

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

In the Matter of GDR Issue of Southern Ispat and Energy Limited

In respect of –

Sr. No.	Noticee	PAN/Other Identifying Number
1.	Southern Ispat and Energy Limited	AAECS6476P
2.	Vivek Agarwal	ADAPA2289E
3.	Anusuya Devi Agarwal	ACOPA7958H
4.	Richa Agarwal	AAEPR4954Q
5.	V Manikandan	AHSPM8760C
6.	T.I. Venkatramani	AANPI3004P
7.	R. Sivaramakrishnan	BGIPS6010B
8.	Arun Panchariya	AEVPP6125N
9.	Vintage FZE	<i>Registered outside India</i>
10.	Mukesh Chauradiya	AAVPC0966A
11.	Pan Asia Advisors Ltd.	<i>Registered outside India</i>

12.	Highblue Sky Emerging Market Fund	AADCK9460G
13.	Aspire Emerging Fund	AALC45544M
14.	KBC Aldini Capital Limited	FII Registration No. INUEFD237810
15.	Golden Cliff	FII Registration No. INMUFD256111

Background –

1. The present matter emanates from an investigation by SEBI into the certain issuances of Global Depository Receipts (“**GDRs**”) done by Indian companies allegedly with the intention of defrauding Indian investors. During the course of the investigation, it was observed that for many of the GDR issues, a loan was taken by a foreign entity for subscribing to the Issue and the said loan was secured against the proceeds of the same Issue. The focus of the investigation was, therefore, to ascertain whether the shares underlying the GDRs were issued with proper consideration and whether appropriate disclosures were made by the Company while issuing the GDRs. One of the companies which was investigated was Southern Ispat and Energy Limited (“**SIEL**”/“**Company**”).
2. SIEL had made two issues of GDRs: the first one was on August 10, 2010 (Issue I) and the second one was on June 10, 2011 (Issue II). The investigation period, which was the period around which the issuance of GDRs were made by the Company, was July 25, 2010 to August 25, 2010 and May 25, 2011 to June 25, 2011 (“**Investigation Period**”).
3. Pursuant to the investigation, a common Show-Cause Notice dated **May 31, 2018** (“**SCN**”) was issued calling upon the Noticees 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. The summary of the allegations made in the SCN is given below:

Role of the Noticees

4. It was alleged in the SCN that the scheme of issuance of GDRs was fraudulent as Noticee No. 1, the Company, had entered into a Pledge Agreement (pledging the proceeds of the same GDR issue) with the European American Investment Bank AG (“**EURAM Bank**”) for a loan that had been availed by Noticee No. 6, Vintage FZE (“**Vintage**”), for subscribing to the GDRs issued by the Company. Vintage was also, therefore, allegedly a party to this fraudulent scheme. Noticee No. 10, Mukesh Chauradiya, signed the Loan Agreement on behalf of Vintage for the subscription of the second issue of the GDRs by the Company. Noticee No. 8, Arun Panchariya (AP), was director and beneficial owner of Vintage.
5. Noticee No. 2, Vivek Agarwal, who was the chairman and managing director of the Company, signed the Pledge Agreement with EURAM Bank, on behalf of the Company, whereby the account holding the GDR proceeds was given as security for the loan availed by Vintage from EURAM Bank for subscribing to the GDRs issued by the Company. Noticee No. 3, Anusuya Devi Agarwal, Noticee No. 4, Richa Agarwal, Noticee No.5, V. Manikandan, Noticee No. 6, T.I. Venkatramani, and Noticee No. 7, R. Sivaramakrishnan, who were directors of SIEL, participated in the board meeting dated April 07, 2010, which authorized Noticee No. 2 to sign the pledge agreement with EURAM bank allowing the Bank to use the account holding the GDR proceeds as security for the loan availed by Vintage. The SCN alleges that the Pledge Agreement was not disclosed to the stock exchanges, which allegedly made the investors believe that the GDR issue was fully subscribed by foreign investors.

6. Noticee No12, Highblue Sky Emerging Market Fund (HBSF), was registered as a sub-account of both Noticee No. 14, FII KBC Aldini Capital Limited, and Noticee No. 15, FII-Golden Cliff during the Investigation Period; Noticee No. 13, Aspire Emerging Fund (AEF), was registered as a sub-account of Noticee No. 15 during the Investigation Period. It was alleged in the SCN that AP connected entities were beneficial owners and directors of HBSF. It was further alleged in the SCN that AEF was also an AP connected entity.
7. FII sub-accounts AEF and HBSF received GDRs, converted them and sold the converted equity shares of the Company in the Indian market. It was therefore alleged that AEF and HBSF acted as conduits for AP and his connected entities, and sold the converted equity shares of Southern Ispat which had been acquired by Vintage (another alleged AP entity), free of cost, to the extent of USD 13.676 million, through the fraudulent scheme.
8. Noticee No. 14 and Noticee No. 15 did not make any investment in India except investments made by their sub-accounts, namely AEF and HBSF. It was therefore alleged in the SCN that FIIs - KBC Aldini and Golden Cliff - acted as conduits for Arun Panchariya and facilitated AEF and HBSF to sell the shares underlying the GDRs in the Indian stock exchanges.

The Scheme

9. SIEL came out with the two issuances of GDRs: 1.09 million issue amounting to \$10 million on August 10, 2010 (Issue I) and 2.946 million issue for an amount of \$ 19.978 million GDRs on June 10, 2011 (Issue II). The details of the said GDR issuances are provided hereunder:

Table – 1

No. of GDRs issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
Issue I- 10-Aug- 2010							
1.09 (at USD 9.17 each GDR)	10.00	DBS Bank	3,27,23,400	The Bank of New York Mellon, USA	Pan Asia Advisors Ltd.	EURAM Bank, Austria	Luxembourg Stock Exchange
Issue II-10-June- 2011							
2.946 (at USD 6.78 each GDR)	19.978	DBS Bank	8,83,99,980	The Bank of New York Mellon, USA	Pan Asia Advisors Ltd.	EURAM Bank, Austria	Luxembourg Stock Exchange

10. On April 07, 2010, the Board of Directors of SIEL passed a resolution resolving that a bank account be opened with any Branch of EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue of this Company. Further, at the said board meeting, the Board also authorised EURAM Bank to use the GDR proceeds as security against loan availed by Vintage.
11. Vintage entered into a loan agreement dated April 28, 2011 with EURAM Bank for a loan facility of USD 19.978 million “*[t]o provide funding enabling Vintage FZE to take down GDR issue of 2,946,666 Luxembourg public offering and may only be transferred to EURAM account nr. 580021, Southern Ispat and Energy Limited.*”

12. On April 28, 2011 itself, a Pledge Agreement was executed between SIEL and EURAM Bank. As per the Pledge Agreement, SEIL's designated account with EURAM Bank bearing no. 540012 would be held in pledge by EURAM Bank to secure the obligations of Vintage under the Loan Agreement.
13. The SCN alleges that the aforesaid Pledge Agreement was an integral part of the Loan Agreement entered between Vintage and EURAM Bank and vice versa and both were executed concurrently. The Pledge Agreement had the reference to the Loan Agreement entered between Vintage and EURAM Bank by virtue of which EURAM Bank provided the loan facility to Vintage for the purpose of subscribing to the GDRs of SIEL.
14. A total of USD 29.980 million was credited to the bank account opened by SIEL, with EURAM Bank bearing number 580021, to deposit the GDR proceeds. The entire amount credited to the said GDR proceeds account of the Company was from Vintage and it was, therefore, alleged that Vintage was the only subscriber for the two GDR issues made by the Company. Details of the amounts credited to the GDR proceeds account is given below:

Table – 2

Date of credit of funds	Credit amount (US\$)	Remarks
09/08/2010	10,002,452.60	GDR Issue-I
09/06/2011	19,978,395.48	GDR Issue-II
TOTAL	29,980,848.08	

15. Out of the GDR proceeds of USD 10 million from Issue I (along with the interest earned on money market instruments), following amounts have been transferred to various entities:

Table – 3

(Source: SIEL's EURAM bank a/c statement)

Date of transfer of funds	USD transferred from SIEL's EURAM Bank a/c to	Remarks
09/08/2010	2,500.00	Escrow Fees GDR Issue
15/09/2010	209,594.00	Payment to Pan Asia Management Ltd for Placement Fees
15/09/2010	130,000.00	Paid to Pan Asia Advisors Ltd.
15/09/2010	15,900.00	Paid to AL Jabha Legal Consulting FZC
15/09/2010	10,351.20	Paid to EURAM BANK
SUB TOTAL (A)	368,345.20	
15/09/2010	200,000.00	SIEL's bank account in India
17/09/2010	200,000.00	SIEL's bank account in India
28/09/2010	200,000.00	SIEL's bank account in India
01/10/2010	100,000.00	SIEL's bank account in India
10/11/2010	1000,000.00	SIEL's bank account in India
02/12/2010	500,000.00	SIEL's bank account in India
SUB TOTAL (B)	2,200,000.00	
13/12/2010	7,462,094.16	SIEL FZE
SUB TOTAL (C)	7,462,094.16	
GRAND TOTAL (A+B+C)	10,030,439.36	

16. It was, therefore, observed that out of the GDR proceeds of USD 10 million, SIEL transferred USD 2.20 million to its Indian Bank account, USD 7.46 million to SIEL FZE and USD 0.37 million as GDR Issue expenses. It was further observed from the loan account statement of Vintage that loan availed by Vintage for subscription of GDR Issue-I had been totally repaid.
17. Out of the GDR proceeds of USD 19.978 million from Issue II (along with the interest earned on money market instruments), following amounts have been transferred to various entities:

Table – 4

(Source: SIEL's EURAM bank a/c statement)

Date of transfer of funds	USD transferred from SIEL's EURAM Bank a/c to	Remarks
09/06/2011	2,500.00	Escrow Fees GDR Issue
21/06/2011	71,538.40	Pan Asia Advisors Ltd & EURAM BANK Asisa Ltd
SUB TOTAL (A)	74,038.40	
03/10/2011	49,000.00	SIEL FZE
13/02/2012	500,000.00	SIEL FZE
16/02/2012	750,000.00	SIEL FZE
24/02/2012	1,300,000.00	SIEL FZE
28/02/2012	900,000.00	SIEL FZE
06/03/2012	2,850,000.00	SIEL FZE
SUB TOTAL (B)	6,349,000.00	
27/08/2012	13,679,513.01	Realisation of Pledge by EURAM Bank
SUB TOTAL (C)	13,679,513.01	
GRAND TOTAL (A+B+C)	20,102,551.41	

18. It was, therefore, observed that out of the GDR proceeds of USD 19.978 million from the Issue II, SIEL had only transferred an amount of USD 6.35 million to itself or a related entity (SIEL FZE). It was further observed during investigation that of the total 19.978 million USD taken as loan by Vintage, it repaid only USD 6.313 million and defaulted on the repayment the remaining USD 13.679 million along with interest. Subsequent to the default by Vintage, EURAM Bank by invoking the Pledge Agreement, appropriated the funds in the GDR proceeds account of SIEL towards satisfaction of the amount owed by Vintage. Considering that Vintage was the only subscriber of the GDR issues and since the Company had ultimately serviced a substantial portion of the loan taken by Vintage for subscribing to Issue II, from the proceeds of the said issue, it was alleged that the GDRs, and the underlying equity shares in turn, to the tune of USD 13.679 million, were issued by SIEL to Vintage without any consideration, at the cost of shareholders of the Company.

