

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

FINAL ORDER

UNDER SECTION 19 READ WITH SECTIONS 11, 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND REGULATION 11 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003.

IN THE MATTER OF –

	NOTICEE	PAN / FII REG. No.
1.	HIRAN ORGOCHEM LTD.	AAACH0977
2.	KANTILAL HIRAN	AAUPH7660P
3.	ARUN PANCHARIYA	AEVPP6125N
4.	VINTAGE FZE	REGISTERED OUTSIDE INDIA
5.	MUKESH CHAURADIYA	AAVPC0966A
6.	INDIA FOCUS CARDINAL FUND	AABCI9518D
7.	HIGHBLUE SKY EMERGING MARKET FUND (NOW KNOWN AS EMERGING MARKET OPPORTUNITIES FUND)	AADCK9460G
8.	EUROPEAN AMERICAN INVESTMENT BANK AG	FII REGISTRATION No. INASFD211608
9.	CARDINAL CAPITAL PARTNERS LTD.	FII REGISTRATION No. INMUFD263211
10.	GOLDEN CLIFF	FII REGISTRATION No. INMUFD256111

BACKGROUND:

- 1.1 The present matter emanates from an investigation by Securities and Exchange Board of India (“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 a loan was availed of by a foreign entity and the collateral for such loan was provided by the GDR Issuing Company by signing a *Pledge Agreement*. One such Company was Hiran Orgochem Ltd. (“**Hiran Orgochem**”/the “**Company**”), which was incorporated on March 22, 1983 and is an integrated manufacturer of active pharmaceutical ingredients and formulations. Hiran Orgochem was listed on BSE.
- 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 Hiran Orgochem with respect to the GDRs issued by it on May 20, 2010. The period under

investigation was the period around which the issuance of GDRs by the Company took place, i.e. April 1, 2010 to May 31, 2010 ("**Investigation period**").

SHOW CAUSE NOTICE DATED JUNE 30, 2017 – (A) THE SCHEME AND (B) *MODUS OPERANDI* AND FUND FLOW:

2.1 Pursuant to the findings of the Investigation Report, a common Show Cause Notice dated June 30, 2017 ("**SCN**") was issued to the Noticees calling upon them 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:

- i. 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, 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. 4, Vintage FZE was a party to this fraudulent scheme. Noticee No. 2, Kantilal Hiran, who was Chairman and Managing Director in Hiran Orgochem, signed a *Pledge Agreement* with EURAM Bank, whereby the account holding the GDR proceeds was given as security for the loan availed by Vintage FZE from EURAM Bank for subscribing to the GDRs of Hiran Orgochem. The Board of Directors of Hiran Orgochem in the Board Meeting dated October 31, 2009, had authorised Kantilal Hiran to sign the *Pledge Agreement* allowing EURAM Bank to use the GDR proceeds account as security for the loan availed by Vintage FZE. Noticee No. 3, Arun Panchariya was Director and beneficial owner of Vintage FZE and had also signed the *Loan Agreement* on behalf of Vintage FZE for the subscription of GDRs of the Company. Noticee No. 5, Mukesh Chauradiya was the authorised signatory of Vintage FZE as on June 6, 2007 and had signed the redemption of loan amount requests of Vintage FZE during the period June 2010 – October 2010.
- ii. Noticee No. 6, India Focus Cardinal Fund ("**IFCF**") was a Sub-account of FII–EURAM Bank and FII–Cardinal Capital Partners Ltd. ("**Cardinal Capital Partners**"). Arun Panchariya was the beneficial owner of Noticee No. 6. Noticee No. 7, Highblue Sky Emerging Market Fund ("**Highblue Sky**") (now known as Emerging Market Opportunities Fund) was registered as a

Sub-account of FII–KBC Aldini and FII–Golden Cliff (also known as Vaibhav Investment Ltd.). Entities connected to Arun Panchariya were beneficial owners and Directors of Highblue Sky. FII Sub-accounts, IFCF and Highblue Sky, who had received GDRs of Hiran Orgochem, had subsequently converted them and thereafter, sold the resultant equity shares of the Company in the Indian securities market. Noticee Nos. 6 and 7 acted as conduits for Arun Panchariya and his connected entities and sold the converted equity shares of Hiran Orgochem (which had been acquired free of cost by Vintage FZE) to the extent of approximately ₹18.20 Crore, through the fraudulent scheme.

- iii. Noticee No. 8, EURAM Bank, Noticee No. 9, Cardinal Capital Partners and Noticee No. 10, Golden Cliff, did not make any investment in India except investments made by their Sub-accounts, viz. IFCF and Highblue Sky. So, the FIIs, viz. EURAM Bank, Cardinal Capital Partners and Golden Cliff, acted as conduits for Arun Panchariya and facilitated the sale of underlying shares of the GDRs in the Indian securities market, by IFCF and Highblue Sky.

A. THE SCHEME:

- i. The Company came out with the issuance of 15,38,462 GDRs amounting to USD 10 million on May 20, 2010 (as per information received from the Company vide letter dated June 22, 2015 and from the local custodian i.e. DBS Bank, vide e-mail dated September 3, 2015), as under:

TABLE I – DETAILS OF GDR ISSUE								
GDR ISSUE DATE	NO. OF GDRs ISSUED	CAPITAL RAISED (USD MILLION)	LOCAL CUSTODIAN	NO. OF EQUITY SHARES UNDERLYING GDRs	GLOBAL DEPOSITORY BANK	LEAD MANAGER	BANK WHERE GDR PROCEEDS DEPOSITED	GDRs LISTED ON
20.05.2010	15,38,462	10	DBS BANK, MUMBAI	4,61,53,860	BANK OF NEW YORK MELLON	IKON CAPITAL LTD., UK	EURAM, AUSTRIA	LUXEMBOURG STOCK EXCHANGE

- ii. A bank account was opened by Hiran Orgochem with EURAM Bank bearing number 580012 to deposit the GDR proceeds. Accordingly, a total of USD 10 million was credited to this account. Vintage FZE had subscribed to the total GDR Issue of Hiran Orgochem. The amount credited to the GDR proceeds account is tabulated hereunder:

TABLE II – DETAILS OF RECEIPT OF GDR PROCEEDS	
DATE OF CREDIT OF FUNDS	CREDIT AMOUNT (USD MILLION)
20.05.2010	10

- iii. During the investigation, it was observed that of the USD 10 million taken as loan by Vintage FZE, it repaid only USD 5.07 million of the said amount from June 8, 2010 to October 19, 2010. Subsequently, it defaulted on the 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 FZE. Considering that Vintage FZE was the only subscriber of the GDR Issue and the Company had in effect paid for Vintage FZE (owing to the default by it in servicing the loan and the same being satisfied from the GDR proceeds account of Hiran Orgochem), it was concluded that the GDRs and the underlying equity shares in turn, to the tune of USD 10 million, were issued by Hiran Orgochem to Vintage FZE without any consideration, at the cost of shareholders / investors of Hiran Orgochem. This is the fraudulent scheme that had been conceived.

B. THE MODUS OPERANDI AND FUND FLOW:

- i. On October 31, 2009, the Board of Directors of Hiran Orgochem passed a resolution resolving that a bank account be opened with EURAM Bank for the purpose of receiving subscription money in respect of the GDR Issue of the Company. Further, the Directors of the Company, viz. Kantilal Hiran and Vijay Hiran, were authorised to sign, execute any application, agreement, etc. as may be required. At the said Board Meeting, EURAM Bank was also authorised to use the GDR proceeds as security in connection with loans, if any.
- ii. Vintage FZE (as Borrower) entered into a *Loan Agreement* dated March 15, 2010, with EURAM Bank (as Bank) for a loan facility of USD 10 million, so as to “provide funding enabling Vintage FZE to take down GDR Issue of 1,538,462 Luxembourg public offering and may only be transferred to EURAM account nr. 580012, Hiran Orgochem.” The *Loan Agreement* was signed by Arun Panchariya as Managing Director of Vintage FZE.
- iii. On March 15, 2010, a *Pledge Agreement* was executed between Hiran Orgochem and EURAM Bank and the same was signed by Kantilal Hiran, Chairman and Managing Director of Hiran Orgochem. As per the *Pledge Agreement*, Hiran Orgochem’s designated account with EURAM Bank bearing no. 580012 would be held in pledge by EURAM Bank to secure the obligations of Vintage FZE under the *Loan Agreement*. The preamble of the *Pledge Agreement* states:

“By Loan Agreement K150310–001 (hereinafter referred to as the “**Loan Agreement**”) dated 15 May 2010, the Bank granted a loan (hereinafter referred to as the “**Loan**”) to Vintage FZE, AAH–213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates (the “**Borrower**”) in the amount of USD 10,000,003.00. The Pledgor has received a copy of the Loan Agreement No. K150310–001 and acknowledges and agrees to its terms and conditions.”

- iv. The aforesaid *Pledge Agreement* was an integral part of the *Loan Agreement* entered between Vintage FZE and EURAM Bank and vice versa and both were executed concurrently. The *Pledge Agreement* had a reference to the *Loan Agreement* entered between Vintage FZE and EURAM Bank by virtue of which EURAM Bank had provided the loan facility to Vintage FZE for the purpose of subscribing to the GDRs of Hiran Orgochem.
- v. As already stated, GDR proceeds to the tune of USD 10 million were deposited in the Company’s bank account bearing number 580012 maintained with EURAM Bank on May 20, 2010. Vintage FZE repaid the loan amount to the extent of USD 5.07 million in several installments from June 8, 2010 to October 19, 2010 and thereafter, defaulted on the loan repayment. Post repayment of loan instalments by Vintage FZE, an equal or lesser amount of money was transferred/released from Hiran Orgochem’s EURAM Bank account to Hiran Orgochem’s bank account in India (ICICI Bank account no. 001105011836), which occurred on the same date of such loan repayment. The amount transferred from Hiran Orgochem’s EURAM Bank account to its bank account in India was dependent on the repayment of the loan by Vintage FZE. Amounts received by Hiran Orgochem in India was as under:

TABLE III – DETAILS OF REALIZATION OF FUNDS	
DATE OF RECEIPT OF FUNDS	AMOUNT OF FUNDS RECEIVED BY HIRAN ORGOCHEM IN INDIA (USD MILLION)
8.10.2010	1,000,000.00
12.10.2010	1,000,000.00
14.10.2010	1,000,000.00
18.10.2010	1,000,000.00
19.10.2010	1,000,000.00
17.06.2013	*95,769.77
TOTAL	5,095,769.77
*THE ONLY INSTANCE WHEN USD 0.09 MILLION WAS TRANSFERRED WITHOUT REPAYMENT OF LOAN BY VINTAGE FZE ON THAT DAY.	

- vi. As Vintage FZE had defaulted, the balance amount remaining in the account of Hiran Orgochem i.e. USD 4.94 million, was adjusted in conformity with the *Pledge Agreement* dated

March 15, 2010, towards the outstanding loan amount as owed by Vintage FZE. Even though consideration had not effectively passed from Vintage FZE to Hiran Orgochem, the GDRs issued were, however, allowed to be converted into equity shares and said shares were sold in the Indian capital market.

- vii. From the information regarding details of GDR transactions as provided by EURAM Bank, it is observed that Vintage FZE had transferred 11,55,000 GDRs to IFCF. A total of 11,00,589 GDRs (71.54% of total 15,38,462 GDRs issued) were converted to equity shares during the period from June 28, 2010 and continued till July 30, 2014, as under:

TABLE IV – DETAILS OF GDR CANCELLATION				
DATE OF CONVERSION OF GDRs	No. OF GDRs CONVERTED	No. OF CUMULATIVE CONVERTED GDRs	No. OF EQUITY SHARES ISSUED ON CONVERSION OF GDRs	ENTITY BECOMING HOLDER OF EQUITY SHARES POST CONVERSION OF GDRs
28.06.2010	80,000	80,000	24,00,000	IFCF
16.07.2010	30,000	1,10,000	9,00,000	IFCF
23.09.2010	65,000	1,75,000	19,50,000	IFCF
24.09.2010	1,53,000	3,28,000	45,90,000	IFCF
27.09.2010	72,000	4,00,000	21,60,000	IFCF
29.09.2010	85,000	4,85,000	25,50,000	IFCF
4.10.2010	50,000	5,35,000	15,00,000	IFCF
4.11.2010	32,000	5,67,000	9,60,000	IFCF
16.11.2010	50,000	6,17,000	15,00,000	IFCF
17.07.2013	1,00,000	7,17,000	30,00,000	HIGHBLUE SKY
7.11.2013	41,243	7,58,243	12,37,290	HIGHBLUE SKY
13.11.2013	1,00,000	8,58,243	30,00,000	HIGHBLUE SKY
10.12.2013	75,000	9,33,243	22,50,000	HIGHBLUE SKY
8.01.2014	67,346	10,00,589	20,20,380	HIGHBLUE SKY
30.07.2014	1,00,000	11,00,589	30,00,000	HIGHBLUE SKY
TOTAL	11,00,589		3,30,17,670	

- viii. Post cancellation of GDRs, FII Sub-accounts, viz. IFCF and Highblue Sky, had received a total of 3,30,17,670 equity shares on conversion of 11,00,589 GDRs as under:

TABLE V – POST CANCELLATION GDRs			
SL. No.	NAME	No. OF GDRs CONVERTED	No. OF EQUITY SHARES ISSUED ON CONVERSION OF GDRs
1.	IFCF	6,17,000	1,85,10,000
2.	HIGHBLUE SKY	4,83,589	1,45,07,670
TOTAL		11,00,589	3,30,17,670

- ix. As seen from the above table, IFCF had received 1,85,10,000 equity shares of Hiran Orgochem post-conversion of 6,17,000 GDRs while Highblue Sky had received 1,45,07,670 equity shares of Hiran Orgochem post-conversion of 4,83,589 GDRs. As per information provided to SEBI,

by NSDL, vide its e-mails dated March 1, 2016 and January 5, 2017, it is observed that the equity shares received post-conversion of 11,00,589 GDRs were subsequently sold in the Indian securities market by IFCF (sold 1,85,10,000 equity shares) and Highblue Sky (sold 1,15,07,670 equity shares while retaining 30,00,000 equity shares) (entities related to Arun Panchariya) for an amount of approximately ₹18.20 Crore.

