

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

in the matter of GDR issue of Vikash Metal and Power Limited.

In respect of –

Sr. No.	Noticee	PAN/Other Identifying Number
1.	Vikash Metal & Power Ltd.	AAACV8850A
2.	Akkash Patni	AIMPP5138N
3.	Vimal Kumar Patni	(DIN) 00101744
4.	Vikash Patni	AKXPP4105E
5.	Arun Panchariya	AEVPP6125N
6.	Vintage FZE	<i>Registered outside India</i>
7.	Mukesh Chauradiya	AAVPC0966A
8.	Pan Asia Advisors Ltd.	<i>Registered outside India</i>
9.	India Focus Cardinal Fund	AABCI9518D
10.	Highblue Sky Emerging Market Fund	AADCK9460G
11.	Cardinal Capital Partners	(FII Registration No.) INMUFD263211

12.	European American Investment Bank AG	(FII Registration No.) INASFD211608
13.	Golden Cliff	(FII Registration No.) INMUFD256111

1. Background –

1.1. The present matter emanates from an investigation by SEBI into the issuances of Global Depository Receipts (“**GDRs**”) in overseas markets by Indian companies, allegedly with the intention of defrauding Indian investors. During the course of such investigation, it came to SEBI’s knowledge that there were several other GDR issues wherein loan was taken by a foreign entity and the security of the loan was provided by the GDR issuing company by signing an account charge/pledge agreement. One such company was Vikash Metal and Power Limited (“**Vikash**”/the “**Company**”).

1.2. The focus of the investigation was to ascertain whether the shares underlying the GDRs were issued with proper consideration and whether appropriate disclosures, if any, were made by Vikash with respect to the GDRs issued by it on April 12, 2011. The period under investigation was the period around which the issuance of GDRs by the Company took place, i.e. March 25, 2011 to April 25, 2011 (“**Investigation Period**”).

2. Summary of Show-cause Notice - (i) The Scheme (ii) The Modus Operandi and Fund Flow

2.1. Pursuant to the findings of the Investigation Report, a common Show-cause Notice dated February 01, 2018 was issued to the Noticees (hereafter referred to as the “**SCN**”). By way of the SCN, all the Noticees were called upon to show cause as to why suitable directions should not be issued against them under Sections 11, 11B and 11(4) of the SEBI Act.

2.2. In this regard, the SCN relying on the Investigation Report has alleged that—

A. The scheme of issuance of GDRs was fraudulent as Noticee No. 1, the Company, had entered into a Pledge Agreement with the bank, European American Investment Bank AG (“**EURAM Bank**”) for a loan that had been availed by Vintage FZE (“**Vintage**”), also known as Alta Vista International FZE, towards the subscription of GDRs issued by the Company. The Pledge Agreement was not disclosed to the stock exchanges, which made the investors believe that the said GDR issue was genuinely subscribed by foreign investors. Noticee No. 6, Vintage was a party to this fraudulent scheme. Noticee No. 2, Akkash Patni, who was a Director in Vikash, signed a Pledge Agreement with EURAM Bank, whereby the account holding the GDR proceeds was given as security for the loan availed by Vintage from EURAM Bank for subscribing to the GDRs of Vikash. Noticee No. 3, Vimal Kumar Patni and Noticee No. 4, Vikash Patni were Directors on the Board of Vikash, and in the board meeting dated October 27, 2010 authorised Akkash Patni to sign the Pledge Agreement

allowing EURAM bank to use the GDR proceeds account as security for the loan availed by Vintage. Noticee No. 7, Mukesh Chauradiya signed the Loan Agreement on behalf of Vinatge for the subscription of GDRs of the Company. Noticee No. 5, Arun Panchariya was director and beneficial owner of Vintage.

B. Noticee No. 9, India Focus Cardinal Fund was a sub-account of FII EURAM Bank and FII Cardinal Capital Partners. Arun Panchariya was the beneficial owner of Noticee No.9. Noticee No. 10, Highblue Sky Emerging Market Fund was registered as a sub-account of FII-Golden Cliff (also known as Vaibhav Investment Ltd.). Arun Panchariya connected entities were beneficial owners and directors of Highblue Sky Emerging Market Fund. FII sub-accounts, India Focus Cardinal Fund and Highblue Sky Emerging Market Fund received GDRs, converted them and sold the converted equity shares of Vikash in the Indian stock exchanges. Noticee No. 9 and Noticee No. 10 acted as conduits for Arun Panchariya and his connected entities, and sold the converted equity shares of Vikash, which had been acquired by Vintage, free of cost to the extent of USD 11.46 million, through the fraudulent scheme.

C. Noticee No. 11, Cardinal Capital Partners; Noticee No.12, EURAM Bank; and Noticee No. 13, Golden Cliff did not make any investment in India except investments made by their sub-accounts, namely India Focus Cardinal Fund and Highblue Sky Emerging Market Fund. So, the FIIs namely, EURAM Bank, Cardinal Capital Partners and Golden Cliff acted as conduits for Arun Panchariya and facilitated India Focus Cardinal Fund and Highblue Sky

Emerging Market Fund to sell the underlying shares of the GDRs in the Indian stock exchanges.

2.2 (I) *The Scheme*

A. The Company came out with the issuance of 12,02,400 GDRs amounting to USD 11.99 million on April 12, 2011. A summary of the said GDR issuance is provided hereunder:

Table - 1

GDR issue date	No. of GDRs Issued (mn)	Capital raised (USD mn.)	Price per GDR (USD)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
12-Apr-2011	1.20	11.99	(at USD 9.98 each GDR)	DBS Bank	3,60,72,000	The Bank of New York Mellon, USA	Pan Asia Advisors Ltd.	EURAM Bank, Austria	Luxembourg Stock Exchange

B. A bank account was opened by Vikash with EURAM Bank bearing number 580037 to deposit the GDR proceeds. Accordingly, a total of USD 11.99 million was credited to this account. Vintage had subscribed to the total GDR

issue of Vikash. The amount credited to the GDR proceeds account is tabulated hereunder:

Table - 2

Date of credit of funds	Credit amount (USD)
11/04/2011	11,999,952
	11,999,952

C. It was observed during investigation that of the total 11.99 million USD taken as loan by Vintage, it repaid only USD 550,485 of the total amount. Subsequently, it defaulted on the said loan, and the funds in the GDR proceeds account were appropriated by EURAM Bank by invoking the Pledge Agreement for satisfaction of the amount owed by Vintage. Considering that Vintage was the only subscriber of the GDR issue, and the Company had in effect paid for Vintage owing to the default by it in servicing the loan and the same being satisfied from the GDR proceeds account of Vikash, it was concluded that the GDRs, and the underlying equity shares in turn, to the tune of 11.99 million USD, were issued by Vikash to Vintage without adequate consideration, at the cost of shareholders / investors of Vikash. This is the fraudulent scheme that had been conceived.

2.2 (II) *The Modus Operandi and Fund Flow*

- A. On **October 27, 2010**, the Board of Directors of Vikash passed a resolution resolving that a bank account be opened with any Branch of EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue of this Company. Also, at the said board meeting, EURAM Bank was authorised to use the GDR proceeds as security against loan availed by Vintage.
- B. Vintage entered into a loan agreement dated March 22, 2011 with EURAM Bank for a loan facility of USD 11,999,952, so as to “ *provide funding enabling Vintage FZE to take down GDR issue of 1,202,400 Luxembourg public offering and may only be transferred to EURAM account nr.580037, Vikash Metal & Power Ltd.*”
- C. On March 22, 2011, a Pledge Agreement was executed between Vikash and EURAM Bank and the same was signed by Akkash Patni of Vikash. As per the Pledge Agreement, Vikash’s designated account with EURAM Bank bearing no. 580037 would be held in pledge by EURAM Bank to secure the obligations of Vintage under the Loan Agreement.
- D. The aforesaid Pledge Agreement was an integral part of the Loan Agreement entered between Vintage and EURAM Bank and vice versa and both were executed concurrently. The Pledge Agreement had the reference to the Loan Agreement entered between Vintage and EURAM Bank by virtue of which EURAM Bank provided the loan facility to Vintage for the purpose of subscribing to the GDRs of Vikash.

E. As already stated, the GDR proceeds to the tune of 11.99 million USD were deposited in the Company's bank account bearing number 580037 maintained with EURAM Bank. Vintage repaid the loan amount to the extent of USD 550,485 in two instalments on July 12, 2011 (USD 515,485) and November 09, 2011 (USD 35,000) and thereafter defaulted on the loan repayment. Amounts were transferred from the Company's bank account to various beneficiaries.

The details are as follows:

Table-3

S N	Date	Amount (USD)	Beneficiary	Comments
1	28/07/2011	500,000	Vikash Metal and Power Ltd.	India Account
2	04/08/2011	25,000	Pan Asia Advisors Limited	Payment to Pan Asia Advisors Limited for Lead Manager fee
3	09/11/2011	83,000	Vikash Metal and Power Ltd.	India Account
	Total	608,000		

F. As Vintage had defaulted, the balance amount remaining in the account of Vikash i.e., 11,463,211.6 USD was adjusted, in conformity with the Pledge Agreement dated 22 March 2011, towards the outstanding loan amount of 11,449,467.00 USD owed by Vintage.

G. Even though consideration had not effectively passed from Vintage to Vikash, the GDRs issued were, however, allowed to be converted into equity shares, and these shares were sold in the Indian capital market. Cancellation of GDRs started from May 30, 2011. As on July 05, 2017, 8,92,824 GDRs (74.25% of total 12,02,400 GDRs issued) were converted. 3,09,576 GDRs remained outstanding for conversion, as on July 05, 2017.

H. Post cancellation of GDRs, FII-sub accounts namely 1) India Focus Cardinal Fund (Noticee No. 9); 2) Highblue Sky Emerging Market Fund (Noticee No. 10); 3) Stream Value Fund; 4) Davos International Fund; 5) Sparrow Asia Diversified Opportunities Fund; and 6) Leman Diversified Fund received total of 2,67,84,720 equity shares on conversion of 8,92,824 GDRs.

I. A summary of the cancellation of the GDRs is provided hereunder:

Table - 4

Date of conversion of GDRs	No. of GDRs converted	No. of remaining GDRs	No. of equity shares issued on conversion of GDRs	Entity becoming holder of equity shares post conversion of GDRs
30-May-11	10,000	11,92,400	3,00,000	India Focus Cardinal Fund
1-Jun-11	30,000	11,62,400	9,00,000	India Focus Cardinal Fund
21-Jun-11	5,700	11,56,700	1,71,000	India Focus Cardinal Fund
30-Jun-11	37,500	11,19,200	11,25,000	India Focus Cardinal Fund
6-Jul-11	72,500	10,46,700	21,75,000	India Focus Cardinal Fund
14-Jul-11	50,000	9,96,700	15,00,000	India Focus Cardinal Fund
17-May-12	12,274	9,84,426	3,68,220	HighBlue Sky Emerging Market Fund
8-Feb-13	1,10,000	8,74,426	33,00,000	HighBlue Sky Emerging Market Fund

5-Mar-13	33,400	8,41,026	10,02,000	HighBlue Sky Emerging Market Fund
6-Mar-13	33,400	8,07,626	10,02,000	HighBlue Sky Emerging Market Fund
16-Jul-13	70,000	7,37,626	21,00,000	HighBlue Sky Emerging Market Fund
12-Aug-13	1,07,012	6,30,614	32,10,360	Stream Value Fund
14-Aug-13	1,07,012	5,23,602	32,10,360	Davos International Fund
14-Aug-13	1,07,014	4,16,588	32,10,420	Sparrow Asia Diversified Opportunities Fund
14-Aug-13	1,07,012	3,09,576	32,10,360	Leman Diversified Fund
Total	8,92,824		2,67,84,720	

J. As seen from the above table, India Focus Cardinal Fund (Noticee No.9), upon conversion of 2,05,700 GDRs, received 61,71,000 equity shares of Vikash. These were then sold by India Focus Cardinal Fund in the Indian capital market. Similarly, Highlue Sky Emerging Market Fund (Noticee No. 10) upon conversion of 2,59,074 GDRs got 77,72,220 equity shares of Vikash. Out of the said 77,72,220 equity shares, by March 03, 2017 a total of 43,61,915 was sold in the Indian capital market. Investigation found that the said sub-accounts, namely, India Focus Cardinal Fund and Highlue Sky Emerging Market Fund were related to Arun Panchariya, and as such, the GDRs were converted into equity shares and these shares were sold in the Indian Capital Market.

K. Further, India Focus Cardinal Fund was registered as sub account of FII, EURAM Bank and FII, Cardinal Capital Partners. India Focus Cardinal Fund was the only sub account to be registered with EURAM Bank. Also, as FIIs,

both EURAM Bank and Cardinal Capital Partners did not make investment in India, except for the sale of shares in the Indian capital market, pursuant to the conversion of GDRs by India Focus Cardinal Fund. Similarly, Highblue Sky Emerging Market Fund was registered as a sub account of FII, Golden Cliff. Golden Cliff did not make any investment in India, except for the sale of shares in the Indian capital market, pursuant to the conversion of GDRs by Highblue Sky Emerging Market Fund.

- L. These FIIs, namely, Cardinal Capital Partners (Noticee No. 11), EURAM Bank (Noticee No. 12), and Golden Cliff (Noticee No. 13) facilitated the sale of the equity shares, received by way of fraudulent issue of GDRs.

2.3. In view of the above acts of the Noticees, the SCN has alleged that Noticee Nos. 2 to 13 have violated the following provisions of the SEBI Act, 1992 and SEBI PFUTP Regulations, 2003: Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) & 4(1) of SEBI (PFUTP) Regulations, 2003. In addition to the above provisions, the Company (Noticee No. 1) has been alleged to have also violated Regulation 4(2) (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003.