19. It was further alleged in the SCN that even though consideration for a substantial portion of Issue II had not effectively passed from Vintage to SIEL, the GDRs issued were allowed to be converted into equity shares, and these shares were eventually sold in the Indian market. The cancellation of GDRs started from September 02, 2010 and went on till April 06, 2015.
20. Post cancellation of GDRs, Highblue Sky Emerging Market Fund and Aspire Emerging Fund received total 42,45,17,250 shares on conversion of 40,37,446GDRs. Summary of the cancellation of the GDRs is provided hereunder:

Table - 5

Date of conversion of GDRs	No. of GDRs converted	No. of remaining GDRs	No. of shares issued on conversion of GDRs	Entity becoming holder of equity shares post conversion of GDRs
17-Apr-12	1,80,000	30,22,666	54,00,000	HighBlueSky Emerging Market Fund
19-Mar-13	44,490	29,78,176	13,34,700	HighBlueSky Emerging Market Fund
9-Apr-13	1,00,000	28,78,176	30,00,000	HighBlueSky Emerging Market Fund
17-May-13	50,000	28,28,176	15,00,000	HighBlueSky Emerging Market Fund
16-Aug-13	44,500	27,83,676	13,35,000	HighBlueSky Emerging Market Fund
10-Dec-13	62,500	27,21,176	18,75,000	HighBlueSky Emerging Market Fund
24-Dec-13	86,957	26,34,219	26,08,710	HighBlueSky Emerging Market Fund
6-Jan-14	1,00,000	25,34,219	30,00,000	HighBlueSky Emerging Market Fund
10-Jan-14	2,00,000	23,34,219	60,00,000	HighBlueSky Emerging Market Fund
17-Jan-14	2,00,000	21,34,219	60,00,000	HighBlueSky Emerging Market Fund
24-Jan-14	1,81,547	19,52,672	54,46,410	HighBlueSky Emerging Market Fund
29-Jan-14	1,00,000	18,52,672	30,00,000	HighBlueSky Emerging Market Fund

9-Apr-14	1,76,991	16,75,681	53,09,730	HighBlueSky Emerging Market Fund
2-Jun-14	2,20,000	14,55,681	66,00,000	HighBlueSky Emerging Market Fund
3-Jul-14	1,00,000	13,55,681	30,00,000	HighBlueSky Emerging Market Fund
20-Aug-14	2,32,000	11,23,681	69,60,000	HighBlueSky Emerging Market Fund
22-Sep-14				
16-Oct-14	90,000	10,33,681	2,70,00,000	HighBlueSky Emerging Market Fund
5-Nov-14	1,47,272	8,86,409	4,41,81,600	Aspire Emerging Fund
15-Jan-15	2,60,000	6,26,409	7,80,00,000	HighBlueSky Emerging Market Fund
27-Jan-15	1,40,000	4,86,409	4,20,00,000	HighBlueSky Emerging Market Fund
20-Feb-15	1,40,000	3,46,409	4,20,00,000	HighBlueSky Emerging Market Fund
5-Mar-15	50,000	2,96,409	1,50,00,000	HighBlueSky Emerging Market Fund
23-Mar-15	1,70,000	1,26,409	5,10,00,000	Aspire Emerging Fund
24-Mar-15	90,000	36,409	2,70,00,000	HighBlueSky Emerging Market Fund
6-Apr-15	36,409	-	1,09,22,700	Aspire Emerging Fund
40,37,446		42,45,17,250		

21. As seen from the above table, HBSF (Noticee No.9) received, upon conversion of 28,48,985 GDRs received 29,33,69,550 equity shares of SIEL. It was further noted that HBSF sold a total of 33,32,96,980 shares for a value of Rs. 22.61 crore. It was also noted that HBSF continues to hold 3,18,22,577 shares of SIEL in its demat account. Similarly, AEF upon conversion of 3,53,681 GDRs received 10,61,04,300 equity shares of SIEL, out of which AEF sold a total of 5,95,74,218 shares for a value of Rs. 44.19 lakh. It is observed that ASPIRE continues to hold 4,65,30,082 shares of SIEL in its demat account.
22. In view of the above acts of the Noticees, the SCN has alleged that Noticee Nos. 2 to 15 have violated the following provisions of the SEBI Act, 1992 and SEBI PFUTP Regulations, 2003: Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 r /w regulations 3

(a), (b), (c), (d) & 4(1) of SEBI (PFUTP) Regulations, 2003. In addition to the above provisions, the Company (Noticee No. 1) has been alleged to have also violated Regulation 4(2) (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003.

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

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

Table-6

Noticee No.	Noticee	Date of Inspection of Documents	Inspection Conducted By
7	Mukesh Chauradiya	April 17, 2018	Mr. Devendra Dhanesha, Chartered Accountant
1 and 2	Southern Ispat and Energy Limited and Vivek Agarwal	September 17, 2018	Mr. Sumit Agarwal, Advocate and Ms. Prachi Jain, Advocate
3 and 4	Anusuya Devi Agarwal and Richa Agarwal	October 15, 2018	Ms. Vanessa Fernandes, Authorised Representative

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

Table- 7

Noticee No.	Name of the Noticee	Date of Hearing	Represented by
10	Mukesh Chauradiya	July 01, 2020	Mr. Devendra Dhanesha, Chartered Accountant
8	Arun Panchariya	October 20, 2020	Mr. P.R. Ramesh, Advocate
1	Southern Ispat and Energy Limited	March 24, 2021	Mr. Joby Mathew
2	Vivek Agarwal		
3	Anusuya Devi Agarwal		
4	Richa Agarwal		
13	Aspire Emerging Fund	May 05, 2021	Mr. Prakash Shah

25. Noticees Nos. 6, 7, 9, 11, and 14 did not the opportunity of personal hearing nor filed any reply in response to the SCN and Noticees Nos. 5 and 15 only filed written submissions. The details with respect to the service of the SCN and Hearing Notices to the other Noticees are provided hereunder:

Table- 8

Noticee No.	Name of the Noticee	Details
5	V Manikandan	The SCN was served by way of newspaper publication

9	Vintage FZE	▪ SCN was sent by Speed Post to the Noticee at the address: Aah-273, Al Ahmadi House, Jebel Ali Free Zone, Dubai. The same could not be delivered. ▪ Hearing Notice for the personal hearing scheduled for February 24, 2021 was served via email to the address of Arun Panchariya (arun.panchariya@me.com), the beneficial owner of the Noticee.
11	Pan Asia Advisors Ltd.	▪ SCN was sent by Speed Post to the Noticee at the address: 1st Floor Minster House, 42 Mincing Lane, London EC3R 7AE, UK. The same could not be delivered. ▪ Hearing Notice for the personal hearing scheduled for February 24, 2021 was served via email to the address of Arun Panchariya (arun.panchariya@me.com), the beneficial owner of the Noticee.

26. A summary of the replies as submitted by the Noticees is provided hereunder:

Noticee No. 1 and Noticee No.2

The Noticees in their replies have *inter alia* submitted the following:

- a. SEBI has not provided all the documents sought by the Noticee and has also not allowed the cross examination of the officials of the other Noticees who had a significant role to play in the issuance of the GDRs.
- b. The documents relied upon by SEBI are not admissible as evidence as they are neither original documents nor certified copies.

- c. The SCN was issued with a delay of 9 years from the date of the first issue of the GDRs. The delay has prejudiced the Noticee in filing an effective reply.
- d. The Company had not authorized any person to execute any pledge agreement with EURAM bank in respect of the proceeds of the GDR issues. It was specifically denied that the Company authorized Noticee No. 2 to sign the pledge agreement. The Company has never consented to the proceeds from the issues being used as a security for any loan.
- e. It was denied that Noticee No.2 had entered into a Pledge Agreement as alleged in the SCN. It was submitted that document relied upon by SEBI is a forged document.
- f. Euram bank has never informed the Company regarding creation of a pledge or regarding any restriction on the use of proceeds from the GDR issue.
- g. Non joiner of necessary parties. SEBI has not investigated the role of the overseas Depository Bank – BoNY Mellon
- h. PAN Asia Advisors acted as the Lead Managers of both the GDR issues; however, the Company was not concerned with the shareholding pattern of the Lead Manager. The company was not aware of the relationship between AP and EURAM Bank.
- i. SEBI has not considered an alternate factual narration that Vintage and EURAM Bank have entered into a conspiracy whereby a loan was granted to Vintage by EURAM Bank to subscribe to the GDR issue without any security and that the purported Pledge Agreement is a forged document created only to mislead the stakeholders of the Bank and the regulators in Austria
- j. Noticee is not concerned with the identity of the allottees or holders of the GDR. Only the identity of BoNY Mellon as holder of the Master GDR was visible to the Company.