- x. The Bank of New York Mellon, which was the Depository for the GDRs, issued Termination Notice to holders of GDRs of Hiran Orgochem Ltd. on March 16, 2015 and facility was terminated w.e.f. June 15, 2015. Post termination of GDR program, no sale of shares of Hiran Orgochem took place in the market. Remaining 1,31,36,190 equity shares of Hiran Orgochem (out of total 4,61,53,860 underlying shares of GDRs, 3,00,17,670 shares were sold pre-termination of GDR facility and 30,00,000 shares are outstanding with Highblue Sky) are currently held in the demat account of The Bank of New York Mellon held with DBS Bank as trading is suspended in the scrip. In this context, vide an Interim Order dated June 16, 2016, SEBI had directed local custodians to freeze the beneficiary accounts which receive/ received the underlying shares on conversion/ cancellation of GDRs pursuant to GDR Issues under investigation by SEBI. SEBI had further directed that in case the underlying shares of the GDRs are sold by the Global Depository Bank, the sale proceeds shall be kept in an interest bearing Escrow account with the Indian custodian of the GDRs. Vide an e-mail dated August 25, 2016, custodian DBS Bank provided details of the sale proceeds of shares kept by it and it was observed that no sale proceeds of the shares of Hiran Orgochem were kept by DBS Bank.
- xi. IFCF was registered as Sub-account of FII, EURAM Bank and FII, Cardinal Capital Partners. IFCF was the only Sub-account to be registered with EURAM Bank. Also, as FIIs, both EURAM Bank and Cardinal Capital Partners did not make investments in India except for the sale of shares in the Indian capital market, pursuant to the conversion of GDRs by IFCF. Similarly, at the relevant time, Highblue Sky was registered as a Sub-account of FII, Golden Cliff. Golden Cliff did not make any investments in India except for the sale of shares in the Indian capital market, pursuant to the conversion of GDRs by Highblue Sky. These FIIs, viz. EURAM Bank (Noticee No. 8), Cardinal Capital Partners (Noticee No. 9), and Golden Cliff (Noticee No. 10), facilitated the sale of the equity shares received by way of the fraudulent issue of GDRs.

2.3 In view of the above acts of the Noticees, the SCN had alleged that Noticee Nos. 2 to 10 had violated the provisions of Sections 12A(a)–(c) of the SEBI Act, 1992 (“**SEBI Act**”) and Regulations 3(a)–(d) and 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“**PFUTP Regulations, 2003**”). In addition, the SCN has alleged that Noticee No. 1 had violated the provisions of Sections 12A(a)–(c) of the SEBI Act, Regulations 3(a)–(d), 4(1) and 4(2)(f), (k) and (r) of the PFUTP Regulations, 2003. During the intervening period, an opportunity for inspection of documents was granted to Noticee No. 5 on February 12, 2018. Subsequent to the issuance of the SCN, a Supplementary Show Cause Notice dated August 26, 2019 (“**Supplementary SCN**”), was issued to Noticee No. 1 *inter alia* calling upon the Company to show cause as to why suitable directions including the direction to bring the money back to the extent of loan default should not be issued against it.

HEARING.

3.1 Subsequent to the issuance of SCN and Supplementary SCN, an opportunity of personal hearing/opportunity to file written submissions was granted to the Noticees on various occasions and such dates along with details of appearances/responses are listed out hereunder:

- A. **July 22, 2020:** An opportunity of personal hearing was granted to all the Noticees on July 22, 2020.
- i. Noticee No. 5 (Mukesh Chauradiya) appeared for the hearing through his authorised representative, Devendra Dhanesha, Chartered Accountant. The Noticee reiterated the submissions contained in his replies. The Noticee was granted time till July 29, 2020, to file additional written submissions.
 - ii. Noticee No. 8 (EURAM Bank) appeared for the hearing through its authorised representative, Shouryendu Ray, Advocate, Wadhwa Law Offices. The Noticee reiterated the submissions contained in its reply. The Noticee was granted time till July 29, 2020, to file additional written submissions.
 - iii. Noticee Nos. 1–4, 6–7 and 9–10 did not appear for the hearing.

B. **October 14, 2020:** An opportunity of personal hearing was granted to Noticee Nos. 1–4, 6–7 and 9–10 on October 14, 2020.

i. Noticee No. 3 (Arun Panchariya) appeared for the hearing through his authorised representative, P. R. Ramesh, Advocate and sought a postponement of the hearing. Accordingly, it was directed that the Noticee may appear for a hearing on October 20, 2020.

ii. Noticee Nos. 1, 2, 4, 6–7 and 9–10 did not appear for the hearing.

C. **October 20, 2020:** An opportunity of personal hearing was granted to Noticee No. 3 on October 14, 2020.

i. Noticee No. 3 (Arun Panchariya) appeared for the hearing through his authorised representative, P. R. Ramesh, Advocate. The Noticee reiterated the submissions contained in his reply and had denied the allegations in the SCN *inter alia* contending that he was not the lynchpin in respect of the GDR Issue of the Company. Further, the Noticee had submitted that SCN was issued without jurisdiction as he was not a resident of India and had no place of business in India and since the GDR Issue process had occurred outside the territorial boundaries of India, SEBI had no jurisdiction in the matter. As regards the alleged connection with other Noticees, it was submitted that mere claim of such connection would not suffice, rather fund movement had to be shown to establish connection. The Noticee was granted time till November 15, 2020, to file additional written submissions.

D. **February 23, 2021:** An opportunity of personal hearing was granted to Noticee Nos. 1, 2, 4, 6–7 and 9–10 on February 23, 2021.

i. Noticee No. 2 (Kantilal Hiran) appeared for the hearing through his authorised representative, Vikas Bengani, Advocate. The Noticee reiterated the submissions contained in his reply. The Noticee was granted time till March 5, 2021, to file additional written submissions.

ii. Noticee Nos. 1, 4, 6–7 and 9–10 did not appear for the hearing.

CONSIDERATION OF ISSUES AND FINDINGS:

4.1 I have considered the Investigation Report, the SCN, Supplementary SCN along with the replies/submissions made by the Noticees and all the relevant material on record. I note that Noticee Nos. 4, 6 and 9 have not filed any reply to the SCN or made any submissions for consideration during the course of these proceedings. Further, the aforementioned Noticees had failed to appear for the personal hearing before me.

4.2 From the material available on record, the following is noted:

TABLE VI – DETAILS REGARDING SERVICE OF SCN AND HEARING NOTICES ALONG WITH REPLIES FILED BY NOTICEES, TO THE SCN		
NAME	SERVICE OF SCN	SERVICE OF HEARING NOTICE
NOTICEE NO. 4 VINTAGE FZE	SCN WHICH WAS SENT BY SPEED POST AT THE ADDRESS: AAH-273, AL AHMADI HOUSE, JEBEL ALI FREE ZONE, DUBAI, WAS NOT DELIVERED.	HEARING NOTICE FOR THE PERSONAL HEARING SCHEDULED FOR FEBRUARY 23, 2021, WAS SERVED VIDE E-MAIL TO THE ADDRESS OF ARUN PANCHARIYA (arun.panchariya@me.com), THE BENEFICIAL OWNER.
NOTICEE NO. 6 IFCF	SCN WHICH WAS SENT BY SPEED POST AT THE ADDRESS: C/O CARDINAL CAPITAL PARTNERS, SUITE 501, ST. JAMES COURT, ST DENNIS STREET, PORT LOUIS, MAURITIUS, WAS NOT DELIVERED.	HEARING NOTICE FOR THE PERSONAL HEARING SCHEDULED FOR FEBRUARY 23, 2021, WAS SERVED VIDE E-MAIL TO THE ADDRESS OF THE LIQUIDATOR I.E. m.reaz@intent.mu.
NOTICEE NO. 9 CARDINAL CAPITAL PARTNERS	SCN WHICH WAS SENT BY SPEED POST AT THE ADDRESS: SUITE 501, ST. JAMES COURT, ST. DENNIS STREET, PORT LOUIS, MAURITIUS, WAS NOT DELIVERED.	HEARING NOTICE FOR THE PERSONAL HEARING SCHEDULED FOR FEBRUARY 23, 2021, WAS SERVED VIDE E-MAIL TO THE ADDRESS OF ARUN PANCHARIYA (arun.panchariya@me.com), THE BENEFICIAL OWNER.

4.3 As observed from the Table above, the SCN and Notices for personal hearing were duly served on Noticee Nos. 4, 6 and 9. However, the Noticees have either failed to respond to the SCN or appear for the personal hearing granted to them either by themselves or through authorised representative(s). Further, no explanation has been given by any of them as to why the opportunity of hearing could not be availed before SEBI through their authorised representative(s) despite being advised by SEBI to do so. I therefore, am of the considered view that the aforementioned Noticees have been provided with sufficient time to submit a reply to the SCN and also adequate opportunities to present their submissions before SEBI and defend themselves against the allegations contained in the SCN, which are sought to be adjudicated upon in the instant proceedings. Keeping the aforesaid in mind, the instant proceedings against Noticee Nos. 4, 6 and 9 are undertaken *ex parte* on the basis of material available on record.

FINDINGS ON THE PRELIMINARY OBJECTION RAISED BY THE NOTICEES –

5.1 **SEBI CANNOT EXERCISE ITS JURISDICTION IN THESE PROCEEDINGS:** Arun Panchariya (Noticee No. 3) had submitted that as the GDR Issue process took place outside the territorial boundaries of India, SEBI has no jurisdiction in the matter. I note that the said question has already been answered by the Hon'ble Supreme Court of India in its **Judgment dated July 6, 2015** in the matter of **SEBI vs. 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**, wherein it 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 Judgment 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 vs. 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 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 Supreme 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. 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.

5.2 **DELAY IN THE PROCEEDINGS:** With respect to the submission of Noticee Nos. 2 and 8, Kantilal Hiran and EURAM Bank, that there has been delay in the proceedings, it is seen from the record that documents/records in the instant proceedings were obtained from the Financial Market Authority, Austria on February 15, 2016, March 1, 2016 and March 3, 2016 and the Financial Services Commission, Mauritius on September 15, 2016 and September 22, 2016. Consequent to the receipt of documents as stated aforesaid, investigation was initiated into the GDR Issue of Hiran Orgochem and the said investigation was completed in the year 2017. After the completion of investigation in the matter, the SCN dated June 30, 2017, was issued to the Noticees. Further, a Supplementary SCN dated August 26, 2019, was issued to Noticee No. 1. Also, as many of the Noticees were based out of India, the service of the SCN involved processes which required more time. Once the SCN were served on all the Noticees, opportunity of personal hearing was granted to the Noticees who had sought for the same. In the matter of **Jindal Cotex Ltd. and Ors vs. SEBI** (Date of Decision: February 5, 2020, SAT Appeal No. 376 of 2019), the Hon'ble SAT held that arguments on delay in investigation and consequently affecting natural justice were devoid of any merit. The Hon'ble Tribunal had acknowledged the complexity involved in the entire manipulative GDR Issue and had appreciated the time taken by SEBI to gain information relating to the various entities from multiple jurisdictions. Further, in the matter of **G. V. Films Ltd. vs. SEBI** (Date of Decision: February 15, 2021, SAT Appeal No. 168 of 2020), the Hon'ble SAT opined on the issue of delay in a similar matter pertaining to issue of GDR's, stating: *"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."* In view of the aforementioned, I do not agree that the delay in the matter would vitiate the proceedings. Accordingly, I now proceed to deal with the other issues in the matter.

5.3 **SPECIFICITY OF VIOLATIONS ALLEGED IN THE SCN:** Arun Panchariya (Noticee No. 3) has also submitted that the SCN is vague as it does not disclose the kind of measures SEBI is contemplating to take after 11 years and the Noticee is completely in the dark about what exactly SEBI has in mind. In the instant proceedings, the SCN has been issued for breach of provisions of securities law, which confer discretion upon SEBI to take such measures as it thinks fit in the interest of investors and securities market. In this regard, it is further noted that the SCN issued

to the Noticee has clearly spelt out the provisions under which the desired preventive/remedial measures, etc. if found necessary, would be issued and also clearly indicate the specific nature of violations that have been alleged against him in terms of different provisions of the PFUTP Regulations, 2003. Therefore, it is observed that specific allegations were unambiguously conveyed to the Noticee and further, opportunity was given to the Noticee for tendering his response thereto. It is, therefore, incumbent on the part of the Noticee to explain his position with support of relevant evidence in response to various allegations made against him in the SCN. Only after examining and considering the explanation offered by the Noticee to the allegations levelled under the SCN, it would be possible for the Competent Authority to determine as to what directions are required to be issued against the Noticee, depending on his role in the alleged violations and the impact of the alleged violations on the securities markets. It is to be noted here that the provision of Sections 11, 11(4) and 11B of the SEBI Act vest in the quasi-judicial authority plenary power to issue wide ranging directions as it may deem fit in the interest of securities market, which cannot be crystallised and formulated before the adjudication of issues involved.