2.4. Consequent to the issuance of the SCN, a Supplementary Show-cause Notice dated June 18, 2018 bearing number EFD/DRA-1/SM/RK/VMPL/17416/2018 was issued to Noticee No. 1 *inter alia* calling upon the Noticee to show cause as to why suitable directions, including bringing the money back should not be passed against it. Further, a common Supplementary Show-cause Notice dated June 18, 2018

bearing number EFD/DRA-1/SM/RK/VMPL/17417/2018 was issued to Noticee Nos. 5, 6, 9 and 10 *inter alia* calling upon them to show cause as to why suitable directions, including disgorgement should not be passed against them.

3. Inspection, Personal Hearing, and Replies and Written Submissions from the Noticees

3.1. The SCN was served on all the Noticees. Pursuant to the SCN, some of the Noticees filed their replies. Some of the Noticees also sought inspection of documents. Based upon the request of the Noticees, opportunities of inspection of the records/ documents (which were relied upon by SEBI for the purpose of the SCN) were provided to the Noticees. Details with respect to the same are furnished hereunder:

Table-5

Noticee No.	Noticee	Date of Inspection of Documents	Inspection Conducted By
7	Mukesh Chauradiya	April 17, 2018	Mr. Devendra Dhanesha, Chartered Accountant

3.2. The details of the personal hearings in the matter are tabulated below:

Table- 6

Noticee No.	Name of the Noticee	Date of Hearing	Represented by
5	Arun Panchariya	October 20, 2020	Mr. P.R. Ramesh, Advocate
7	Mukesh Chauradiya	July 01, 2020	Mr. Devendra Dhanesha, Chartered Accountant
12	EURAM Bank, Austria	July 01, 2020	Mr. Shouryendu Ray, Advocate Wadhwa Law Offices,

3.3. Noticees Nos. 1, 2, 3, 4, 6, 8, 9 and 11 neither availed the opportunity of personal hearing nor filed any reply in response to the SCN. The details with respect to the service of the SCN and Hearing Notices to the other Noticees are provided hereunder:

Table- 7

Noticee No.	Name of the Noticee	Details
1	Vikash Metal and Power Ltd.	SCN dated February 01, 2018 was sent by Speed Post to the said Noticee at the address: 35, Chittaranjan Avenue, 6th Floor, Kolkata, West Bengal – 700012. The same could not be delivered.

		▪ A copy of the SCN was affixed at the address of the said Noticee on March 17, 2018. ▪ Newspaper publication was carried out on May 01, 2018 intimating the issuance of SCN in the Kolkata editions of The Telegraph (English daily) and the Anandabazar Patrika (Bengali daily). ▪ Supplementary SCN dated June 18, 2018 was sent by email dated August 08, 2018 to the Official Liquidator appointed by Order of the Calcutta High Court. ▪ Newspaper publication was carried out on October 09, 2020 in the Kolkata edition of The Telegraph (English daily) intimating the Noticee that an opportunity of personal hearing has been scheduled for October 15, 2020. ▪ Newspaper publication was carried out on February 19, 2021 in the Kolkata editions of The Telegraph (English daily) and the Anandabazar Patrika (Bengali daily) intimating the Noticee that an opportunity of personal hearing has been scheduled for February 24, 2021.
2	Akkash Patni	▪ SCN dated was February 01, 2018 sent by Speed Post to the said Noticee at the address: 227/1A, A.J.C. Bose Road, Kolkata - 700020. The same could not be delivered.

		▪ Service was sought to be effected through affixture on March 19, 2018; however, the same could not be carried out. ▪ Newspaper publication was carried out on May 01, 2018 intimating the issuance of SCN in the Kolkata editions of The Telegraph (English daily) and the Anandabazar Patrika (Bengali daily). ▪ Newspaper publication was carried out on October 09, 2020 in the Kolkata edition of The Telegraph (English daily) intimating the Noticee that an opportunity of personal hearing has been scheduled for October 15, 2020. ▪ Newspaper publication was carried out on February 19, 2021 in the Kolkata editions of The Telegraph (English daily) and the Anandabazar Patrika (Bengali daily) intimating the Noticee that an opportunity of personal hearing has been scheduled for February 24, 2021.
3	Vimal Kumar Patni	▪ SCN dated February 01, 2018 was sent by Speed Post to the said Noticee at the address: 227/1A, A.J.C. Bose Road, Kolkata - 700020. The same could not be delivered. ▪ Service was sought to be effected through affixture on March 16, 2018; however, the same could not be carried out.

		▪ Newspaper publication was carried out on May 01, 2018 intimating the issuance of SCN in the Kolkata editions of 'The Telegraph' (English daily) and the Anandabazar Patrika (Bengali daily). ▪ Newspaper publication was carried out on October 09, 2020 in the Kolkata edition of 'The Telegraph' (English daily) intimating the Noticee that an opportunity of personal hearing has been scheduled for October 15, 2020. ▪ Newspaper publication was carried out on February 19, 2021 in the Kolkata editions of 'The Telegraph' (English daily) and the Anandabazar Patrika (Bengali daily) intimating the Noticee that an opportunity of personal hearing has been scheduled for February 24, 2021.
4	Vikash Patni	▪ SCN dated February 01, 2018 was sent by Speed Post to the said Noticee at the address: 227/1A, A.J.C. Bose Road, Kolkata - 700020. The same could not be delivered. ▪ Service was sought to be effected through affixture on March 19, 2018; however, the same could not be carried out. ▪ Newspaper publication was carried out on May 01, 2018 intimating the issuance of SCN in the Kolkata editions of 'The Telegraph' (English daily) and the Anandabazar Patrika (Bengali daily).

		▪ Newspaper publication was carried out on October 09, 2020 in the Kolkata edition of The Telegraph (English daily) intimating the Noticee that an opportunity of personal hearing had been scheduled for October 15, 2020. ▪ Newspaper publication was carried out on February 19, 2021 in the Kolkata editions of The Telegraph (English daily) and the Anandabazar Patrika (Bengali daily) intimating the Noticee that an opportunity of personal hearing has been scheduled for February 24, 2021.
6	Vintage FZE	▪ SCN dated February 01, 2018 was sent by Speed Post to the said Noticee at the address: Aah-273, Al Ahmadi House, Jebel Ali Free Zone, Dubai. The same could not be delivered. ▪ Hearing Notice for the personal hearing scheduled for February 24, 2021 was served via email dated February 15, 2021 to the address of Arun Panchariya (arun.panchariya@me.com), the beneficial owner.

8	Pan Asia Advisors Ltd.	▪ SCN dated February 01, 2018 was sent by Speed Post to the said Noticee at the address: 1st Floor Minster House, 42 Mincing Lane, London EC3R 7AE, UK. The same could not be delivered. ▪ Hearing Notice for the personal hearing scheduled for February 24, 2021 was served via email dated February 15, 2021 to the address of Arun Panchariya (arun.panchariya@me.com), the beneficial owner.
9	India Focus Cardinal Fund	▪ SCN dated February 01, 2018 was sent by Speed Post to the said Noticee at the address: C/o Cardinal Capital Partners, Suite 501, St. James Court, St Dennis Street, Port Louis, MAURITIUS. The same could not be delivered. ▪ SCN dated February 01, 2018 was served on the Noticee through FSC Mauritius. Intimation of the same was sent to SEBI by way of email dated June 5, 2018. ▪ Hearing Notice for the personal hearing scheduled for February 24, 2021 was served via email dated February 15, 2021 to the address of the liquidator i.e. m.reaz@intent.mu.
11	Cardinal Capital Partners	▪ SCN dated February 01, 2018 was sent by Speed Post to the said Noticee at the address: Suite 501, St. James Court, St Dennis Street, Port Louis, MAURITIUS. The same could not be delivered.

		▪ SCN dated February 01, 2018 was served on the Noticee through FSC Mauritius. Intimation of the same was sent to SEBI by way of email dated June 5, 2018. ▪ Hearing Notice for the personal hearing scheduled for February 24, 2021 was served via email dated February 15, 2021 to the address of Arun Panchariya (arun.panchariya@me.com), the beneficial owner.
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3.4. A summary of the replies as submitted by the Noticees is provided hereunder:

Noticee No. 5 (Arun Panchariya)

3.4.2. In his replies dated March 09, 2018; July 19, 2018; and November 15, 2020, Arun Panchariya has stated that he has been a non-resident Indian for the last more than 20 years, has certifications in finance and has been in the financial services industry in the Middle East and Europe.

3.4.3. The Noticee has challenged the jurisdiction of SEBI to initiate the present proceedings. In this regard, the Noticee has submitted that —

- a. SEBI has no jurisdiction to initiate action against natural persons resident outside India as the scope of the SEBI Act extends to the whole of India only, and not outside India;

- b. the Noticee was never registered with SEBI or the RBI, or any other regulatory agency in India, and he never had a place of business in India and has not carried out any activities within India;
- c. Vintage FZE, which was a limited liability company incorporated under the relevant laws of the UAE, was established by him;
- d. Cardinal Capital Partners, a company incorporated in Mauritius, was established by him, and Cardinal Capital Partners in turn established India Focus Cardinal Fund ;
- e. the activities of Vintage, Cardinal Capital Partners and India Focus Cardinal Fund were carried out wholly outside India; and
- f. the subscription by Vintage of the GDRs issued by Vikash was a purely commercial arrangement outside India, under the relevant laws, and SEBI has no jurisdiction to question this arrangement under the provisions of the SEBI Act and PFUTP Regulations.

3.4.4. The said Noticee has also denied all the allegations and charges made against him in the Show Cause Notices. In this regard, the Noticee has submitted that —

- a. the SCN is vague as it does not disclose the kind of measures SEBI is contemplating to take after 10 years, and the Noticee is completely in the dark about what exactly SEBI has in mind;

- b. there is no justification to issue the SCN in the name of the Noticee, in his personal capacity, ignoring the existence of corporate entities and transactions executed by way of legal and binding agreements between such entities;
- c. the legal entities are incorporated under respective foreign jurisdictions and many of them are also regulated by the respective financial market regulator of their respective jurisdictions, which shows that these legal entities are real, and there is no case for looking through them and arraigning the Noticee in his personal capacity;
- d. SEBI has no powers to lift the corporate veil and hold the Noticee as a beneficiary;
- e. the entities whose veils have been lifted are not entities incorporated in India, and hence the assumption of powers by SEBI to lift the corporate veil and issue a SCN to the Noticee in his personal capacity is beyond the scope of the powers of SEBI under the SEBI Act;
- f. numerous other companies have come out with GDR issues which followed the market practices allegedly now found to be illegitimate by SEBI in the year 2011;
- g. the investigation carried out by SEBI has been highly prejudiced and biased;

- h. the allegations in the SCNs are exclusively based on Xerox/Photostat copy of documents, the original of which are not available with SEBI, so 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 SEBI cannot be and should not be admissible as evidence in the present proceedings;
- i. SEBI has passed various orders in which no action has been taken against the investors like Clifford Partners, Solec company limited, Seviron company limited, Fusion Investment Ltd etc., so placing reliance on the doctrine of “issue estoppel”, the Noticee must be granted similar relief and the charges against it be dropped as per the previous decisions of the Hon'ble Whole Time Member, covering essentially the same facts and addressing the same issues;
- j. The Noticee was a director in Vintage FZE till 2007, and has already resigned from it;
- k. the decisions of Vintage FZE including Loan default was taken on the circumstances in the best interest of the Company by its management;
- l. The Noticee was neither a whole-time director nor the managing director of India Focus, and during the time when the Noticee was a director, investment decisions of India Focus were taken collectively by its Board of Directors;

- m. Further, in relation to the other FIIs/sub-accounts, there is no document or evidence provided to support the allegation that they were connected to or controlled by the Noticee, except showing few connections which were totally independent business relationships; and
- n. the scheme of subscription to the GDR is not a fraudulent device as the GDR issue was made under the 1993 GDR Scheme governed by the GOI Guidelines and FEMA.

3.4.5. The said Noticee has in his replies relied on the following case laws:

- i. UMC Technologies Pvt Ltd. V. Food Corporation of India, (2021) 2 SCC 551 to contend that impugned show cause notices does not specify what action SEBI proposes to take;
- j. Salomon V. A. Salomon & Co. Ltd, [1897] AC 22 to state that the facts and circumstances of the case do not warrant lifting of the corporate veil;
- k. Smt. J. Yashoda V. Smt. K. Shobha Rani, (2007) 5 SCC 730 and Hariom Agarwal V. Prakashchand Malaviya, (2007) 12 SCC 49 to contend that photostat copies of documents cannot be relied upon since the same have not been certified by any of the authorities from which they have been obtained;

- l. Dilip S Pendse V. SEBI, Order dated November 19, 2009 in Appeal No.80 of 2009, Securities Appellate Tribunal to state that the more serious the offence, the stricter should be the degree of proof;
- m. SEBI and Others V. Kanaiyalal Baldevbhai Patel and Others , (2017) 15 SCC 1 to contend that the charges under PFUTP Regulations need to be established as per the applicable standards rather than on mere conjectures and surmises; and
- n. Price Waterhouse & Co. and Ors. V. SEBI, Order dated September 09, 2019 in Appeal Nos.6, 7, 190 and 191 of 2018, Securities Appellate Tribunal, to contend that it must be proved by cogent evidence that the appellants are guilty of “inducement”.