- k. The Proceeds of the Issues were transferred to a wholly owned subsidiary of the Company – SIEL FZE without any restriction showing that there was no pledge or other encumbrance created on the Company account with EURAM Bank. Further, the details of the utilization of the proceeds of the GDR have been duly disclosed in the audited financial statements of the Company.
- l. The company is not concerned with the conversion of the GDRs into the equity shares of the Company. The Company denied the allegations that it had colluded with FII/sub-accounts to structure or give effect to a fraudulent scheme as alleged in the SCN.

Noticee No. 3 (Anusuya Devi Agarwal)

Apart from adopting the replies submitted by Noticee No.1 and Noticee No. 2, the following additional submissions were made:

- a. Noticee is a senior citizen who has survived a major cardiac arrest and acute stroke and as a result is bedridden. The Noticee is in no position to search for and review documents related to a transaction which was entered into a decade ago.
- b. The Noticee resigned as a director of the Company w.e.f December 27, 2010 and, therefore, did not attend the meeting of the Board of the Directors held on June 10, 2011 in respect of Issue -II.
- c. It was also contended on behalf of the Noticee that the Minutes of the Board Meeting held on April 07, 2010, which was sent to BSE by the Company does not contain the resolution authorizing Notice No.2 to pledge of the proceeds of the GDR issue with EURAM Bank. On the basis of the same, it was submitted that the pledging of the securities was undertaken without the knowledge and consent of the Noticee.

Noticee No.4 (Richa Agarwal)

Apart from adopting the replies submitted by Noticee No.1 and Noticee No. 2, the following additional submissions were made:

- a. The Noticee resigned as a director of the Company w.e.f December 27, 2010 and, therefore, did not attend the meeting of the Board of the Directors held on June 10, 2011 in respect of Issue -II.
- b. Even as per the SCN, the role of the Noticee is limited to attending the meeting of the Board of the Directors held on April 07, 2010 in respect of Issue I.
- c. It was also contended on behalf of the Noticee that the Minutes of the Board Meeting held on April 07, 2010, which was sent to BSE by the Company does not contain the resolution authorizing Notice No.2 to pledge of the proceeds of the GDR issue with EURAM Bank. On the basis of the same, it was submitted that the pledging of the securities was undertaken without the knowledge and consent of the Noticee.

Noticee No. 8 (Arun Panchariya)

- a. In his replies, Arun Panchariya has stated that he has been a non-resident Indian for the last more than 20 years, has certifications in finance and has been in the financial services industry in the Middle East and Europe.
- b. The Noticee has challenged the jurisdiction of SEBI to initiate the present proceedings.
- c. SEBI has no jurisdiction to initiate action against natural persons resident outside India as the scope of the SEBI Act extends to the whole of India only, and not outside India;

- d. the Noticee was never registered with SEBI or the RBI, or any other regulatory agency in India, and he never had a place of business in India and has not carried out any activities within India;
- e. Vintage FZE, which was a limited liability company incorporated under the relevant laws of the UAE, was established by him;
- f. the activities of Vintage, was carried out wholly outside India; and
- g. the subscription by Vintage of the GDRs issued by SIEL was a purely commercial arrangement outside India, under the relevant laws, and SEBI has no jurisdiction to question this arrangement under the provisions of the SEBI Act and PFUTP Regulations.
- h. The said Noticee has also denied all the allegations, charges made against him in the Show Cause Notices. In this regard, the Noticee has submitted that —
 - A. the SCN is vague as it does not disclose the kind of measures SEBI is contemplating to take after 10 years, and the Noticee is completely in the dark about what exactly SEBI has in mind;
 - B. There is no justification to issue the SCN in the name of the Noticee, in his personal capacity, ignoring the existence of corporate entities and transactions executed by way of legal and binding agreements between such entities;
 - C. the legal entities are incorporated under respective foreign jurisdictions and many of them are also regulated by the respective financial market regulator of their respective jurisdictions, which shows that these legal entities are real,

and there is no case for looking through them and arraigning the Noticee in his personal capacity;

- D. SEBI has no powers to lift the corporate veil and hold the Noticee as a beneficiary;
- E. the entities whose veil have been lifted are not entities incorporated in India, and hence the assumption of powers by the SEBI to lift the corporate veil and issue a SCN to the Noticee in his personal capacity is beyond the scope of the powers of SEBI under the SEBI Act;
- F. numerous other companies have come out with GDR issues which followed the market practices allegedly now found to be illegitimate by SEBI in the year 2011;
- G. the investigation carried out by SEBI has been highly prejudiced and biased;
- H. The allegations in the SCNs are exclusively based on Xerox/Photostat copy of documents, the original of which are not available with SEBI, so the conditions precedent laid down in Section 63 and 65(a) of the Evidence Act, 1872 are not satisfied, and as such, the photostat copy of the documents relied upon by SEBI cannot be and should not be admissible as evidence in the present proceedings;
- I. SEBI has passed various orders in which no action has been taken against the investors like Clifford Partners, Solec Company Limited, Seviron Company Limited, Fusion Investment Ltd etc., so placing reliance on the doctrine of “issue estoppel”, the Noticee must be granted similar relief and the charges against it be dropped as per the previous decisions of the Hon'ble

Whole Time Member, covering essentially the same facts and addressing the same issues;

- J. The Noticee was a director in Vintage FZE till 2007, and has already resigned from it;
- K. the decisions of Vintage FZE including Loan default was taken on the circumstances in the best interest of the Company by its management;
- L. Further, in relation to the other FIIs/sub-accounts, there is no document or evidence provided to support the allegation that they were connected to or controlled by the Noticee, except showing few connections which were totally independent business relationships; and
- M. 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.

Noticee No. 10 (Mukesh Chauradiya)

The Noticee in his replies has *inter alia* submitted the following:

- a. the Implementing Regulations No. 1/92 (Pursuant to Law No. 9 of 1992) of Free Zone Enterprise in JAFZA, under which Vintage FZE was registered, required that there shall be a single owner, and it was Arun Panchariya who was the legal and beneficial owner of Vintage;
- b. in the Shareholder's list as on September 30, 2009/2010/2011/2012/2013 in relation to Ramsai Investment Holding Private Limited (Vintage FZE Investment Holding Private Limited), it can be clearly seen that Arun Panchariya held 9,998/18,59,013 Equity Shares in Vintage;

- 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 SIEL 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. in respect of the loan agreement signed by the Noticee, it has been stated by the Noticee that he signed the document, on instructions from Arun Panchariya, owing to the conflict of interest that existed as Arun Panchariya was the Director and President of Euram Bank Asia., and he also held a stake in Euram Bank Asia;

- k. the title “Managing Director” was pre-printed or part of the proforma of the Bank, and it was by oversight continued to be so;
- l. the loan availed by Vintage from Euram Bank was for the sole purpose of subscribing to the GDR of SIEL, and the same was applied for the purposes for which it was obtained;
- m. 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;
- n. The Noticee was not aware of any arrangement that Arun Panchariya may have had with SIEL in arranging the loan and its repayment, and that the Noticee had no role to play in the said transaction;
- o. 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
- p. 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.

Noticee No. 13 (Aspire Emerging Fund)

The adverse findings against the Noticee is mainly on the suspicion that the Noticee is connected with AP. The said suspicion is, however, factually incorrect and totally erroneous.

- a. The Noticee is registered with SEBI as an FPI from 2017 onwards and therefore proceedings under section 11B ought not to have been initiated against it.
- b. Noticee is an investor in the Indian securities market and has holding in around 240 scrips (Non GDR)

- c. Noticee was acquired by a new set of promoters in 2013. Even though at the time of acquisition, the portfolio of the Noticee consisted mainly of GDR issues, post acquisition the Noticee has mainly dealt in the secondary market and in derivatives.
- d. The Noticees dealing in the GDR of SIEL was in normal and ordinary course of business.
- e. The allegations made in the SCN regarding the connections with the Co-Noticees is farfetched.
- f. It is stated in para 5 of the SCN that the total number of shares sold by the Noticee is 41,79,14,598. However, the SCN fails to take in to consideration the stock split in the shares of the company. If the share split is taken into consideration, the quantum of shares sold by the Noticees is miniscule.
- g. It was further submitted that the quantum of shares sold by the Noticee is only 0.90% of the total shares sold by the three sub-accounts.
- h. No adverse findings have been made in the SCN against IFCF even though they had converted a substantially larger number of GDR of the Company into underlying shares.
- i. Noticee has not made any unlawful gains or averted any loss w.r.t to their dealing in the shares/GDR of SIEL. It was submitted that the Noticee in fact suffered losses on their trades in the scrip of the Company.
- j. Noticees are as on date still holding 4,65,30,082 shares of the SIEL.

Noticee No. 15 (Golden Cliff)

- a. Noticee is limited liability company incorporated in the Republic of Mauritius and was registered with SEBI as an FII until February 28, 2017.

- b. Noticee was not aware of loan agreement or repayment thereof as alleged in the SCN
- c. As regards, the allegation in the SCN that the Noticee did not make investment in India other than its through its sub-accounts investments in GDR's issued by Indian companies, it was submitted that Noticee holds a GBC1 CIS Manager License and was holding FII investment manager license category II and was non investing entity promoted by NRI. It was also stated that their sub-accounts have made investments in the both the primary and secondary markets in India.
- d. It was submitted that just because Mr. Anant Sharma and Arun Panchariya were directors in one Indian Company, does not make them connected.
- e. As regards, the allegation that Mr. Anant Sharma is a director in Alka India whose promoter is Satish Panchariya (brother of Arun Panchariya), it was submitted that Mr. Anant Sharma had resigned from Alka India on March 28, 2016.
- f. Regarding the allegation that Mr. Anant Sharma worked with Vintage in the past, it was submitted that the Noticee was not concerned with the past employment of Mr. Anant Sharma.
- g. It was also submitted by the Noticee that SEBI should appreciate the fact that Mr. Anant Sharma had suo moto approached SEBI to give his statement and assist with the investigation.
- h. As regards the allegation in the SCN regarding the connection between Reema Shetty and Arun Panchariya, it was stated that the Ms. Shetty was the earlier beneficial owner of the Company.

Noticee No. 6 (T.I Venkataramani)

Noticee No. 1 vide letter dated June 29, 2018, informed SEBI that the Noticee had expired on March 02, 2014. A copy of the death certificate of T.I Venkataramani was also forwarded by the Company.

Noticee No. 7 (R Sivaramakrishnan)

- a. Noticee submitted that he was a chartered accountant working as a full time consultant with an eye hospital by name Eye Foundation Ltd. since July 25, 2008.
- b. It was further submitted that in 2009, Noticee No.5 (Mr. Manikandan) who was then a director in SIEL voluntarily offered to help the Noticee in getting professional assignments from Noticee No.1. Noticee No.5 also requested the Noticee to join the Board of SIEL.
- c. Noticee submitted that he had never met Noticee No. 1 or any of the other directors of the Company other than Noticee No. 5 and never attended any meeting of the Company.
- d. Noticee got his DIN only on April 27, 2010 and joined SIEL's Board as an independent director. Noticee only served on the Board for 9 months having resigned from the Board w.e.f February 01, 2011.
- e. Noticee also submitted that he was not a party to any of the irregularities committed by the MD and other directors of the Company.

KBC Aldini Capital Limited

- a. The Noticee replied vide email dated June 12, 2018 wherein it denied that it was in any way connected to Arun Panchariya.
- b. It was submitted that the Noticee was a Dubai based Investment Bank regulated by Dubai Financial Services Authority and was also registered with SEBI as an FII.

- c. Noticee further submitted that in 2009-10 they had set up a Sub Fund in Mauritius by the name KBC Aldini Capital Ltd. Mauritius wherein the main fund (FII) was KBC Aldini Capital Limited Dubai. However, due to the disarray in name KBC – Dubai and KBC-Mauritius, Noticee decided to cease all relationship and ties with KBC Mauritius.
- d. Subsequent to this, Sub Account was taken over by another management and the name was changed to Highblue Sky Emerging Fund. Noticee had ceased its dealing with HBSF and the sub-account was taken over by FII Vaibhav Investments Limited.
- e. Noticee is not related to Arun Panchariya or HBSF.
- f. The allegation in the SCN that Mr. Daniel Baumslag, who is a director of the Noticee, is connected KBC Aldini Mauritius is incorrect.

Provisions of the securities laws alleged to have been violated by the Noticees

1. SEBI Act

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

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

“12A. No person shall directly or indirectly—

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

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

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

2. SEBI (PFUTP) Regulations, 2003

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

3. Prohibition of certain dealings in securities

“No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

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

Regulation 4 (1) and 4(2)

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

(a) ... ;

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

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

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

Issues

I. Whether SIEL (Noticee No.1) by allowing the GDR proceeds to be used as security for a loan that was availed by Vintage (Noticee No. 9) towards the subscription of GDRs issued by SIEL, and not disclosing the same to the stock exchanges, had devised a scheme with Vintage to defraud the investors ?

II. Whether the Directors of SIEL, namely, Vivek Agarwal (Noticee No.2), Anusuya Devi Agarwal (Noticee No. 3), Richa Agarwal (Noticee No. 4), V. Manikandan (Noticee No. 5), and T.I Venkatramani (Noticee No. 6), who

attended the Board Meeting which authorized SIEL to sign the pledge agreement with EURAM Bank authorizing the Bank to use the GDR proceeds as security in connection with the loan acted as party to the fraudulent scheme, and whether the Directors of Vintage namely, Arun Panchariya (Noticee No. 9) and Mukesh Chauradiya (Noticee No. 10) involved in the loan acted as party to the fraudulent scheme ?

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

IV. Whether the sub-accounts namely, Highblue Sky Emerging Market Fund (Noticee No. 12) and Aspire Emerging Fund (Noticee No. 13), and the FIIs namely, KBC Aldini Capital Limited (Noticee No. 14) and Golden Cliff (Noticee No. 15) through whom the sub-accounts traded in the Indian securities market account acted pursuant to the fraudulent scheme?

V. Whether Noticee No. 8, Noticee No. 9, Noticee No. 10 and Noticee No. 11 should be directed to disgorge the illegal gains?

VI. Whether SIEL (Noticee No. 1) should be directed to bring back the money?

Consideration and findings –

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

Jurisdiction of SEBI challenged as GDR issue done outside India

28. Noticee No. 8, Arun Panchariya has raised an objection that since the GDR issue process took place outside the territorial boundaries of India, SEBI has no jurisdiction in the

matter. In this regard, it is stated that the issue of SEBI's jurisdiction w.r.t to similar issuances of GDR was settled by the Hon'ble Supreme Court vide its judgment dated July 06, 2015 in the matter of ***Securities and Exchange Board of India V. Pan Asia Advisors Ltd and Another in Civil Appeal No. 10560/2013.*** The case came before the Hon'ble Supreme Court pursuant to an appeal by SEBI against the order dated September 30, 2013, passed by the Hon'ble Securities Appellate Tribunal ("SAT"), Mumbai, in Appeal No.126 of 2013. The Hon'ble SAT by way of its above mentioned order had set aside SEBI's Order dated June 20, 2013, whereby SEBI had debarred Pan Asia Advisors and Arun Panchariya for a period of ten years from dealing i 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 v. Income Tax Officer (2011) 4 SCC 36***, where it had been held that a law may proceed against an extra-territorial aspect, in case it had "*got a cause and something in India or related to India and Indians in terms of impact, effect of consequence*". The court also placed reliance on the effects doctrine; which meant that in case the allegations of manipulation were true, there would be adverse consequences in the Indian securities market. In view of above-mentioned reasons, the Hon'ble Supreme Court concluded that

any fraudulent activity impinging upon the interests of Indian investors would squarely fall within the jurisdiction of SEBI. Thus, it was held by the Court that SEBI had the powers to initiate action against Pan Asia Advisors and Arun Panchariya, even though they were based outside India, since their actions impinged upon the interests of Indian investors.

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

Proceedings not maintainable owing to delay

30. With respect to the submission of Noticees that there has been delay in the proceedings, it is seen from the record that many of the documents pertaining to the matter was obtained from the Financial Market Authority, Austria on January 22, 2016 and Financial Services Commission, Mauritius on September 15, 2016. Consequent to the receipt of documents as above, investigation was initiated into the GDR issue of SIEL and the said investigation was completed in the year 2017. After the completion of investigation in the matter, a Show-Cause Notice dated May 31, 2018 was issued to the Noticees. Also, as many of the Noticees were based out of India the service of the said Show-Cause Notices involved processes which required more time. Once the said Show-Cause Notices were served on all the Noticees, personal hearings were granted to the Noticees who had sought for the same.
31. In this connection, it is worth mentioning that in another GDR matter namely ***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 as follow:

“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.”

(Emphasis supplied)

32. Further, in the matter of ***Jindal Cotex Limited 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 acknowledged the complexity involved in the entire manipulative GDR issue and appreciated the time taken by SEBI to gain information relating to the various entities from multiple jurisdictions.

33. In view of the fact that the Noticee has not cited how any prejudice has been caused by the delay, I do not find that the ‘delay’ can itself constitute a ground for disposing of the SCN without any adjudication.

Specificity of Violations Alleged in the SCN

34. Noticees have 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 Noticees are 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 it 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 its response thereto. It is, therefore, incumbent on the part of the Noticee to explain its position with support of relevant evidence in response to various allegations made against it 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 its 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(1), 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 crystallized and formulated before the adjudication of issues involved.

Investigation Report/ Documents Not Provided by SEBI:

35. The Noticees have submitted that a copy of the Investigation Report/ other documents on the basis of which the SCN was issued, was not provided to them despite the request made by them. From the SCN and Annexures, I find that all the relevant and relied upon documents in support of the SCN and also the findings of the investigation captured in the SCN have been forwarded to the Noticees. 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.

36. In this regard, it would be appropriate to refer to the *Order of Hon'ble SAT dated February 12, 2020 in Shruti Vora vs. SEBI (Appeal No. 28 of 2020)* wherein, it was observed that: “*The contention that the appellant is entitled for copies of all the documents in possession of the AO which has not been relied upon at the preliminary stage when the AO has not formed any opinion as to whether any inquiry at all is required to be held cannot be accepted. A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by*

the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon.”

37. In view of the aforesaid, I find that the contention of the Noticee that SEBI has not provided complete documents is untenable. Accordingly, I now proceed to deal with the other issues in the matter.

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

38. The SCN has alleged that issuance of GDRs by SIEL was fraudulent as the Company had entered into a Pledge Agreement with EURAM Bank for a loan that had been availed by Vintage towards the subscription of GDRs issued by the Company. The Pledge Agreement was not disclosed to the stock exchanges which, the SCN alleges, made the investors believe that the said GDR issue was genuinely subscribed by the foreign investors.
39. So, to consider the allegation made in the SCN, it is relevant to place a chronology of the events associated with the GDR issues. Further, as Vintage has paid back the loan availed for subscribing to Issue 1, only the chronology of events leading up to Issue II is being looked at:-
- a. ***April 07, 2010*** – The Board of Directors of SIEL passed a resolution whereby it resolved to open an account with EURAM Bank for the purpose of receiving subscription money in respect of the Company’s GDR issue. The excerpts from the said Board Resolution are reproduced hereunder:

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

“RESOLVED FURTHER THAT Shri Vivek Agarwal, Chairman and Managing Director of the Company, be and is hereby severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.

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

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

- b. ***April 28, 2011*** – Vintage entered into a Loan Agreement with EURAM Bank for availing a loan facility of USD 19.978 million for subscribing to the Issue II of GDRs by SIEL.
- c. ***April 28, 2011*** – SIEL entered into a Pledge Agreement with EURAM Bank, whereby the GDR proceeds received by the Company from Vintage was pledged as collateral for the loan availed by Vintage from EURAM Bank.
- d. ***June 09, 2011*** – In the Account maintained by SIEL with EURAM Bank to receive the proceeds of the GDR issue, a deposit of USD 19,978,395.48 was made. The said amount was deposited by Vintage towards subscription of 100% of Issue II.
- e. ***August 08, 2012*** – A letter was issued by Noticee No.2 (Vivek Agarwal) to EURAM Bank with respect to the deposit account maintained by SIEL with it. By way of the said letter, Noticee No.2 (Vivek Agarwal) on behalf of SIEL confirmed that EURAM

Bank had the right to set off the outstanding loan of Vintage, amounting to USD 13.665 million, against the pledged cash deposit lying in its account with the Bank.

- f. **August 27, 2012** - In line with the approval granted by SIEL, EURAM Bank adjusted USD 13.679 million (including interest on loan amount) on August 27, 2012

40. The above chronology brings out that there was a clear understanding between SIEL and Vintage (which later became Alta Vista International FZE) to bring about this fraudulent scheme. In this regard, specific mention is made of the Loan Agreement entered into by Vintage with EURAM Bank on April 28, 2011, for availing the loan facility. It is pertinent to note that the loan as per the said agreement was granted to Vintage on the pledge of the following assets :

“Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:

2.1.1 all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the “Pledged Securities”) and the balance of funds up to the amount USD 19,978,395.48 existing from time to time at present or hereafter on the securities account(s) no. 580021 held with the Bank (hereinafter referred to as the “Pledged Securities Account”) and all amounts credited at any particular time therein.

2.1.2 all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 580021 kept by the Bank (hereinafter referred to as the “Pledged Time Deposit Account”) and all amounts credited at any particular time therein....”

41. It is further noted that it was stated that the Pledge Agreement which was referred to in the Loan Agreement between Vintage and EURAM bank, which is an integral part of the Loan Agreement, is the Pledge Agreement entered between SIEL and EURAM Bank on the same date as the date on which the Loan Agreement was signed.

42. The Pledge Agreement, it is noted, further provides in its preamble as under:
- "By Loan Agreement K270411-001 (hereinafter referred to as the "Loan Agreement") dated 28 April 2011 the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates (the "Borrower") in the amount of USD 19,978,395.48."*
43. Further, as regards the realization of the Pledge, the agreement provides as under,-
- "In the case that the Borrower fails to make payment on any due amount, or defaults in accordance with the Loan Agreement, the Pledgor herewith grants its express consent and the Bank is entitled to apply the funds in the Pledged Account to settle the Obligations. In such case the Bank shall transfer the funds on the Pledged Accounts, even repeatedly, to an account specified by the Bank."*
44. 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 the Pledge Agreement to allow the said deposit account to be used as security for all the obligations of Vintage under the Loan Agreement, was a pre-condition for the grant of the loan to Vintage. The simultaneous execution of both the Loan Agreement and the Pledge Agreement indicates that SIEL was itself financing the subscription of its GDR issue. Once the loan facility was activated, an amount of USD 19,978,395.48 was received from Vintage on June 09, 2011 in the Escrow Account maintained by SIEL with EURAM Bank for receiving the GDR proceeds. However, as already mentioned, on August 08, 2012, a letter was issued by SIEL to EURAM Bank confirming to EURAM Bank that it had the right to set off the pledged cash deposit with the outstanding loan of Vintage amounting to USD 13.679 million. This effectively establishes that a substantial part of the consideration received from Vintage for subscribing to Issue II was returned to Vintage, and, therefore, Vintage came to possess the substantial portion of Issue II without paying any consideration.

45. I note that SIEL in its reply has stated that it had not authorized any person to sign any pledge agreement on its behalf and has disputed the genuineness of both the pledge agreement and the copies of the board resolution annexed with the SCN wherein Board of Directors of the Company had authorized Noticee No. 2 to enter into a Pledge Agreement with EURAM Bank. In support of this contention, the Company submitted that the copy of the minutes of the Board Meeting held on April 07, 2010 which was disclosed on the BSE website, did not have the resolution authorizing pledging of the proceeds from the issue. I note that the copy of the minutes of the said Board Meeting filed with the stock exchange does not contain the resolution authorizing Noticee No. 2 to execute a pledge agreement with EURAM Bank. It was, therefore, claimed by the Company that the purported Pledge Agreement was a forged document. It was also claimed by the Company that the entire proceeds of Issue II was received by the Company or related entities and no amount was adjusted or paid out towards the claims of EURAM bank over Vintage on account of the loan default.
46. I am, however, unable to accept the above contention made on behalf of the Company for the following reasons. First of all, the Company has failed to provide any documentary evidence to support its claim that the entire proceeds from Issue II was received by the Company or even related entities. I note that as the proceeds would have moved only through formal banking channels, it would not have been difficult for the Company to provide the details regarding how the proceeds from Issue II were actually received by the Company and was not invoked by EURAM Bank pursuant to the default by Vintage. Secondly, it is noted from the bank statements that, even for the funds that were transferred to its accounts, the same were tied to loan repayments by Vintage, as every time Vintage made a repayment, a similar amount would be transferred out by the Company.

47. The failure of the Company to provide any documentary evidence to support its claim that the entire proceeds of Issue II was received by the Company and manner in which the transfer of funds by the company was contingent on the repayments made by Vintage, leads me to conclude that the allegations in the SCN that USD 13.665 million out of the proceeds of Issue II was used for settling the claim of EURAM bank against Vintage on account of default in repaying the loan availing for subscribing to Issue II, as borne out from the statement of account opened by the Company with EURAM Bank, stands established.
48. Further, as regards, the contention of Company that the minutes of the Board Meeting which was disclosed on BSE did not have the resolution authorizing Noticee No. 2 to sign the Pledge Agreement, I note that this plea only further strengthens the allegation in the SCN that the Company had failed to disclose the existence of the Pledge Agreement to the investors. It transpires that there were two set of board resolutions: one which was uploaded on BSE which did not contain the resolution authorizing Noticee No. 2 to sign the Pledge Agreement; and a second one which was annexed to the Pledge Agreement which contained the said authorization. I note that Company has contended in its reply that it was not involved in creating the forged document which was annexed to the Pledge Agreement. I, however, note that money lying in the bank account of the Company with EURAM Bank was set off by the Bank against the claim on account of the loan default by Vintage which would not have been possible without the express authorization of the Company allowing such settlement. Also, as stated in the preceding paragraph the ability of the Company to transfer funds to its own accounts was tied to the repayment of the loan by Vintage. Further, the Company has neither been able to show that the entire proceeds from Issue II has been transferred to its bank accounts nor has it been able to provide any documents to support its claim that proceeds from its account were not

utilized for satisfying the claims against Vintage as borne out from the statement of its account maintained with EURAM. In view of the same, the claim that the Company was not involved or associated in creating the second set of the Board Minutes has to fail.

49. In view of the above, I note that SIEL in connivance with Vintage devised a fraudulent scheme whereby Vintage received substantial portion of GDR Issue II without paying any consideration, at the cost of shareholders / investors of SIEL. Accordingly, I find that SIEL and Vintage have clearly violated Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) & 4(1) of SEBI (PFUTP) Regulations, 2003.
50. Additionally, it has been alleged that SIEL 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 SIEL and EURAM Bank by virtue of which EURAM Bank provided a credit facility to Vintage for the purpose of subscribing to the GDRs of SIEL. So, the GDR issue would not have been subscribed in its entirety had the Company not given security towards the loan taken by Vintage through the Loan Agreement. These should have been reported to the Stock Exchanges. However, the Company reported to the stock exchange (BSE) on June 10, 2011 that “...the Board of Directors of the Company at its meeting held on June 10, 2011, has passed necessary resolution for the GDR issue. 1. The Board has approved the allotment of 88,399,980 equity shares of Rs. 10/- each underlying 2,946,666 GDR's issued in the name of Depository (The Bank of New York Mellon) and issuance of share Certificate thereof. 2. The Board has approved the offering circular filed at Luxembourg Stock Exchange..”
51. The Company making a corporate announcement that the Company had approved the allotment of 88,399,980 equity shares of Rs.10 each underlying 2,946,666 GDRs, without disclosing the pledge/loan arrangement that it had with regard to the subscription of its

GDR issue, might have made the investors believe that the said GDR issue was genuinely subscribed. Further, as stated in paragraph 48 above, the Company had uploaded a copy of the minutes of the Board Meeting which did not have the resolution authorizing Noticee to sign the agreement. Therefore, such publication/disclosure of information, as seen above, was misleading and contained distorted and false information which induced investors to deal in the shares of SIEL. Accordingly, I find that SIEL has violated Regulation 4(2) (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003.

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

A. Directors of SIEL

52. The Annual Report of the Company for the financial year 2010-11 and 2011-12 states that during the said period there were a total of 11 directors in the Company. The names and details of the directors who attended the meeting of the Board of Directors on April 07, 2010, approving the pledge of GDR proceeds are provided hereunder :

Table -9

Name of Directors	Category of Directors
Vivek Agarwal	Executive Director
Richa Agarwal	Director (resigned w.e.f 27.12.2010)
Anusuya Devi Agarwal	Director (resigned w.e.f 27.12.2010)

R. Sivaramakrishnan	Non-Executive Director (resigned w.e.f 14.01.2011)
V Manikandan	Independent Director
Thiagara Iyer Venkatramani	Independent Director

53. I now proceed to examine the liability of the individual directors of the Company mentioned in Table 9.

Vivek Agarwal

54. During the investigation period, as seen from the Annual Report, Vivek Agarwal was the Managing Director of the Company. Further, by way of the Board Resolution dated April 07, 2010, Vivek Agarwal was authorized to sign, execute any application, agreement, escrow agreement, document, undertaking etc. as may be required by the Bank, i.e. EURAM Bank. By way of the said Board Resolution, the Noticee was also authorized to draw cheques and generally to take all such steps and do all such things as may be required from time to time on behalf of the company in relation to the GDR issues.
55. It is further noted that the Pledge Agreement entered into by SIEL with EURAM Bank, whereby a deposit account of SIEL maintained with EURAM Bank was given as security for all the obligations of Vintage under the Loan Agreement, had been signed by Vivek Agarwal. The letter from SIEL confirming that EURAM Bank had the right to set off the pledged cash deposit with the outstanding loan of Vintage amounting to USD 13.678 million was also signed by Vivek Agarwal.
56. Noticee No. 2 in his reply has submitted that he had never entered into the Pledge Agreement alleged to have been executed between the Company and EURAM Bank.

However, for reason already set out in paragraph 48 of this order, the contention raised by the Company and Noticee no. 1 that the Pledge Agreement was a forged document created without their knowledge cannot be accepted.

57. In view of the same, I find that Noticee No. 2, who was actively involved in the day-to-day activities of the Company, and had entered into the Pledge Agreement on behalf of the Company has violated the provisions of Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

Noticee No. 3, Noticee No. 4, Noticee No. 5, Noticee No. 6 and Noticee No. 7

58. I note from the replies made of behalf of Noticee No. 3 and Noticee No. 4 that they had not attended the Board Meeting held on June 10, 2011 which had taken the decision in respect of allotting the GDRs in respect of Issue II.
59. I also note that the said Noticees have contended that the Minutes of the Board Meeting held on April 07, 2010, which was sent to BSE by the Company does not contain the resolution authorizing Notice No. 2 to pledge the proceeds of the GDR issue with EURAM Bank. In view of the same, it was argued that the pledging of the securities was undertaken without the knowledge and consent of the Noticees.
60. I note that Noticee No. 5 has not filed any reply and Noticee No. 7 has replied stating that he was not in any way involved in the day to day management of the Company and he had also resigned from the Company w.e.f February 14, 2011. Noticee No. 6 expired during the course of the proceedings. It is further noted that Noticee Nos. 5, 6 and 7 were independent directors.

61. I note that the crux of the arguments made on behalf of these Noticees No. 3, 4 and 7 is they were not aware of the existence of the pledge agreements, and they had also resigned prior to the board meeting held on June 10, 2011 which had taken the decision in respect of allotting the GDRs in respect of Issue II. I, however, note that even though the said Noticees were not part of the Board Meeting in which the decision to allot the GDRs in respect of Issue II was taken, they were part of the Board Meeting held on April 07, 2010, wherein the decision to proceed with the issue of GDRs, including Issue II, was taken. However, considering that they had resigned prior to Issue II, the liability for monitoring the use of proceeds from the said issue and responsibility for ensuring the transfer of the said proceeds to the bank account of the company in India cannot be latched on to them. In view of the same, considering that they had resigned from the Company prior to Issue II, I am inclined to take a lenient towards Noticees No. 3, 4 and 7.
62. In respect of Noticee No. 5, I note that the said Noticee has neither filed any reply nor availed the opportunity of personal hearing, and in view of the same, I do not have the benefit of considering his response prior to arriving at a finding. However, from the material available on record, I note that Noticee No. 5 not just continued to be an independent director of the Company throughout this period, he was also the Chairman of the Audit Committee of the Company. In view of the same, I note that he had a responsibility in monitoring the end use of funds that were raised by issue of the GDRs and also ensuring their transfer to the accounts of the Company in India. In view of the same, considering the long association of Noticee No. 5 with the Company, wherein he has been a director from April 23, 2007, participation in the Board Meeting that sanctioned the issue of GDRs and his role as the Chairman of the Audit Committee of the Company, I am of the view that the said Noticee cannot escape liability for actions of the Company with respect to the issue of GDRs.

63. Based on the facts brought out in paragraphs 58 - 61, I hold that the charges in the SCN against Noticee No. 3, Noticee No. 4 and Noticee No. 7 do not stand established. However, for reasons elaborated in the paragraph 62, I find that Noticee No. 5 has violated the provisions of Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.
64. I note that Noticee No. 6 had expired during the course of the proceeding and, therefore, the proceeding against him stands abated.

B. Directors of Vintage

Arun Panchariya

65. It has been stated in the SCN that Arun Panchariya was beneficial owner and Managing Director of Vintage FZE as on June 06, 2007 and June 07, 2010 respectively. It has also been stated in the SCN that Alkarni Holdings Limited was the shareholder of Vintage as on December 28, 2010, and Arun Panchariya was the sole director of Alkarni as on April 21, 2014.
66. Arun Panchariya in his submissions/replies submitted to SEBI has refuted the allegations made in the SCN. The same have been captured in the previous part of this order, and accordingly are not being reproduced here. It shall, however, be relevant to briefly mention herein the fundamental grounds of defense taken by the said Noticee in respect of the allegations made in the SCN –
- a. SEBI does not have the jurisdiction to initiate action against natural persons resident outside India;
 - b. other companies have come out with GDR issues which followed the market practices allegedly now found to be illegitimate by SEBI;

- c. the Noticee was a director in Vintage FZE only till 2007; and
- d. decisions of Vintage FZE including Loan default was taken on the circumstances in the best interest of the Company by its management.

67. The question of jurisdiction of SEBI has already been dealt with in the previous part of this Order. With regards to the merits of the case, it is seen from a letter dated December 28, 2010, issued by the Jebel Ali Free Zone Authority, that Vintage was Free Zone Establishment and its sole shareholder was Alkarni Holding Ltd. Further, it is seen from a Certificate of Incumbency of Alkarni Holding Ltd. dated April 21, 2014, issued by the Overseas Management Company Trust (BVI) Ltd., that the only shareholder in the said company was Arun Panchariya, who held 50,000 shares. Arun Panchariya was also the sole director of the said company. Also, reference is made to the Administrative Fine Statement passed by the Dubai Financial Services Authority against Arun Panchariya, by way of which, a fine of USD 12,000 was imposed on him. The said Administrative Fine Statement notes that on February 19, 2009 Arun Panchariya had disclosed that he was controller/director/partner in three firms, including Vintage FZE. So, it is clear that the sole beneficial owner of Vintage was Arun Panchariya, who held complete shareholding of Vintage through Alkarni Holding Ltd. Furthermore, it is seen from the above-mentioned letter dated December 28, 2010, issued by the Jebel Ali Free Zone Authority, that the director of Vintage was Ashok Panchariya, who is the brother of Arun Panchariya.
68. 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 GDR Issue II was done, Arun Panchariya was the sole beneficial owner of Vintage and had a controlling position in it. Also, during this period Ashok Panchariya, who is the brother of Arun Panchariya was the director of Vintage. Thus, I find that Arun Panchariya was involved in the running of the

business during the process of issuance of GDRs, held a controlling position in Vintage and being the sole beneficial owner had benefitted from the illegal scheme. Accordingly, I find that Arun Panchariya has violated Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

Mukesh Chauradiya

69. It has been alleged in the SCN that Mukesh Chauradiya served as Managing Director and director of Vintage. Mukesh Chauradiya in his submissions/replies submitted to SEBI has refuted the allegations made in the SCN. The same have been captured in the previous part of this order, and accordingly are not being reproduced here. It shall, however, be relevant to briefly mention herein the fundamental grounds of defense 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.

70. In this regard, reference is made to the Loan Agreement entered into by Vintage with EURAM Bank. The said agreement has been signed by Mukesh Chauradiya on behalf of Vintage, and in the space for providing the “Title” of the signatory, Managing Director has been mentioned. Further, I note that the letter dated December 30, 2010 addressed by

Vintage to EURAM Bank, has been signed by Mukesh Chauradiya, suffixing Director to his name. It is relevant to note that by way of the said letter, it has been represented to EURAM Bank that “*Mr. Mukesh Chauradiya, Managing Director of the company, has successfully completed the Training Program of DGCX in 2005.*” In addition to the above references, a letter dated December 28, 2010, issued by the Jebel Ali Free Zone Authority, shows Mukesh Chaurdiaya as a Manager of Vintage and not the director. Also, the UAE Residence Permits submitted by the Noticee show his profession during the period September 14, 2008 to September 13, 2014 as General Manager. Further, the Employment Card for entry into the Jebel Ali Free Zone mention his occupation as General Manager.

71. It is seen from the letter dated December 30, 2010 addressed to EURAM Bank and the Loan Agreement dated April 28, 2011 that the Noticee has represented himself to be the Managing Director/Director of Vintage. Having represented himself as being the Managing Director/Director of Vintage, the Noticee cannot seek relief from the consequences of such representation by asserting that he was merely an employee.
72. In this regard I note that a similar contention had been raised by Mukesh Chauradiya before the Hon’ble SAT in *Mukesh Chauradiya vs. SEBI (Date of Decision: January 7, 2021 Appeal No. 260 of 2020)* wherein it was argued that he was never a managing director of Vintage FZE; he was initially only a Manager and later on a General Manager. It was contended that he was never a beneficial owner of Vintage FZE and he had never benefited from the alleged violation as he was only a salaried employee of Vintage FZE. In the matter, the Hon’ble SAT held as follows:

“It is an undisputed fact that the appellant has signed as Managing Director as we also note at page 94 of the Memo of appeal. It is not that he signed “for managing director” or “on behalf of managing director” etc. Therefore, irrespective of the dispute relating to the designation as contended by the appellant, the appellant was undoubtedly having the power to sign as managing director. In

the certificate given by the JAFZA only 3 names [and 4 designations, with the sole Director, being named as the Secretary also] are indicated who are responsible people in Vintage FZE and appellant was one of them. Therefore, the dispute as to what was the exact designation of the appellant is irrelevant in the context that admittedly the appellant signed as Managing Director of Vintage FZE. It is also important to clarify here that using a designation in other jurisdictions, such as UAE in the instant case, or elsewhere, for comparison to similar designations in India is also not relevant because designations vary widely even with respect to similarly placed officials across multiple jurisdictions. What is relevant is only whether the appellant was holding a position in which he could put his signature, that too in a loan agreement for USD 13.24 million with a bank under the designation of Managing Director. In any case designation of a person and whether a person is “an officer in default” in an organization etc are irrelevant when the charge is that of aiding and abetting fraud under the PFUTP Regulations, which is the case herein.”

73. So, as held by the Hon’ble SAT, the exact designation of the present Noticee is not relevant. What is relevant is whether the Noticee was holding a position in which he could put his signature in the Loan Agreement with EURAM Bank under the designation of Managing Director. From the facts of the case, it clearly appears that the appellant was holding a position by way of which he could execute binding agreements on behalf of Vintage. Thus, the 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 in his capacity as an employee has violated Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

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

74. Pan Asia Advisors Ltd. (“**Pan Asia**”), a UK based entity, was the Lead Manager for GDR issue of SIEL. It has been alleged in the SCN that Arun Panchariya was the director and beneficial owner of Pan Asia and as the Lead Manager, Pan Asia had procured the subscriber for the GDR issue of SIEL. No replies/submissions have been received from Pan Asia.
75. It is seen from the records that the Noticee was registered as a private limited company with the Registrar of Companies for England and Wales on April 24, 2006. It is also seen that the name of the said Noticee has been changed from Pan Asia Advisors Ltd. to Global Finance and Capital Limited on February 08, 2013. Further, it is seen from the information, as received from the Financial Conduct Authority, UK, that Arun Panchariya was the director of Pan Asia from August 30, 2006 to September 29, 2011. Also, between July 01, 2008 and January 20, 2012, Arun Panchariya was the sole shareholder holding 100 % of the total shareholding. So, during the period when the process for issue of GDRs was initiated and the announcement of allotment of GDRs was done i.e., during October 2010 to April, 2011, Arun Panchariya was a director and had a controlling stake in Pan Asia.
76. In this respect, reference is also made to the letter dated February 20, 2012 of Pan Asia addressed to SEBI. By way of the said letter, Pan Asia has provided a summary of the various steps involved in the consummation of a GDR issue, right from the initiation of the issue till the closing of the issue. Pan Asia, as part of the letter, has also provided a list of activities that it is usually required to carry out as the Lead Manager which is given hereunder:
- “ 1) *Signing the mandate with the Client (i.e. Indian Listed Company).*
- 2) *Conducting the due diligence that includes documentary evidences as well as a check on the premises owned by the company.*

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

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

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

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

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

77. The above explanation of Pan Asia about its role in GDR issues along with the confirmation received from the Financial Conduct Authority, UK, that Arun Panchariya was its director from August 30, 2006 to September 29, 2011, brings out the fact that Pan Asia was well aware of the entire scheme underlying the GDR issue of SIEL. As seen from the sequence of events in the matter, the fraudulent scheme was devised by Arun Panchariya using all his connected entities to enact various roles in the GDR issue, including Pan Asia as the Lead Manager.

78. In this context, I would also like to place reliance on the Order dated October 25, 2016 of the Hon'ble SAT in Pan Asia Advisors Limited V. SEBI in Appeal No. 126 of 2013. The Hon'ble SAT while considering the role of the lead manager i.e., Pan Asia Advisors Limited and its Managing Director, Arun Panchariya, with respect to the GDR issue of Asahi Infrastructure & Projects Ltd., which is similar to the present matter, has held,

“...instead of ensuring that the foreign investors subscribe to the GDRs of Asahi, AP as Managing Director of PAN Asia planned to subscribe to the GDRs of Asahi through Vintage and in fact as Managing Director of Vintage took loan of 5.98 Million USD from Euram Bank for subscribing to the GDRs of Asahi and made Asahi to pledge to the Euram Bank the GDR subscription amount of 5.98 Million USD as security for the loan taken by Vintage. Similar modus operandi was adopted in case of other issuer companies. Thus, the investors in India were made to believe that in the global market the issuer companies have acquired high reputation in terms of investment potential and hence the foreign investors have fully subscribed to the GDRs, when in fact, the GDRs were subscribed by AP through Vintage which was wholly owned by AP. In other words, PAN Asia as a Lead Manager and AP as Managing Director of PAN Asia attempted to mislead the investors in India that the GDRs have been subscribed by foreign investors when in fact the GDRs were subscribed by AP through Vintage. Any attempt to mislead the investors in India constitutes fraud on the investors under the PFUTP Regulations...”

79. Accordingly, I find that Pan Asia has violated Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

Issue – IV: Whether Highblue Sky Emerging Market Fund (Noticee No. 12), Aspire Emerging Fund (Noticee No. 13) and the FIIs, KBC Aldini Capital Ltd. (Noticee No. 14) and Golden Cliff (Noticee No. 15) have acted in pursuance of the fraudulent scheme?

80. It has been alleged in the SCN that Highblue Sky Emerging Market Fund and Aspire Emerging Fund by selling the equity shares of SIEL, which were acquired by Vintage free of cost to the extent of USD 13.768 million through the fraudulent scheme, in the Indian Securities Market acted as conduit for Arun Panchariya and his connected entities,

81. It has been further alleged in the SCN that KBC Aldini Capital got registered as FIIs only to facilitate Aspire Emerging Fund to become its sub account and Golden Cliff got registered as FII only to facilitate Highblue Sky Emerging Market Fund become its sub-account and sell the converted shares of SIEL in the Indian securities market.
82. In this regard, the liability of the above-named Noticees is being taken up for consideration,-
83. It has been stated in the SCN that Highblue Sky Emerging Market Fund received 29,33,69,550 converted equity shares of SIEL. It sold 33,32,96,980 converted shares by July 2013 and remaining 3,18,22,577 converted shares were available with them as on July 05, 2017. The shares sold by the sub-account, Highblue Sky Emerging Market Fund were done through the FII, Golden Cliff.
84. It has been stated in the SCN that AEF received 10,61,04,300 converted equity shares of SIEL. It sold 5,95,74,218 converted shares by July 2013 and remaining 4,65,30,082 converted shares were available with them as on July 05, 2017. The shares sold by the sub-account, AEF were done through the FII, Golden Cliff.
85. HBSF was registered as a sub account under FII KBC Aldini Capital Limited and FII Golden Cliff; and AEF was registered with Golden Cliff. It is observed that as FIIs, both KBC Aldini Capital Limited and Golden Cliff did not make investment in India. The details of the registration of the sub-accounts is given below:

Table – 10

Sl. No.	Name of sub/a/c	Period of registration of Sub-account	Name of FII under which sub a/c is registered	Period of registration of FII
1	HBSF [previously	18/06/2010 to 21/10/2012	KBC Aldini Capital Limited	22/03/2010 to 21/03/2016

Sl. No.	Name of sub/a/c	Period of registration of Sub-account	Name of FII under which sub a/c is registered	Period of registration of FII
	known as KBC Aldini Capital (Mauritius) Ltd.]	22/10/2012 to 28/02/2017	Golden Cliff (previously known as Vaibhav Investments Limited	01/03/2011 to 28/02/2017
2	ASPIRE	14/06/2013 to 28/02/2017		

86. In this regard, it is seen that Mr. Anant Kailash Chandra Sharma was a director (since July 16, 2014) and 100% beneficial owner (since September 09, 2014) of Golden Cliff. Anant Kailash Chandra Sharma is connected to Arun Panchariya. Reema Narayan Shetty was director and 100% beneficial owner (from September 12, 2013 till September 09, 2014)) of Golden Cliff. She was authorized signatory for the bank account of AP connected entity India Focus Cardinal Fund which was maintained with EURAM Bank Austria.

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

- a. Reema Narayan Shetty was the authorised signatory of India Focus Cardinal Fund for the bank account held with EURAM Bank Austria as on June 02, 2011. It has already been established above that India Focus Cardinal Fund was managed and operated by Arun Panchariya.
- b. She was the beneficial owner of Golden Cliff from September 12, 2013 till September 09, 2014.

- c. From April 21, 2014, upon Golden Cliff acquiring the complete shareholding in Highblue Sky Emerging Market Fund, she also became the beneficial owner of Highblue Sky Emerging Market Fund.

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

- a. He joined as a director of Highblue Sky Emerging Market Fund on August 11, 2014.
- b. Anant Kailash Chandra Sharma became the beneficial owner of Golden Cliff on September 09, 2014.
- c. He also became the beneficial owner of Highblue Sky Emerging Market Fund on September 09, 2014, by virtue of being the beneficial owner of Golden Cliff, which holds 100 % shareholding in Highblue Sky Emerging Market.

89. 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-11

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

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

Table-12

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

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

Table-13

Serial No.	Director	Company	Start Date	End Date
1	Mukesh Chauradiya	Alka India Limited	31/01/2006	01/06/2010

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

Table-14

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

93. 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.

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

Table-15

Serial No.	Company	Shareholding Pattern
1	Vintage FZE (India) Private Limited	<i>As on September 30, 2010</i> ▪ Vintage FZE – 99.98 % (9998 shares) ▪ Arun Panchariya – 0.01% (1 share) ▪ Mukesh Chauradiya – 0.01% (1 share) <i>As on September 30, 2013</i> ▪ Vintage FZE – 99.99 % (9998 shares) ▪ Mukesh Chauradiya – 0.02% (2 shares)

95. 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. Both Anant Sharma and Reema Narayan Shetty are related to Arun Panchariya. Furthermore, Highblue Sky Emerging Market Fund is owned by Golden Cliff.
96. It is further observed 100% of the shareholding of AEF was held by Image Securities Limited. Mr. Ashish Nanda is Managing Director (MD) of Image Securities Ltd and he is also director of AEF. Mr. Aslam Kanowah, who is a director of AEF was also a director of HBSF. HBSF is connected to Mr. Anant Kailash Chandra Sharma who is connected to AP as detailed in the preceding paragraphs. From the above it is observed that FII sub-account Aspire Emerging Fund is connected to HBSF and AP. It is also noted that Mr. Daniel Baumslag, was a director of KBC Aldini Capital Ltd. and Highblue Sky Emerging Market Fund. Mr. Daniel Baumslag was 100% shareholder of Highblue Sky Emerging Market Fund, which was been established to be an AP related entity. In view of the same, it is noted that KBC Aldini is also an AP connected entity.
97. In the present proceedings, the allegation is that Golden Cliff and KBC Aldini Capital Ltd., registered FIIs, facilitated Highblue Sky Emerging Market Fund and AEF, their sub-accounts to sell the illegally acquired shares in the Indian securities market. It has already been established that Vintage, an Arun Panchariya entity, fraudulently subscribed to the GDR issues. It has also been brought out that Highblue Sky Emerging Market Fund and Aspire Emerging Fund, which came to possess the GDRs, converted them into equity shares, and Golden Cliff and KBC Aldini were all Arun Panchariya related entities. In view of the same, I am convinced that Golden Cliff and KBC Aldini worked as a conduit for

Arun Panchariya, Highblue Sky Emerging Market Fund and Aspire Emerging Fund to sell the illegally acquired shares of SIEL in the Indian securities market. Accordingly, I find that KBC Aldini, Golden Cliff, Highblue Sky Emerging Market Fund and Aspire Emerging Fund have violated Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

V. Whether Noticee No. 8 (Arun Panchariya), Noticee No. 9 (Vintage), Noticee No. 12 (HBSF) and Noticee No. 13 (Aspire) should be directed to disgorge the illegal gains?

98. It is noted from the SCN that Noticee No. 8, Noticee No. 9, Noticee No. 12 and Noticee No. 13 have been called upon to show cause as to why suitable directions under 11, 11B and 11(4) of the SEBI Act, 1992 including the direction for disgorging the illegal gains to the extent of Rs. 23.05 crore, being the proceeds from the shares sold by Noticee No. 12 and Noticee No. 13 as detailed in paragraph 21 of this order, should not be issued against them.

99. In this regard, it has already been concluded in paragraph 97 of this order that the allegation in the SCN that HBSF and Aspire, which were Arun Panchariya related entities, worked as a conduit for Vintage, another Arun Panchariya entity, to sell the illegally acquired shares of SIEL in the Indian securities market, stands established. Further, as the GDR underlying the said shares were obtained by Vintage without paying any consideration, the entire proceeds from the sale of the said securities are liable to be disgorged. Also, as all said Noticees had orchestrated the entire fraudulent scheme as a group, the liability to disgorge the illegal gains shall be joint and several.

100. In view of the above, as alleged in the SCN, I find that Noticee No. 8 (Arun Panchariya), Noticee No. 9 (Vintage), Noticee No. 12 (HBSF) and Noticee No. 13 (Aspire) are joint and severally liable to disgorge a sum of Rs. 23.05 crores.

VI. Whether SIEL (Noticee No. 1) should be directed to bring back the money?

1.2. It has been brought out in the previous part of this Order that EURAM Bank had utilized the cash, amounting to USD 13.679 million lying in the Company's bank account for the realization of the outstanding loan amount of Vintage. In view of the same, GDRs to the extent of USD 13.679 million were issued by the Company to Vintage without any consideration and thus, has caused loss to the shareholders. Accordingly, I find that SIEL has to bring back the amount of USD 13.679 million to the Company.

Conclusion –

101. Thus, from the above, it is concluded that SIEL in connivance with Vintage devised a fraudulent scheme whereby Vintage received GDRs without paying any consideration for a substantial portion of the GDRs, at the cost of the shareholders / investors of SIEL. Further, the director, Vivek Agarwal, 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. Vintage FZE, Noticee No.6, was part of the fraudulent scheme as a consequence of which, it received a large number of GDRs without payment of consideration. Similarly, Arun Panchariya, Noticee No. 5, the director of Vintage was instrumental in the activation of the fraudulent scheme and benefitted the most from the same being the beneficial owner of Vintage. Mukesh Chauradiya, Noticee No. 7, a key manager in Vintage was fully involved in the day-to-day activities of Vintage, and had signed the Loan Agreement whereby loan was provided by EURAM Bank to extend credit facility to Vintage to subscribe to the GDR issue of SIEL. Further, Pan Asia Advisors Ltd., Noticee No. 8, the lead manager for the GDR issue, which was owned and controlled by Arun Panchariya carried out its activities to further the fraudulent scheme, and as such was a party to the

same. Furthermore, the GDRs illegally acquired by Vintage were sold in the Indian securities market by AEF, Noticee No. 13, and Highblue Sky Emerging Market Fund, Noticee No. 12. The above entities were sub-accounts of KBC Aldini Capital Noticee No. 14; and Golden Cliff, Noticee No. 15. These entities were all related to Arun Panchariya, the beneficial owner of Vintage, either by ownership or through business relations. Pursuant to the same, Noticee Nos. 9 to 13 acted as conduits for Arun Panchariya by facilitating the sale of illegally acquired securities in the Indian securities market.

102. The above summary brings out that Arun Panchariya was the principal architect in the activation of the fraudulent scheme and had orchestrated the whole scheme, including the GDR issuance (through Southern Ispat and Pan Asia), subscription of GDRs (through Vintage), and conversion of the GDRs and sale of the equity shares (through Highblue Sky Emerging Market Fund, Aspire Emerging Fund, KBC Aldini Capital Ltd and Golden Cliff) with the intention of making illegal gains.

103. In this regard, I note that the same *modus operandi* of manipulation by a similar set of Arun Panchariya connected entities has been found in several other matters involving the GDR Issue of listed Indian Companies and the instant case is not an isolated occurrence. In several such matters, it is observed that Arun Panchariya has been central to the fraud perpetrated on the investors in the Indian securities market. In this context, it is noted that in the matter of *Pan Asia Advisors Limited and Another vs. SEBI Appeal No. 126 of 2013*, the Hon'ble SAT while dismissing the appeal filed by the appellants therein (against the SEBI Order *inter alia* prohibiting Arun Panchariya from accessing the capital market directly or indirectly, for a period of 10 years), had *inter alia* observed: "... *apart from making it artificially appear that GDRs have been subscribed by foreign investors when in fact the GDRs were subscribed by Arun Panchariya through Vintage, Arun Panchariya ensured that the GDRs were sold by Vintage to the entities controlled by Arun Panchariya and further ensured that the equity shares generated*

on conversion of GDRs were acquired by the entities with which Arun Panchariya was connected. Even though all GDRs were not converted and sold, it is apparent that the *modus operandi* adopted by the appellants was not only to create an artificial impression that the GDRs have been subscribed by foreign investors, but also to create an impression that after the GDR Issue, investors in India have started subscribing to the shares of issuer companies when in fact the shares were sold and acquired by the entities controlled by Arun Panchariya. In these circumstances inference drawn by SEBI that at every stage of the GDR Issue, the acts committed by the appellants constituted fraud on the investors in India cannot be faulted. ...” Further, in the matter of *Jindal Cotex Limited and Ors vs. SEBI* (Date of Decision: February 5, 2020 Appeal No. 376 of 2019), the Hon’ble SAT had observed: “This Tribunal had passed a number of orders relating to manipulations and fraudulent behavior from the part of a few companies and several connected entities including Vintage. EURAM Bank has also been one of the entities found to be part of those transactions. Such judgments include *PAN Asia Advisors Limited and Anr vs. SEBI* (Appeal No. 126 of 2013 decided on 25.10.2016) and *Cals Refineries Limited vs. SEBI* (Appeal No. 04 of 2014 decided on 12.10.2017). The *modus operandi* adopted in all such cases have been similar i.e. the subscriber to the GDR Issue (Vintage here) taking a loan from a foreign bank/ investment bank (EURAM Bank here) enabled by a Pledge Agreement signed between the issuer company (JCL here) and the loaner bank. This arrangement itself vitiates the entire issue of GDR as it is through an artificial arrangement supported by the company itself which enables the subscription to the GDR. Therefore, the contention in the Order that it is a fraudulent scheme created by the appellants along with some other entities cannot be faulted.” It appears that the whole series of GDR issues by several listed companies in India was an act orchestrated by Arun Panchariya to reap benefits by sitting on the other side of the issuance and subscribing to the GDRs through an arrangement with Vintage. The respective Indian companies have also apparently participated in such schemes. Accordingly, as brought in the foregoing paragraphs, in view of the repetitive nature of such acts along with the gravity of the offences that have been

perpetrated by Arun Panchariya, I am of the considered opinion that stern measures need to be taken against him and his connected entities.

Directions –

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

- A. Noticee No. 1 (Southern Ispat and Energy Limited) is directed to take measures for ensuring that the outstanding amount of USD 13.679 million is brought back to its bank account in India. Noticee No. 2 and the other present directors of the Company 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*”.
- B. Noticee No. 1 (Southern Ispat and Energy Limited) 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;
- C. Noticee No. 2 (Vivek Agarwal) 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;
- D. Noticee Nos. 2 (Vivek Agarwal) 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 themselves 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. 7 (R. Sivaramakrishnan) 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;
- F. Noticee No. 7 (R. Sivaramakrishnan) shall also be restrained for a period of two (2) years from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, and during the said period shall be restrained from associating themselves with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI
- G. Noticee No. 8 (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 ;
- H. Noticee No. 8 (Arun Panchariya) 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 themselves with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI;

- I. Noticee No. 9 (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 ;
- J. Noticee No. 10 (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 ;
- K. Noticee No. 10 (Mukesh Chauradiya) 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 themselves with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI;
- L. Noticee No. 11 (Pan Asia Advisors) shall be restrained from accessing the Indian securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of eight (8) years; and
- M. Noticee No. 12 (Highblue Sky Emerging Market Fund); Noticee No. 13 (Aspire Emerging Fund); Noticee No. 14 (KBC Aldini Capital); and Noticee No. 15 (Golden Cliff) shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of eight (8) years.

- N. Noticee No. 14 (KBC Aldini Capital) and Noticee No. 15 (Golden Cliff) shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of two (2) years.
- O. Noticees no. 8 (Arun Panchariya), 9 (Vintage FZE), 12 (Highblue Sky Emerging Market Fund) and 13 (Aspire Emerging Fund) are further directed to jointly and severally disgorge illegal gains of Rs. 23.06 crore, made by way of sale of equity shares of SIEL (after conversion of GDRs) by Noticees no. 12 and 13, along with interest of 12% per annum from the date of sale of those equity shares till the payment of disgorgement amount, within a period of 45 days from the date of this order. In case Noticee no. 8, 9, 12 and 13 fail to comply with the said direction, they shall be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in the securities market, till the actual payment of disgorgement amount or till the completion of the debarment directed, to the respective Noticees in this Order, whichever is later. This direction is without prejudice to any other action against these Noticees which may be initiated by SEBI.
105. The above directions shall come into force with immediate effect.
106. The period of debarment as directed by way of this Order shall run concurrently in respect of any Noticee, as mentioned in paragraph 104 above, who may already be undergoing any period of debarment with respect to similar issue of GDRs..
107. 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.

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

Place: Mumbai

Date: October 22, 2021

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