- 5.4 **INVESTIGATION REPORT NOT PROVIDED BY SEBI:** Kantilal Hiran (Noticee No. 2) had submitted that a copy of the Investigation Report on the basis of which the SCN was issued, was not provided to him despite the request made by him on February 23, 2021. 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 Noticee. Further, as regards the inspection of original copy of the Annexures as sought by the Noticee, it is noted that vide an e-mail dated October 7, 2020, SEBI had informed the Noticee of its inability to permit physical inspection of documents on account of the ongoing Covid-19 pandemic but instead had provided him with all the requisite documents relied upon in the instant proceedings. In view of the aforesaid, I find that the contention of the Noticee that SEBI has not provided complete documents is untenable. Further, on a comparison of the SCN and the Investigation Report, it is observed that the SCN has largely reproduced the contents of the Investigation Report. I therefore, do not find that any prejudice has been caused to the Noticee.

SPECIFIC FINDINGS ON MERIT:

6.1 I have considered the Investigation Report, the SCN, Supplementary SCN along with the replies/submissions made by the Noticees and all the relevant material on record. As stated at paragraphs 4.1–4.3, Noticee Nos. 4, 6 and 9 have not filed any reply to the SCN or made any submissions for consideration during the course of these proceedings. Further, the aforementioned Noticees had failed to appear for the personal hearing before me either by themselves or through authorised representative(s). Even though the instant proceedings are *ex parte* against the aforementioned Noticees, I have nonetheless perused the documents available on record while evaluating the case against them. I shall now proceed to take up the following issues for adjudication against all the Noticees:

- A. *Whether Hiran Orgochem (Noticee No.1) by allowing the GDR proceeds to be used as security for a loan that was availed by Vintage FZE (Noticee No. 4) towards the subscription of GDRs issued by Hiran Orgochem and not disclosing the same to the stock exchanges, had devised a scheme with Vintage FZE to defraud the investors?***
- B. *Whether the Director of Hiran Orgochem, Kantilal Hiran (Noticee No.2), who had authorised EURAM Bank (Noticee No. 8) to use the GDR proceeds as security in connection with the loan availed by Vintage FZE, acted as party to the fraudulent scheme? Whether the Directors of Vintage FZE, Arun Panchariya (Noticee No. 3) and Mukesh Chauradiya (Noticee No. 5), were involved in perpetrating the fraudulent scheme?***
- C. *Whether the Sub-accounts, IFCF (Noticee No. 6), Highblue Sky (Noticee No. 7) and the FIs, viz. EURAM Bank, Cardinal Capital Partners (Noticee No. 9) and Golden Cliff (Noticee No. 10) through whom the Sub-accounts had traded in the Indian securities market account, acted in pursuance of the fraudulent scheme?***
- D. *Whether Hiran Orgochem (Noticee No. 1) should be directed to bring back an amount of USD 4.95 million, which was utilised towards repayment of loan outstanding, as availed by Vintage FZE under the Loan Agreement?***

- 6.2 Before examining the issues, it is necessary to refer to the relevant provisions of law which the Noticees are alleged to have violated as per the SCN, which are reproduced hereunder:

Provisions of SEBI Act:

“Section 12A - 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; ...”*

Provisions of PFUTP Regulations, 2003:

Regulation 3. Prohibition of certain dealings in securities

No person shall directly or indirectly –

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

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

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

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves
(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.”

REPLIES FILED BY NOTICEES.

6.3 In its submission, **Noticee No. 1 (Hiran Orgochem – reply dated July 28, 2017)**, had *inter alia* submitted as under:

- a. In the year June–July 2009, we were approached by one Sanjay Talathi, who explained to us the Global Depository Scheme and its various purported benefits. Believing the various representations and assurances made to us about the effectiveness of the GDR Scheme, we decided to adopt the same for our business purposes and thus, placed the scheme before the Board for its approval. We say that the said proposal was adopted by the Board in the meeting held on August 29, 2009, by passing a resolution to this effect.
- b. In September 2009, the aforesaid Sanjay Talathi introduced our Director, viz. Kantilal Hiran to his associate, one Satish Panchariya of Pan Asia Advisors Ltd. at the office of K. Sera Sera Ltd. at Andheri. During the course of the said meeting, Satish Panchariya and Sanjay Talathi represented to Kantilal Hiran that they were proficient and adept in handling the process and structuring of the GDR Scheme and further, represented to him that they had well placed contacts in various banks who could enable us to raise adequate capital through the issuance of GDRs. Satish Panchariya further proposed that our Director should meet his brother, Arun Panchariya, who purportedly possessed unparalleled expertise with regard to the GDR Scheme to gain further clarity on the same. Since the Company had ratified to initiate the process of

the Scheme, our Director, Kantilal Hiran, agreed to meet Arun Panchariya in order to further clarify on the same. Arun Panchariya and Satish Panchariya represented to us that they possessed expertise in the field of raising finance through GDR Schemes and that they would help us in raising capital through the issue of GDRs. We were further informed that the GDR Scheme was a very viable and feasible method of raising capital and that our Company would certainly benefit from the same. ... Believing their various representations and assurances, we contracted Arun Panchariya and Satish Panchariya to raise capital for our Company through the GDR Scheme.

- c. *The entire documentation procedure and formalities with respect to the GDR Scheme was managed and handled by the aforesaid Arun Panchariya and Satish Panchariya. On completion of all documentation formalities, we issued 15,38,462 GDRs (amounting to USD 10 million). We were informed by Arun Panchariya and Satish Panchariya that the bank selected by them for the GDR Issue was a very reputed bank with tremendous goodwill and much akin to public beliefs in bank, we felt secure with the involvement of the bank selected by them. We were thereafter informed by Arun Panchariya that our GDR Issue was fully subscribed to by various entities and that the proceeds of the subscription had been deposited with EURAM Bank. Believing the representations by Arun Panchariya to be true, we provided a list of various subscribers to our GDR Issue, to SEBI.*
- d. *Despite being fully subscribed to, we were taken aback to learn that we had received only USD 5 million as GDR proceeds. Deeply aggrieved, we immediately confronted Arun Panchariya, who started avoiding our repeated and persistent follow ups with regard to the short fall in the receipt of funds. We were rudely shocked to learn that EURAM Bank had appropriated the funds received by our Company as GDR proceeds against the default on loan repayment of one, Vintage FZE. Upon further enquiry and investigation, we learnt that EURAM Bank had granted a loan to Vintage FZE against the security of GDR proceeds received by us. We were unaware of the same as the entire process of issuance of GDRs was handled by Arun Panchariya and Satish Panchariya. It is extremely pertinent to note that Vintage FZE was alien to us and we have no relation/association/connection with the said entity in any manner whatsoever. We had no knowledge about the said entity's transaction or dealings with EURAM Bank.*
- e. *We have no relation/association/connection with any of the entities mentioned in the SCN.*

6.4 In his submission, **Noticee No. 2 (Kantilal Hiran – replies dated August 12, 2020; February 18, 2021 and March 5, 2021)**, had *inter alia* submitted as under:

- a. *I have no role in selling the shares of the Company after GDR Issue. Indeed, no such allegation has been made against me. I am facing only one allegation in the entire SCN that I as a Chairman and Managing Director of the Company signed the purported Pledge Agreement. In this regard, I have already denied that I had not signed any pledge agreement. It is to be noted that the alleged Pledge Agreement is purported to have been signed on March 15, 2010. However, it is pertinent to note that I was in India and not in Vienna or in Dubai on that particular day/date and therefore the question of me having signed the said Pledge Agreement on March 15, 2010 does not arise at all. It is further to be noted that on perusal of the alleged Pledged Agreement, it is revealed that Arun Panchariya i.e. Noticee No. 3 has purportedly verified the signature of mine on the alleged Pledge Agreement on 09-05-2009 as a Director of Euram Bank Asia Ltd.. However, on this particular day, I was in India and not in Vienna nor in Dubai. Therefore, the question of verification of my signature on the said Agreement by the Director of Euram Bank Asia Ltd. i.e. Arun Panchariya (Noticee No. 3) does not arise at all.*
- b. *Even if it is assumed only for the sake of argument and without admitting at all that I had signed the Pledge Agreement, it is indeed highly perplexing and impossible for the said Mr. Arun R. Panchariya (Noticee No. 3) to have verified the signature of mine on the Pledge Agreement (dated March 15, 2010) on May 9, 2009, which date is much prior to the date of execution of the alleged Loan Agreement / Pledge Agreement. Furthermore, the contents of the Pledge Agreement appear to indicate that I was aware of the alleged Loan Agreement dated 15-03-2010 i.e. executed in between EURAM Bank and Vintage FZE (now known as Alta Vista international FZE). Now, if my signature was affixed on the Pledge Agreement dated 09-05-2009 (as verified by Director of Euram Bank Asia Ltd. i.e. Mr. Arun Panchariya, Noticee No. 3), then it is amazing and improbable that I would have signed the Pledge Agreement on 09-05-2009 and would have received a copy of the Loan Agreement dated 15-03-2010 and agreed to its terms and conditions (as claimed in the Preamble Clause of the said alleged Pledge Agreement) about 10 months BEFORE the said Loan Agreement was purported to have been executed.*
- c. *Without prejudice to whatever is stated hereinabove, if I would have signed any Pledge Agreement then there would have been a meeting called upon by the Company i.e. Hiran (Noticee No.1) for passing a Resolution in this respect as required under the Indian Laws. It is*

the law of the land that in order to issue any guarantee for a third-party loan, the corporate body has to obtain permission from the Reserve Bank of India under the Foreign Exchange Management Act. However, clearly since I and/or Hiran (Noticee No.1) was NEVER aware of any such pledge or loan at the relevant time, the question of conducting a Meeting or passing a Resolution or obtaining the Permission from the Reserve Bank of India did not arise at all. Therefore, the said Pledge Agreement was not binding on Hiran (Noticee No.1) who was absolutely unaware of any Loan Agreement signed between EURAM Bank and the said Mr. Arun R. Panchariya or the purported Pledge Agreement alleged to have been signed by the Company i.e. Hiran (Noticee No.1) with EURAM Bank. Furthermore, a bare perusal of the Pledge Agreement shows that there is no common seal and rubber stamp of the Company i.e. Hiran (Noticee No.1) affixed on the alleged Pledge Agreement. This fact also clearly proves that the said agreement is forged and bogus.

- d. It is most pertinent to note that the said Mr. Arun R. Panchariya was the Promoter/ Director/ Employee of EURAM Bank and he was the person who had allegedly signed the purported Loan Agreement and has purportedly verified my signature on the alleged Pledge Agreement about 10 months before the execution thereof! Thus, it is abundantly clear that there was a conflict of interest as the same person has taken the loan from EURAM Bank and the same person has verified the signatures (in his capacity as Director of Lender Bank itself) on the alleged Pledge Agreement for the very same loan and has thereafter defaulted on the loan. Additionally, it is also pertinent to note the fact that the EURAM Bank has till date not initiated any recovery proceedings against its principal borrower i.e. Vintage owned and managed by Mr. Arun R. Panchariya. The facts leading upto this entire sequence of events makes it amply clear that this was a well- planned heist committed by EURAM Bank and the cronies in order to falsely, criminally deprived the Company i.e. Hiran (Noticee No.1) from valuable assets lying and being in its account with EURAM Bank.
- e. In the last quarter of the year 2009, Arun Panchariya, Sanjay Talathi, Satish Panchariya and Mukesh Chauradiya approached the Company and assured that they would assist in issuing and subscribing GDRs of the Company. Arun Panchariya & Others also induced the Company and me by mis-representing themselves as '**GDR Experts**' [Of Issuance and Subscription of GDRs] and also showcased their efforts in issuance and subscription of GDRs for many other reputed companies. Since the Company was in need of financial help and the management of the Company did not find any adversity in the proposal, the Company accepted the proposal made by Arun Panchariya & Others. At that time, I was not at all aware about the manipulative

intent of Arun Panchariya & Others. The management of the Company under bona fide belief had accepted the assistance of Arun Panchariya & Others. The Company at very later stage had found that the Company had been cheated by Arun Panchariya & Others.

- f. The Company through its Advocate and Solicitors had sent a Legal Notice dated September 4, 2013, to the Euram Bank (copy enclosed). However, the Company could not take further action against Euram Bank due to very poor financial condition of the Company.*
- g. I further request your good self to allow me cross examination of Arun Panchariya and Mukesh Chauradiya.*

6.5 In his submission, **Noticee No. 3 (Arun Panchariya – replies dated August 18, 2017 and November 15, 2020)**, had *inter alia* submitted as under:

- a. 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.*
- b. He 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. The Noticee was a Director in Vintage FZE till 2007, and has already resigned from it. The decisions of Vintage FZE including Loan default was taken on the circumstances in the best interest of the Company by its management. Cardinal Capital Partners, a Company incorporated in Mauritius, was established by him, and Cardinal Capital Partners in turn, established IFCF. The Noticee was neither a whole-time Director nor the managing Director of IFCF, and during the time when the Noticee was a Director, investment decisions of IFCF were taken collectively by its Board of Directors. The activities of Vintage FZE, Cardinal Capital Partners and IFCF were carried out wholly outside India. The subscription by Vintage FZE of the GDRs issued by Hiran Orgochem was a purely commercial arrangement outside India.*
- d. 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. SEBI has no powers to lift the corporate veil and hold the Noticee as a beneficiary.*

- e. 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. 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.
- f. SEBI has passed various orders in which no action has been taken against the investors like Clifford Partners, Solsec Company Ltd., Sevion Company Ltd., 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.
- g. Further, in relation to the other FIs/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.
- h. 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.
- i. The said Noticee has in his replies relied on the following case laws:
- UMC Technologies Pvt. Ltd. vs. Food Corporation of India, to contend that impugned show cause notices does not specify what action SEBI proposes to take;
 - Salomon vs. A. Salomon & Co. Ltd. to state that the facts and circumstances of the case do not warrant lifting of the corporate veil;
 - Smt. J. Yashoda vs. Smt. K. Shobha Rani, (2007) 5 SCC 730 and Hariom Agarwal vs. 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.
 - Dilip S Pendse vs. SEBI (SAT Appeal No.80 of 2009, decided on November 19, 2009) to state that the more serious the offence, the stricter should be the degree of proof;
 - SEBI vs. Kanhaiyalal Baldevbhai Patel, 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
 - Hon. SAT in Appeal 6/2018, PWC v SEBI, to contend that it must be proved by cogent evidence that the appellants are guilty of "inducement".

6.6 In his submission, **Noticee No. 5 (Mukesh Chauradiya – replies dated August 18, 2017, August 22, 2017, February 13, 2018 and July 30, 2020)**, had *inter alia* submitted as under:

- a. *The Implementing Regulations No. 1/92 (Pursuant to Law No. 9 of 1992) of Free Zone Enterprise in 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 FZE;*
- b. *In the Shareholder's list as on September 30, 2009/2010/2011/2012/2013 in relation to Ramsai Investment Holding Private Ltd. (later known as Vintage FZE Investment Holding Private Ltd.), it can be clearly seen that Arun Panchariya held 9,998/18,59,013 Equity Shares in Vintage FZE;*
- c. *Administrative fine statement passed by DFSA imposing fine of US\$ 12,000 on Mr. Arun Panchariya also indicates that Arun Panchariya was the Licensed Director in relation to Vintage FZE;*
- d. *Arun Panchariya was initially the sole Director, subsequently somewhere in 2010, Ashok Panchariya, his brother, replaced him as the Director of Vintage FZE;*
- e. *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;*
- f. *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;*
- g. *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;*
- h. *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;*
- i. *The decisions to subscribe to the GDRs issued by Hiran Orgochem 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;*
- j. *The title "Managing Director" was pre-printed or part of the pro forma of the Bank, and it was by oversight continued to be so;*
- k. *The loan availed by Vintage from EURAM Bank was for the sole purpose of subscribing to the GDR of Hiran Orgochem, and the same was applied for the purposes for which it was obtained;*

- l. 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;*
- m. The Noticee was not aware of any arrangement that Arun Panchariya may have had with Hiran Orgochem in arranging the loan and its repayment, and that the Noticee had no role to play in the said transaction;*
- n. 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; and*
- o. 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.*
- p. I had signed the loan redemption requests as an authorised signatory of Vintage FZE, as instructed by Arun Panchariya. Since they are only loan redemption requests, I submit that nothing adverse can be read into the same.*
- q. I had no personal or financial relation with IFCF, Highblue Sky or EURAM Bank. Further, I had no control whatsoever in relation to the loan repayment or loan default by Vintage FZE – all decisions being taken by its sole shareholder and Director, Arun Panchariya.*

6.7 In its submission, **Noticee No. 7 (Highblue Sky – replies dated August 21, 2017)**, had *inter alia* submitted as under:

- a. It is a limited liability company incorporated under the law of the Republic of Mauritius. 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).*
- b. Allegation in the SCN that the GDRs were converted by Highblue Sky on behalf of Arun Panchariya and his connected entities was not correct. 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. Allegation that Highblue Sky 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 Hiran Orgochem were done upto July 30, 2014, which was prior to the association of Anant Sharma (August 11, 2014)*

and Reema Narayan Shetty (April 21, 2014). Anant Sharma himself approached SEBI to give his statement, and to assist in the investigation, which shows the bona fide intention of Anant Sharma. 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. Also Anant Sharma had resigned from the directorship of Alka India Ltd., whose promoter, Satish Panchariya was the brother of Arun Panchariya, with effect from March 28, 2016.

- d. In respect of the allegation that Anant Sharma had worked with Vintage FZE in the past, the Noticee has submitted that 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) into FPI.
- e. With respect to the KYC documents of Highblue Sky showing its address and contact numbers being common with one Aurisse Fund, it has been submitted by the Noticee that Aurisse was the management company for Highblue Sky 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.

6.8 In its submission, **Noticee No. 8 (EURAM Bank – replies dated July 28, 2017, July 22, 2020 and July 29, 2020)**, had *inter alia* submitted as under:

- a. 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, 2003 or FII Regulations. The SCN is predicated entirely and seeks to fasten liability on Euram on the averment that Euram is connected with Mr. Arun Panchariya and on the fact that Euram was the FII to a sub-account, ICFC (that admittedly SEBI granted registration to on the basis of its independent scrutiny), and which in turn may have been part of a scheme and be related or connected to persons that violated provisions of the SEBI Act and the PFUTP Regulations, 2003.
- b. 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.

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

- *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 Ltd..*
- *EURAM Bank set up EURAM Bank Asia Ltd. to explore business opportunities in the Middle East region, which has now been dissolved;*
- *EURAM was misled into entering into a Joint Venture 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.*
- *Ever since EURAM learnt of Arun Panchariya's involvement in the GDR manipulation, it has taken steps to end this Joint Venture and it was ultimately dissolved in December 30, 2013.*
- *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 IFCF, 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.*
- *EURAM Bank Asia Ltd. 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 IFCF through Euram as an FII.*

d. *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:*

- *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.*
- *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;*
- *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 FZE 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;

- *Euram had simply lent a sum of money to Vintage FZE for the specific purpose of subscribing to the Hiran Orgochem's GDR Issue., for which Euram sought adequate security and towards that end, obtained Hiran Orgochem's pledge, thereby creating a charge on the proceeds from the GDR issuance in favour of Euram;*
- *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;*
- *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;*
- *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;*
- *Euram had no control over the investment strategies and decisions of IFCF, and it cannot be held responsible for the same;*
- *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.*
- *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;*
- *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 FIT for IFCF;*
- *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*

- *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.*
- e. *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:*
 - *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;*
 - *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;*
 - *the defence of issue estoppel, not only applies to proceedings before judicial authorities proper but extends to quasi-judicial authorities and administrative authorities; and*
 - *Therefore, the present authority can afford the benefit of such cardinal principles as issue estoppel to Euram.*
- f. *The said Noticee has in his replies relied on the following case laws:*
 - *Samir Arora vs. SEBI, (2005) 59 SCL 96 (SAT), Nirmal Bang Securities (P) La vs. SEBI, (2004) 49 SCL 421 and KSL & Industries Ltd vs. SEBI (SAT 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.*
 - *Rakesh Kathotia & Ors. vs. SEBI in (SAT Appeal No. 7 of 2016 decided by this Tribunal on May 27, 2019), Sanjay Jethalal Soni vs. SEBI, (SAT Appeal no. 483 of 2018), Subhkam Securities Private Ltd. vs. SEBI (SAT Appeal no. 73 of 2012) and Khandwala Securities vs. SEBI (SAT Appeal no. 19 of 2012), to state that SEBI is required to exercise its powers within a reasonable period.*
 - *Hope Plantation Ltd. vs. Taluk Land Board, (1999) 5 SCC 590, Vijayabai vs. Shriram Tukaram, (1999) 1 SCC 693 and Bhanu Kumar Jain vs. Archana Kumar, (2005) 1 SCC 787 to contend that the doctrine of issue estoppel is a key element of res judicata.*

6.9 In its submission, **Noticee No. 10 (Golden Cliff – reply dated August 21, 2017)**, had *inter alia* submitted as under:

- a. *It is a limited liability company incorporated under the law of the Republic of Mauritius.*
- b. *Allegation in the SCN that Golden Cliff did not make any investment in India except through its Sub-account, Highblue Sky was not correct.*
- c. *Its Sub-account holders have invested in primary and secondary markets other than the Indian GDR Issue.*
- d. *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 Hiran Orgochem were done upto July 30, 2014, which was prior to the association of Anant Sharma (August 11, 2014) and Reema Narayan Shetty (April 21, 2014). Anant Sharma himself approached SEBI to give his statement, and to assist in the investigation, which shows the bona fide intention of Anant Sharma. 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. Also Anant Sharma had resigned from the directorship of Alka India Ltd. whose Promoter, Satish Panchariya was the brother of Arun Panchariya, with effect from March 28, 2016.*
- e. *In respect of the allegation that Anant Sharma had worked with Vintage FZE in the past, the Noticee has submitted that 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) into FPI.*

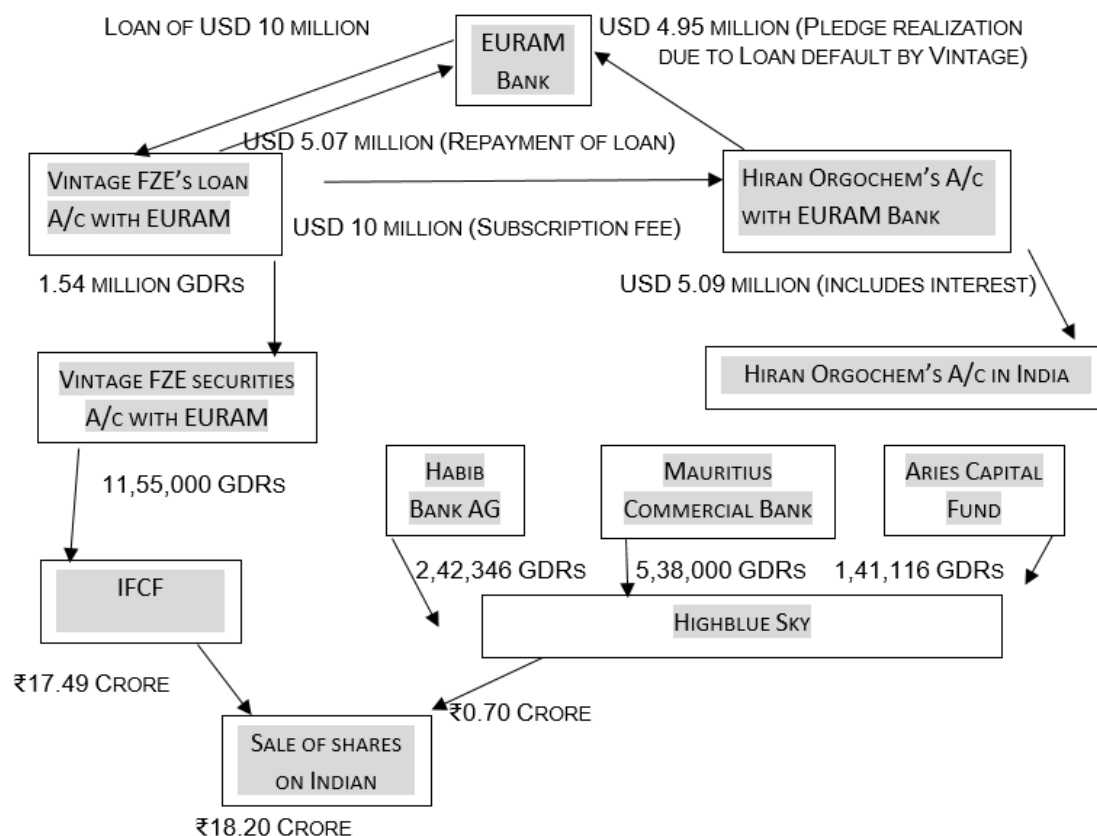
FINDINGS:

A. ***Issue I – Whether Hiran Orgochem (Noticee No.1) by allowing the GDR proceeds to be used as security for a loan that was availed by Vintage FZE (Noticee No. 4) towards the subscription of GDRs issued by Hiran Orgochem and not disclosing the same to the stock exchanges, had devised a scheme with Vintage FZE to defraud the investors?***

7.1 The SCN has alleged that issuance of GDRs by Hiran Orgochem was fraudulent as the Company had entered into a *Pledge Agreement* with EURAM Bank for a loan that had been availed by Vintage FZE 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 to by the foreign investors.

7.2 No reply has been received from the subscriber of the GDRs i.e. Vintage FZE.

7.3 The issuance of Hiran Orgochem's GDRs, flow of funds and subsequent sale of shares was as under:



7.4 In order 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 31, 2009** – The Board of Directors of Hiran Orgochem had 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 thereby ensuring that the GDR proceeds became collateral for all the obligations of Vintage FZE under the *Loan Agreement*. Incidentally, during the investigation, SEBI had sought a copy of the minutes of the aforementioned meeting from Hiran Orgochem; however, no information was provided by the Company.

B. 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 Mr. Kantilal Hiran and Mr. Vijay Hiran Directors 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.”

C. **MARCH 15, 2010** – Vintage FZE entered into a *Loan Agreement* with EURAM Bank for availing a loan facility of USD 10 million with respect to the subscription of GDRs issued by Hiran Orgochem.

D. **MARCH 15, 2010** – Hiran Orgochem entered into a *Pledge Agreement* with EURAM Bank, whereby the GDR proceeds received by the Company from Vintage FZE was pledged as collateral for the loan availed by Vintage FZE from EURAM Bank.

- E. **MAY 20, 2010** – In the Escrow Account maintained by Hiran Orgochem with EURAM Bank to receive the proceeds of the GDR Issue, a deposit of USD 10 million was made. The said amount had been deposited by Vintage FZE for subscription of 100% of the GDR Issue.
- F. Vide a letter dated June 22, 2015, Hiran Orgochem had provided SEBI with the list of subscribers to its GDR Issue, which is reproduced as under:

TABLE VII – LIST OF SUBSCRIBERS TO GDR ISSUE (AS PROVIDED BY HIRAN ORGOCHEM)			
SL. No.	NAME OF THE SUBSCRIBER	COUNTRY OF SUBSCRIBER	NO. OF GDRs ALLOTTED
1.	AXINITE INC.	UNITED ARAB EMIRATES	1,80,000
2.	CRUISE WATERFORD LTD.	UNITED KINGDOM	1,46,462
3.	FORT TROPICAL LTD.	INDONESIA	2,32,000
4.	MEDITERRANEAN CAPITAL HOLDINGS CORP.	PORTUGAL	1,60,000
5.	SCHOLARI INVESTMENTS LTD.	SOUTH AFRICA	2,60,000
6.	URANUS GLOBAL LTD.	PHILIPPINES	2,50,000
7.	VICTORY PILLAR HOLDINGS LTD.	INDONESIA	3,10,000
TOTAL			15,38,462

- G. However, as detailed earlier, Hiran Orgochem had received a lump sum amount of USD 10 million in a single transaction, from only one entity, viz. Vintage FZE, and not from any of the above mentioned seven entities.
- H. **MAY 21, 2010** – Hiran Orgochem had reported to the stock exchange (BSE) that: “... the Board of Directors of the Company at its meeting held on May 21, 2010, inter alia, has considered and approved allotment of 15,38,462 GDRs representing 4,61,53,860 underlying equity shares of face value of Rs 10/ each at an offer price of US \$6.50 per GDR..”
- I. **JUNE 8, 2010–OCTOBER 19, 2010:** Vintage repaid loan amount to the extent of USD 5.07 million in several instalments during the period from June 8–October 19, 2010.
- J. **OCTOBER 31, 2012** – A letter was issued by Hiran Orgochem to EURAM Bank with respect to the deposit account maintained by the Bank. By way of the said letter, Hiran Orgochem confirmed that EURAM Bank had the right to set off the pledged cash deposit with the outstanding loan of Vintage FZE amounting to USD 4.92 million. By way of the said letter, it was further instructed by Hiran Orgochem that upon exercising its right to set off, all the

remaining GDRs held in Deposit No. 5400121E of Vintage FZE should be transferred to Account No. 20311–333–196205 in Habib Bank AG Zurich.

- K. **AUGUST 21, 2012 AND APRIL 11, 2013** – EURAM Bank sent letters dated August 21, 2012 and April 11, 2013, to Hiran Orgochem informing the Company that despite multiple demands for repayment of USD 4.94 million (\$4,924,003 plus interest of \$21,610), Vintage FZE had not repaid the outstanding loan amount. Further, vide Notice dated April 11, 2013, EURAM Bank informed Hiran Orgochem that in accordance with the *Pledge Agreement* executed by the Company, in order to secure the above mentioned loan of USD 4.94 million, defaulted by Vintage FZE, it would exercise its right and invoke the charge of Hiran Orgochem's deposit towards repayment of loan defaulted.
- L. **MAY 27–28, 2013**: On May 27, 2013, EURAM Bank adjusted USD 4.95 million from Hiran Orgochem Ltd.'s bank a/c (where GDR proceeds were deposited) towards loan taken by Vintage FZE (evident from Hiran Orgochem's EURAM Bank account) (see also paragraph 7.4. I.). Thereafter, on May 28, 2013, EURAM Bank sent a letter to Hiran Orgochem informing the Company of the loan amount of Vintage FZE.
- M. Vide an e-mail dated May 12, 2016, SEBI had requested Hiran Orgochem to provide copy of AGM/ Board meeting agenda, resolution and minutes/ resolution with regard to write off by the Company. It was observed that information of the write off was not part of the corporate announcement about outcome of the Board meeting held on May 31, 2013, as made by Hiran Orgochem to the stock exchange (BSE) on May 31, 2013. Vide an e-mail dated May 16, 2016, Hiran Orgochem provided a copy of Board resolution dated May 31, 2013 in which the Company's Board of Directors had approved the write off for the outstanding deposit lying with EURAM Bank amounting to USD 4.95 million (equivalent to ₹27,50,74,047). Subsequently, vide an e-mail dated May 16, 2016, Hiran Orgochem informed SEBI that rest of the documents were not available with the Company (copy of AGM agenda, voting, etc.).
- N. In Hiran Orgochem's Annual Report for the Financial Year 2013–14 and 2014–15, it had been stated that the Company had filed a case against EURAM Bank. However, in his statement to SEBI (given on March 8, 2016), Noticee No. 2 had submitted that as per his knowledge, no case had been filed against any entity in a Court of law in relation to non-receipt of GDR proceeds.

In response to the query raised during the hearing as to what action was taken by the Company when its management became aware that EURAM Bank would not pay the balance amount of GDR proceeds, vide a letter dated March 5, 2021, Noticee No. 2 had replied that Hiran Orgochem had sent a legal notice dated September 4, 2013, to EURAM Bank. However, Noticee No. 2 had not annexed a copy of the legal notice and had merely drawn reference to an Appeal filed before the Hon'ble SAT, without giving any further details thereof. I find the aforesaid reply to be an afterthought and since no supporting records are placed before me, I am inclined to dismiss this contention.

7.5 The above chronology brings out that there was a clear understanding between Hiran Orgochem and Vintage FZE (which later came to be known as 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 FZE with EURAM Bank for availing a loan facility of USD 10 million on March 15, 2010. It is pertinent to note that the loan as per the said *Loan Agreement* was granted to Vintage FZE on the pledge of the following assets: “(i) *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.* (ii) *Pledge of the account no. 580012 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.*”

7.6 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 Hiran Orgochem 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 FZE, under the *Loan Agreement*. Further, the *Pledge Agreement* provides the circumstances in which EURAM Bank would invoke the Pledge: “In case 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."

- 7.7 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 FZE under the *Loan Agreement*, was a pre-condition for the grant of loan to Vintage FZE. The simultaneous execution of both the *Loan Agreement* and the *Pledge Agreement* indicates that Hiran Orgochem was itself financing the subscription of its GDR Issue. Once the loan facility was activated, an amount of USD 10 million was received from Vintage FZE on May 20, 2010, in the Escrow Account maintained by Hiran Orgochem in EURAM Bank for the GDR proceeds. However, as already mentioned, Vintage FZE had repaid the loan amount only to the extent of USD 5.07 million during the period from June 8–October 19, 2010. As a result, on October 31, 2012, a letter was issued by Hiran Orgochem 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 FZE amounting to USD 4.92 million. Further, by way of the said letter, Hiran Orgochem requested EURAM Bank that upon exercising its right to set off, all the remaining GDRs held in Deposit No. 5400121E of Vintage FZE, which would have otherwise reverted to Hiran Orgochem, were to be transferred to Account No. 20311–333–196205 of Vintage FZE in Habib Bank AG Zurich. This effectively establishes that a substantial part of the consideration received from Vintage FZE, for the GDRs subscribed by it, was returned to Vintage FZE, and as such, Vintage FZE came to possess the GDRs without paying any consideration. Thus, Hiran Orgochem in connivance with Vintage FZE had devised a fraudulent scheme whereby Vintage FZE received

GDRs without paying any consideration, at the cost of shareholders/investors of Hiran Orgochem. Accordingly, I find that Hiran Orgochem and Vintage FZE have clearly violated Sections 12A(a)–(c) of the SEBI Act and Regulations 3(a)–(d) and 4(1) of the PFUTP Regulations, 2003.

- 7.8 Additionally, it has been alleged that Hiran Orgochem 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 Hiran Orgochem and EURAM Bank by virtue of which EURAM Bank provided a credit facility to Vintage FZE for the purpose of subscribing to the GDR Issue of Hiran Orgochem. So, the GDR Issue would not have been subscribed in its entirety had the Company not given security towards the loan taken by Vintage FZE through the *Loan Agreement*. These should have been reported to the Stock Exchange. However, the Company reported to the stock exchange (BSE) on May 21, 2010 that “...the Board of Directors of the Company at its meeting held on May 21, 2010, *inter alia*, has considered and approved allotment of 15,38,462 GDRs representing 4,61,53,860 underlying Equity Shares of face value of ₹10 each at an offer price of US \$ 6.50 per GDR.” The making of a corporate announcement that the Company had approved the allotment of 4,61,53,860 equity shares of ₹10 each underlying 15,38,462 GDRs, without disclosing the pledge / loan arrangement that it had with regard to the subscription of its GDR Issue, led investors to believe that the said GDR Issue was genuinely subscribed. Therefore, I find that publication / disclosure of information, as seen above, was misleading and contained distorted information which induced investors to deal in the shares of Hiran Orgochem. Accordingly, I find that Hiran Orgochem has violated Regulations 4(2)(f), (k) and (r) of the PFUTP Regulations, 2003. Further, as detailed at paragraph 7.4. F., Hiran Orgochem had also furnished wrong information to SEBI by providing a false list of GDR subscribers.

- B. Issue II – Whether the Director of Hiran Orgochem, Kantilal Hiran (Noticee No.2), who had authorised EURAM Bank (Noticee No. 8) to use the GDR proceeds as security in connection with the loan availed by Vintage FZE, acted as party to the fraudulent scheme? Whether the Directors of Vintage FZE, Arun Panchariya (Noticee No. 3) and Mukesh Chauradiya (Noticee No. 5), were involved in perpetrating the fraudulent scheme?**

8.1 **Directors of Hiran Orgochem:** From the Annual Report of Hiran Orgochem for the Financial Years 2009–10 and 2010–11, it is observed that there were a total of seven Directors in the Company as under:

TABLE VIII – DETAILS OF DIRECTORS OF HIRAN ORGOCHEM				
F. Y. 2009–10		F. Y. 2010–11		DESIGNATION
SL. No.	NAME	SL. No.	NAME	
1.	KANTILAL HIRAN	1.	KANTILAL HIRAN	CHAIRMAN AND MD, EXECUTIVE, PROMOTER
2.	VIJAY K. HIRAN	2.	VIJAY K. HIRAN	WHOLE TIME DIRECTOR, EXECUTIVE, PROMOTER (RESIGNED W.E.F. MAY 5, 2011)
3.	NARESH K. HIRAN	3.	NARESH K. HIRAN	WHOLE TIME DIRECTOR, EXECUTIVE, PROMOTER (APPOINTED W.E.F. NOVEMBER 01, 2009, RESIGNED W.E.F. MAY 5, 2011)
4.	H. N. BAFNA	4.	H. N. BAFNA	NON–EXECUTIVE INDEPENDENT DIRECTOR
5.	MUKESH NAIK	5.	MUKESH NAIK	NON–EXECUTIVE INDEPENDENT DIRECTOR
6.	M. KAILASH KUMAR	6.	M. KAILASH KUMAR	NON–EXECUTIVE INDEPENDENT DIRECTOR
7.	ASHOK A. LUNIA	7.	ASHOK A. LUNIA	NON–EXECUTIVE INDEPENDENT DIRECTOR

8.1.1 As noted from Table VIII, Kantilal Hiran was the Chairman and Managing Director of the Company and was also categorized as a Promoter of the Company (including with Vijay K. Hiran and Naresh K. Hiran, who were also the Whole Time Directors of the Company). The rest of the Directors, viz. H. N. Bafna, Mukesh Naik, M. Kailash Kumar and Ashok A. Lunia, were Non–Executive Independent Directors. The Investigation Report has clearly stated that barring Kantilal Hiran, no adverse inference has been drawn with respect to the other members of the Board of Directors of Hiran Orgochem including Vijay K. Hiran and Naresh K. Hiran. Accordingly, in the instant proceedings, the liability of only Kantilal Hiran is being taken up for consideration.