Noticee No.7 (Mukesh Chauradiya)

3.4.6. The Noticee in his reply dated March 14, 2018 and affidavit dated July 04, 2020 has *inter alia* submitted the following:

- a. the Implementing Regulations No. 1/92 (Pursuant to Law No. 9 of 1992) of Free Zone Enterprise in the Jebel Ali Free Zone Authority, UAE (“JAFZA”), under which Vintage FZE was registered, required that there shall be a single owner, and it was Arun Panchariya who was the legal and beneficial owner of Vintage;

- b. in the Shareholder's list as on September 30, 2009/2010/2011/2012/2013 in relation to Ramsai Investment Holding Private Limited (Vintage FZE Investment Holding Private Limited), it can be clearly seen that Arun Panchariya held 9,998/18,59,013 Equity Shares in Vintage FZE, so all along Arun Panchariya was the beneficial owner of Vintage FZE ;
- c. administrative fine statement passed by the Dubai Financial Services Authority ("DFSA") imposing fine of USD 12,000 on Arun Panchariya also indicates that Arun Panchariya was the Licensed Director in relation to Vintage FZE;
- d. the Noticee attempted to gather relevant information from JAFZA regarding the allegation that he was a director in Vintage, however he was denied the same and informed that he would be required to provide a court order; SEBI may seek the information from JAFZA as it would help the Noticee in defending his case;
- e. Arun Panchariya was initially the sole director, subsequently somewhere in 2010, Ashok Panchariya, his brother, replaced him as the Director of Vintage FZE;
- f. the copy of the JAFZA Visa of Arun Panchariya for the period 12/01/2010 to 11/01/2013 shows his designation to be Managing Director;

- g. the Noticee has never been the Director or Managing Director of Vintage FZE, as alleged in the SCN, and that he only held the position of Manager;
- h. the copies of the Noticee's resident-permits for the period 14th September 2005 to 9th September 2017 show that his designation/position was General Manager and not Director or Managing Director;
- i. the Employment Card issued to the Noticee by JAFZA shows that he has always been an employee of Vintage FZE, and not a Director or Managing Director;
- j. the decisions to subscribe to the GDRs issued by Vikash and to obtain loan from Euram Bank for subscribing to the GDRs was taken by Arun Panchariya as the Director/sole owner of Vintage FZE, and the Noticee, as an employee, had no role to play in it;
- k. in respect of the loan agreement signed by the Noticee, it has been stated by the Noticee that he signed the document, on instructions from Arun Panchariya, owing to the conflict of interest that existed as Arun Panchariya was the Director and President of Euram Bank Asia., and he held a stake in Euram Bank Asia;
- l. the title "Managing Director" was pre-printed or part of the proforma of the Bank, and it was by oversight continued to be so;

- m. The loan availed by Vintage from Euram Bank was for the sole purpose of subscribing to the GDR of Vikash, and the same was applied for the purposes for which it was obtained;
- n. taking a loan for subscribing to a GDR issue per-se is not a violation of any laws, especially that of UAE and JAFZA, and also is not a violation of any Indian laws;
- o. The Noticee was not aware of any arrangement that Arun Panchariya may have had with Vikash in arranging the loan and its repayment, and that the Noticee had no role to play in the said transaction;
- p. he did not gain any other advantage, monetary or otherwise for any of the acts done by him as an employee of Vintage FZE, working under Arun Panchariya;
- q. the Noticee being a nominee director in some of the subsidiaries is true, though the same has nothing to do with the allegations contained in the present matter of GDR issue is concerned; and
- r. the Noticee requested that he be permitted to inspect all documents collected during investigation, and the recorded statement of Arun Panchariya.

Noticee No. 10 (Highblue Sky)

3.4.7. In its replies dated March 22, 2018 and August 12, 2018, it has been submitted by the Noticee that it is a limited liability company incorporated under the law of the Republic of Mauritius having its registered office at C/o Aurisse International Ltd, Suit 1909, 19th Floor, Citadelle Mall, Sir Edgar Laurent Street, Port Louis, Mauritius.

3.4.8. It has a license issued by the Financial Service Commission (FSC) of Mauritius, and its business was in the nature of a mutual fund/hedge fund i.e it receives fund and “in kind subscription” from investors, which it in turn invests in shares and securities across the global markets (including India). The investors are foreign corporates and institutional investors, and none of its investors are Indians or Non Resident Indians (NRIs).

3.4.9. The said Noticee has also denied all the allegations, charges made against it in the Show Cause Notices. In this regard, the Noticee has submitted that —

- a. the allegation in the SCN that the GDRs were converted by Highblue Sky Emerging Market Fund on behalf of Arun Panchariya and his connected entities was not correct;
- b. the Noticee’s investments did not belong to Arun Panchariya or his connected entities, and the Noticee did not have any connection with Arun Panchariya or his connected entities in any manner.

- c. the allegation that Highblue Sky Emerging Market Fund was connected to Arun Panchariya, on the ground that Anant Sharma and Reema Shetty were connected to AP, was not correct as the cancellation of GDRs and the sale of the converted equity shares of Vikash Metal and Power Limited were done upto May 17, 2013, which was prior to the association of Anant Sharma (August 11, 2014) and Reema Narayan Shetty (April 21, 2014) with the Noticee;
- d. Anant Sharma himself approached SEBI to give his statement, and to assist in the investigation, which shows the *bonafide* intention of Anant Sharma;
- e. the fact that Arun Panchariya and Anant Sharma were Directors in one of the Indian company cannot be used to conclude that Anant Sharma was connected with Arun Panchariya in all businesses, which were independently handled by Anant Sharma;
- f. also Anant Sharma had resigned from the directorship of Alka India Limited, whose promoter, Satish Panchariya was the brother of Arun Panchariya, with effect from March 28, 2016;
- g. the past employment of Anant Sharma did not affect the business decisions of the Fund, and Anant Sharma had never hidden any information about his past employment, which was disclosed to FSC and other regulatory authorities, at the time of his appointment as a Director in Golden Cliff and Emerging Market Opportunities Fund, and also to ICICI bank while seeking conversion of Sub-account Emerging Market

Opportunities Fund (Previously known as Highblue Sky Emerging Market Fund) into FPI; and

- h. Aurisse was the management company for Highbluesky Emerging Market Fund, and provided services, viz., accounting, NAV calculations, provision of Directors, Secretary, Registered office, maintenance of books and accounts, filing of change on Directors, shareholders, tax advice etc., which was a normal practice so the KYC documents of Highblue Sky showed its address and contact numbers being common with one Aurisse fund.

Noticee No. 12 (EURAM Bank)

3.4.10. In its replies dated February 26, 2018 and July 08, 2020, it has been submitted by the Noticee that there is not a single finding against Euram as an FII, in either the SCN or otherwise, that it has violated any provision of the SEBI Act or the PFUTP Regulations or FII Regulations.

3.4.11. The Noticee in its submissions has made the following preliminary submissions:

- a. the period under investigation in the present matter was March 25, 2011 to April 25, 2011, the first SCN in the matter was issued only on February 01, 2018, after a period of almost seven years, and the hearing in the matter happened almost a decade after the investigation period, so this could not be construed as a reasonable period of time;

- b. in the order of the Hon'ble Member dated January 25, 2012 (WTM/PS/ISD/64/01/2012), which was passed over 8 years ago, it was directed that “*SEBI shall expeditiously complete the investigation in the matter, in the interest of justice and thereafter shall immediately take appropriate actions in accordance with law.*”; and
- c. so, the present proceedings are barred in light of the inordinate delay and on account of the doctrine of laches.

3.4.12. The Noticee has made its submissions on merits under three broad heads:

- a) Euram Bank has no connection with Arun Panchariya; b) Euram Bank was not involved in any fraudulent practice in relation to the Indian stock markets; and c) issues in the present matter have already been dealt with by SEBI in its earlier orders.

3.4.13. With respect to the assertion that there was no connection between EURAM Bank and Arun Panchariya, it has been submitted by the Noticee that —

- a. Arun Panchariya was never a director or had any material role in Euram Bank, EURAM's association with Arun Panchariya was limited to the Dubai joint venture entity — EURAM Bank Asia Limited;
- b. EURAM Bank set up EURAM Bank Asia Limited to explore business opportunities in the Middle East region, which has now been dissolved;

- c. EURAM was misled into entering into a JV with Arun Panchariya and at that time, due to representations by Arun Panchariya, thought it to be a way for EURAM to connect with private investors in the Middle East.;
- d. Ever since EURAM learnt of Arun Panachariya's involvement in the GDR manipulation, it has taken steps to end this JV and it was ultimately dissolved on December 30, 2013;
- e. SEBI has relied on the Dubai Financial Services Authority's Administrative Fine Statement, whereby Arun Panchariya was fined USD 12,000 for failure to disclose his directorship and control over various entities to DFSA, to establish Arun Panchariya's connections with and control over Pan Asia Advisors, Vintage FZE and IFCE, but SEBI has failed to note that there is no mention of EURAM in that list of entities in which Arun Panchariya has control or directorship;
- f. EURAM Bank Asia Limited has not at any point dealt in or provided any assistance in connection with any transaction related to the Indian securities market, including the transactions that were undertaken by IFCE through Euram as an FII;

3.4.14. With respect to the assertion that Euram Bank was not involved in any fraudulent practice in relation to the Indian stock markets, it has been submitted by the Noticee that —

- a. EURAM Bank's dealings as a bank incorporated in Austria were regulated by the Austrian regulators, and as such, do not fall under the jurisdiction of SEBI;
- b. EURAM Bank has been extensively investigated by the Austrian Financial Market Supervisory Authority and the Austrian Public Prosecutor for White Collar Crime and Corruption and both have cleared EURAM from all regulatory, civil and criminal charges;
- c. The White Collar Crime and Corruption while dealing with a complaint against Euram by one of the GDR issuer companies, alleging fraud in the execution of the pledge agreement therein, has cleared EURAM Bank and its directors of all criminal charges and noted that the structure i.e., of granting Vintage a loan to subscribe to the GDRs of the company, secured by way of pledge on the GDR proceeds, was sound from an economic analysis perspective and there was no wrongdoing attributable to Euram;
- d. Euram had simply lent a sum of money to Vintage for the specific purpose of subscribing to the Vikash's GDR issue., for which Euram sought adequate security and towards that end, obtained Vikash's pledge, thereby creating a charge on the proceeds from the GDR issuance in favour of Euram;

- e. Euram Bank's dealings were entirely on an arm's length basis, and as per banking best practices as followed in Austria, where it was incorporated and operated;
- f. Euram exercised due diligence to verify that the persons executing the loan and pledge agreements were appropriately authorised to do so by the board of the GDR issuer company;
- g. while registering IFCF as a sub-account, EURAM Bank exercised necessary precaution, and only after conducting a thorough diligence viz., checking all of the prescribed credentials of IFCF and it fulfilling the mandated KYC norms, did it give IFCF registration as its sub-account, which has also been validated by SEBI;
- h. Euram had no control over the investment strategies and decisions of IFCF, and it cannot be held responsible for the same;
- i. Euram offered a bouquet of financial services, one of which was to offer a terminal for its clients to make investments — the investments themselves were made directly by the clients;
- j. Euram cannot be penalised merely for not having invested directly in the Indian markets, and it would be a stretch to say that Euram registered itself as an FII merely to facilitate transactions by IFCF, without any actual finding to that end;

- k. Euram was the FII for IFCF only for a limited period of time up till July 19, 2011, after which a transfer was granted by SEBI and Cardinal Capital Partners became the FII for IFCF.;
- l. Euram Bank extended all support to the investigation and in fact had also reported suspected money laundering by Arun Panchariya to the Austrian Federal Criminal Police Office under the Federal Ministry of the Interior, and cooperation and support was extended by Euram to the investigation process which has helped SEBI establish key elements of the fraudulent scheme; and
- m. Euram made no unwarranted gains out of the scheme, it simply lent money to one entity and when that entity failed to repay, Euram proceeded to enforce the security, as such, it had no interest or reason to be part of the fraudulent scheme.

3.4.15. With respect to the assertion that the issues in the present matter have already been dealt with by SEBI in its earlier orders, it has been submitted by the Noticee that —

- a. in previous decision dated September 5, 2017, the Hon'ble Whole Time Member, SEBI in the matter of *Alleged Market Manipulation Using GDR Issues by Asahi Infrastructure & Projects Ltd; Avon Corp. Ltd.; CAT Technologies Ltd.; IKF Technologies Ltd.; K Sera Sera Ltd; and Maars Software Intl. Ltd.* (SEBI/WTM/SR/EFD/64/09/2017), covering essentially the same facts and addressing the same issues as in the present matter, has granted

relief to Euram, so similar relief should be granted in the present matter and the charges should be dropped;

- b. the Hon'ble Supreme Court has held that issue estoppel is established if the same issue of fact had already been decided in an earlier case;
- c. the defence of issue estoppel, not only applies to proceedings before judicial authorities proper but extends to quasi-judicial authorities and administrative authorities; and
- d. therefore, the present authority can afford the benefit of such cardinal principles as issue estoppel to Euram.

3.4.16. The said Noticee has in his replies relied on the following case laws:

- a. Samir Arora V. SEBI, (2005) 59 SCL 96 (SAT), Nirmal Bang Securities Pvt. Ltd. V. SEBI, (2004) 49 SCL 421 and KSL & Industries Ltd V. SEBI (Appeal No. 9 of 2003) to contend that where serious malpractices such as insider trading and fraudulent trade practices are concerned, charges must be proved based on cogent materials and in accordance with law;
- b. Rakesh Kathotia & Ors. V. SEBI Order dated May 27, 2019 in Appeal No. 7 of 2016, Securities Appellate Tribunal, Sanjay Jethalal Soni V. SEBI, Order dated June 28, 2019 in Appeal No. 483 of 2018, Securities Appellate Tribunal, Subhkam Securities Private Limited V. SEBI (SAT Appeal no. 73 of 2012) and Khandwala Securities V. SEBI, Order dated September 7, 2012 in Appeal no. 19 of 2012, Securities Appellate

Tribunal to state that SEBI is required to exercise its powers within a reasonable period; and

- c. Hope Plantation Ltd. V. Taluk Land Board, (1999) 5 SCC 590, Viayabai V. Shriram Tukaram, (1999) 1 SCC 693 and Bhanu Kumar Jain V. Archana Kumar, (2005) 1 SCC 787 to contend that the doctrine of issue estoppel is a key element of res judicata.

Noticee No. 13 (Golden Cliff)

3.4.17. In its replies dated March 22, 2018, it has been submitted by the Noticee that it is a limited liability company incorporated under the law of the Republic of Mauritius having its registered office at C/o Aurisse International Ltd, Suit 1909, 19th Floor, Citadelle Mall, Sir Edgar Laurent Street, Port Louis, Mauritius. It was duly registered with SEBI as an FII until February 28, 2017.

3.4.18. The said Noticee has also denied all the allegations, charges made against it in the Show Cause Notices. In this regard, the Noticee has submitted that —

- a. the allegation in the SCN that Golden Cliff did not make any investment in India except through its sub-account Highblue Sky was not correct;
- b. its sub-account holders have invested in primary and secondary markets other than the Indian GDR issue;

- c. the fact that Arun Panchariya and Anant Sharma were Directors in one of the Indian company cannot be used to conclude that Anant Sharma was connected with Arun Panchariya in all business, which were independently handled by Anant Sharma;
- d. the allegation that Golden Cliff was connected to Arun Panchariya, on the ground that Anant Sharma and Reema Shetty were connected to Arun Panchariya, was not correct as the cancellation of GDRs and the sale of the converted equity shares of Vikash Metal and Power Limited were done upto May 17, 2013, which was prior to the association of Anant Sharma (September 09, 2014) and Reema Narayan Shetty (September 12, 2013);
- e. Anant Sharma himself approached SEBI to give his statement, and to assist in the investigation, which shows the bonafide intention of Anant Sharma;
- f. Also Anant Sharma had resigned from the directorship of Alka India Limited, whose promoter, Satish Panchariya was the brother of Arun Panchariya, with effect from March 28, 2016; and
- g. the past employment of Anant Sharma did not affect the business decisions of the Fund, and Anant Sharma had never hidden any information about his past employment, which was disclosed to FSC and other regulatory authority, at the time of his appointment as a Director in Golden Cliff and Emerging Market Opportunities Fund, and also to ICICI bank while seeking conversion of Sub account Emerging Market opportunities Fund (Previously known as Highblue Sky Emerging Market Fund) into FPI.

3.5. Relevant Provisions

3.5.1. Provisions of the SEBI Act —

Section 12 A (a), (b), (c)

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

“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”

3.5.2. Provisions of the SEBI (PFUTP) Regulations, 2003 —

Regulation 3(a), (b), (c) and (d)

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 (1) and (2)

4. Prohibition of manipulative, fraudulent and unfair trade practices

“(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.

(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following, namely:—

(a) ... ;

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

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

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

4. Issues

I. Whether Vikash (Noticee No.1) by allowing the GDR proceeds to be used as security for a loan that was availed by Vintage FZE (Noticee No.6) towards the subscription of GDRs issued by Vikash, and not disclosing the same to the stock exchanges, had devised a scheme with Vintage to defraud the investors ?

II. Whether the Directors of Vikash, namely, Akkash Patni (Noticee No.2), Vimal Kumar Patni (Noticee No. 3) and Vikash Patni (Noticee No. 4) who authorised EURAM Bank to use the GDR proceeds as security in connection with the loan acted as party to the fraudulent scheme, and whether the Directors of Vintage namely, Arun Panchariya (Noticee No.5) and Mukesh Chauradiya (Noticee No. 7), were involved in perpetrating the fraudulent scheme ?

III. Whether the Lead Manager to the issue, Pan Asia Advisors Ltd. (Noticee No.8) acted as a party to the fraudulent scheme?

IV. Whether the sub-accounts namely, India Focus Cardinal Fund (Noticee No. 9) and Highblue Sky Emerging Market Fund (Noticee No. 10), and the FIIs namely, Cardinal Capital Partners (Noticee No. 11), EURAM Bank (Noticee No. 12) and Golden Cliff (Noticee No. 13) through whom the sub-accounts traded in the Indian securities market, acted in pursuance of the fraudulent scheme?

V. Whether Vikash (Noticee No. 1) should be directed to bring back the money, and Arun Panchariya (Noticee No. 5), Vintage (Noticee No. 6), India Focus Cardinal Fund (Noticee No. 9) and Highblue Sky Emerging Market Fund (Noticee No. 10) should be directed to disgorge the illegal gains?

5. Consideration and findings –

5.1. Before proceeding with the merits of the matter, it would be relevant to deal with the preliminary objections raised by certain Noticees.

Jurisdiction of SEBI challenged as GDR issue done outside India

5.2. Noticee No. 5, Arun Panchariya has raised this objection since the GDR issue process took place outside the territorial boundaries of India, SEBI has no jurisdiction in the matter. It is stated that the said question has already been answered by the Hon'ble Supreme Court of India in its judgment dated July 06, 2015 in the matter of *Securities and Exchange Board of India V. Pan Asia Advisors Ltd and Another in Civil Appeal No. 10560/2013, (2008) 13 SCC 369*. The case came before the Hon'ble Supreme Court pursuant to an appeal by SEBI against the order dated September 30, 2013, passed by the Hon'ble Securities Appellate Tribunal ("SAT"), Mumbai, in Appeal No.126 of 2013. The Hon'ble SAT by way of its above mentioned order had set aside SEBI's Order dated June 20, 2013, whereby SEBI had debarred Pan Asia Advisors and Arun Panchariya for a period of ten years in dealing with securities with respect to their roles in the issuance of GDRs by six companies. In this background, the Hon'ble Supreme Court through the

said judgement has clarified the scope of SEBI's territorial jurisdiction, especially with respect to the issuance of GDRs by companies. The Hon'ble Supreme Court noted that GDRs are issued by an overseas depository bank on the basis of the shares deposited by a company with a domestic custodian bank in India. Considering this, the Supreme Court held that since GDR issuances were backed by underlying shares held by the Domestic Custodian Bank in India, a GDR can be construed as a right or interest in securities. Section 2(h) of the Securities Contracts (Regulation) Act, 1956, which enlists the instruments that can be considered as 'Securities' and includes rights or interest in securities among those. Further, the Hon'ble Supreme Court placed reliance on the case of *GVK Industries Officer v. Income Tax Officer (2011) 4 SCC 36*, where it had been held that a law may proceed against an extra-territorial aspect, in case it had "*got a cause and something in India or related to India and Indians in terms of impact, effect of consequence*". The court also placed reliance on the effects doctrine; which meant that in case the allegations of manipulation were true, there would be adverse consequences in the Indian securities market. In view of the above-mentioned reasons, the Hon'ble Supreme Court concluded that any fraudulent activity impinging upon the interests of Indian investors would squarely fall within the jurisdiction of SEBI. Thus, it was held by the Court that SEBI had the powers to initiate action against Pan Asia Advisors and Arun Panchariya, even though they were based outside India, since their actions impinged upon the interests of Indian investors.

5.3. Thus, the issue of jurisdiction of SEBI in GDR matters having been settled by the Hon'ble Supreme Court, I proceed to consider the matter on merits.

Proceedings not maintainable owing to delay

- 5.4. With respect to the submission of Noticee No.12, EURAM Bank, that there has been delay in the proceedings, it is seen from the record that documents *inter-alia* in the captioned matter were obtained from the Financial Market Authority, Austria on January 22, 2016 and Financial Services Commission, Mauritius on September 15, 2016. Consequent to the receipt of documents as above, investigation was initiated into the GDR issue of Vikash and the said investigation was completed in the year 2017. After the completion of investigation in the matter, a Show-Cause Notice dated February 01, 2018 was issued to the Noticees. Further, a Supplementary Show-Cause Notices dated June 18, 2018 were issued to Noticee Nos. 1, 5, 6, 9 and 10. Also, as many of the Noticees were based out of India the service of the said Show-Cause Notices involved processes which required more time. Once the said Show-Cause Notices were served on all the Noticees, personal hearings were granted to the Noticees who had sought for the same.
- 5.5. The Hon'ble SAT in its *Order dated February 05, 2020 in Appeal No. 376 of 2019, Jindal Cotex Limited and Ors Vs. SEBI*, while dealing with the question of delay, held that arguments on delay in investigation and consequently affecting natural justice were devoid of any merit. In the aforesaid matter, the Hon'ble Tribunal, while dismissing the ground of delay acknowledged the complexity involved in the investigation of the manipulative GDR issue and the time taken by SEBI to gain information relating to the various entities from multiple jurisdictions.

5.6. Similarly, in the matter of *G. V. Films Ltd. Vs. SEBI*. (Order dated February 15, 2021 in Appeal No. 168 of 2020, Securities Appellate Tribunal) the Hon'ble SAT opined on the issue of delay in a similar matter pertaining to issue of GDRs as follows:

“Having heard the learned counsel for the parties on this issue, we find that there is no doubt that there has been a delay in the issuance of the show cause notice after 10 years from the date of the GDRs issue. However, on this ground of delay, the proceedings cannot be quashed for the reasons that we find that an investigation was required to be done beyond the borders of India which took time.”

(Underline added)

5.7. Thus, in view of the above, I do not accept that the delay in the matter would vitiate the proceedings..

All Documents Relied During Investigation be Provided by SEBI

5.8. Noticee No 7 has submitted that all the documents collected during the investigation process should be provided to him. From the SCN and Annexures, I find that all the relevant and relied upon documents in support of the SCN and also the findings of the investigation captured in the SCN have been forwarded to the Noticees in the matter. Further, as regards the inspection of documents, it is noted that Noticee No. 7 had sought inspection of documents and the same was provided on April 17, 2018. Mr. Devendra Dhanesha, the authorised representative of Noticee No. 7 carried out inspection of the documents relied upon by SEBI.

5.9. 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.” In view of the aforesaid, I find that the contention of the Noticee that SEBI has not provided complete documents is untenable.

Issue I- Whether Vikash had devised a scheme with Vintage to defraud the investors?

5.10. The SCN has alleged that issuance of GDRs by Vikash was fraudulent as the Company had entered into a Pledge Agreement with the bank, EURAM Bank for a loan that had been availed by Vintage towards the subscription of GDRs issued by the Company. The Pledge Agreement was not disclosed to the stock exchanges which, the SCN alleges, made the investors believe that the said GDR issue was genuinely subscribed by the foreign investors.

5.11. No reply to the SCN has been received from the Company. Also no reply has been received from the subscriber of the GDRs i.e., Vintage.

5.12. So, to consider the allegation made in the SCN, it is relevant to place a chronology of the events associated with the GDR issue:-

- a. **October 27, 2010** – The Board of Directors of Vikash passed a resolution whereby it resolved to open an account with EURAM Bank for the purpose of receiving subscription money in respect of the Company's GDR issue. The excerpts from the said Board Resolution are reproduced hereunder:

“RESOLVED THAT a bank account be opened with EURAM Bank (“the Bank”) or any branch of Euram Bank, including the Offshore Branch, outside India for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of the Company.”

RESOLVED FURTHER THAT Shri Vimal Kumar Patni, Shri Vikash Patni, Shri Akkash Patni, Authorized Signatory of the Company, be and are hereby severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.

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

The GDR proceeds became the security for all the obligations of Vintage under the loan agreement.

- b. **March 22, 2011** – Vintage entered into a Loan Agreement with EURAM Bank for availing a loan facility of USD 11,999,952 with respect to the subscription of GDRs issued by Vikash.
- c. **March 22, 2011** – Vikash entered into a Pledge Agreement with EURAM Bank, whereby the GDR proceeds received by the Company from Vintage was pledged as collateral for the loan availed by Vintage from EURAM Bank.
- d. **April 11, 2011** – In the Escrow Account maintained by Vikash with EURAM Bank to receive the proceeds of the GDR issue, a deposit of USD 11,999,952 was made. The said amount had been deposited by Vintage for subscription of 100% of the GDR issue.
- e. **November 14, 2012** – A letter was issued by Vikash to EURAM Bank with respect to the deposit account maintained by it. By way of the said letter, Vikash confirmed that EURAM Bank had the right to set off the pledged cash deposit with the outstanding loan of Vintage amounting to USD 11,449,467. By way of the said letter, it was further instructed by Vikash that upon exercising its right to set off, all the remaining GDRs held in Deposit No. 5400121E of Vintage should be transferred to Account No. 20311-333-196205 in Habib Bank AG Zurich.
- f. **January 03, 2013** – A letter was issued by EURAM Bank informing Vikash that pursuant to the Pledge Agreement, USD 11,463, 211.63 had been used from the account of Vikash towards the realisation of loan due from Vintage. It was further informed by EURAM Bank that “ *Pursuant to the realisation of the pledged cash accounts of Vikash Metal & Power Ltd. and Section 1358 of the Austrian*

Civil Code (“ABGB”) Vikash Metal & Power Ltd. automatically takes EURAM Bank’s position as pledgee regarding 974426 GDRs of Vikash Metal & Power Ltd. (ISIN US92675V1026) owned by Alta Vista FZE. Please be aware that from now on Vikash Metal & Power Ltd. is the pledgee of the GDRs. According to your instructions we have transferred 974426 GDRs Vikash Metal & Power Ltd. (ISIN US92675V1026) with trade date 03 January 2013 and value date 04 January 2013 to Habib Bank AG Zurich for further credit to account no 20311-333-196205 Alta Vista International FZE.”

5.13. The above chronology brings out that there was a clear understanding between Vikash and Vintage (which later became Alta Vista International FZE) to bring about this fraudulent scheme. In this regard, specific mention is made of the Loan Agreement entered into by Vintage with EURAM Bank for availing a loan facility of USD 11,999,952 on March 22, 2011. It is pertinent to note that the loan as per the said Loan Agreement was granted to Vintage on the pledge of the following assets : “ *Pledge of certain securities held from time to time in the Borrower’s account no 540012 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement. Pledge of the account no 580037 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.*” It is stated that the separate pledge agreement as mentioned above, which forms an integral part of the Loan Agreement, is the Pledge Agreement entered between Vikash and EURAM Bank. The Pledge Agreement provides that the purpose of the pledge was “...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...” So, the purpose of the Pledge Agreement is to secure the obligations of the Borrower i.e., Vintage under the Loan Agreement. Further, the Pledge Agreement provides the circumstances in which EURAM Bank would invoke the Pledge. The said circumstances are: *“In the case that the Borrower fails to make payment on any due amount, or defaults in accordance with the Loan Agreement, the Pledgor herewith grants its express consent and the Bank is entitled to apply the funds in the Pledged Accounts to settle the Obligations. In such case the Bank shall transfer the funds in the Pledged Accounts, even repeatedly, to an account specified by the Bank. Notwithstanding the foregoing, in the case that the Borrower fails to make payment of 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 public authorized for such transactions, selected by the Bank. 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.”* Thus, from a conjoint reading of the above-mentioned terms of the Loan Agreement and the Pledge Agreement, it is quite clear that the pledging of the proceeds of the GDR issue by

way of a Pledge Agreement to allow the said deposit account to be used as security for all the obligations of Vintage under the Loan Agreement, was a pre-condition for the grant of the loan to Vintage. The simultaneous execution of both the Loan Agreement and the Pledge Agreement indicates that Vikash was itself financing the subscription of its GDR issue. Once the loan facility was activated, an amount of USD 11,999,952 was received from Vintage on April 11, 2011 in the Escrow Account maintained by Vikash in EURAM Bank for the GDR proceeds. However, as already mentioned, on November 14, 2012, a letter was issued by Vikash to EURAM Bank confirming to EURAM Bank that it had the right to set off the pledged cash deposit with the outstanding loan of Vintage amounting to USD 11,449,467. Further, by way of the said letter, Vikash requested EURAM Bank that upon exercising its right to set off, all the remaining GDRs held in Deposit No. 540012 1E of Vintage, which would have otherwise reverted to Vikash, were to be transferred to Account No. 20311-333-196205 of Vintage in Habib Bank AG Zurich. This effectively establishes that a substantial part of the consideration received from Vintage, for the GDRs subscribed by it, was returned to Vintage, and as such, Vintage came to possess the GDRs without paying any consideration.

5.14. Thus, Vikash in connivance with Vintage devised a fraudulent scheme whereby Vintage received GDRs without paying any consideration for a substantial portion of the GDRs, at the cost of shareholders / investors of Vikash. Accordingly, I find that Vikash and Vintage have clearly violated Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) & 4(1) of SEBI (PFUTP) Regulations, 2003.

5.15. Additionally, it has been alleged that Vikash had made wrong disclosures to the stock exchanges regarding the investment in GDRs by foreign investors. As already brought out, the Loan Agreement had reference to the Pledge Agreement entered into between Vikash and EURAM Bank by virtue of which EURAM Bank provided a credit facility to Vintage for the purpose of subscribing to the GDRs of Vikash. So, the GDR issue would not have been subscribed in its entirety had the Company not given security towards the loan taken by Vintage through the Loan Agreement. These should have been reported to the Stock Exchanges. However, the Company reported to the stock exchange (NSE) on April 12, 2011 that “... *the Board of Directors of the Company at its meeting held on April 12, 2011 has, inter alia, considered and approved the following matters : (1) The Board has approved the offering circular filed at Luxembourg Stock Exchange. (2) The Board has approved Deposit Agreement in respect of the GDR issue. (3) The Board has approved the allotment of 36,072,000 equity shares of Rs.10/- each underlying 1,202,400 GDR's issued in the name of Depository (The Bank of New York Mellon) and issuance of share certificate thereof.*” The Company making a corporate announcement that the Company had approved the allotment of 36,072,000 equity shares of Rs.10 each underlying 1,202,400 GDRs, without disclosing the pledge/loan arrangement that it had with regard to the subscription of its GDR issue, might have made the investors believe that the said GDR issue was genuinely subscribed. Further, as already stated above, Vikash by way of a letter dated November 14, 2012 confirmed the right of EURAM Bank to set off the cash lying in Vikash’s account with the outstanding loan of Vintage amounting to USD 11,449,467 and EURAM Bank by way of letter dated January 03, 2013

informed that it had utilised the cash amounting to USD 11,463,211.63 lying in Vikash's account for realization of the outstanding loan of Vintage. However, the corporate announcements made by Vikash during the period did not mention the above two events. Therefore, such publication/disclosure of information, as seen above, was misleading and contained distorted information which induced investors to deal in the shares of Vikash. Accordingly, I find that Vikash has violated Regulation 4(2) (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003.

Issue II. Whether the Directors of Vikash and Vintage can be held liable for the fraudulent scheme?

A. Directors of Vikash

5.16. The Annual Report of the Company for the financial year 2010-11 states that during the said period Vimal Kumar Patni, Vikash Patni and Akkash Patni were part of the Board of Directors. The details regarding their attendance in the board meetings of the Company are provided hereunder :

Table -8

Name of Directors	Category of Directors	No. of Board Meetings attended during 2010-11	Attended last AGM held on 22nd September, 2010	Directorships held in other Public Limited Companies incorporated in India
Mr. Vimal Kumar Patni - Chairman	Non-Executive, Promoter	19	Yes	7
Mr. Vikash Patni - Managing Director	Executive, Promoter	19	Yes	8
Mr. Akkash Patni	Non-Executive, Promoter	19	Yes	7

5.17. It is further seen from the Annual Report that during the said financial year, a total of nineteen board meetings were held. The said board meetings were held on: 8 April, 2010; 29 May, 2010; 11 June, 2010; 9 July, 2010; 21 July, 2010; 14 August, 2010; 27 August, 2010; 2 September, 2010; 8 September, 2010; 16 September, 2010; 25 October, 2010; 27 October, 2010; 13 November, 2010; 11th December 2010; 10 January, 2011; 11 February, 2011; 16 March, 2011; 23 March, 2011; and 28 March 2011.

5.18. As seen from the above table, Vimal Kumar Patni, a Non-executive director, was the Chairman of the Company; Vikash Patni, an Executive director, was the Managing Director of the Company and Akkash Patni was a Non-executive director. The above-named Directors were categorised as Promoters of the

Company. In view of the above, the liability of the Directors namely, Vimal Kumar Patni, Vikash Patni and Akkash Patni is being taken up for consideration.

Vimal Kumar Patni, Vikash Patni and Akkash Patni

5.19. During the investigation period, as seen from the Annual Report, Vimal Kumar Patni was the Chairman of the Company and Vikash Patni was the Managing Director. By way of the Board Resolution dated October 27, 2010, Vimal Kumar Patni, Vikash Patni and Akkash Patni were authorised to sign, execute any application, agreement, escrow agreement, document, undertaking etc. as may be required by the Bank, i.e. EURAM Bank. By way of the said Board Resolution, the above-named directors were also authorised to draw cheques and generally to take all such steps and do all such things as may be required from time to time on behalf of this Company.

5.20. It is further noted that the Pledge Agreement entered into by Vikash with EURAM Bank, whereby the bank account of Vikash maintained with EURAM Bank having the GDR proceeds was given as security for all the obligations of Vintage under the Loan Agreement, had been signed by Akkash Patni. The letter from Vikash confirming that EURAM Bank had the right to set off the pledged cash deposit with the outstanding loan of Vintage amounting to USD 11,449,467 had also been signed by Akkash Patni. It is to be noted that by way of the said letter, EURAM Bank was instructed that upon exercising its right to set off, the GDRs pledged by Vintage which would have come to Vikash, should be transferred to Vintage's account in Habib Bank AG Zurich.

5.21. Further, Vimal Kumar Patni was the Chairman of the Company and Vikash Patni was the Managing Director. The very nature of the above positions would have required knowledge and involvement in the functioning of the Company. Also, all the three, namely, Vimal Kumar Patni, Vikash Patni and Akkash Patni were promoters of the Company, and as such had substantial holdings in the Company. Lastly, it is seen that many of the letters of instruction to EURAM Bank in respect of account(s) of Vikash mention the names of Vimal Kumar Patni, Vikash Patni and Akkash Patni.

5.22. It is stated that Vimal Kumar Patni, Vikash Patni and Akkash Patni have neither submitted any replies in response to the SCN nor appeared before me during the opportunities of personal hearing granted to them. So, on the basis of the information and documents available on record, I find that Vimal Kumar Patni, Vikash Patni and Akkash Patni were actively involved in the day-to-day activities of the Company, and had full knowledge of the activities of Company during the process of issuance of GDRs. Thus, the facts show that the directors of the Company, namely, Vimal Kumar Patni, Vikash Patni and Akkash Patni have violated the provisions of Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

B. Directors of Vintage

Arun Panchariya

5.23. It has been stated in the SCN that Arun Panchariya was the beneficial owner and Managing Director of Vintage FZE as on June 06, 2007 and June 07, 2010 respectively. It has also been stated in the SCN that Alkarni Holdings Limited was the shareholder of Vintage as on December 28, 2010, and Arun Panchariya was the sole director of Alkarni as on April 21, 2014.

5.24. Arun Panchariya in his submissions/replies submitted to SEBI has refuted the allegations made in the SCN. The same have been captured in the previous part of this order, and accordingly are not being reproduced here. It shall, however, be relevant to briefly mention herein the fundamental grounds of defence taken by the said Noticee in respect of the allegations made in the SCN –

- a. SEBI does not have the jurisdiction to initiate action against natural persons resident outside India;
- b. other companies have come out with GDR issues which followed the market practices allegedly now found to be illegitimate by SEBI;
- c. the Noticee was a director in Vintage FZE only till 2007;
- d. decisions of Vintage FZE including Loan default was taken on the circumstances in the best interest of the Company by its management; and
- e. SEBI has passed various orders in which no action has been taken against the investors like Clifford Partners, Solec company limited, Seviron

company limited, Fusion Investment Ltd etc., so placing reliance on the doctrine of “issue estoppel”, the Noticee must be granted similar relief.

5.25. The question of jurisdiction of SEBI has already been dealt with in the previous part of this Order. As regards the defence of issue estoppel raised by the said Noticee, it is stated that the same has been dealt with in a detailed manner in the subsequent paragraphs of the Order. Proceeding with the merits of the matter, reference is made to a loan agreement dated May 30, 2008 entered into by Vintage with EURAM Bank. The said agreement has been signed by Arun Panchariya and in the space for “Title”, MD has been mentioned. So, it clearly belies the claim of the Noticee that he was a director in Vintage FZE only till 2007. It is seen from a letter dated December 28, 2010, issued by the JAFZA, that Vintage was a Free Zone Establishment and its sole shareholder was Alkarni Holding Ltd. Further, it is seen from a Certificate of Incumbency of Alkarni Holding Ltd. dated April 21, 2014, issued by the Overseas Management Company Trust (BVI) Ltd., that the only shareholder in the said company was Arun Panchariya, who held 50,000 shares. Arun Panchariya was also the sole director of the said company. Also, reference is made to the Administrative Fine Statement passed by the Dubai Financial Services Authority against Arun Panchariya, by way of which, a fine of USD 12,000 was imposed on him. The said Administrative Fine Statement notes that on February 19, 2009 Arun Panchariya had disclosed that he was controller/director/partner in three firms, including Vintage FZE. So, it is clear that the sole beneficial owner of Vintage was Arun Panchariya, who held complete shareholding of Vintage through Alkarni Holding Ltd. Furthermore, it is seen from

the above-mentioned letter dated December 28, 2010, issued by the Jebel Ali Free Zone Authority, that the director of Vintage was Ashok Panchariya, who is the brother of Arun Panchariya.

5.26. Thus, from the above, it is concluded that during the period when the process for issue of GDRs was initiated and the announcement of allotment of GDRs was done i.e., October 2010 to April, 2011, Arun Panchariya was the sole beneficial owner of Vintage and had a controlling position in it. Also, during this period Ashok Panchariya, who is the brother of Arun Panchariya was the director of Vintage. Thus, I find that Arun Panchariya was involved in the running of the business during the process of issuance of GDRs, held a controlling position in Vintage and being the sole beneficial owner had benefitted from the illegal scheme. Accordingly, I find that Arun Panchariya has violated Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

Mukesh Chauradiya

5.27. It has been alleged in the SCN that Mukesh Chauradiya served as Managing Director and director of Vintage.

5.28. Mukesh Chauradiya in his submissions/replies submitted to SEBI has refuted the allegations made in the SCN. The same have been captured in the previous part of this order, and accordingly are not being reproduced here. It shall, however, be relevant to briefly mention herein the fundamental grounds of defence taken by the said Noticee in respect of the allegations made in the SCN –

- a. he has never been the Director or Managing Director of Vintage FZE, and he only held the position of Manager;
- b. the decisions to subscribe to the GDRs and obtain loan from Euram Bank for subscribing to the GDRs was taken by Arun Panchariya and the Noticee, had no role to play in it; and
- c. the Noticee did not gain any other advantage, monetary or otherwise for any of the acts done by him as an employee of Vintage FZE, working under Arun Panchariya.

5.29. In this regard, reference is made to the Loan Agreement entered into by Vintage with EURAM Bank. The said agreement has been signed by Mukesh Chauradiya on behalf of Vintage, and in the space for providing the “Title” of the signatory, Managing Director has been mentioned. Further, I note that the letter dated December 30, 2010 addressed by Vintage to EURAM Bank, has been signed by Mukesh Chauradiya, suffixing Director to his name. It is relevant to note that by way of the said letter, it has been represented to EURAM Bank that “*Mr. Mukesh Chauradiya, Managing Director of the company, has successfully completed the Training Program of DGCX in 2005.*” In addition to the above references, a letter dated December 28, 2010, issued by the JAFZA, shows Mukesh Chaurdiaya as a Manager of Vintage and not the director. Also, the UAE Residence Permits submitted by the Noticee show his profession during the period September 14, 2008 to September 13, 2014 as General Manager. Further, the Employment Card for entry into the Jebel Ali Free Zone mentions his occupation as General Manager.

5.30. It is seen from the letter dated December 30, 2010 addressed to EURAM Bank and the Loan Agreement dated March 22, 2011 that the Noticee has represented himself to be the Managing Director/Director of Vintage. Having represented himself as being the Managing Director/Director of Vintage, the Noticee cannot seek relief from the consequences of such representation by asserting that he was merely an employee.

5.31. In this regard I note that a similar contention had been raised by Mukesh Chauradiya before the Hon'ble SAT in *Mukesh Chauradiya vs. SEBI (Date of Decision: January 7, 2021 Appeal No. 260 of 2020)* wherein it was argued that he was never a managing director of Vintage FZE; he was initially only a Manager and later on a General Manager. It was contended that he was never a beneficial owner of Vintage FZE and he had never benefited from the alleged violation as he was only a salaried employee of Vintage FZE. In the matter, the Hon'ble SAT held as follows:

"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.”

5.32. So, as held by the Hon’ble SAT, the exact designation of the present Noticee is not relevant. What is relevant is whether the Noticee was holding a position in which he could put his signature in the Loan Agreement with EURAM Bank under the designation of Managing Director. From the facts of the case, it clearly appears that the appellant was holding a position by way of which he could execute binding agreements on behalf of Vintage. Thus, the present circumstances indicate that Mukesh Chauradiya was playing an important role in the affairs of Vintage during the relevant period. Accordingly, I find that Mukesh Chauradiya has violated Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

III. Whether the Lead Manager to the Issue, Pan Asia Advisors Ltd. (Noticee No.8) acted as a party to the fraudulent scheme?

5.33. Pan Asia Advisors Ltd. (“**Pan Asia**”), a UK based entity, was the Lead Manager for the GDR issue of Vikash. It has been alleged in the SCN that Arun Panchariya was the director and beneficial owner of Pan Asia and as the Lead Manager, Pan Asia had handled the GDR issue of Vikash. No replies/submissions have been received from Pan Asia.

5.34. It is seen from the records that the Noticee was registered as a private limited company with the Registrar of Companies for England and Wales on April 24, 2006. It is also seen that the name of the said Noticee has been changed from Pan Asia Advisors Ltd. to Global Finance and Capital Limited on February 08, 2013. Further, it is seen from the information, as received from the Financial Conduct Authority, UK, that Arun Panchariya was the director of Pan Asia from August 30, 2006 to September 29, 2011. Also, between July 01, 2008 and January 20, 2012, Arun Panchariya was the sole shareholder holding 100 % of the total shareholding. So, during the period when the process for issue of GDRs was initiated and the announcement of allotment of GDRs was done i.e., during October 2010 to April, 2011, Arun Panchariya was a director and had a controlling stake in Pan Asia.

5.35. In this respect, reference is also made to the letter dated February 20, 2012 of Pan Asia addressed to SEBI. By way of the said letter, Pan Asia has provided a summary of the various steps involved in the consummation of a GDR issue, right from the initiation of the issue till the closing of the issue. Pan Asia, as part of the letter, has

also provided a list of activities that it is usually required to carry out as the Lead Manager which is given hereunder:

“ 1) *Signing the mandate with the Client (i.e. Indian Listed Company).*

2) *Conducting the due diligence that includes documentary evidences as well as a check on the premises owned by the company.*

5) *Then lead manager (PAA) enters into a tri-party Escrow Agreement wherein the parties are the (a) Issuer Company, (b) Lead manager (Pan Asia) and (c) Escrow Agent appointed by the company.*

6) *PAA introduces all the parties to each other by circulating a Working Group List.*

7) *PAA presents the project report of the Issuer Company along with the Offer document to the investor(s). This process runs simultaneously along with the progress on the working group co-ordination in terms of documentation for the listing.*

10) *As per the opening/closing schedule of the transaction- PAA obtains confirmation from Escrow Agent that the subscription money from the Investors is in place, on the day that is the last day for receipt of the subscription from investors.*

11) *On the closing day/allotment day, PAA closely monitors the documentation that is required by/from each & every working group member for the successful closure of the transaction. ”*

5.36. The above explanation of Pan Asia about its role in GDR issues, along with the confirmation received from the Financial Conduct Authority, UK, that Arun Panchariya was its director from August 30, 2006 to September 29, 2011, brings out the fact that Pan Asia was well aware of the entire scheme underlying the GDR

issue of Vikash. As seen from the sequence of events in the matter, the fraudulent scheme was devised by Arun Panchariya using all his connected entities to enact various roles in the GDR issue, including Pan Asia as the Lead Manager.

5.37. Further, reference is drawn to Order dated October 25, 2016 of the Hon'ble SAT in *Pan Asia Advisors Limited V. SEBI* in Appeal No. 126 of 2013. The Hon'ble SAT while considering the role of the lead manager i.e., Pan Asia Advisors Limited and its Managing Director, Arun Panchariya, with respect to the GDR issue of Asahi Infrastructure & Projects Ltd., which is similar to the present matter, has held,

“...instead of ensuring that the foreign investors subscribe to the GDRs of Asahi, AP as Managing Director of PAN Asia planned to subscribe to the GDRs of Asahi through Vintage and in fact as Managing Director of Vintage took loan of 5.98 Million USD from Euram Bank for subscribing to the GDRs of Asahi and made Asahi to pledge to the Euram Bank the GDR subscription amount of 5.98 Million USD as security for the loan taken by Vintage. Similar modus operandi was adopted in case of other issuer companies. 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...”

5.38. Accordingly, I find that Pan Asia being an Arun Panchariya owned and controlled entity, acted as a party to the fraudulent scheme, and as such has violated Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

Issue – IV: Whether India Focus Cardinal Fund (Noticee No. 9) and Highblue Sky Emerging Market Fund (Noticee No. 10), and the FIIs, Cardinal Capital Partners (Noticee No. 11), EURAM Bank (Noticee No. 12) and Golden Cliff (Noticee No. 13) have acted in pursuance of the fraudulent scheme?

5.39. It has been alleged in the SCN that India Focus Cardinal Fund and Highblue Sky Emerging Market Fund by selling the equity shares of Vikash in the Indian Securities Market acted as conduit to Arun Panchariya and his connected entities, which were acquired by Vintage free of cost to the extent of USD 11.46 million through the fraudulent scheme.

5.40. It has been further alleged in the SCN that EURAM Bank and Cardinal Capital Partners got registered as FIIs to facilitate India Focus Cardinal Fund become its sub account and Golden Cliff got registered as FII to facilitate Highblue Sky Emerging Market Fund become its sub-account and sell the converted shares of Vikash in the Indian securities market.

5.41. In this regard, the summary of the registration of FIIs and sub-accounts is tabulated below:

Table- 9

Sl. No.	Name of sub a/c	Period of registration	Name of FII under which sub a/c is registered	Period of registration with FII
1	India Focus Cardinal Fund	12/12/2008 to 19/07/2011	European American Investment Bank	21/11/2008 to 20/11/2011
		20/07/2011 to 19/06/2017	Cardinal Capital partners	20/06/2011 to 19/06/2017
2	Highblue Sky Emerging Market Fund [previously known as KBC Adini Capital (Mauritius) Ltd.]	18/06/2010 to 21/10/2012	KBC Aldini Capital Limited	22/03/2010 to 21/03/2016
		22/10/2012 to 28/02/2017	Golden Cliff (previously known as Vaibhav Investments Limited)	01/03/2011 to 28/02/2017
3	Davos International Fund DR	06/05/2011 to 05/05/2014	NA	NA
4	Stream Value Fund	29/11/2011 to 22/03/2016	SBM Capital Management Limited	NA
		23/03/2016 to 22/03/2019 as FPI	NA	NA
5	Sparrow Asia Diversified Opportunities Fund	10/08/2009 to 27/07/2014	Sparrow Investment Managers Limited	10/08/2009 to NA
6	Leman Diversified Fund	17/05/2012 to 03/01/2017	Arcstone Capital Limited	17/05/2012 to NA

5.42. In this regard, the liability of the above-named Noticees is being taken up for consideration in three parts: a) joint role of India Focus Cardinal Fund and Cardinal Capital Partner; b) joint role of Highblue Sky Emerging Market Fund and Golden Cliff; and c) role of EURAM Bank.

India Focus Cardinal Fund and Cardinal Capital Partners

5.43. In response to the allegations made in the SCN, India Focus Cardinal Fund has not filed any replies/submissions to SEBI.

5.44. A summary of the shares received by India Focus Cardinal Fund upon conversion of GDRs is provided hereunder:

Table- 10

Date of conversion of GDRs	No. of GDRs converted	Total No. of remaining GDRs on the corresponding date	No. of equity shares issued on conversion of GDRs
30-May-11	10,000	11,92,400	3,00,000
01-Jun-11	30,000	11,62,400	9,00,000
21-Jun-11	5,700	11,56,700	1,71,000
30-Jun-11	37,500	11,19,200	11,25,000
06-Jul-11	72,500	10,46,700	21,75,000
14-Jul-11	50,000	9,96,700	15,00,000
Total	2,05,700		61,71,000

5.45. Further, the summary of the shares sold by India Focus Cardinal Fund upon conversion of GDRs is provided hereunder:

Table-11

Name of entity	No. of shares sold		Total no. of shares sold	Trade value		Total trade value (INR)	Period of Sale
	BSE	NSE		BSE	NSE		
India Focus Cardinal Fund	43,22,392	18,48,608	61,71,000	2,03,16,541.31	2,43,64,996.34	4,46,81,537.65	June 01, 2011 to October 25, 2012

5.46. It is seen from the above tables that India Focus Cardinal Fund received 61,71,000 equity shares of Vikash upon conversion of 2,05,700 GDRs. It is also seen from that the 61,71,000 equity shares received by India Focus Cardinal Fund were then sold by it in the Indian capital market between June 01, 2011 and October 25, 2012.

5.47. In this regard, reference is made to the letter dated September 15, 2016 addressed by the Financial Services Commission, Mauritius to SEBI. In the said letter dated September 15, 2016, it was stated that Cardinal Capital Partners Ltd. was the management shareholder of India Focus Cardinal Fund, since August 22, 2008 and Arun Panchariya was the beneficial owner. Further, reference is drawn to the letter dated April 02, 2012 addressed by India Focus Cardinal Fund to SEBI. In the said letter, it has been disclosed by the Noticee that for the period January 01, 2009 to May 31, 2010, the complete shareholding of Cardinal Capital Partners was held by Arun Panchariya.

5.48. From the above, it is seen that complete shareholding in India Focus Cardinal was held by Cardinal Capital Partners Ltd., and in turn the complete shareholding in

Cardinal Capital Partners Ltd. was held by Arun Panchariya. So, both India Focus Cardinal Fund and Cardinal Capital Partners Ltd. were controlled by Arun Panchariya during the GDR issue and the sale of the converted equity shares in the Indian securities market.

5.49. In the present proceedings, the allegation is that Cardinal Capital Partners Ltd., a registered FII facilitated India Focus Cardinal Fund, its sub-account to sell the illegally acquired shares in the Indian securities market. It has already been established that Vintage, an Arun Panchariya entity, fraudulently subscribed to the GDRs of Vikash. It has also been brought out above that India Focus Cardinal Fund (which came to possess the GDRs and converted them into equity shares) and Cardinal Capital Partners Ltd. were both owned and controlled by Arun Panchariya. In view of the same, I am convinced that Cardinal Capital Partners Ltd. worked as a conduit for Arun Panchariya by providing a vehicle to India Focus Cardinal Fund to sell the illegally acquired shares of Vikash in the Indian securities market. Accordingly, I find that Cardinal Capital Partners Ltd. and India Focus Cardinal Fund have violated Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

Highblue Sky Emerging Market Fund and Golden Cliff

5.50. Highblue Sky in its submissions/replies submitted to SEBI has refuted the allegations made in the SCN. The same have been captured in the previous part of this order, and accordingly are not being reproduced here. It is, however, relevant

to briefly mention herein the essential grounds of defence taken by the said Noticee in respect of the allegations made in the SCN –

- a. the allegation of the Noticee's connection with Arun Panchariya was on the ground that Anant Sharma and Reema Shetty were connected to Arun Panchariya, but the cancellation of GDRs and the sale of the converted equity shares of Vikash Metal and Power Limited were done up to May 17, 2013, which was prior to the association of Anant Sharma (August 11, 2014) and Reema Narayan Shetty (April 21, 2014);
- b. Arun Panchariya and Anant Sharma being Directors in one Indian company cannot be used to conclude that Anant Sharma was connected with Arun Panchariya in all the businesses; and
- c. the KYC documents of Highblue Sky showing its address and contact numbers being common with Aurisse fund was because Aurisse was the management company for Highbluesky Emerging Market Fund, and provided services, viz., accounting, NAV calculations etc.

5.51.A summary of the shares received by Highblue Sky Emerging Market Fund upon conversion of GDRs is provided hereunder:

Table -12

Date of conversion of GDRs	No. of GDRs converted	Total No. of remaining GDRs on the said date	No. of equity shares issued on conversion of GDRs	Entity becoming holder of equity shares post conversion of GDRs
17-May-12	12,274	9,84,426	3,68,220	HighBlue Sky Emerging Market Fund
08-Feb-13	1,10,000	8,74,426	33,00,000	HighBlue Sky Emerging Market Fund

05-Mar-13	33,400	8,41,026	10,02,000	HighBlue Sky Emerging Market Fund
06-Mar-13	33,400	8,07,626	10,02,000	HighBlue Sky Emerging Market Fund
16-Jul-13	70,000	7,37,626	21,00,000	HighBlue Sky Emerging Market Fund
Total	2,59,074		77,72,220	

5.52. Further, the summary of the shares sold by Highblue Sky Emerging Market

Fund upon conversion of GDRs is provided hereunder:

Table-13

Name of entity	No. of shares sold		Total no. of shares sold	Trade value (INR)		Total trade value (INR)	Period of Sale
	BSE	NSE		BSE	NSE		
Highblue Sky Emerging Market Fund	43,61,915	0	43,61,915	47,04,293.78	0	47,04,293.78	November 06, 2012 to May 17, 2013

5.53. It is seen from the above tables that Highblue Sky Emerging Market Fund received 77,72,220 converted equity shares of Vikash. It sold 43,61,915 converted shares by May 2013 and the remaining 34,10,305 converted shares were available with it as on July 05, 2017. The shares sold by the sub-account, Highblue Sky Emerging Market Fund were done through the FII, Golden Cliff.

5.54. In this regard, it is seen that Reema Narayan Shetty was a director of Golden Cliff from May 16, 2013 to August 01, 2014. There was a common period of two months

(May 16, 2013 to July 16, 2013) when she was a director of Golden Cliff , which coincided with the conversion of GDRs/selling of shares by Highblue Sky Emerging Market Fund.

5.55.Reference is made to emails dated March 02, 2016 and April 29, 2016 whereby Highblue Sky Emerging Market Fund has provided its shareholding and directorship details. The details provided by way of the above emails bring out the connection between Reema Narayan Shetty and Arun Panchariya. The details are as under:

- a. Reema Narayan Shetty was the authorised signatory of India Focus Cardinal Fund for the bank account held with EURAM Bank Austria as on June 02, 2011. It has already been established above that India Focus Cardinal Fund was owned, managed and operated by Arun Panchariya.
- b. She was the beneficial owner of Golden Cliff from September 12, 2013 till September 09, 2014.
- c. From April 21, 2014, upon Golden Cliff acquiring the complete shareholding in Highblue Sky Emerging Market Fund, she also became the beneficial owner of Highblue Sky Emerging Market Fund.

5.56.As regards Anant Kailash Chandra Sharma, it is seen from the above mentioned emails that —

- a. He joined as a director of Highblue Sky Emerging Market Fund on August 11, 2014.

- b. Anant Kailash Chandra Sharma became the beneficial owner of Golden Cliff on September 09, 2014.
- c. He also became the beneficial owner of Highblue Sky Emerging Market Fund on September 09, 2014, by virtue of being the beneficial owner of Golden Cliff, which holds 100 % shareholding in Highblue Sky Emerging Market Fund.

5.57. Furthermore, it is seen from the information available on the MCA website that Anant Sharma was a director in the following Companies between 2009 and 2016:

Table-14

Serial No.	Director	Company	Start Date	End Date
1	Anant Kailash Chandra Sharma	Alka India Limited	01/12/2009	-
2	Anant Kailash Chandra Sharma	Sai Sant Advisory (India) Private Ltd.	01/12/2009	18/03/2016
3	Anant Kailash Chandra Sharma	Vintage FZE (India) Private Limited	22/12/2009	18/03/2016
4	Anant Kailash Chandra Sharma	Ramsai Investment Holdings Private Limited	01/09/2015	18/03/2016

5.58. It is seen from the MCA website that between 2009 and 2016, the tenure of Arun Panchariya as a director coincided with Anant Sharma's tenure as a director in the following companies :

Table-15

Serial No.	Director	Company	Start Date	End Date
1	Arun Panchariya	Sai Sant Advisory (India) Private Ltd.	31/08/2007	20/10/2010
2	Arun Panchariya	Ramsai Investment Holdings Private Limited	04/02/2008	18/08/2010

5.59. Further, between 2009 and 2016, the tenure of Mukesh Chauradiya as a director coincided with Anant Sharma's tenure as a director in the following companies :

Table-16

Serial No.	Director	Company	Start Date	End Date
1	Mukesh Chauradiya	Alka India Limited	31/01/2006	01/06/2010
2	Mukesh Chauradiya	Ramsai Investment Holdings Private Limited	17/08/2010	17/03/2015

5.60. Furthermore, from the MCA website it is seen that between 2009 and 2016, the tenure of Satish Panchariya and Ashok Panchariya (related to Arun Panchariya) as directors coincided with Anant Sharma's tenure as a director in the following companies :

Table-17

Serial No.	Director	Company	Start Date	End Date
1	Satish Ramswaroop Panchariya	Alka India Limited	01/02/2000	-
2	Ashok Ramswaroop Panchariya	Alka India Limited	29/04/2005	-
3	Ashok Ramswaroop Panchariya	Ramsai Investment Holdings Private Limited	17/03/2016	-
4	Ashok Ramswaroop Panchariya	Sai Sant Advisory (India) Private Ltd.	17/03/2016	-
5	Ashok Ramswaroop Panchariya	Vintage FZE (India) Private Limited	30/09/2007	-

5.61. So, from the above-mentioned tables, it is seen that Anant Sharma was a director in the companies where the directorships were either held by Arun Panchariya or Arun Panchariya related entities.

5.62. Also, it would be relevant to see the shareholding pattern of the companies in which Anant Sharma held directorships:

Table-18

Serial No.	Company	Shareholding Pattern
1	Vintage FZE (India) Private Limited	<i>As on September 30, 2010</i> ▪ Vintage FZE – 99.98 % (9998 shares) ▪ Arun Panchariya – 0.01% (1 share) ▪ Mukesh Chauradiya – 0.01% (1 share)

		<i>As on September 30, 2013</i> ▪ Vintage FZE – 99.99 % (9998 shares) ▪ Mukesh Chauradiya – 0.02% (2 shares)
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5.63. Thus, it is seen from the above that Anant Sharma was involved in such businesses which were owned/managed by Arun Panchariya or related entities. It is to be noted that Anant Sharma became the owner of Golden Cliff upon receiving the shares from Reema Narayan Shetty. There is no connection between Anant Sharma and Reema Narayan Shetty, but for the fact that both are closely related to Arun Panchariya. Furthermore, Highblue Sky Emerging Market Fund is owned by Golden Cliff.

5.64. In the present proceedings, the allegation that Golden Cliff, a registered FII facilitated Highblue Sky Emerging Market Fund, its sub-account to sell the illegally acquired shares in the Indian securities market. It has already been established that Vintage, an Arun Panchariya entity, fraudulently subscribed to the GDRs of Vikash. It has also been brought out that Highblue Sky Emerging Market Fund, which came to possess the GDRs and converted them into equity shares, and Golden Cliff were both Arun Panchariya related entities. In view of the same, I am convinced that Golden Cliff worked as a conduit for Arun Panchariya and Highblue Sky Emerging Market Fund to sell the illegally acquired shares of Vikash in the Indian securities market. Accordingly, I find that Golden Cliff and Highblue Sky Emerging Market Fund have violated Section 12A(a), 12A(b), 12A(c) of the

SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

EURAM Bank

5.65. EURAM Bank (in its capacity as the FII for IFCF) has in his submissions/replies submitted to SEBI has refuted the allegations made in the SCN. The essential grounds of defence taken by the said Noticee in respect of the allegations made in the SCN are provided hereunder –

- a. in previous decisions, covering essentially the same facts and addressing the same issues as in the present matter, Whole Time Member, SEBI has granted relief to EURAM Bank, so similar relief should be granted in the present matter and the charges should be dropped on the basis of issue estoppel/cause of action estoppel;
- b. Euram Bank's association with Arun Panchariya was limited to the Dubai joint venture entity — EURAM Bank Asia Limited and he had no material role in EURAM Bank; and
- c. Euram Bank offered a bouquet of financial services, including providing a terminal to sub-accounts to make investments — the investments themselves were made directly by the clients.

5.66. The Noticee has specifically placed reliance on *Hope Plantation Ltd. v. Taluk Land Board*, (1999) 5 SCC 590 and *Vijayabai and Others v. Shriram Tukaram, and Others* (1999) 1 SCC 693 and *Bhanu Kumar Jain v. Archana Kumar*, (2005) 1 SCC 787 to

assert issue estoppel / cause of action estoppel. In respect of the assertion made by the Noticee, it would be relevant to examine the principle as laid down in the above-mentioned cases. The specific references made by the Noticee are as follows:

Hope Planation Ltd. –

“When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are 'cause of action estoppel' and 'issue estoppel'. These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operated in subsequent suits between the same parties in which the same issue arises.”

“Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.”

Vijayabai –

“It would be impermissible to permit any party to raise an issue, inter se, where such an issue under the very Act has been decided in an early proceeding. Even if res judicata in its strict sense may not apply but its principle would be applicable. Parties who are disputing now, if they were parties in an

early proceeding under this very Act raising the same issue, would be stopped from raising such an issue both on the principle of estoppel and constructive res judicata."

Bhanu Kumar Jain –

Reliance has been placed by the Noticee on the undermentioned English cases, which were cited by the Hon'ble Supreme Court in the above-mentioned matter.

" In Thoday v. Thoday, 1964 (1) All ER 341, Lord Diplock held: "cause of action estoppel" is that which prevents a party to an action from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties. If the cause of action was determined to exist, i.e., judgment was given on it, it is said to be merged in the judgment. If it was determined not to exist, the unsuccessful plaintiff can no longer assert that it does: he is estopped per rem judicatam."

The said dicta was followed in Barber vs. Staffordshire Country Council, (1996) 2 All ER 748. A cause of action estoppel arises where in two different proceedings identical issues are raised, in which event, the latter proceedings between the same parties shall be dealt with similarly as was done in the previous proceedings. In such an event the bar is absolute in relation to all points decided save and except allegation of fraud and collusion."

5.67. At this juncture, I find it relevant to upfront clarify that the Order referred to by the Noticee, wherein EURAM Bank (in its capacity as the FII for IFCF) has been discharged of the allegations made in the SCN was purely based on the facts and circumstances as available on record in that particular case. However, this does not

entitle it to advance the ground of issue estoppel/ cause of action estoppel in relation to the present proceedings, in view of the difference in the factual matrix. In this regard, reliance is placed on the case of *Gopal Prasad Sinha vs. State of Bihar* (1970) 2 SCC 905, whereby the Supreme Court held that the fundamental principle underlying the rule of issue estoppel is that the same issues of fact and law should have been determined in the prior litigation. So, for the invocation of the principle of issue estoppel, the issues of fact and law in the present matter, as they relate to the Noticee, should be the same as that determined in the Order referred to by the Noticee. It is seen that the SCN, from which the present proceedings emerge, has alleged that EURAM Bank facilitated India Focus Cardinal Fund to become its sub account and sell the converted shares of Vikash in the Indian securities market. As regards SEBI's Order of September 05, 2017 bearing number SEBI/WTM/SR/EFD/64/09/2017, it is seen that the allegation in the said matters pertained to the facilitation of EURAM Bank for the sale of converted equity shares of Asahi Infrastructure & Projects Limited, Avon Corporation Limited, CAT Technologies Limited, IKF Technologies Limited, K Sera Sera Limited and Maars Software International Limited. So, it is evident that the facts in issue in the matters decided earlier were distinct from the facts in issue in the present matter. Thus, the principle of issue estoppel is inapplicable in the present proceedings.

5.68. Further, with respect to the cause of action estoppel asserted by the Noticee, it is stated that the cause of action in the present matter emerges from the facilitation granted by EURAM Bank to India Focus Cardinal Fund to become its sub account

and sell the converted shares of Vikash in the Indian securities market. On the other hand, the causes of action in the previous matters emerged from the facilitation granted by EURAM Bank for the sale of converted equity shares of Asahi Infrastructure & Projects Limited, Avon Corporation Limited, CAT Technologies Limited, IKF Technologies Limited, K Sera Sera Limited and Maars Software International Limited. So, it is evident that the cause of action in the matter(s) decided earlier were distinct from the cause of action in the present matter. Thus, the principle of cause of action estoppel is also inapplicable in the present proceedings.

5.69. Coming to the merits of the allegation made against EURAM Bank (in its capacity as the FII for IFCF), which is that it facilitated IFCF to become its Sub-account and sell the converted shares of Vikash in the Indian securities market; it has already been established in the previous part of this order that the issuance of GDRs to Vintage, an Arun Panchariya related entity, was illegal. It has also been established that India Focus Cardinal Fund was controlled and managed by Arun Panchariya. It is relevant, in this connection, to note that Arun Panchariya was a director in EURAM Bank Asia Ltd. (incorporated in Dubai), which was a joint venture between EURAM Bank (incorporated in Austria) and Pan Asia Advisors Ltd., admittedly another Arun Panchariya entity. It has been stated by EURAM Bank that “*AP was never the director or had any material role in Euram Bank*”. However, I find that in the Pledge Agreement signed between Vikash and EURAM Bank, a stamp mark reads, “*Signature verified Dir. AP*”. Another stamp mark on the said Pledge Agreement reads, “*EURAM Bank Asia Ltd., Verified With Original, Name:*

Arun Panchariya, Date: 3rd April, 2011, Reg. No. 0868". It is quite clear that the arm's length relationship between EURAM Bank Asia Ltd. and EURAM Bank, as asserted by the Noticee, was not existing or maintained in fact. There was certainly a relationship between EURAM Bank and Arun Panchariya which existed beyond EURAM Bank Asia Ltd. Further, it has been brought out that during the relevant period the sub-account availing the services of EURAM Bank as an FII happened to be an Arun Panchariya entity. In this regard, EURAM Bank has contended that they provided a bouquet of services, which included the sub-account facility to clients, and that it was simply a business decision. I am not at all convinced with this defence. It is a matter of record that as an FII, it did not make any direct investments in the Indian securities market, but was using its FII status to provide sub-account facilities to its clients to access the Indian securities market. Thus, it cannot be a simple business decision or coincidence that the entity availing the sub-account facility happens to be an entity managed and controlled by Arun Panchariya, at a time when EURAM Bank was in a joint venture with him and he was signing the agreements that were being entered into by EURAM Bank. There is a clear and evident nexus between EURAM Bank and Arun Panchariya.

5.70. Thus, I find that EURAM Bank (in its capacity as the FII for IFCF) was acting as a conduit of Arun Panchariya and facilitated India Focus Cardinal Fund to become its sub-account and sell the converted shares of Vikash in the Indian securities market. Accordingly, I find that EURAM Bank (in its capacity as the FII for IFCF) has violated Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

V. Whether Vikash (Noticee No. 1) should be directed to bring back the money and Arun Panchariya (Noticee No. 5) Vintage (Noticee No. 6), India Focus Cardinal Fund (Noticee No. 9) and Highblue Sky Emerging Market Fund (Noticee No. 10) should be directed to disgorge the illegal gains?

5.71. As already stated a Supplementary Show-cause Notice dated June 18, 2018 was issued to Noticee No. 1 with respect to bringing the money back and a common Supplementary Show-cause Notice dated June 18, 2018 was issued to Noticee Nos. 5, 6, 9 and 10 for the disgorging of profits made through the sale of shares, upon conversion of fraudulently acquired GDRs of Vikash.

5.72. It has been brought out in the previous part of this Order that EURAM Bank had utilised the cash, amounting to USD 11,463,211.63, lying in Vikash's bank account for the realisation of the outstanding loan amount of Vintage. However, I note that the Company has gone into liquidation pursuant to the Order dated September 08, 2017 in C.P. No. 985 of 2014 of the High Court of Calcutta. In this background, I find that since Vikash has been ordered to be wound up, directions to the Company under Sections 11(1), 11(4) and 11B of the SEBI Act for bringing back the money at this juncture would not be efficacious.

5.73. With respect to the disgorging of profits, I note that Noticee Nos. 9 and 10 sold shares of Vikash, upon conversion of GDRs, in the Indian capital market and earned **Rs. 4,46,81,537.65** and **Rs. 47,04,293.78** respectively. Thus, the said two Noticees made a total gain of **Rs. 4,93,85,831.43**. I also note that the acquisition of the GDRs was due to Noticee No.6, which had subscribed to the GDR issue of

Vikash, transferring the GDRs to Noticee Nos. 9 and 10, who then converted the GDRs into equity shares and sold them in the market for the above mentioned amount. The above mentioned Noticees i.e. Noticee Nos. 6, 9 and 10 were all owned and controlled by Noticee No. 5, Arun Panchariya, who had devised the whole scheme for making illegal gains. Thus, the total gain of Rs. 4,93,85,831.43 made was a consequence of the collective action of Noticee Nos. 5, 6, 9 and 10. In view of the above, as alleged in the Supplementary SCN, I find that Noticees No. 5, 6, 9 and 10 are jointly and severally liable to disgorge Rs. 4,93,85,831.43. I find that the SCN/Supplementary SCN does not identify any particular investor or any specific group of investors who have suffered losses due to manipulation by the above mentioned Noticees.

6. Conclusion –

6.1. Thus, from the above, it is concluded that Vikash in connivance with Vintage devised a fraudulent scheme whereby Vintage received GDRs without paying any consideration for a substantial portion of the GDRs, at the cost of the shareholders / investors of Vikash. Further, the directors, Akkash Patni, Vimal Kumar Patni and Vikash Patni, are liable for the above mentioned fraudulent scheme as they were fully involved in the day-to-day activities of the Company, and had complete knowledge of the activities of the Company during the process of issuance of GDRs. I note that by way of a letter dated March 21, 2017, it has been informed by the Office of the Official Liquidator, High Court of Calcutta that pursuant to the Order dated September 08, 2017 in C.P. No. 985 of 2014 of the High Court of

Calcutta, Vikash Metal and Power, Noticee No.1 has gone into liquidation. Vintage FZE, Noticee No.6, was part of the fraudulent scheme as a consequence of which, it received a large number of GDRs without payment of consideration. The directors of Vikash, namely, Akkash Patni, Noticee No.2; Vimal Kumar Patni, Noticee No.3; and Vikash Patni. Noticee No. 4 were involved in the day-to-day activities of the Company, and had full knowledge of the activities of Company during the process of issuance of GDRs, which were patently illegal. Similarly, Arun Panchariya, Noticee No. 5, the director of Vintage was instrumental in the activation of the fraudulent scheme and benefitted the most from the same being the beneficial owner of Vintage. Mukesh Chauradiya, Noticee No. 7, a key person in Vintage was fully involved in the day-to-day activities of Vintage, and had signed the Loan Agreement whereby loan was provided by EURAM Bank to extend credit facility to Vintage to subscribe to the GDR issue of Vikash. Further, Pan Asia Advisors Ltd., Noticee No. 8, the lead manager for the GDR issue, which was owned and controlled by Arun Panchariya carried out its activities to further the fraudulent scheme, and as such was a party to the same. Furthermore, the GDRs illegally acquired by Vintage were sold in the Indian securities market by India Focus Cardinal Fund, Noticee No. 9 and Highblue Sky Emerging Market Fund, Noticee No. 10. The above entities were sub-accounts of Cardinal Capital Partners, Noticee No. 11; EURAM Bank, Noticee No. 12; and Golden Cliff, Noticee No. 13. These entities were all related to Arun Panchariya, the beneficial owner of Vintage, either by ownership or through business relations. Pursuant to the same,

Noticee Nos. 9 to 13 acted as conduits for Arun Panchariya by facilitating the sale of illegally acquired securities in the Indian securities market.

6.2. As already stated, vide Order dated September 08, 2017 in C.P. No. 985 of 2014 of the High Court of Calcutta an Official Liquidator has been appointed to windup the Company. Since, the Company has been ordered to be wound up, directions to bring back the money, at this juncture, would not serve any purpose. Further, with respect to disgorgement, it is seen that as a consequence of the collective action of Noticee Nos. 5, 6, 9 and 10, a total gain of Rs. 4,93,85,831.43 was made by Noticee Nos. 9 and 10, and as such, the said Noticees are jointly and severally liable to disgorge the above amount.

6.3. The above summary brings out that Arun Panchariya was the principal architect in the activation of the fraudulent scheme and had orchestrated the whole scheme, including the GDR issuance (through Vikash and Pan Asia), subscription of GDRs (through Vintage), and conversion of the GDRs and sale of the equity shares (through India Focus Capital Fund, Highblue Sky Emerging Market Fund, Cardinal Capital Partners, EURAM Bank and Golden Cliff) with the intention of making illegal gains.

6.4. In this regard, I note that the same *modus operandi* of manipulation by a similar set of Arun Panchariya connected entities has been found in several other matters involving the GDR Issue of listed Indian Companies and the instant case is not an isolated occurrence. In several such matters, it is observed that Arun Panchariya has been central to the fraud perpetrated on the investors in the Indian securities market. In this context, it is noted that in the matter of *Pan Asia Advisors Limited*

and Another vs. SEBI Appeal No. 126 of 2013, the Hon’ble SAT while dismissing the appeal filed by the appellants therein (against the SEBI Order *inter alia* prohibiting Arun Panchariya from accessing the capital market directly or indirectly, for a period of 10 years), had *inter alia* observed: “... *apart from making it artificially appear that GDRs have been subscribed by foreign investors when in fact the GDRs were subscribed by Arun Panchariya through Vintage, Arun Panchariya ensured that the GDRs were sold by Vintage to the entities controlled by Arun Panchariya and further ensured that the equity shares generated on conversion of GDRs were acquired by the entities with which Arun Panchariya was connected. 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 Arun Panchariya. 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. ...*” Further, in the matter of *Jindal Cotex Limited and Ors vs. SEBI (Date of Decision: February 5, .2020 Appeal No. 376 of 2019)*, the Hon’ble SAT had observed: “*This Tribunal had passed a number of orders relating to manipulations and fraudulent behavior from the part of a few companies and several connected entities including Vintage. EURAM Bank has also been one of the entities found to be part of those transactions. Such judgments include PAN Asia Advisors Limited and Anr vs. SEBI (Appeal No. 126 of 2013 decided on 25.10.2016) and Cals Refineries Limited vs. SEBI (Appeal No. 04 of 2014 decided on 12.10.2017). The modus operandi adopted in all such cases have been similar i.e. the subscriber to the GDR Issue (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. Therefore, the contention in the Order that it is a fraudulent scheme created by the appellants along with some other entities cannot be faulted.” It appears that the whole series of GDR issues by several listed companies in India was an act orchestrated by Arun Panchariya to reap benefits by sitting on the other side of the issuance and subscribing to the GDRs through an arrangement with Vintage. The respective Indian companies have also apparently participated in such schemes. Accordingly, as brought in the foregoing paragraphs, in view of the repetitive nature of such acts along with the gravity of the offences that have been perpetrated by Arun Panchariya, I am of the considered opinion that stern measures need to be taken against him and his connected entities.

7. Directions –

7.1. I, in exercise of powers conferred upon me under sections 11(1), 11 (4) and 11B the Securities and Exchange Board of India Act, 1992 hereby pass the following directions:

7.1.1. In view of the findings in para 6 above, the present proceedings initiated against Noticee No. 1 (**Vikash Metal and Power Ltd.**) vide the Show-cause Notice dated February 01, 2018 and Supplementary Show-cause Notice dated June 18, 2018 (EFD/DRA-1/SM/RK/VMPL/1746/2018) are disposed of without any directions, in view of the Company Petition before the High Court of Calcutta.

7.1.2. In the event, order for winding up passed by the Hon'ble High Court of Calcutta is reversed, for any reason whatsoever, then in such eventuality, the Noticee No. 1, Vikash Metal and Power Ltd. 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 11,463,211.63 into its bank account in India. Noticee Nos. 2, 3 and 4 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*".

7.1.3. Noticee No. 2 (**Akkash Patni**), Noticee No.3 (**Vimal Kumar Patni**), Noticee and No.4 (**Vikash Patni**) shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 3 years ;

7.1.4. Noticee Nos. 2 to 4 shall also be restrained for a period of 3 years from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, and during the said period shall be restrained from associating themselves with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI;

7.1.5. Noticee No.5 (**Arun Panchariya**) shall be restrained from accessing the Indian securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 10 years;

7.1.6. Noticee No. 5 shall also be restrained for a period of 10 years from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, and during the said period shall be restrained from associating themselves with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI;

7.1.7. Noticee No. 6 (**Vintage FZE**) shall be restrained from accessing the Indian securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 8 years ;

7.1.8. Noticee No. 7 (**Mukesh Chauradiya**) shall be restrained from accessing the Indian securities market, and further prohibited from buying, selling or otherwise

dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 3 years ;

7.1.9. Noticee No.7 shall also be restrained for a period of 3 years from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, and during the said period shall be restrained from associating themselves with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI;

7.1.10. Noticee No. 8 (**Pan Asia Advisors**) shall be restrained from accessing the Indian securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 8 years;

7.1.11. Noticee No. 9 (**India Focus Cardinal Fund**) and Noticee No. 10 (**Highblue Sky Emerging Market Fund**) shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 8 years; and

7.1.12. Noticee No. 11 (**Cardinal Capital Partners**); Noticee No. 12 (**European American Bank AG**) and Noticee No. 13 (**Golden Cliff**) shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 2 years.

7.1.13. Noticee No. 5, **Arun Panchariya**; Noticee No. 6, **Vintage FZE**; Noticee No. 9, **India Focus Cardinal Fund**; and Noticee No. 10, **Highblue Sky Emerging Market Fund** are further directed to disgorge illegal gains of Rs. 4,93,85,831.43, made by way of sale of equity shares of Vikash along with interest of 12% per annum from May 17, 2013 till the payment of disgorgement amount, within a period of 45 days from the date of this order. The liability of Noticee no. 5, 6, 9 and 10 to disgorge the said amount shall be joint and several. In the event, Noticee Nos. 5, 6, 9 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 the said 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, whichever is later.

7.2. The above directions shall come into force with immediate effect.

7.3. The period of debarment as directed by way of this Order shall run concurrently in respect of any Noticee, as mentioned in 7.1 above, who may already be undergoing any period of debarment with respect to the issue of GDRs.

7.4. These directions are without prejudice to any other action against the Noticees which may be initiated by SEBI.

7.5. A copy of this order shall be served upon the Noticees immediately. A copy shall be served on the recognised Stock Exchanges and the Depositories for necessary action.

7.6. A copy of this order may also be sent to the Official Liquidator of the Calcutta High Court, Reserve Bank of India, Enforcement Directorate and Ministry of Corporate Affairs for information and necessary action, if any.

Place: Mumbai

Date: September 29, 2021

G. MAHALINGAM

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA