conversion and sale of equity shares worth Rs. 88.15 lakhs. Hence, with regard to the allegations of disgorgement in the SCN against Noticees no. 5, 6 and 10, I find that Noticees no. 5, 6 and 10 have made a profit of Rs. 88.15 lakhs from the fraudulent scheme of the GDR Issue of AQUA orchestrated by Noticee no. 5, and are thereby liable to disgorge the amount of Rs. 88.15 lakhs as alleged in the SCN.

50. With regard to the allegations of disgorgement in the SCN against Noticee no. 12, I

note that he has vide letter dated October 20, 2020 submitted that Euram Bank, in its letter dated August 14, 2012 to AQUA, has stated that *"According your instructions we have transferred 890350 GDRs Aqua Logistics Ltd. (ISIN: US03837W1027) with trade date 13 August 2012 and value date 16 August 2012 to Bank Julius Baer & Co. Singapore, Euroclear Account no. 13469 for further credit to account no. 3104410 Sea Dragon Worldwide Web Ltd"*. In this connection Noticee no. 12 has submitted that as per table provided at Para 28(b) read with table at Para 29(a) of the SCN, the GDRs converted by Noticee no. 10 upto June 24, 2011 were sold in the Indian Securities Market for total sale value of Rs. 88.15 lakh. Whereas as per SEBI's own case the GDRs were received by Sea Dragons in and around the month of August 2012. The Noticee no. 12 has submitted that he did not have any role in the shares converted by Noticee no. 10 upto June 24, 2011 and hence, cannot be liable to disgorge any profits arising out of this. That in view of the above, it cannot be alleged that shares sold by Noticee no. 10 are the shares which were acquired by Noticee no. 12 without consideration as there is no evidence to establish that.

51. From the table in para 46 above, I note that the 40,000 GDRs given to Noticee no. 10 by Noticee no. 6 was converted to equity shares on June 24, 2011. In this regard, from the material available on record, I find that there is no proof that 9,20,000 converted equity shares that were sold by Noticee no. 10 are shares which were also acquired by Noticee no. 12. Further, if the loss of Rs. 88.15 lakhs inflicted on the shareholders is due to the fraudulent scheme of AQUA with Noticee no. 5 and his connected entities, then the liability to disgorge the said amount should be on all the Noticees who have played a role in the fraudulent scheme perpetrated, which is not the case. I note that the allegation of disgorgement of Rs. 88.15 lakhs against Noticees no. 5, 6 and 10 is due to Noticee no. 5 transferring the GDRs to Noticee no. 10 who then converted the GDRs into equity shares and sold them in the market for Rs. 88.15 lakhs and Noticees no. 6 and 10 were controlled and under the ownership of Noticee no. 5. However, since there is no material before me to prove that Noticee no. 12 was a beneficiary to the Rs. 88.15 lakhs that was received by Noticee no. 10 or was part of the transfer of GDRs to Noticee no. 10 or part of the sale of the converted equity shares, I find the allegation in the SCN that Noticee no. 12 is also

liable to disgorge the amount of Rs. 88.15 is not sustainable.

52. In view of the above, as alleged in the SCN, I find that Noticees no. 5, 6 and 10 are jointly and severally liable to disgorge Rs. 88.15 lakhs. However, I find that the SCN does not identify any particular investor or any specific group of investors who have suffered losses due to manipulation by the Noticees. Further, the violations committed by the Noticees no. 1 to 12 in planned and structured manner, as noted above, whereby, camouflage of GDR issue was created to mislead the Indian investors. Such acts are prejudicial to the interest of the investors and the securities market. Such acts also calls for issue of directions as contemplated under the SEBI Act, 1992.

DIRECTIONS:

53. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992, hereby direct that:

- a. The present proceedings initiated against Aqua Logistics Limited (Noticee no. 1) vide SCN dated October 01, 2018, stands disposed of, in view of Order dated January 04, 2013, passed by the Hon'ble High Court of Bombay directing winding up of Noticee no. 1 and appointing Official Liquidator of Bombay High Court as the liquidator to Noticee no. 1.
- b. In the event, order for winding up passed by the Hon'ble High Court of Bombay is recalled, for any reason whatsoever, resulting in reversal of said winding up proceedings, then in such eventuality, the Noticee No. 1 shall:
 - (i) be restrained from accessing the securities market and also remain prohibited from buying, selling or dealing in securities, directly or indirectly, in any manner whatsoever or being associated with the securities market in any manner, whatsoever, for a period of 3 years from the date of such reversal of winding up order;

- (ii) continue to pursue the measures to bring back the outstanding amount of USD 47.44 million into its bank account in India. Noticees No. 2, 3 and 4 and all other directors of Noticee No. 1, shall ensure the compliance of this direction by Noticee No. 1 and Noticee no. 1 shall furnish a Certificate from a Chartered Accountant of ICAI along with necessary documentary evidences, certifying the compliance of this direction to “The Division Chief, EFD, DRA-1, Securities and Exchange Board of India, SEBI Bhawan, Plot NO. C4 A, G Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400051”.
- c. Noticees No. 2, 3 and 4 are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 2 years from the date of this order.
- d. Noticee No. 5 and Noticee no. 12, are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 3 years from the date of this order.
- e. Noticee no. 6, 7, 8, 9, 10 and 11, are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 2 year from the date of this order.
- f. Noticee no. 5, 6 and 10 are further directed to disgorge illegal gains of Rs. 88,15,000/-, made by way of sale of equity shares (after conversion of GDRs) of AQUA by Noticee no. 10, along with interest of 12% per annum from the date of sale of those equity shares till the payment of disgorgement amount, within a

period of 45 days from the date of this order. Having regard to the close connection and role played, the liability of Noticee no. 5, 6 and 10, as discussed in para 49, shall be joint and several. In case Noticee no. 5, 6 and 10 fail to comply with the said direction, SEBI shall be free to recover the said amount from the Noticees under Section 28A of SEBI Act, 1992 and these Noticees shall also be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in the securities market, till the actual payment or recovery of disgorgement amount or till the completion of the debarment directed, to the respective noticees herein at sub-paras (d) and (e) above, whichever is later. This direction is without prejudice to any other action against these Noticees which may be initiated by SEBI.

- g. The amount, as directed to be disgorged in sub-para (f) above, shall be remitted by Noticees no. 5, 6 and 10 to Investor Protection and Education Fund (IPEF) referred to in Section 11(5) of the SEBI Act, 1992. An intimation regarding the payment of said disgorgement amount directed to be paid herein, shall be sent to “The Division Chief, EFD, DRA-1, Securities and Exchange Board of India, SEBI Bhawan, Plot NO. C4 A, G Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400051”.

- 54. During the period of restraint, the existing holding of securities including units of mutual funds of the Noticees shall also remain frozen. However, the obligation of the Noticees, restrained/prohibited by this Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, are allowed to be discharged irrespective of the restraint/prohibition imposed by this Order, however, shall be subject to any other restraint order operating against these entity(ies). Further, all open positions, if any, of the Noticees, restrained/prohibited in the present Order, in the F&O segment of the recognised stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order, however, shall be subject to any other restraint order operating against these entity(ies).

55. This Order comes into force with immediate effect.
56. A copy of this Order shall be forwarded to the Noticees, recognized stock exchanges, depositories and Registrars and Transfer Agents (RTA) of mutual funds for information and necessary action.
57. A copy of this order may also be sent to the Official Liquidator of the Bombay High Court, RBI, Enforcement Directorate and Ministry of Corporate Affairs for information and necessary action, if any.

Place: Mumbai

Date: July 22, 2021

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