8.1.2 During the Investigation period, as seen from the Annual Report, Kantilal Hiran was the Chairman and Managing Director of the Company. By way of the Board Resolution dated October 31, 2009, Kantilal Hiran was authorised to sign, execute any application, agreement, escrow agreement, document, undertaking, etc. as may be required by the Bank, i.e. EURAM Bank. It is further noted that the *Pledge Agreement* entered into by Hiran Orgochem with EURAM Bank,

whereby a deposit account of Hiran Orgochem maintained with EURAM Bank having USD 10 million was given as security for all the obligations of Vintage FZE under the *Loan Agreement*, had been signed by Kantilal Hiran. The letter (dated October 31, 2012) from Hiran Orgochem confirming that EURAM Bank had the right to set off the pledged cash deposit with the outstanding loan of Vintage FZE amounting to USD 4.92 million had also been signed by Kantilal Hiran. 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 FZE which would have come to Hiran Orgochem, should be transferred to Vintage FZE's account in Habib Bank AG Zurich. EURAM Bank sent several letters to Hiran Orgochem Ltd. (dated August 21, 2012, April 11, 2013 and May 28, 2013) intimating the due loan amount of Vintage FZE. The manner in which the funds were transferred/ withdrawn from Hiran Orgochem's bank account maintained with EURAM Bank and the fact that the transfer of funds was dependent on the loan repayment by Vintage FZE clearly establishes that Kantilal Hiran was aware of the *Pledge Agreement* contrary to his submissions that he could not have executed the *Pledge Agreement*. As regards the submission that the *Pledge Agreement* cannot be relied upon as it did not bear the Company's seal, etc., I am not inclined to accept such submission in view of his conduct in executing the *Pledge Agreement* and also in signing the letter dated October 31, 2012, forwarded by the Company to Euram Bank. Thus, the facts show that Kantilal Hiran has violated the provisions of Sections 12A(a)–(c) of the SEBI Act and Regulations 3(a)–(d) and 4(1) of the PFUTP Regulations, 2003.

8.1.3 As regards the request made by Noticee No. 2 for cross examination of Arun Panchariya and Mukesh Chauradiya, I note that SEBI has not relied upon any statements of the aforementioned Noticees in the instant proceedings. Therefore, I do not find any reason to accede to the aforementioned request.

8.2 **Directors of Vintage FZE – Arun Panchariya:** From the Know Your Customer ("KYC") documents (signed on June 6, 2007) of Vintage FZE, as available with EURAM Bank, it is observed that Arun Panchariya was the beneficial owner and Managing Director of Vintage FZE as on June 6, 2007 and June 7, 2010, respectively. Alkarni Holdings Ltd. was the shareholder of Vintage FZE as on December 28, 2010, and Arun Panchariya was the sole Director of Alkarni as on April 21, 2014. Arun Panchariya had signed the *Loan Agreement* dated March 15, 2010, as Managing Director of Vintage FZE, for subscription of GDR Issue of Hiran Orgochem. In addition, Arun Panchariya was connected to various entities involved in the GDR Issue as under:

TABLE IX - BASIS OF CONNECTION		
SL. No.	NAME OF ENTITY	CONNECTION/ASSOCIATION OF ARUN PANCHARIYA WITH ENTITY
1.	VINTAGE FZE (NOW KNOWN AS ALTA VISTA INTERNATIONAL FZE)	ARUN PANCHARIYA WAS MANAGING DIRECTOR AS ON MAY 5, 2010 AS WELL AS BENEFICIAL OWNER.
2.	IFCF	ARUN PANCHARIYA WAS DIRECTOR FROM AUGUST 22, 2008 TO OCTOBER 28, 2010, INVESTMENT OFFICER (100% SHAREHOLDER) AND BENEFICIAL OWNER.
3.	EURAM BANK, AUSTRIA	ARUN PANCHARIYA CONNECTED PAN ASIA ADVISORS LTD., HAD A JOINT VENTURE WITH EURAM BANK, WHICH WAS KNOWN BY THE NAME OF EURAM BANK ASIA LTD.
4.	EURAM BANK ASIA LTD.	ARUN PANCHARIYA WAS DIRECTOR AND PRESIDENT (RESIGNED ON SEPTEMBER 22, 2011).
5.	MUKESH CHAURADIYA	ARUN PANCHARIYA WAS BENEFICIAL OWNER OF VINTAGE FZE IN WHICH MUKESH CHAURADIYA SERVED AS MANAGING DIRECTOR. MUKESH CHAURADIYA SERVED AS DIRECTOR OF ALKA INDIA LTD. FROM JANUARY 31, 2006 TILL JUNE 1, 2010. MUKESH CHAURADIYA WAS A DIRECTOR IN RAMSAI INVESTMENT HOLDINGS PRIVATE LTD. (WHICH WAS A SUBSIDIARY OF VINTAGE FZE) (ARUN PANCHARIYA WAS HOLDING 99.98% SHARES IN RAMSAI INVESTMENT HOLDINGS PRIVATE LTD. FOR THE PERIOD 2009–2013 AND WAS DIRECTOR FOR THE PERIOD FROM FEBRUARY 4, 2008 TO AUGUST 18, 2010), FROM AUGUST 17, 2010 TILL MARCH 17, 2011.
6.	CARDINAL CAPITAL PARTNERS	ARUN PANCHARIYA WAS BENEFICIAL OWNER AND 100% SHAREHOLDER
7.	ANANT KAILASH CHANDRA SHARMA	ARUN PANCHARIYA AND ANANT KAILASH CHANDRA SHARMA WERE DIRECTORS IN SAI SANT ADVISORY (INDIA) PRIVATE LTD.: ARUN PANCHARIYA – AUGUST 31, 2007 TO OCTOBER 20, 2010. ANANT KAILASH CHANDRA SHARMA – DECEMBER 1, 2009 TILL MARCH 18, 2016. ARUN PANCHARIYA'S BROTHER, SATISH RAMSWAROOP PANCHARIYA IS PROMOTER OF ALKA INDIA LTD. ANANT KAILASH CHANDRA SHARMA IS ALSO ADDITIONAL DIRECTOR IN ALKA INDIA LTD. SINCE DECEMBER 1, 2009. ARUN PANCHARIYA'S BROTHER, SATISH RAMSWAROOP PANCHARIYA AND ASHOK RAMSWAROOP PANCHARIYA ARE DIRECTORS IN ALKA INDIA LTD. SINCE OCTOBER 5, 2011 AND APRIL 29, 2005, RESPECTIVELY.
8.	HIGHBLUE SKY	ANANT KAILASH CHANDRA SHARMA IS DIRECTOR (SINCE AUGUST 11, 2014 TILL DATE) AND BENEFICIAL OWNER OF HIGHBLUE SKY (SINCE SEPTEMBER 9, 2014 TILL DATE). ANANT KAILASH CHANDRA SHARMA IS CONNECTED TO ARUN PANCHARIYA. REEMA NARAYAN SHETTY WAS BENEFICIAL OWNER (100% SHAREHOLDER) FROM APRIL 21, 2014 TO SEPTEMBER 9, 2014 (BY VIRTUE OF BEING BENEFICIAL OWNER OF GOLDEN CLIFF, WHICH IN TURN IS BENEFICIAL OWNER OF HIGHBLUE SKY).
9.	GOLDEN CLIFF (PREVIOUSLY KNOWN AS VAIBHAV INVESTMENTS LTD.)	ANANT KAILASH CHANDRA SHARMA IS DIRECTOR (SINCE JULY 16, 2014) AND 100% BENEFICIAL OWNER (SINCE SEPTEMBER 9, 2014) OF GOLDEN CLIFF. ANANT KAILASH CHANDRA SHARMA IS CONNECTED TO ARUN PANCHARIYA. REEMA NARAYAN SHETTY WAS DIRECTOR (FROM MAY 16, 2013 TILL AUGUST 1, 2014) AND 100% BENEFICIAL OWNER (FROM SEPTEMBER 12, 2013 TILL SEPTEMBER 9, 2014) OF GOLDEN CLIFF. SHE WAS AUTHORIZED SIGNATORY FOR THE BANK ACCOUNT OF ARUN PANCHARIYA CONNECTED ENTITY IFCF, WHICH WAS MAINTAINED WITH EURAM BANK.

- 8.3 From the above, it was noted that IFCF, EURAM Bank, Vintage FZE, Mukesh Chauradiya, Cardinal Capital Partners Ltd, Highblue Sky and Golden Cliff were connected to each other. Further, Arun Panchariya was holding ownership in Vintage FZE, IFCF and EURAM Bank Asia Ltd.
- 8.3.1 In his submissions and replies, Arun Panchariya had refuted the allegations made in the SCN. The same have been captured in the previous part of this Order and are not being reproduced here. It shall, however, be relevant to briefly mention herein the fundamental grounds of defence taken by Arun Panchariya in respect of the allegations made in the SCN, which are as under:
- 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; and
 - d. Decisions of Vintage FZE including Loan default was taken on the circumstances in the best interest of the Company by its management.
 - e. SEBI has passed various Orders in which no action has been taken against the investors like Clifford Partners, Solec Company Ltd., Seviron Company Ltd., Fusion Investment Ltd., etc. so placing reliance on the doctrine of “*issue estoppel*”, the Noticee must be granted similar relief.
- 8.3.2 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*”, it is stated that the same has been dealt with a detailed manner in the subsequent paragraphs of this Order.
- 8.3.3 Proceeding with the merits of the matter, reference is made to the *Loan Agreement* dated March 15, 2010, entered into by Vintage FZE with EURAM Bank. The said *Agreement* has been signed by Arun Panchariya and in the space for “*Title*”, MD (Managing Director) has been mentioned. So, it clearly belies the claim of the Noticee that he was a Director in Vintage FZE only till 2007. As per a letter dated December 28, 2010, issued by the JAFZA, Vintage FZE was a Free Zone Establishment and its sole shareholder was Alkarni Holding Ltd. Further, as per the Certificate of Incumbency of Alkarni Holding Ltd. dated April 21, 2014, issued by the Overseas Management

Company Trust (BVI) Ltd., 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. Reference is also 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 thousand 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 FZE was Arun Panchariya, who held complete shareholding of Vintage FZE 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 FZE was Ashok Panchariya who is the brother of Arun Panchariya.

8.3.4 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 2009 to May 2010, Arun Panchariya was the sole beneficial owner of Vintage FZE and had a controlling position in it. Further, during the period of loan repayment, Ashok Panchariya, who is the brother of Arun Panchariya, was the Director of Vintage FZE. 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 FZE and being the sole beneficial owner had benefitted from the illegal scheme. Accordingly, I find that Arun Panchariya has violated Sections 12A(a)–(c) of the SEBI Act and Regulations 3(a)–(d) and 4(1) of the PFUTP Regulations, 2003.

8.4 **Directors of Vintage FZE – Mukesh Chauradiya:** It is also observed from the KYC documents of Vintage FZE (signed on June 6, 2007), as available with EURAM Bank that Mukesh Chauradiya was the authorized signatory of Vintage FZE as on June 6, 2007. As per the SCN, it was alleged that Mukesh Chauradiya served as Managing Director of Vintage FZE when it had defaulted on the repayment of the loan availed for subscription of GDRs of Hiran Orgochem.

8.4.1 Mukesh Chauradiya in his submissions/replies submitted to SEBI, has refuted the allegations made in the SCN, which have been captured in the previous part of this Order and 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.

8.4.2 In this regard, reference is made to the redemption of loan amount requests of Vintage FZE with EURAM Bank dated June 7, 2010, July 8, 2010, October 8, 2010, October 12, 2010, October 14, 2010, October 18, 2010 and October 19, 2020, which were all signed by Mukesh Chauradiya. Vide the aforementioned *requests*, Vintage FZE had requested EURAM Bank to *debit its retail account no. 540012 and redeem the loan regarding Hiran Orgochem GDRs Issue with value dated (date of redemption of loan amount request) for an amount mentioned therein*. Post repayment of loan instalments by Vintage FZE, an equal or lesser amount of money was transferred/released from Hiran Orgochem's EURAM Bank account to Hiran Orgochem's bank account in India (ICICI Bank account no. 001105011836), which occurred on the same date of such loan repayment (see also Table III). From the said *requests*, it is observed that Mukesh Chauradiya was the authorised signatory of Vintage FZE from June 7, 2010 to October 19, 2010. Further, I note that the letter dated December 30, 2010 addressed by Vintage FZE 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, a letter dated December 28, 2010, issued by the Jebel Ali Free Zone Authority, shows Mukesh Chauradiya as a Manager of Vintage FZE. 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 mentioned his occupation as General Manager.

8.4.3 It is observed from the letter dated December 30, 2010 addressed to EURAM Bank that the Noticee has represented himself to be the Managing Director/General Manager of Vintage FZE and having done so, cannot now seek relief from the consequences of such representation by asserting that he was merely an employee. The circumstances indicate that Mukesh Chauradiya was playing an important role in the affairs of Vintage FZE during the relevant period. It is also noted that Mukesh Chauradiya had signed the *Loan Agreement* for subscription of the GDR Issue of Rasoya Proteins Ltd. as Managing Director of the Vintage FZE on February 14, 2011. In this regard I note that a similar contention (as raised in these proceedings) 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 gained any benefits as he was only a salaried employee of Vintage FZE. In the matter, the Hon'ble SAT had held: *"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."* So, as held by the Hon'ble SAT, the exact designation of Mukesh Chauradiya in Vintage FZE is not relevant. What is relevant is whether Mukesh Chauradiya was holding a position in which he could put his signature under the designation of Managing Director of Vintage FZE. Upon a consideration of the facts in the instant

proceedings, it is clear that Mukesh Chauradiya was holding a position by way of which he could execute binding agreements/documents on behalf of Vintage FZE. Thus, the 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 Sections 12A(a)–(c) of the SEBI Act and Regulations 3(a)–(d) and 4(1) of the PFUTP Regulations, 2003.

C. Issue III – Whether the Sub–accounts, IFCF (Noticee No. 6), Highblue Sky (Noticee No. 7) and the FIIs, viz. EURAM Bank, Cardinal Capital Partners (Noticee No. 9) and Golden Cliff (Noticee No. 10) through whom the Sub–accounts had traded in the Indian securities market account, acted in pursuance of the fraudulent scheme?

9.1 It has been alleged in the SCN that IFCF and Highblue Sky by selling the equity shares of Hiran Orgochem in the Indian securities market acted as conduits to Arun Panchariya and his connected entities in pursuance of the fraudulent scheme. It has been further alleged in the SCN that EURAM Bank and Cardinal Capital Partners got registered as FIIs only to facilitate IFCF to become its Sub–account and Golden Cliff got registered as FII only to facilitate Highblue Sky to become its Sub–account and sell the converted shares of Hiran Orgochem in the Indian securities market.

9.2 In this regard, the summary of the registration of FIIs and Sub–accounts is tabulated below:

TABLE X – SUMMARY OF THE REGISTRATION OF FIIs AND SUB–ACCOUNTS				
SL. No.	NAME OF SUB–ACCOUNT	PERIOD OF REGISTRATION	NAME OF FII UNDER WHICH SUB A/C IS REGISTERED	PERIOD OF REGISTRATION WITH FII
1.	IFCF	12.12.2008 TO 19.07.2011	EURAM 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 [PREVIOUSLY KNOWN AS KBC ALDINI CAPITAL (MAURITIUS) LTD.]	18.06.2010 TO 21.10.2012	KBC ALDINI CAPITAL LTD.	22.03.2010 TO 21.03.2016
		22.10.2012 TO 28.02.2017	GOLDEN CLIFF (PREVIOUSLY KNOWN AS VAIBHAV INVESTMENTS LTD.)	1.03.2011 TO 28.02.2017

9.3 Accordingly, the liability of the above–named Noticees is being taken up for consideration in three parts: (a) joint role of IFCF and Cardinal Capital Partners; (b) joint role of Highblue Sky and Golden Cliff and (c) role of EURAM Bank.

9.3.1 **Joint role of IFCF and Cardinal Capital Partners:** IFCF has not filed any replies/submissions to the allegations made in the SCN.

9.3.2 It is seen from Table V of this Order that IFCF had received 1,85,10,000 equity shares of Hiran Orgochem upon conversion of 6,17,000 GDRs. Similarly, Highblue Sky got 1,45,07,670 equity shares of Hiran Orgochem upon conversion of 4,83,589 GDRs. It is observed that the equity shares received post-conversion of 11,00,589 GDRs were subsequently sold in the Indian securities market by IFCF (sold 1,85,10,000 equity shares) and Highblue Sky (sold 1,15,07,670 equity shares while retaining 30,00,000 equity shares) (entities related to Arun Panchariya) for an amount of approximately ₹18.20 Crore, as under:

TABLE XI – SALE OF SHARES BY IFCF AND HIGHBLUE SKY			
NAME OF ENTITY	TOTAL NO. OF SHARES SOLD ON BSE	TOTAL TRADE VALUE	PERIOD OF SALE
IFCF	1,85,10,000	17,49,20,974.40	JULY 5, 2010 TO MAY 22, 2014
HIGHBLUE SKY	1,15,07,670	70,78,653.44	
TOTAL	3,00,17,670	18,19,99,627.80	

9.3.3 The sale of shares by IFCF (source: NSDL) was as under:

Date of sale of equity shares	Quantity of equity shares sold
06-Jul-2010	300,000
07-Jul-2010	100,000
08-Jul-2010	200,000
13-Jul-2010	200,000
14-Jul-2010	200,000
20-Jul-2010	200,000
09-Aug-2010	100,000
21-Sep-2010	100,000
23-Sep-2010	1,820,000
24-Sep-2010	1,820,000
27-Sep-2010	3,430,000
28-Sep-2010	2,083,520
29-Sep-2010	949,801
30-Sep-2010	623,661
06-Oct-2010	26,878
04-Nov-2010	936,488
12-Nov-2010	500,000
15-Nov-2010	650,000
16-May-2011	492,716
03-Jun-2011	400,000
10-Oct-2012	45,643
11-Oct-2012	636
12-Oct-2012	27,682
15-Oct-2012	43,989
18-Oct-2012	200,000
22-Oct-2012	200,000
25-Oct-2012	302,501
29-Oct-2012	240,000
31-Oct-2012	79,000
06-Nov-2012	61,001
08-Nov-2012	200,000
09-Nov-2012	50,000
21-Nov-2012	292,150
12-Dec-2012	85,000
13-Dec-2012	200,000
17-Dec-2012	242,203
19-Dec-2012	135,000
27-Dec-2012	200,000
28-Dec-2012	67,383
31-Dec-2012	21,362
01-Jan-2013	2,018
03-Jan-2013	163,005
04-Jan-2013	5,738
07-Jan-2013	61,063
08-Jan-2013	451,022
23-Jan-2013	540
Total	18,510,000

9.3.4 In this regard, reference is made to the letter dated September 15, 2016, as addressed by the Financial Services Commission, Mauritius to SEBI, wherein it was informed that in respect of IFCF, Cardinal Capital Partners was the management shareholder since August 22, 2008, and

Arun Panchariya was the beneficial owner. Vide an e-mail dated July 12, 2010, Arun Panchariya has also stated that Cardinal Capital Partners, was established by him, and Cardinal Capital Partners in turn, had established IFCF. Further, reference is drawn to letter dated April 2, 2012 addressed by IFCF to SEBI. In the said letter, it has been disclosed by the Noticee that for the period January 1, 2009 to May 31, 2010, the complete shareholding of Cardinal Capital Partners was held by Arun Panchariya. In his submissions before me, Arun Panchariya has also stated that Cardinal Capital Partners was established by him and Cardinal Capital Partners in turn established IFCF. From the aforementioned, it is observed that the complete shareholding in IFCF was held by Cardinal Capital Partners, and in turn the complete shareholding in Cardinal Capital Partners was held by Arun Panchariya. So, both IFCF and Cardinal Capital Partners were controlled by Arun Panchariya during the GDR Issue and the sale of the converted equity shares in the Indian securities market.

9.3.5 In the present proceedings, the allegation is that Cardinal Capital Partners, a registered FII facilitated IFCF, its Sub-account to sell the illegally acquired shares in the Indian securities market. It has already been established that Vintage FZE, an Arun Panchariya entity, fraudulently subscribed to the GDRs of Hiran Orgochem. It has also been brought out above that IFCF (which came to possess the GDRs and converted them into equity shares) and Cardinal Capital Partners were both owned and controlled by Arun Panchariya. In view of the same, I am convinced that Cardinal Capital Partners worked as a conduit for Arun Panchariya by acting as a vehicle to IFCF to sell the illegally acquired shares of Hiran Orgochem in the Indian securities market. Accordingly, I find that Cardinal Capital Partners and IFCF have violated Sections 12A(a)–(c) of the SEBI Act and Regulations 3(a)–(d) and 4(1) of the PFUTP Regulations, 2003.

9.3.6 **Joint role of Highblue Sky and Golden Cliff:** In its submissions/replies, Highblue Sky had refuted the allegations made in the SCN. The same have been captured in the previous part of this Order and are not being reproduced here. It is, however, relevant to briefly mention herein the essential grounds of defence taken by the said Noticees 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 Hiran Orgochem were done up to July 30, 2014, 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 Highblue Sky, and provided services, viz. accounting, NAV calculations, etc.

9.4 It has been stated in the SCN that Highblue Sky received 1,45,07,670 converted equity shares of Hiran Orgochem and had subsequently sold off 1,15,07,670 equity shares received post-conversion. The sale of shares by the Sub-account, Highblue Sky was done through the FII, Golden Cliff. Highblue Sky was registered as Sub-account under FII-KBC Aldini Capital Ltd. (June 18, 2010 to October 21, 2012) and thereafter, the Sub-account was transferred to FII-Golden Cliff (previously known as Vaibhav Investments Ltd.) for the period from October 22, 2012 to February 28, 2017. During the period June 18, 2010 to October 21, 2012, when Highblue Sky was registered as Sub-account of KBC Aldini Capital Ltd., it neither received shares post cancellation of GDRs nor had it sold shares on the stock exchange. Hence, the Investigation Report has clearly stated that no adverse inference has been drawn with regard to the role of KBC Aldini Capital Ltd.

9.5 Details of purchase and conversion of GDRs were sought from Highblue Sky. Vide an e-mail dated April 29, 2016, Highblue Sky submitted that it converted 4,83,589 GDRs and it provided details of the purchase of GDRs which is as under:

TABLE XIII – DETAILS OF PURCHASE OF GDRS			
DATE	NO. OF GDRS	NAME OF THE COUNTERPARTY	TYPE OF TRANSACTION
10.07.2013	1,41,243	MAURITIUS COMMERCIAL BANK	PURCHASE OF GDRS
6.11.2013	2,42,346	HABIB BANK AG ZURICH	PURCHASE OF GDRS
23.07.2014	3,96,757	MAURITIUS COMMERCIAL BANK	PURCHASE OF GDRS
3.06.2015	-2,96,757	AMBRUS VALUE FUND LTD	GDRS REDEMPTION (IN KIND)
5.06.2015	1,41,116	ARIES CAPITAL FUND	GDR SUBSCRIPTION (IN KIND)
TOTAL	6,24,705		

9.6 As stated earlier, Highblue Sky had received 1,45,07,670 equity shares post conversion of 4,83,589 GDRs. By May 23, 2014, it had sold 1,15,07,670 shares which it had received post conversion of GDRs. As on January 4, 2017, it was holding 30,00,000 shares of Hiran Orgochem. It is observed that Highblue Sky sold shares through FII–Golden Cliff during the period when Ms. Reema Narayan Shetty and Mr. Anant Kailash Chandra Sharma (who are connected to AP) were associated with FII–Golden Cliff. The sale of shares by Highblue Sky (source: NSDL) was as under:

Date of sale of equity shares	Quantity of equity shares sold
19-Jul-2013	39,805
01-Nov-2013	575,812
05-Nov-2013	211,000
05-Nov-2013	1,127,769
06-Nov-2013	1,000,000
11-Nov-2013	1,250,000
22-Nov-2013	122,950
25-Nov-2013	20,000
25-Nov-2013	204,219
25-Nov-2013	40,000
26-Nov-2013	42,020
26-Nov-2013	50,000
03-Dec-2013	560,000
31-Dec-2013	216,369
01-Jan-2014	83,112
02-Jan-2014	500,000
03-Jan-2014	500,000
06-Jan-2014	500,000
25-Apr-2014	490,000
25-Apr-2014	490,000
25-Apr-2014	490,000
25-Apr-2014	490,000
09-May-2014	490,000
09-May-2014	490,000
09-May-2014	490,000
09-May-2014	490,000
09-May-2014	490,000
23-May-2014	54,614
Total	11,507,670

9.7 In this regard, it is seen that Reema Narayan Shetty was a Director of Golden Cliff from May 16, 2013 to August 1, 2014. There was a common period of eleven months (July 19, 2013 to May 23, 2014) when she was a Director of Golden Cliff, which coincided with the selling of shares by

Highblue Sky. Reference is made to e-mail dated March 2, 2016 and April 29, 2016 whereby Highblue Sky has provided its shareholding and directorship details. The details provided by way of the above e-mails bring out the connection between Reema Narayan Shetty and Arun Panchariya as under:

- a. Reema Narayan Shetty was the authorised signatory of IFCF for the bank account held with EURAM Bank as on June 2, 2011. It has already been established above that IFCF was managed and operated by Arun Panchariya.
- b. She was the beneficial owner of Golden Cliff from September 12, 2013 till September 9, 2014.
- c. From April 21, 2014, upon Golden Cliff acquiring the complete shareholding in Highblue Sky, she also became the beneficial owner of Highblue Sky.

9.8 As regards Anant Kailash Chandra Sharma, it is seen from the above mentioned e-mails that he joined as a Director of Highblue Sky on August 11, 2014. Anant Kailash Chandra Sharma became the beneficial owner of Golden Cliff on September 9, 2014. He also became the beneficial owner of Highblue Sky on September 9, 2014, by virtue of being the beneficial owner of Golden Cliff, which holds 100 % shareholding in Highblue Sky. 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 XV – DETAILS OF DIRECTORSHIP OF ANANT SHARMA				
SL. No.	DIRECTOR	COMPANY	START DATE	END DATE
1.	ANANT KAILASH CHANDRA SHARMA	ALKA INDIA LTD.	1.12.2009	–
2.	ANANT KAILASH CHANDRA SHARMA	SAI SANT ADVISORY (INDIA) PRIVATE LTD.	1.12.2009	18.03.2016
3.	ANANT KAILASH CHANDRA SHARMA	VINTAGE FZE (INDIA) PRIVATE LTD.	22.12.2009	18.03.2016
4.	ANANT KAILASH CHANDRA SHARMA	RAMSAI INVESTMENT HOLDINGS PRIVATE LTD.	1.09.2015	18.03.2016

9.8.1 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 Company:

TABLE XVI – DETAILS OF DIRECTORSHIP OF ARUN PANCHARIYA			
DIRECTOR	COMPANY	START DATE	END DATE
ARUN PANCHARIYA	SAI SANT ADVISORY (INDIA) PRIVATE LTD.	31.08.2007	20.10.2010

9.8.2 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 Company:

TABLE XVII – DETAILS OF DIRECTORSHIP OF MUKESH CHAURADIYA			
DIRECTOR	COMPANY	START DATE	END DATE
MUKESH CHAURADIYA	ALKA INDIA LTD.	31.01.2006	01.06.2010

9.8.3 Furthermore, from the MCA website it is seen that between 2009 and 2016, the tenure of Satish Panchariya and Ashok Panchariya (Arun Panchariya's brother) as Directors coincided with Anant Sharma's tenure as a Director in the following Companies:

TABLE XVIII – DETAILS OF DIRECTORSHIP OF SATISH PANCHARIYA AND ASHOK PANCHARIYA				
SL. No.	DIRECTOR	COMPANY	START DATE	END DATE
1	SATISH PANCHARIYA	ALKA INDIA LTD.	01.02.2000	–
2	ASHOK PANCHARIYA	ALKA INDIA LTD.	29.04.2005	–
3	ASHOK PANCHARIYA	RAMSAI INVESTMENT HOLDINGS PRIVATE LTD.	17.03.2016	–
4	ASHOK PANCHARIYA	SAI SANT ADVISORY (INDIA) PRIVATE LTD.	17.03.2016	–
5	ASHOK PANCHARIYA	VINTAGE FZE (INDIA) PRIVATE LTD.	30.09.2007	–

9.8.4 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. Also, it would be relevant to see the shareholding pattern of Vintage FZE (India) Pvt. Ltd. in which Anant Sharma held Directorship:

TABLE XIX – SHAREHOLDING PATTERN OF THE COMPANIES IN WHICH ANANT SHARMA HELD DIRECTORSHIPS.		
SL. No.	COMPANY	SHAREHOLDING PATTERN
1	VINTAGE FZE (INDIA) PVT. LTD.	AS ON SEPTEMBER 30, 2010 <i>i.</i> VINTAGE FZE – 99.98 % (9998 SHARES) <i>ii.</i> ARUN PANCHARIYA – 0.01% (1 SHARE) <i>iii.</i> MUKESH CHAURADIYA – 0.01% (1 SHARE) AS ON SEPTEMBER 30, 2013 <i>v.</i> VINTAGE FZE – 99.99 % (9998 SHARES) <i>vi.</i> MUKESH CHAURADIYA – 0.02% (2 SHARES)

- 9.8.5 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. As detailed above, Anant Sharma and Reema Narayan Shetty are related to Arun Panchariya. Furthermore, Highblue Sky is owned by Golden Cliff.
- 9.8.6 In the present proceedings, the allegation that Golden Cliff, a registered FII facilitated Highblue Sky, its Sub-account to sell the illegally acquired shares in the Indian securities market. It has already been established that Vintage FZE, an Arun Panchariya entity, fraudulently subscribed to the GDR Issue of Hiran Orgochem. It has also been brought out that Highblue Sky (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 by acting as a vehicle to sell the illegally acquired shares of Hiran Orgochem in the Indian securities market. Accordingly, I find that Golden Cliff and Highblue Sky have violated Sections 12A(a)–(c) of the SEBI Act and Regulations 3(a)–(d) and 4(1) of the PFUTP Regulations, 2003.
- 9.9 **Euram Bank** (in its capacity as the FII for IFCF): In its submissions/replies submitted to SEBI, EURAM Bank 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 as under:
- a. In previous decisions, covering essentially the same facts and addressing the same issues as in the present matter, the WTM, 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 Ltd. 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.

- d. The Noticee has specifically placed reliance on ***Hope Plantation Ltd. vs. Taluk Land Board, (1999) 5 SCC 590*** and ***Vijayabai and Others vs. Shriram Tukaram, and Others (1999) 1 SCC 693*** and ***Bhanu Kumar Jain vs. 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 aforementioned matter: *“In Thoday vs. 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.”

- 9.9.1 At this juncture, I find it relevant to clarify upfront 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 matter. 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 IFCF to become its Sub-account and sell the converted shares of Hiran Orgochem in the Indian securities market. As regards SEBI's Order of September 5, 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 Ltd., Avon Corporation Ltd., CAT Technologies Ltd., IKF Technologies Ltd., K Sera Sera Ltd. and Maars Software International Ltd. 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.

9.9.2 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 IFCF to become its Sub-account and sell the converted shares of Hiran Orgochem 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 Ltd., Avon Corporation Ltd., CAT Technologies Ltd., IKF Technologies Ltd., K Sera Sera Ltd. and Maars Software International Ltd. 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.

9.9.3 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 Hiran Orgochem in the Indian securities market. EURAM Bank was registered as FII in India during the period November 21, 2008 to November 20, 2011. IFCF was a Sub-account of EURAM Bank during the period December 12, 2008 to July 19, 2011. It has already been established in the previous part of this Order that the issuance of GDRs to Vintage FZE (an Arun Panchariya related entity) was illegal. It has also been established that IFCF was controlled and managed by Arun Panchariya. It is also relevant to note that Arun Panchariya was a Director in EURAM Bank Asia Ltd. (which was incorporated in Asia), which was a joint venture between EURAM Bank (which was incorporated in Austria) and Pan Asia Advisors Ltd., admittedly another Arun Panchariya entity. It has been stated by EURAM Bank that "*Arun Panchariya was never the Director or had any material role in EURAM Bank*". However, I find that in the *Pledge Agreement* signed between Hiran Orgochem and EURAM Bank, a stamp mark reads, "*EURAM Bank Asia Ltd., Reg. No. 0868, Signature verified, Arun, Director, EURAM Bank Asia Ltd.*". 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. Thus, I find that EURAM Bank (in its capacity as the FII for IFCF) was acting as a conduit of Arun Panchariya and facilitated IFCF to become its Sub-account and sell the converted shares of Hiran Orgochem in the Indian securities market. Accordingly, I find that EURAM Bank (in its capacity as the FII for IFCF) has violated Sections 12A(a)–(c) of the SEBI Act and Regulations 3(a)–(d) and 4(1) of the PFUTP Regulations, 2003.

D. ***Issue IV – Whether Hiran Orgochem (Noticee No. 1) should be directed to bring back an amount of USD 4.95 million, which was utilised towards repayment of loan outstanding, as availed by Vintage FZE under the Loan Agreement?***

- 9.10 As already stated, a Supplementary SCN dated August 26, 2019, was issued to Noticee No. 1 calling upon the Company to show cause as to why suitable directions under Sections 11, 11B and 11(4) of the SEBI Act including the direction to bring the money back to the extent of loan default should not be issued against it. As brought out in the preceding paragraphs, out of the USD 10 million loan availed by Vintage FZE from EURAM Bank, for subscription to the GDR Issue of Hiran Orgochem, it had repaid only USD 5.5 million of the said loan amount to EURAM Bank. Vintage FZE had defaulted on the aforesaid loan to the extent of USD 4.95 million. Thereafter, EURAM Bank had utilised the amounts in Hiran Orgochem's bank account for realisation of the outstanding loan amount of Vintage FZE. Accordingly, I find that Hiran Orgochem has to bring back the said amount of USD 4.95 million to the Company.

CONCLUSION:

- 10.1 Thus, from the above, it is concluded that Hiran Orgochem in connivance with Vintage FZE devised a fraudulent scheme whereby Vintage FZE received GDRs without paying any consideration, at the cost of the shareholders / investors of Hiran Orgochem. Further, the Director of Hiran Orgochem i.e. Kantilal Hiran, is liable for the above mentioned fraudulent scheme as he was 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 vide a letter dated November 21, 2017, Noticee No. 2 had submitted that the Company is under liquidation and an Official Liquidator has been appointed by the Bombay High Court to wind up the Company. In this context, it is noted that vide an Order dated September 5, 2018 (Company Petition no. 631 of 2017), the Hon'ble Bombay High Court had directed that the Official Liquidator's Report be allowed. Further, from the information obtained from the *MCA21 Portal*, the status of Hiran Orgochem has been stated as "*Under Liquidation*". At this juncture, I find that directions against Hiran Orgochem under Sections 11, 11(4) and 11B of the SEBI Act, will not be efficacious.
- 10.2 Kantilal Hiran was certainly 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.
- 10.3 Similarly, Arun Panchariya, the Director of Vintage FZE was instrumental in the activation of the fraudulent scheme and benefitted the most from the same being the beneficial owner of Vintage FZE. Similarly, Vintage FZE was part of the fraudulent scheme as a consequence of which, it received a large number of GDRs without payment of consideration. There effectively was no fund movement after the GDRs of Hiran Orgochem were subscribed as the subscription amount running into several million USD was not available to the Company till the loan taken by Vintage FZE for subscribing to such GDRs, were repaid to EURAM Bank. In other words, although the bank account in which GDR proceeds were held, was in the name of the Hiran Orgochem, the amount deposited therein was not at the free disposal of the Company as the same was kept as collateral prior to issuance of GDRs for the loan availed by Vintage FZE; it was only after Vintage FZE had repaid loan installments that an amount equal to such repayment was transferred from the aforesaid Hiran Orgochem's EURAM Bank account to the Company's bank account in India

(ICICI Bank account no. 001105011836), on the same day. Mukesh Chauradiya, a key person in Vintage FZE was fully involved in the day-to-day activities of Vintage FZE and had signed the redemption of loan amount requests for the GDR Issue of Hiran Orgochem. Furthermore, the GDRs illegally acquired by Vintage FZE were sold in the Indian securities market by IFCF and Highblue Sky. The aforesaid entities were Sub-accounts of Cardinal Capital Partners, EURAM Bank and Golden Cliff. These entities were all related to Arun Panchariya, the beneficial owner of Vintage FZE, either by ownership or through business relations. Pursuant to the same, the said Noticee Nos. 6 to 10 acted as conduits for Arun Panchariya by facilitating the sale of illegally acquired securities in the Indian securities market.

- 10.4 The above summary brings out that Arun Panchariya was the principal architect in the activation and orchestration of the fraudulent scheme including the GDR Issue (through Hiran Orgochem), subscription of GDRs (through Vintage FZE), and conversion of the GDRs and sale of the equity shares (through IFCF, Highblue Sky, Cardinal Capital Partners, EURAM Bank and Golden Cliff). In this context, I also note that the same *modus operandi* of manipulation by a similar set of Arun Panchariya connected entities has been found in several 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 Ltd. 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 Ltd. 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 Ltd. and Anr vs. SEBI (Appeal No. 126 of 2013 decided on 25.10.2016)** and **Cals Refineries Ltd. 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 FZE. The respective Indian companies have also apparently participated in such fraudulent schemes. Accordingly, as brought in the foregoing paragraphs, in view of the repetitive nature of such acts along with the gravity of 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.*

DIRECTIONS:

- 11.1 I, in exercise of powers conferred upon me under Sections 11, 11 (4) and 11B the SEBI Act read with Regulation 11 of the PFUTP Regulations, 2003, hereby pass the following directions:
- A. In view of the findings in para 10.1, the present proceedings initiated against Noticee No. 1 (**Hiran Orgochem**) vide the SCN dated June 30, 2017 and Supplementary SCN dated August 26, 2019, are disposed of without any directions, in view of the Company Petition no. 631 of 2017 before the High Court of Bombay.

- B. In the event, order for winding up passed by the Hon'ble High Court of Bombay is reversed, for any reason whatsoever, then in such eventuality, the Noticee No. 1 shall:
- (i) be restrained from accessing the securities market and also remain prohibited from buying, selling or dealing in securities, directly or indirectly, in any manner whatsoever or being associated with the securities market in any manner, whatsoever, for a period of 3 years from the date of such reversal of Winding Up Order;
 - (ii) Continue to pursue the measures to bring back the outstanding amount of USD 4.95 million into its bank account in India. Noticee No. 2 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 Bhavan, Plot NO. C4 A, G Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400051*".
- C. Noticee No. 2 (**Kantilal Hiran**) 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 **three (3) years**.
- D. Noticee No. 2 shall also be restrained for a period of **three (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 himself with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI.
- E. Noticee No. 3 (**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 **ten (10) years**.
- F. Noticee No. 3 shall also be restrained for a period of **ten (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 himself with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI.

- G. Noticee No. 4 (**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 **eight (8) years**.
 - H. Noticee No. 5 (**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 **three (3) years**.
 - I. Noticee No. 5 shall also be restrained for a period of **three (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 himself with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI.
 - J. Noticee No. 6 (**IFCF**) and Noticee No. 7 (**Highblue Sky**) (now known as Emerging Market Opportunities 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 **eight (8) years**.
 - K. Noticee No. 8 (**EURAM Bank**), Noticee No. 9 (**Cardinal Capital Partners**) and Noticee No. 10 (**Golden Cliff**) 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 **two (2) years**.
- 11.2 This Order shall come into force with immediate effect. The obligation of the Noticees debarred in the present Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, can take place irrespective of the restraint/ prohibition imposed by this Order, only in respect of pending

unsettled transactions, if any. Further, all open positions, if any, of the Noticees debarred in the present Order, in the F&O segment of the Stock Exchanges, are permitted to be squared off, irrespective of the restraint/ prohibition imposed by this Order.

- 11.3 The period of debarment as directed by way of this Order shall run concurrently in respect of any Noticee, as mentioned in 11.1 above, who may already be undergoing any period of debarment with respect to the issue of GDRs.
- 11.4 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.
- 11.5 A copy of this order may also be sent to the Official Liquidator of the Bombay High Court, Reserve Bank of India, Enforcement Directorate and Ministry of Corporate Affairs for information and necessary action, if any.

Place: Mumbai
Date: October 6, 2021

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA