

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 Rainbow Papers Limited.

In respect of –

Sr. No.	Noticee	PAN/Other Identifying Number
1.	Rainbow Papers Ltd.	AAACR5415K
2.	Ajay Goenka	AAZPG8113B
3.	Radheshyam Goenka	AANPG4258P
4.	Sangeeta Goenka	AADPG0153F
5.	Arun Panchariya	AEVPP6125N
6.	Mukesh Chauradiya	AAVPC0966A
7.	Vintage FZE	<i>Registered outside India</i>
8.	Pan Asia Advisors Ltd.	<i>Registered outside India</i>
9.	India Focus Cardinal Fund	AABCI9518D
10.	Highblue Sky Emerging Market Fund	AADCK9460G
11.	Aspire Emerging Fund	AALCA5544M
12.	Sparrow Asia Diversified Opportunities Fund	AANCS3131Q
13.	Aries Capital Fund Limited	<i>Registered outside India</i>
14.	European American Investment Bank AG	(FII Registration No.) INASFD211608
15.	Golden Cliff	(FII Registration No.) INMUFD256111

1. Background –

1.1. The present matter emanates from an investigation by SEBI into the issuances of Global Depository Receipts (“**GDRs**”) in overseas markets by Indian companies,

allegedly with the intention of defrauding Indian investors. During the course of such investigation, it came to SEBI's knowledge that there were several other GDR issues wherein loan was taken by a foreign entity and the security of the loan was provided by the GDR issuing company by signing a pledge agreement. One such company was Rainbow Papers Limited ("**Rainbow**" / "**the Company**").

- 1.2. The focus of the investigation was to ascertain whether the shares underlying the GDRs were issued with proper consideration and whether appropriate disclosures, if any, were made by Rainbow with respect to GDRs issued by it on January 27, 2010. The period under investigation was the period around which the issuance of GDRs by the Company took place, i.e. January 1, 2010 to February 28, 2010 ("**Investigation Period**").

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

- 2.1. Pursuant to the findings of the Investigation Report, a common Show-cause Notice dated March 16, 2018 (hereafter referred to as the "**SCN**") was issued to the Noticees. By way of the SCN, all the Noticees were called upon to show cause as to why suitable directions should not be issued against them under Sections 11, 11B and 11(4) of the SEBI Act.

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

- A. The scheme of issuance of GDRs was fraudulent as Noticee No. 1, the Company, had entered into a Pledge Agreement with the bank, European American Investment Bank AG ("**EURAM Bank**") for a loan that had been availed by Vintage FZE ("**Vintage**"), also known as Alta Vista International FZE, towards the subscription of GDRs issued by the Company. The Pledge Agreement was not disclosed to the stock exchanges, which made the investors believe that the said GDR issue was genuinely subscribed by foreign investors. Noticee No. 7, Vintage was a party to this fraudulent scheme. Noticee No. 2, Ajay Goenka, who was the Managing Director of Rainbow, signed a Pledge Agreement with EURAM Bank, whereby the account holding the GDR proceeds was given as security for the loan availed by Vintage from EURAM

Bank for subscribing to the GDRs of Rainbow. Noticee No. 3, Radheshyam Goenka and Noticee No. 4, Sangeeta Goenka were Directors on the Board of Rainbow, and had certified the copy of the board resolution in respect of the board meeting dated November 27, 2009, which authorized Ajay Goenka to sign the Pledge Agreement allowing EURAM bank to use the GDR proceeds credited in the bank account as security for the loan availed by Vintage. Noticee No. 5, Arun Panchariya signed the Loan Agreement on behalf of Vintage for the subscription of GDRs of the Company. Arun Panchariya was Managing Director and beneficial owner of Vintage.

- B. Noticee No. 9, India Focus Cardinal Fund (“IFCF”) was a sub-account of FII EURAM Bank. Arun Panchariya was the beneficial owner of IFCF, *i.e.*, Noticee No.9. Highblue Sky Emerging Market Fund (“HBS”/ “Noticee No. 10”) was registered as a sub-account of FII Golden Cliff (also known as Vaibhav Investment Ltd.). Arun Panchariya connected entities were beneficial owners and directors of Highblue Sky Emerging Market Fund. FII sub-accounts India Focus Cardinal Fund and Highblue Sky Emerging Market Fund received GDRs, converted them and sold the converted equity shares of Rainbow in the Indian stock exchanges. Aspire Emerging Fund (“Aspire”/ “Noticee No.11”) and Sparrow Asia Diversified Opportunities Fund (“Sparrow”/ “Noticee No.12”) were also sub accounts connected to Arun Panchariya who received shares issued on account of the GDR issue. These Noticees acted as conduits for Arun Panchariya and his connected entities, and sold the converted equity shares of Rainbow, which had been acquired by Vintage, free of cost to the extent of USD 6.26 million, through the fraudulent scheme.
- C. Noticee No.14, EURAM Bank; and Noticee No. 15, Golden Cliff (both FIIs) did not make any investment in India except investments made by their sub-accounts, namely India Focus Cardinal Fund and Highblue Sky Emerging Market Fund. So, the FIIs namely, EURAM Bank and Golden Cliff acted as conduits for Arun Panchariya and facilitated India Focus Cardinal Fund and Highbue Sky Emerging Market Fund to sell the underlying shares of the GDRs in the Indian stock exchanges.

2.3. (I) *The Scheme*

- A. The Company came out with the issuance of 1.02 million GDRs amounting to USD 27.02 million on January 27, 2010. A summary of the said GDR issuance is provided hereunder:

Table - 1

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
27-Jan-2010	1.02 (at USD 2.64 each GDR)	27.02	DBS Bank	1,02,35,455	The Bank of New York Mellon, USA	Pan Asia Advisors Ltd.	EURAM, Austria	Luxembourg Stock Exchange

- B. A bank account was opened by Rainbow with EURAM Bank bearing number 580011 to deposit the GDR proceeds. Accordingly, a total of USD 27.02 million was credited to this account. Vintage had subscribed to the total GDR issue of Rainbow.
- C. It was observed during investigation that of the total 27.02 million USD taken as loan by Vintage, it repaid only USD 20.77 million of the total amount. Subsequently, it defaulted on the said loan, and the funds in the GDR proceeds account were appropriated by EURAM Bank by invoking the Pledge Agreement for satisfaction of the amount owed by Vintage. Considering that Vintage was the only subscriber of the GDR issue, and the Company had in effect paid for Vintage owing to the default by it in servicing the loan and the same being satisfied from the GDR proceeds account of Rainbow, it was concluded that the GDRs, and the underlying equity shares in turn, to the tune of USD 6.26 million (including interest), were issued by Rainbow to Vintage without any consideration, at the cost of shareholders / investors of Rainbow. This is the fraudulent scheme that had been conceived.

(II) *The Modus Operandi and Fund Flow*

- A. From the copy of the board resolution of Rainbow received from EURAM Bank, it was observed that the board of directors held a meeting on November

27, 2009, and authorized EURAM Bank to use Rainbow's GDR proceeds deposited with them, as security in connection with any loan. Further., Ajay Goenka (Noticee No.2) was authorized to sign, execute any application, agreement etc. as may be required. The copy of the said resolution was certified to be true by Ms. Sangeeta Goenka (Noticee No.4) and Mr. Radheshyam Goenka (Noticee No.3), directors of Rainbow. However, from the copy of the minutes of the said meeting provided by Rainbow, it was observed that no such resolution authorizing the EURAM Bank to use the funds deposited with them as security in connection with any loan, was passed in the meeting of Board of Directors held on November 27, 2009.

- B. On January 11, 2010, Vintage entered into a loan agreement with EURAM Bank for a loan facility of USD 27.02 million, so as to “ *To provide funding enabling Vintage FZE to take down GDR issue of 10,235,455 Luxembourg public offering and may only be transferred to EURAM account nr. 580011, Rainbow Papers Limited.*”
- C. On the same date, i.e. January 11, 2010, a Pledge Agreement was executed between Rainbow and EURAM Bank and the same was signed by Ajay Goenka of Rainbow. As per the Pledge Agreement, Rainbow's designated account with EURAM Bank bearing no. 580011 would be held in pledge by EURAM Bank to secure the obligations of Vintage under the Loan Agreement.
- D. The aforesaid Pledge Agreement was an integral part of the Loan Agreement entered between Vintage and EURAM Bank and vice versa and both were executed concurrently. The Pledge Agreement had a 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 Rainbow.
- E. As already stated, the GDR proceeds to the tune of USD 27.02 million were deposited in the Company's bank account bearing number 580011 maintained with EURAM Bank. Vintage repaid USD 20.77 million and thereafter defaulted on the loan repayment.
- F. After Vintage defaulted on its loan obligation, the balance amount of USD 6.26 million (nearly 22% of GDR proceeds) was transferred from the company's

Escrow account to the account of Vintage maintained with EURAM in conformity with the Pledge Agreement dated January 11, 2010.

- G. Even though consideration had not effectively passed from Vintage to Rainbow, vide letter dated October 08, 2012, Rainbow instructed EURAM to transfer the remaining GDRs to Vintage's account with Habib Bank. The GDRs issued were allowed to be converted into equity shares, and these shares were sold in the Indian capital market. Cancellation of GDRs started from March 15, 2010 and all GDR were converted by July 08, 2015. The GDR program was terminated by the Depository on June 05, 2015.
- H. Post cancellation of GDRs, FII-sub accounts namely 1) India Focus Cardinal Fund (IFCF) (Noticee No.9), 2) Highblue Sky Emerging Market Fund [previously known as KBC Adini Capital (Mauritius) Ltd.] (HBS) (Noticee No.10), 3) Elara Capital Plc (Elara), 4) Aspire Emerging Fund (Aspire) (Noticee No.11) and 5) Sparrow Asia Diversified Opportunities Fund (Sparrow) (Noticee No.12) received equity shares on account of GDR issue.
- I. A summary of the cancellation of the GDRs is provided hereunder:

Table - 2

Share credit date	No. of GDRs converted	No. of outstanding GDRs	No. of shares created	Entity in whose account shares were credited post cancellation of GDRs
28-Jan-10		1,02,35,455	1,02,35,455	Original Issue of Shares/ GDRs
15-Mar-10	1,75,000	1,00,60,455	1,75,000	IFCF
22-Mar-10	1,55,000	99,05,455	1,55,000	IFCF
23-Mar-10	80,000	98,25,455	80,000	IFCF
26-Mar-10	40,000	97,85,455	40,000	IFCF
26-Apr-10	2,00,000	95,85,455	2,00,000	IFCF
30-Apr-10	2,00,000	93,85,455	2,00,000	IFCF
22-Jun-10	2,00,000	91,85,455	2,00,000	IFCF
23-Jun-10	2,00,000	89,85,455	2,00,000	IFCF
01-Jul-10	2,00,000	87,85,455	2,00,000	IFCF
05-Jul-10	2,00,000	85,85,455	2,00,000	IFCF

Share credit date	No. of GDRs converted	No. of outstanding GDRs	No. of shares created	Entity in whose account shares were credited post cancellation of GDRs
07-Jul-10	2,00,000	83,85,455	2,00,000	IFCF
12-Jul-10	2,00,000	81,85,455	2,00,000	IFCF
23-Jul-10	1,50,000	80,35,455	1,50,000	IFCF
09-Aug-10	2,50,000	77,85,455	2,50,000	IFCF
Change in face value of shares from Rs. 10 to Rs. 2 per share (New conversion ratio 1 GDR = 5 Shares)				
05-Oct-10	2,00,000	75,85,455	10,00,000	IFCF
07-Oct-10	2,00,000	73,85,455	10,00,000	IFCF
16-Nov-10	3,00,000	70,85,455	15,00,000	IFCF
27-Apr-11	1,50,000	69,35,455	7,50,000	IFCF
29-Apr-11	2,16,100	67,19,355	10,80,500	IFCF
04-May-11	1,00,000	66,19,355	5,00,000	IFCF
29-Jun-11	1,35,000	64,84,355	6,75,000	IFCF
01-Jul-11	3,00,000	61,84,355	15,00,000	IFCF
11-Jul-11	3,40,000	58,44,355	17,00,000	IFCF
23-Nov-11	66,410	57,77,945	3,32,050	High Blue Sky Emerging Market Fund
06-Aug-12	50,000	57,27,945	2,50,000	Elara Capital Plc
09-Jun-15	20,50,000	36,77,945	1,02,50,000	High Blue Sky Emerging Market Fund
11-Jun-15	21,00,000	15,77,945	1,05,00,000	Aspire Emerging Fund
24-26 June 2015	12,894	15,65,051	64,469	Shares sold by custodian on instruction from Global Depository (BNY Mellon)
08-Jul-15	15,65,051	0	78,25,255	Sparrow Asia Diversified Opportunities Fund

- J. As seen from the above table, Aspire Emerging Fund cancelled 21,00,000 GDRs and received 1,05,00,000 shares of Rainbow and it sold 3,057 shares on August 27, 2015 for a value of Rs. 1,71,192 and continued to hold the balance 1,04,96,943 shares. Sparrow cancelled 15,65,051 GDRs, received 78,25,256 shares of Rainbow and did not sell any shares. The GDRs of Rainbow were received by Sparrow towards subscription into its fund by Aries Capital Fund Limited (Noticee No. 13).
- K. India Focus Cardinal Fund (Noticee No.9), upon conversion of 43,91,100 GDRs received 1,21,55,500 equity shares of Rainbow. 92,75,000 shares were then sold by India Focus Cardinal Fund in the Indian capital market. Similarly, Highblue Sky Emerging Market Fund (Noticee No. 10) upon conversion of 21,16,410 GDRs got 1,05,82,050 equity shares of Rainbow. Out of the same, by May 10, 2016 a total of 33,51,548 shares were sold in the Indian capital market. Investigation found that the said sub-accounts, namely, India Focus Cardinal Fund and Highblue Sky Emerging Market Fund were related to Arun Panchariya.
- L. Further, India Focus Cardinal Fund was registered as sub account of FII, EURAM Bank. India Focus Cardinal Fund was the only sub account to be registered with EURAM Bank. Also, as an FII, EURAM Bank did not make investment in India, except for the sale of shares in the Indian capital market, pursuant to the conversion of GDRs by India Focus Cardinal Fund. Similarly, Highblue Sky Emerging Market Fund was registered as a sub account of FII, Golden Cliff. Golden Cliff did not make any investment in India, except for the sale of shares in the Indian capital market by Highblue Sky Emerging Market Fund, pursuant to the conversion of GDRs.
- M. These FIIs, namely, EURAM Bank (Noticee No. 14), and Golden Cliff (Noticee No. 15) facilitated the sale of the equity shares, received by way of fraudulent issue of GDRs.

2.4. In view of the above acts of the Noticees, the SCN has alleged that Noticee Nos. 1 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.

2.5. Consequent to the issuance of the SCN, a Supplementary Show-cause Notice dated June 12, 2018 was issued to Rainbow, Vintage FZE, HBS, Aspire and IFCF as to why suitable direction to bring back money/ directions for disgorgement (as applicable) should not be issued against them.

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

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

Table-3

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

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

Table- 4

Noticee No.	Name of the Noticee	Date of Hearing	Represented by
2	Ajay Goenka	July 15, 2021	Kunal Katariya, Advocate
4	Sangeeta Goenka	July 15, 2021	Kunal Katariya, Advocate
5	Arun Panchariya	October 20, 2020	P.R. Ramesh, Advocate
6	Mukesh Chauradiya	August 13, 2021	Mukesh Chauradiya
11	Aspire Emerging Fund	July 15, 2021	Prakash Shah, Advocate
12	Sparrow Asia Diversified Opportunities Fund	July 15, 2021	R.S. Loona, Advocate
14	EURAM Bank, Austria	July 15, 2021	Mr. Shouryendu Ray, Advocate, Wadhwa Law Offices

3.3. Vide letter dated April 17, 2018, Ramchandra D. Choudhary replied on behalf on Rainbow Papers Ltd. as its Resolution Professional stating that an application under Section 8 of the Insolvency and Bankruptcy Code, 2016 (IBC) had been admitted by the Hon'ble National Company Law Tribunal (NCLT) on September 12, 2017 and a moratorium had been declared against initiation and continuation of all legal proceedings against Rainbow. Thereafter, vide letter dated November 2, 2020, Ajay Goenka submitted that the Resolution Plan proposed by one Kushal Ltd. was approved by the NCLT on February 27, 2019. The Resolution Plan included amalgamation of Rainbow into Kushal Ltd. It has been stated that Rainbow ceased to be in existence from the date of the order, *i.e.*, February 27, 2019. It was further submitted that all liabilities of Rainbow that existed on the date of approval of NCLT stood extinguished. Ajay Goenka also submitted that Radheshyam Goenka had expired on October 7, 2010.

3.4. Noticees Nos. 7, 8, 9 and 13 neither availed the opportunity of personal hearing nor filed any reply in response to the SCN.

Table- 5

Noticee No.	Name of the Noticee	Details
7	Vintage FZE	- SCN dated March 16, 2018 was sent by Speed Post to the said Noticee at the address: Aah-273, Al Ahmadi House, Jebel Ali Free Zone, Dubai and OFFICE NO: LB12001, P.O. Box 61454, Jebel Ali, DUBAI, UAE. The SCN was delivered to the beneficial owner of Vintage, i.e. Arun Panchariya. - Hearing Notice for the personal hearing was served via email to Arun Panchariya (arun.panchariya@me.com), the beneficial owner.
8	Pan Asia Advisors Ltd.	- SCN dated March 16, 2018 was sent by Speed Post to the said Noticee at the address: 1st Floor Minster House, 42 Mincing Lane, London EC3R 7AE, UK. The SCN was delivered to the beneficial owner of Pan Asia Advisors Ltd., i.e. Arun Panchariya. - Hearing Notice for the personal hearing was served via email to Arun Panchariya (arun.panchariya@me.com), the beneficial owner.
9	India Focus Cardinal Fund	- SCN dated March 16, 2018 was sent by Speed Post to the said Noticee at the address: C/o Cardinal Capital Partners, Suite 501, St. James Court, St Dennis Street, Port Louis, MAURITIUS. The SCN was delivered to the liquidator i.e. m.reaz@intent.mu. - Hearing Notice for the personal hearing was served via email to the liquidator i.e. m.reaz@intent.mu.

Noticee No.	Name of the Noticee	Details
13	Aries Capital Fund Ltd.	- SCN dated March 16, 2018 was sent by Speed Post to the said Noticee at the address: S Bhavin Dave (Director) Apt 4, Floor 7, Residence d'Epinay, St. Jean Road Quatre Bornes MAURITIUS and C/o. Anant Sharma (Director), D-03-2, Le Meritt Sodnac Quatre Bornes MAURITIUS - Hearing Notice for the personal hearing scheduled was served via email to the address of Anant Kumar Sharma, the Director of the Noticee.

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

Noticee Nos. 2, 3 and 4 (Radheshyam Goenka, Ajay Goenka and Sangeeta Goenka)

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

- a. Mr. Radheshyam Goenka passed away on October 7, 2010. A copy of his death certificate was provided;
- b. no specific action is proposed against Ajay Goenka and Sangeeta Goenka in the SCN or the supplementary SCN;
- c. the unreasonable delay of more than 8 years from the occurrence of event/ issuance of GDR, in issuance of the SCN vitiates its validity;
- d. none of the original documents were made available for inspection;
- e. an opportunity should be provided to undertake cross examination of all the concerned people associated with the purported issue of GDR;
- f. it is denied that the documents like the Account Charge Agreement and the certified true copy of the Board Resolution purportedly dated November 27, 2009 were signed by them;

- g. the SCN has failed to demonstrate any personal gains made by the Noticees from dealing in the securities / GDRs. No inducement was made by them to any agent or any third party to deal in the securities/ GDRs of Rainbow. It was also clear that there was no mens rea on their part to undertake the purported fraudulent arrangement. The Noticees were not aware of the purported execution of the Account Charge Agreement and creation of the charge of the proceeds of the GDR and hence did not disclose such an information to the stock exchanges;
- h. the Noticees were not entitled to any share of profits made by Rainbow Papers Limited and had nothing to personally gain from the GDR issue;
- i. remittance of 76% GDR Proceeds was received in India and 23% was received in Dubai by Rainbow Papers JLT.

Noticee No.4 (Mukesh Chauradiya)

3.5.2. 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 Jebel Ali Free Zone Authority, UAE (JAFZA), under which Vintage FZE was registered, required that there shall be a single owner, and it was Arun Panchariya who was the legal and beneficial owner of Vintage;
- b. in the Shareholder's list as on September 30, 2009/2010/2011/2012/2013 in relation to Ramsai Investment Holding Private Limited (Vintage FZE Investment Holding Private Limited), it can be clearly seen that Arun Panchariya held 99% of Equity Shares in the company, so all along Arun Panchariya was the beneficial owner of the company;
- c. administrative fine statement passed by the Dubai Financial Services Authority (DFSA) imposing fine of USD 12,000 on Arun Panchariya also indicates that Arun Panchariya was the Licensed Director in relation to Vintage FZE;

- d. 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 January 12, 2010 to January 11, 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 Rainbow and to obtain loan from Euram Bank for subscribing to the GDRs was taken by Arun Panchariya as the Director/sole owner of Vintage FZE, and the Noticee, as an employee, had no role to play in it;
- j. the Noticee signed only the loan redemption letters;
- k. the Noticee was not aware of any arrangement that Arun Panchariya may have had with Rainbow in arranging the loan and its repayment, and that the Noticee had no role to play in the said transaction;
- l. 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
- m. 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. 5 (Arun Panchariya)

3.5.3. In his replies, Arun Panchariya has stated that he has been a non-resident Indian for the last 20 years or more, has certifications in finance and has been in the financial services industry in the Middle East and Europe.

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

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

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

- a. the SCN is vague as it does not disclose the kind of measures SEBI is contemplating to take after 10 years, and the Noticee is completely in the dark about what exactly SEBI has in mind;
- b. there is no justification to issue the SCN in the name of the Noticee, in his personal capacity, ignoring the existence of corporate entities and

transactions executed by way of legal and binding agreements between such entities;

- c. the legal entities are incorporated under respective foreign jurisdictions and many of them are also regulated by the respective financial market regulator of their respective jurisdictions, which shows that these legal entities are real, and there is no case for looking through them and arraigning the Noticee in his personal capacity;
- d. SEBI has no powers to lift the corporate veil and hold the Noticee as a beneficiary;
- e. the entities whose veil have been lifted are not entities incorporated in India, and hence the assumption of powers by SEBI to lift the corporate veil and issue a SCN to the Noticee in his personal capacity is beyond the scope of the powers of SEBI under the SEBI Act;
- f. numerous other companies have come out with GDR issues which followed the market practices allegedly now found to be illegitimate by SEBI in the year 2011;
- g. the investigation carried out by SEBI has been highly prejudiced and biased;
- h. the allegations in the SCNs are exclusively based on Xerox/Photostat copy of documents, the original of which are not available with SEBI. Thus, the conditions precedent laid down in Section 63 and 65(a) of the Evidence Act, 1872 are not satisfied. The photostat copies of the documents relied upon by SEBI cannot be and should not be admissible as evidence in the present proceedings;
- i. SEBI has passed various orders in which no action has been taken against the investors like Clifford Partners, Solec Company Limited, Seviron Company Limited, Fusion Investment Ltd etc., so placing reliance on the doctrine of “issue estoppel”, the Noticee must be granted similar relief and the charges against it be dropped as per the previous decisions of the Hon'ble Whole Time Member, covering essentially the same facts and addressing the same issues;

- j. the Noticee was a director in Vintage FZE till 2007, and has already resigned from it;
- k. the decisions of Vintage FZE including Loan default was taken on the circumstances in the best interest of the Company by its management;
- l. the Noticee was neither a whole-time director nor the managing director of IFCF, and during the time when the Noticee was a director, investment decisions of IFCF were taken collectively by its Board of Directors;
- m. Further, in relation to the other FIIs/sub-accounts, there is no document or evidence provided to support the allegation that they were connected to or controlled by the Noticee, except showing few connections which were totally independent business relationships; and
- n. the scheme of subscription to the GDR is not a fraudulent device as the GDR issue was made under the 1993 GDR Scheme governed by the GOI Guidelines and FEMA.

3.5.6. The said Noticee has in his replies *inter alia* relied on the following case laws:

- a. UMC Technologies Pvt Ltd. vs. Food Corporation of India (Civil Appeal 3687 of 2020 before the Hon'ble Supreme Court) 2021) 2 SCC 551, to contend that impugned show cause notices does not specify what action SEBI proposes to take;
- b. Salomon vs. A. Salomon & Co. Ltd [1897] AC 22 - to state that the facts and circumstances of the case do not warrant lifting of the corporate veil;
- c. Smt. J. Yashoda vs. Smt. K. Shobha Rani, (2007) 5 SCC 730 and Hariom Agarwal vs. Prakashchand Malaviya, (2007) 12 SCC 49- to contend that photostat copies of documents cannot be relied upon since the same have not been certified by any of the authorities from which they have been obtained;

- d. Dilip S Pendse vs. SEBI (SAT Appeal No.80 of 2009, decided on November 19, 2009) to state that the more serious the offence, the stricter should be the degree of proof;
- e. SEBI vs. Kanaiyalal Baldevbhai Patel (CA 2595/2013 before the Hon'ble Supreme Court) (2017) 15 SCC, to contend that the charges under PFUTP Regulations need to be established as per the applicable standards rather than on mere conjectures and surmises; and
- f. Hon'ble SAT in Appeal 6/2018, PWC vs. SEBI, to contend that it must be proved by cogent evidence that the appellants are guilty of "inducement".

Noticee No. 10 (Highblue Sky)

- 3.5.7. In its replies, it has been submitted by the Noticee that it is a limited liability company incorporated under the law of the Republic of Mauritius having its registered office at C/o Aurisse International Ltd, Suit 1909, 19th Floor, Citadelle Mall, Sir Edgar Laurent Street, Port Louis, Mauritius. It was registered with SEBI as an FPI.
- 3.5.8. It has a license issued by the Financial Service Commission (FSC) of Mauritius, and its business was in the nature of a mutual fund/hedge fund *i.e* it receives fund and “in kind subscription” from investors, which it in turn invests in shares and securities across the global markets (including India). The investors are foreign corporates and institutional investors, and none of its investors are Indians or Non Resident Indians (NRIs).
- 3.5.9. The said Noticee has also denied all the allegations, charges made against it in the Show Cause Notices. In this regard, the Noticee has submitted that —
- a. the allegation in the SCN that the GDRs were converted by Highblue Sky Emerging Market Fund on behalf of Arun Panchariya and his connected entities was not correct;

- b. the Noticee's investments did not belong to Arun Panchariya or his connected entities, and the Noticee did not have any connection with Arun Panchariya or his connected entities in any manner.
- c. the allegation that Highblue Sky Emerging Market Fund was connected to Arun Panchariya, on the ground that Anant Sharma and Reema Shetty were connected to AP, was not correct as the cancellation of GDRs and the sale of the converted equity shares of Rainbow were done up to May 17, 2013, which was prior to the association of Anant Sharma (August 11, 2014) and Reema Narayan Shetty (April 21, 2014);
- d. Anant Sharma himself approached SEBI to give his statement, and to assist in the investigation, which shows the bonafide intention of Anant Sharma;
- e. The fact that Arun Panchariya and Anant Sharma were Directors in one of the Indian company cannot be used to conclude that Anant Sharma was connected with Arun Panchariya in all businesses, which were independently handled by Anant Sharma;
- f. Also Anant Sharma had resigned from the directorship of Alka India Limited, whose promoter, Satish Panchariya was the brother of Arun Panchariya, with effect from March 28, 2016;
- g. In respect of the allegation that Anant Sharma had worked with Vintage in the past, the Noticee has submitted that the past employment of Anant Sharma did not affect the business decisions of the Fund, and Anant Sharma had never hidden any information about his past employment, which was disclosed to FSC and other regulatory authority, at the time of his appointment as a Director in Golden Cliff and Emerging Market Opportunities Fund (Previously known as Highblue Sky Emerging Market Fund), and also to ICICI bank while seeking conversion of Sub-account Emerging Market Opportunities Fund (Previously known as Highblue Sky Emerging Market Fund) into FPI; and
- h. With respect to the KYC documents of Highblue Sky showing its address and contact numbers being common with one Aurisse fund, it has been

submitted by the Noticee that Aurisse was the management company for Highbluesky Emerging Market Fund, and provided services, viz., accounting, NAV calculations, provision of Directors, Secretary, Registered office, maintenance of books and accounts, filing of change of Directors, shareholders, tax advice etc., which was a normal practice.

Noticee No. 11 (Aspire Emerging Fund)

3.5.10. The Noticee in its replies has *inter alia* submitted the following:

- a. Aspire Emerging Fund (Aspire) was incorporated in Mauritius as a private company with limited liability under the laws of Mauritius on February 9, 2011;
- b. Aspire was registered as a sub-account with Golden Cliff from June 14, 2013 to February 28, 2017. From February 28, 2017, the Noticee is registered as a Foreign Portfolio Investor (FPI) with SEBI;
- c. business decisions were always taken in the best of interest of investors and common directors did not establish the link between two entities;
- d. Golden Cliff became FII of Aspire on June 14, 2013, when neither Anant Sharma nor Reema Shetty were beneficial owners of Golden Cliff. Anant Sharma is the beneficial owner of Golden Cliff from September 9, 2014 till date and Ms. Reema Shetty was the beneficial owner of Golden Cliff only from September 12, 2013 to September 9, 2014. Aspire was not aware of any connection of Anant Sharma and Reema Shetty with Arun Panchariya and there was no reason for Aspire to suspect about such connection. It was only on the receipt of the SCN that they came know about the alleged connections;
- e. the major strategy for dealing in GDR was arbitraging between GDR's prices and the underlying share price;
- f. GDRs were acquired by the Noticee from Aries Capital Fund and the consideration for the same was in the form of subscription i.e. issuance of 1,62,88,605.2467 shares on June 5, 2015 valued at USD 1,14,86,724.42 by Aspire;

- g. Aries Capital Fund did not have custody account in India to hold the converted equity and hence they approached the Noticee for subscription and holding of converted equity;
- h. the Noticee had converted 21,00,000 GDRS into 1,05,00,000 equity shares that could be traded in the Indian equity market, on June 11, 2015;
- i. out of the 1,05,00,000 converted equity shares they have sold only 3,057 shares for around Rs 1.71 Lakhs;
- j. they still hold 1,04,96,943 equity shares of Rainbow. If the Noticee was aware of the alleged fraudulent scheme devised by Arun Panchariya, they would have sold their entire holding. However, they still hold more than 99.9% of the converted equity shares;
- k. the Noticee cannot be held liable for any breach by Arun Panchariya or his connected entities. They had no knowledge whatsoever about any loan/pledge arrangement and the market manipulation scheme;
- l. strict proof is required for a serious charge of 'fraud' and compelling evidence is required to charge someone of fraud;
- m. the acquisition by Aspire has a proper flow of consideration. Further, fees were also paid for conversion of GDRs into shares and the sale of shares was done on market without causing any disturbance on the equilibrium of Rainbow shares. Hence, they have not made any unlawful profits or have averted any losses; and
- n. the price has fallen after conversion of the GDRs of Rainbow by the Noticee. Hence, no allegation of any benefit on account of manipulation or earning any wrongful gain is sustainable.

Noticee No. 12 (Sparrow Asia Diversified Opportunities Fund)

3.5.11. The Noticee in its replies has *inter alia* submitted the following:

- a. Sparrow Asia Diversified Opportunities Fund, is a company which was incorporated on July 3, 2008 under the laws of the Republic of Mauritius as a public company;

- b. the Noticee is registered as a FPI with SEBI and invests in India through the FDI route or the portfolio management route;
- c. the Noticee had come out with the offering for Participating Shares by way of private placement. Any eligible investor/subscriber could subscribe to the Participating Shares by paying the subscription amount either in cash or in kind;
- d. pursuant to the private placement dated January 16, 2015, Global Emerging Opportunities Fund Limited (GEOF), had subscribed to the participating Shares of the Noticee by executing the Transaction Form dated July 10, 2015,
- e. GEOF paid subscription amount in kind i.e. by delivering 7,825,256 shares of Rainbow on July 10, 2015 against which the Noticee issued its 15,162,546.760407 participating shares to GEOF at USD 0.562674 per unit;
- f. as per the Subscription Agreement dated July 1, 2015, Aries Capital Fund Limited had subscribed to the non-voting redeemable preference shares of GEOF by paying the subscription money in kind by delivering 15,77,945 GDRs of Rainbow to GEOF;
- g. thus, Aries Capital Fund Ltd. had invested in the non-voting redeemable participating shares of GEOF by delivering shares of Rainbow to GEOF. In turn, GEOF has invested in the Participating Shares of the Noticee by delivering the said 7,825,256 shares of Rainbow;
- h. hence, it is incorrect that GDRs of Rainbow were received by the Noticee from Aries Capital Fund Ltd towards subscription into its Fund. Further, the Noticee is unaware if a part of the Rainbow GDRs were received by Vintage at free of cost. The Noticee had nothing to do with Vintage or Aries Capital Fund Limited and hence denies that the Noticee acted was a party to the fraudulent scheme of Vintage and Aries Capital Fund Limited.
- i. it is incorrect that AI Jalore and Image Securities Ltd. are investors in Leman Diversified Fund. The Noticee or Leman has no connection or

- relationship with either of them. The SCN has not produced any document or proof whatsoever to show AI Jalore or Image Securities as investors in Leman. Even it is assumed for the sake of argument that AI Jalore and/ or Image Securities are/were investors in Leman that doesn't mean that Leman or the Noticee are connected to Arun Panchariya;
- j. the Noticee has no connection whatsoever with Aspire, Image Securities Ltd., Arun Panchariya and HBS;
 - k. the Noticee has no connection whatsoever with Rainbow or any of its directors and promoters. Hence, the Noticee is not aware of any fraudulent scheme devised by Arun Panchariya, entities connected with him and the directors of Rainbow with respect to issuance of GDRs;
 - l. shares of Rainbow were invested in the Noticee by a reputed and respectable Fund i.e. GEOFF and that at the relevant time there was not even a whisper about any illegality revolving the issuance of GDRs of Rainbow or conversion of GDRs into shares;
 - m. Arun Panchariya is sought to be connected with the Noticee indirectly through six different entities namely AKCS, Aslam Kanowah, Ashish Nanda, Image Securities, Enlil Fund and Leman operating at different levels with no connection whatsoever with the Noticee of anyone except the Enlil Fund or Leman; and
 - n. it is denied that the Noticee has received GDRs, converted them into equity shares of Rainbow and continue to hold the same free of cost. The Noticee is holding the shares of Rainbow as investment of GEOFF. The Noticee has issued its Participating shares to GEOFF equivalent to value of Rainbow shares delivered by GEOFF to the Noticee. GEOFF has paid the subscription money for the Participating Shares of the Noticee by making payment in kind i.e. by delivering the shares of Rainbow.

Noticee No. 12 (EURAM Bank)

3.5.12. In its replies, it has been submitted by the Noticee that there is not a single finding against Euram as an FII, in either the SCN or otherwise, that it has

violated any provision of the SEBI Act or the PFUTP Regulations or FII Regulations.

3.5.13. The Noticee has made the following preliminary submissions:

- a. the first SCN in the matter was issued after a period of almost seven years, the hearing in the matter happened almost a decade after the investigation period. This could not be construed as a reasonable period of time;
- b. in the order of the Hon'ble Member dated January 25, 2012 (WTM/PS/ISD/64/01/2012), which was passed over 8 years ago, it was directed that "*SEBI shall expeditiously complete the investigation in the matter, in the interest of justice and thereafter shall immediately take appropriate actions in accordance with law.*"; and
- c. so, the present proceedings are barred in light of the inordinate delay and on account of the doctrine of laches.

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

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

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

- a. Arun Panchariya was never a director or had any material role in Euram Bank, EURAM's association with Arun Panchariya was limited to the Dubai joint venture entity — EURAM Bank Asia Limited;
- b. EURAM Bank set up EURAM Bank Asia Limited to explore business opportunities in the Middle East region, which has now been dissolved;
- c. EURAM was misled into entering into a JV with AP and at that time, due to representations by Arun Panchariya, thought it to be a way for EURAM to connect with private investors in the Middle East;

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

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

- a. EURAM Bank's dealings as a bank incorporated in Austria were regulated by the Austrian regulators, and as such, do not fall under the jurisdiction of SEBI;
- b. EURAM Bank has been extensively investigated by the Austrian Financial Market Supervisory Authority and the Austrian Public Prosecutor for White Collar Crime and Corruption and both have cleared EURAM from all regulatory, civil and criminal charges;
- c. The White Collar Crime and Corruption while dealing with a complaint against Euram by one of the GDR issuer companies, alleging fraud in the execution of the pledge agreement therein, has cleared EURAM Bank and its directors of all criminal charges and noted that the structure i.e., of granting Vintage a loan to subscribe to the GDRs of the company, secured by way of pledge on the GDR proceeds, was sound from an

economic analysis perspective and there was no wrongdoing attributable to Euram;

- d. Euram had simply lent a sum of money to Vintage for the specific purpose of subscribing to Rainbow's GDR issue., for which Euram sought adequate security and towards that end, obtained Rainbow's pledge, thereby creating a charge on the proceeds from the GDR issuance in favour of Euram;
- e. Euram Bank's dealings were entirely on an arm's length basis, and as per banking best practices as followed in Austria, where it was incorporated and operated;
- f. Euram exercised due diligence to verify that the persons executing the loan and pledge agreements were appropriately authorized to do so by the board of the GDR issuer company;
- g. while registering IFCF as a sub-account, EURAM Bank exercised necessary precaution, and only after conducting a thorough diligence viz., checking all of the prescribed credentials of IFCF and it fulfilling the mandated KYC norms, did it give IFCF registration as its sub-account, which has also been validated by SEBI;
- h. Euram had no control over the investment strategies and decisions of IFCF, and it cannot be held responsible for the same;
- i. Euram offered a bouquet of financial services, one of which was to offer a terminal for its clients to make investments — the investments themselves were made directly by the clients;
- j. Euram cannot be penalized merely for not having invested directly in the Indian markets, and it would be a stretch to say that Euram registered itself as an FII merely to facilitate transactions by IFCF, without any actual finding to that end;
- k. Euram was the FII for IFCF only for a limited period of time up till July 19, 2011, after which a transfer was granted by SEBI and Cardinal Capital Partners became the FII for IFCF.;

- l. Euram Bank extended all support to the investigation and in fact had also reported suspected money laundering by AP to the Austrian Federal Criminal Police Office under the Federal Ministry of the Interior, and cooperation and support was extended by Euram to the investigation process which has helped SEBI establish key elements of the fraudulent scheme; and
- m. Euram made no unwarranted gains out of the scheme, it simply lent money to one entity and when that entity failed to repay, Euram proceeded to enforce the security, as such, it had no interest or reason to be part of the fraudulent scheme.

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

- a. in previous decision dated September 5, 2017, the Hon'ble Whole Time Member, SEBI in the matter of *Alleged Market Manipulation Using GDR Issues by Asahi Infrastructure & Projects Ltd; Avon Corp. Ltd.; CAT Technologies Ltd.; IKF Technologies Ltd.; K Sera Sera Ltd; and Maars Software Intl. Ltd.* (Order No. SEBI/WTM/SR/EFD/64/09/2017), covering essentially the same facts and addressing the same issues as in the present matter, has granted relief to Euram, so similar relief should be granted in the present matter and the charges should be dropped;
- b. the Hon'ble Supreme Court has held that issue estoppel is established if the same issue of fact had already been decided in an earlier case;
- c. the defence of issue estoppel, not only applies to proceedings before judicial authorities proper but extends to quasi-judicial authorities and administrative authorities; and
- d. Therefore, the present authority can afford the benefit of such cardinal principles as issue estoppel to Euram.

3.5.18. The said Noticee has in his replies *inter alia* relied on the following case laws:

- a. Samir Arora vs. SEBI, (2005) 59 SCL 96 (SAT), Nirmal Bang Securities (P) La vs. SEBI, (2004) 49 SCL 421 and KSL & Industries Ltd vs. SEBI

(SAT Appeal No. 9 of 2003) to contend that where serious malpractices such as insider trading and fraudulent trade practices are concerned, charges must be proved based on cogent materials and in accordance with law.

- b. Rakesh Kathotia & Ors. vs SEBI in (SAT Appeal No. 7 of 2016), Sanjay Jethalal Soni vs. SEBI, (SAT Appeal no. 483 of 2018), Subhkam Securities Private Limited vs. SEBI (SAT Appeal no. 73 of 2012) and Khandwala Securities vs. SEBI (SAT Appeal no. 19 of 2012), to state that SEBI is required to exercise its powers within a reasonable period.
- c. Hope Plantation Ltd. vs. Taluk Land Board, (1999) 5 SCC 590, Vijayabai vs. Shriram Tukaram, (1999) 1 SCC 693 and Bhanu Kumar Jain vs. Archana Kumar, (2005) 1 SCC 787 to contend that the doctrine of issue estoppel is a key element of res judicata;

Noticee No. 13 (Golden Cliff)

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

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

- a. the allegation in the SCN that Golden Cliff did not make any investment in India except through its sub-account Highblue Sky was not correct;
- b. its sub-account holders have invested in primary and secondary markets other than the Indian GDR issue;
- c. the fact that Arun Panchariya and Anant Sharma were Directors in one of the Indian company cannot be used to conclude that Anant

Sharma was connected with Arun Panchariya in all business, which were independently handled by Anant Sharma;

- d. the allegation that Golden Cliff was connected to Arun Panchariya, on the ground that Anant Sharma and Reema Shetty were connected to AP, was not correct as the cancellation of GDRs and the sale of the converted equity shares of Rainbow were done up to May 17, 2013, which was prior to the association of Anant Sharma (August 11, 2014) and Reema Narayan Shetty (April 21, 2014);
- e. Anant Sharma himself approached SEBI to give his statement, and to assist in the investigation, which shows the bonafide intention of Anant Sharma;
- f. Also Anant Sharma had resigned from the directorship of Alka India Limited, whose promoter, Satish Panchariya was the brother of Arun Panchariya, with effect from March 28, 2016; and
- g. In respect of the allegation that Anant Sharma had worked with Vintage in the past, the Noticee has submitted that the past employment of Anant Sharma did not affect the business decisions of the Fund, and Anant Sharma had never hidden any information about his past employment, which was disclosed to FSC and other regulatory authority, at the time of his appointment as a Director in Golden Cliff and Emerging Market Opportunities Fund (Previously known as Highblue Sky Emerging Market Fund), and also to ICICI bank while seeking conversion of Sub account Emerging Market opportunities Fund (Previously known as Highblue SKY emerging Market Fund) into FPI.

3.6. Relevant Provisions

3.6.1. Provisions of the SEBI Act —

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

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

“12A. No person shall directly or indirectly—

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

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

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

3. Prohibition of certain dealings in securities

“No person shall directly or indirectly—

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

Regulation 4 (1) and 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.”

4. Issues

I. Whether Rainbow (Noticee No.1) by allowing the GDR proceeds to be used as security for a loan that was availed by Vintage FZE (Noticee No.7) towards the subscription of GDRs issued by Rainbow, and not disclosing the same to the stock exchanges, had devised a scheme with Vintage to defraud the investors ?

II. Whether the Directors of Rainbow, namely, Ajay Goenka (Noticee No.2), Radheshyam Goenka (Noticee No. 3) and Sangeeta Goenka (Noticee No. 4) who authorized EURAM Bank to use the GDR proceeds as security in connection with the loan acted as party to the fraudulent scheme, and whether the Directors of Vintage namely, Arun Panchariya (Noticee No.5) and Mukesh Chauradiya (Noticee No. 6) involved in the loan granting process 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, India Focus Cardinal Fund (Noticee No. 9), Highblue Sky Emerging Market Fund (Noticee No. 10), Aspire Emerging Fund (Aspire) (Noticee No.11) and Sparrow Asia Diversified Opportunities Fund (Sparrow) (Noticee No.12), and the FIIs namely, EURAM Bank (Noticee No. 13) and Golden Cliff (Noticee No. 14) through whom the sub-accounts traded in the Indian securities market account acted pursuant to the fraudulent scheme?

V. Whether Rainbow (Noticee No. 1) should be directed to bring back the money, and Vintage (Noticee No. 7), India Focus Cardinal Fund (Noticee No. 9), Highblue Sky Emerging Market Fund (Noticee No. 10) and Aspire Emerging Fund (Noticee No. 11) should be directed to disgorge the illegal gains?

5. Consideration and findings –

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

Jurisdiction of SEBI challenged as GDR issue done outside India

5.2. Noticee No. 5, Arun Panchariya has raised this objection since the GDR issue process took place outside the territorial boundaries of India, SEBI has no jurisdiction in the matter. It is stated that the said question has already been answered by the Hon'ble Supreme Court of India in its judgment dated July 06, 2015 in the matter of ***Securities and Exchange Board of India V. Pan Asia Advisors Ltd and Another in Civil Appeal No. 10560/2013, AIR 2015 SC 2782***. 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 in securities with respect to their roles in the issuance of GDRs by six companies. In this background, the Hon'ble Supreme

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

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

Proceedings not maintainable owing to delay

5.4. With respect to the submission of Noticees that there has been delay in the proceedings, it is seen from the record that documents *inter-alia* in the captioned matter were obtained from various authorities and entities across jurisdictions. Consequent to the receipt of documents as above, investigation was initiated into the GDR issue of Rainbow and the said investigation was completed in the year

2017. After the completion of investigation in the matter, a Show-Cause Notice dated March 16, 2018 was issued to the Noticees. Further, a Supplementary Show-Cause Notice dated June 12, 2018 was issued to Noticee Nos. 1, 7, 9, 10 and 11. Also, as many of the Noticees were based out of India the service of the said Show-Cause Notices involved processes which required more time. Once the said Show-Cause Notices were served on all the Noticees, personal hearings were granted to the Noticees who had sought for the same.

5.5. In this connection, it is worth mentioning that in another GDR matter, namely ***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. In the aforesaid matter, the Hon'ble Tribunal, while dismissing the ground of delay, 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.

5.6. Again, in the matter of ***G.V. Films Ltd. Vs. SEBI*** (Date of Decision: February 15, 2021, SAT Appeal No. 168 of 2020), the Hon'ble SAT opined on the issue of delay in a similar matter pertaining to issue of GDR's as follows:

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

(Underline added)

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

Specificity of Violations Alleged in the SCN:

5.8. The 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 Noticees and further, opportunity was given to the Noticees for tendering their response thereto. It is, therefore, incumbent on the part of the Noticees to explain their 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 Noticees 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 them, 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:

5.9. 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 reproduced the contents of the Investigation Report to a large extent and hence it tantamounts to providing the Investigation Report itself.

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

5.11. Accordingly, I now proceed to deal with the other issues in the matter.

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

5.12. The SCN has alleged that issuance of GDRs by Rainbow 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.

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

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

- a. ***November 27, 2009***– As per the Board Resolution provided by Euram Bank, it was decided that an account would be opened with EURAM Bank for the purpose of receiving subscription money in respect of the Company's GDR

issue. The Resolution was certified to be true by Ms. Sangeeta Goenka (Noticee No.4) and Late Mr. Radheshyam Goenka (Noticee No.3), 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 Ajay Goenka, Managing Director of the Company, be and is hereby 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.”

However, from the copy of the minutes of the board meeting dated November 27, 2009, as provided by Rainbow, it was observed that no such resolution authorizing EURAM Bank to use the funds deposited with them as security in connection with any loan, was passed in the meeting of Board of Directors held on November 27, 2009.

- b. **January 11, 2010** – Rainbow, Pan Asia Advisors Limited (Lead Manager of GDR) and EURAM Bank entered into an Escrow Agreement. The agreement *inter-alia* stated “..The Lead Manager has entered into a placing agreement dated on or about the date hereof (the “Placing Agreement”) with the Company to procure investors (the “Placees”) for the subscription of up to 10,235,455 global depository receipts ...”.
- c. **January 11, 2010**– Vintage entered into a Loan Agreement with EURAM Bank for availing a loan facility of USD 27.02 million with respect to the subscription of GDRs issued by Rainbow.

- d. **January 11, 2010**– Rainbow 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.
- e. **January 27, 2010** – In the Escrow Account maintained by Rainbow with EURAM Bank to receive the proceeds of the GDR issue, a deposit of USD 27.02 million was made. The GDR funds were transferred from the Escrow account to the retail account (which was pledged as a security for loan availed by Vintage for subscribing to the GDR issue).
- f. **January 29, 2010**– Rainbow issued a press release with the title "Rainbow Papers GDR offer fully subscribed" and emphasized that the company issued shares at a premium of 10% to the prevailing market prices. Rainbow also announced that the company will use the proceeds for capacity expansion and installation of thermal power plant.
- g. **October 08, 2012**– A letter was issued by Rainbow to EURAM Bank with respect to the deposit account maintained by it. By way of the said letter, Rainbow stated that they had been informed by Vintage that an amount of USD 6.25 million has to be repaid to EURAM Bank within 10 days. Rainbow confirmed that EURAM Bank had the right to set off the pledged cash deposit with the outstanding loan of Vintage amounting to USD 6.25 million (plus interest). By way of the said letter, it was further instructed by Rainbow that upon exercising its right to set off, all the remaining GDRs held in Deposit No. 5400121E of Vintage should be transferred to Account No. 20311-333-196205 in Habib Bank AG Zurich.

5.15. The above chronology brings out that there was a clear understanding between Rainbow and Vintage (which later became Alta Vista International FZE) to bring about this fraudulent scheme. In this regard, specific mention is made of the Loan Agreement entered into by Vintage with EURAM Bank for availing a loan facility of USD 27.02 million on January 11, 2010. It is pertinent to note that as per the said Loan Agreement, the loan was granted to Vintage on the pledge of the following assets: *“Pledge of certain securities held from time to time in the Borrower’s account*

no 540012 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement. Pledge of the account no 580 011 held with the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.” It is stated that the separate pledge agreement as mentioned above, which forms an integral part of the Loan Agreement, is the Pledge Agreement entered between Rainbow and EURAM Bank. The Pledge Agreement provides that the purpose of the pledge was “...to secure any and all obligations, Present and future, whether conditional or unconditional of the Borrower towards the bank under the Loan Agreement and any and all respective amendments thereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the Loan Agreement...” So, the purpose of the Pledge Agreement is to secure the obligations of the Borrower i.e., Vintage under the Loan Agreement. Further, the Pledge Agreement provides the circumstances in which EURAM Bank would invoke the Pledge. The said circumstances are:

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

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

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

5.16. Thus, from a conjoint reading of the above-mentioned terms of the Loan Agreement and the Pledge Agreement, it is quite clear that the pledging of the proceeds of the GDR issue by way of a Pledge Agreement to allow the said deposit account to be used as security for all the obligations of Vintage under the Loan Agreement, was a pre-condition for the grant of the loan to Vintage. The simultaneous execution of both the Loan Agreement and the Pledge Agreement indicates that Rainbow was itself financing the subscription of its GDR issue. Once the loan facility was activated, an amount of USD 27.02 million was received from Vintage on January 27, 2010 in the Escrow Account maintained by Rainbow in EURAM Bank for the GDR proceeds. However, as already mentioned, on October 08, 2012, a letter was issued by Rainbow 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 6.26 million. Further, by way of the said letter, Rainbow requested EURAM Bank that upon exercising its right to set off, all the remaining GDRs held in Deposit No. 540012 1E of Vintage, which would have otherwise reverted to Rainbow, were to be transferred to Account No. 20311-333-196205 of Vintage in Habib Bank AG Zurich. This effectively establishes that a substantial part of the consideration received from Vintage, for the GDRs subscribed by it, was returned to Vintage, and as such, Vintage came to possess the GDRs without paying any consideration. The Noticee directors have denied that the documents like the Account Charge Agreement and the certified true copy of the Board Resolution purportedly dated November 27, 2009 were signed by them. However, the fact that Rainbow confirmed that EURAM Bank had the right to set off the pledged cash deposit with the outstanding loan of Vintage amounting to USD 6.25 million (plus interest) and instructed Euram Bank to transfer the remaining GDRs to Vintage's account attests to their acceptance of the existence of the pledge agreement. The Noticees cannot now plead ignorance.

5.17. Moreover, an analysis of the repayment of the loan by Vintage revealed that the transfer of money by Rainbow from its account held with Euram Bank closely followed such repayments by Vintage. These transactions are chronologically arranged in the table below:

Table 6

Date	Repayment of loan by Vintage to EURAM	Amount(USD)	Transfer of amounts/ Payments from Rainbow's EURAM account	Amount(USD)
29-Jan-10			Bank Charges	209
12-Feb-10			Bank Charges	2,500
19-Mar-10	Repayment by Vintage	8,50,000		
22-Mar-10			Rainbow Papers Limited A/c. Corporation Bank	3,84,000
22-Mar-10			PAN Asia Advisors Limited	1,00,000
22-Mar-10			PAN Asia Advisors Limited	3,62,832
29-Mar-10	Repayment by Vintage	3,10,000	Rainbow Papers Limited A/c. Indian Overseas Bank	3,10,000
27-Apr-10	Repayment by Vintage	6,40,000	Rainbow Papers Limited A/c. Indian Overseas Bank	4,00,000
	Repayment by Vintage		Rainbow Papers Limited A/c. Corporation Bank	2,40,000
04-May-10	Repayment by Vintage	7,64,000	Rainbow Papers Limited A/c. Indian Overseas Bank	7,64,000
21-Jun-10	Repayment by Vintage	7,74,000	Rainbow Papers Limited A/c. Indian Overseas Bank	7,74,000
22-Jun-10	Repayment by Vintage	8,02,000	Rainbow Papers Limited A/c. Indian Overseas Bank	8,02,000
01-Jul-10	Repayment by Vintage	8,10,000	Rainbow Papers Limited A/c. Indian Overseas Bank	8,10,000
06-Jul-10	Repayment by Vintage	8,02,000	Rainbow Papers Limited A/c. Indian Overseas Bank	8,02,000
07-Jul-10	Repayment by Vintage	7,98,000	Rainbow Papers Limited A/c. Indian Overseas Bank	7,98,000
12-Jul-10	Repayment by Vintage	7,80,000	Rainbow Papers Limited A/c. Indian Overseas Bank	7,80,000
26-Jul-10	Repayment by Vintage	5,55,000	Rainbow Papers Limited A/c. Indian Overseas Bank	5,55,000
11-Aug-10	Repayment by Vintage	5,00,000	Rainbow Papers Limited A/c. Indian Overseas Bank	5,00,000
05-Oct-10	Repayment by Vintage	10,08,000	Rainbow Papers Limited A/c. Indian Overseas Bank	10,08,000
07-Oct-10	Repayment by Vintage	9,94,000	Rainbow Papers Limited A/c. Indian Overseas Bank	9,94,000
12-Oct-10	Repayment by Vintage	9,00,000	Rainbow Papers Limited A/c. Indian Overseas Bank	9,00,000
11-Nov-10	Repayment by Vintage	4,00,000	Rainbow Papers Limited A/c. Indian Overseas Bank	4,00,000
22-Nov-10	Repayment by Vintage	2,97,000	Rainbow Papers Limited A/c. Indian Overseas Bank	2,97,000
12-Jan-11	Repayment by Vintage	4,00,000	Rainbow Papers Limited A/c. Indian Overseas Bank	4,00,000
24-Jan-11	Repayment by Vintage	3,00,000	Rainbow Papers Limited A/c. Indian Overseas Bank	3,00,000
27-Jan-11	Repayment by Vintage	3,00,000*	Rainbow Papers Limited A/c. Indian Overseas Bank	3,00,000
31-Jan-11	Repayment by Vintage	3,00,000	Rainbow Papers Limited A/c. Indian Overseas Bank	3,00,000
18-Apr-11	Repayment by Vintage	5,00,000	Rainbow Papers Limited A/c. Indian Overseas Bank	5,00,000
28-Apr-11	Repayment by Vintage	20,00,000	Rainbow Papers Limited A/c. Indian Overseas Bank	20,00,000
03-May-11	Repayment by Vintage	8,00,000	Rainbow Papers Limited A/c. Indian Overseas Bank	8,00,000
10-May-11	Repayment by Vintage	5,50,000	Rainbow Papers Limited A/c. Indian Overseas Bank	5,50,000

Date	Repayment of loan by Vintage to EURAM	Amount(USD)	Transfer of amounts/ Payments from Rainbow's EURAM account	Amount(USD)
27-Jun-11	Repayment by Vintage	9,00,000	Rainbow Papers Limited A/c. Indian Overseas Bank	9,00,000
30-Jun-11	Repayment by Vintage	11,00,000	Rainbow Papers Limited A/c. Indian Overseas Bank	11,00,000
11-Jul-11	Repayment by Vintage	11,00,000	Rainbow Papers Limited A/c. Indian Overseas Bank	11,00,000
27-Jul-11	Interest Earned	2,67,446		
28-Jul-11	Repayment by Vintage	5,40,000	Rainbow Papers Limited A/c. Indian Overseas Bank	8,00,000
	Total	2,10,41,446	Total	2,10,33,541
* The transaction was debited in Vintage's loan account on January 31, 2011. However, the redemption request was faxed to EURAM on 27 Jan 2011 at 03:11 PM and also bears a stamp which reads 27 JAN'11 14:50.				

5.18.I note from the above table that the dates and amounts of repayment of loan by Vintage to Euram Bank are synchronous with every transfer by Rainbow out of its account held with Euram Bank, which was pledged as security for the loan. Hence, it appears that only when Vintage repaid a sum of money, Rainbow was able to transfer a similar sum to its bank accounts in India or use the same for any other purpose, as the charge on the pledged account was removed to that extent. Therefore, it is apparent that the amount transferred from Rainbow's Euram account was dependent on the repayment of the loan by Vintage. The same also indicates that Rainbow was aware of the Loan/ Pledge Agreement. The above table makes it clear that the GDR proceeds were not at the disposal of Rainbow, except such amount that had been repaid by Rainbow, as the GDR proceeds were pledged as collateral for the loan. Hence, as noted above, the Noticee cannot deny knowledge of the pledge.

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

5.20.Additionally, it has been alleged that Rainbow 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 Rainbow and EURAM Bank by virtue of which EURAM Bank

provided a credit facility to Vintage for the purpose of subscribing to the GDRs of Rainbow. 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 on January 28, 2010 that “... has allotted 1,02,35,455 GDR which was open between January 21-27, 2010. The said GDR issue has been fully subscribed and the listing application for the aforesaid underlying Equity Shares in terms of GDR issue is being made separately to the exchange” without disclosing the pledge/loan arrangement that it had with regard to the subscription of its GDR issue. This may have led the investors to believe that the said GDR issue was genuinely subscribed. Therefore, such publication/disclosure of information, as seen above, was misleading and contained distorted information which induced investors to deal in the shares of Rainbow. Accordingly, I find that Rainbow has violated Regulation 4(2) (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003.

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

A. Directors of Rainbow

Ajay Goenka, Radheshyam Goenka and Sangeeta Goenka

5.21. The details of the Noticee directors of Rainbow as per the Annual Report of the Company for the financial year 2009-10 are provided hereunder:

Table -7

NAME	DESIGNATION
AJAY R. GOENKA	CHAIRMAN & MANAGING DIRECTOR
RADHESHYAM N.GOENKA	EXECUTIVE DIRECTOR (ceased w.e.f. 28.05.2010)
SANGEETA A. GOENKA	EXECUTIVE DIRECTOR (ceased w.e.f. 28.05.2010)

5.22.As seen from the above table, Ajay Goenka was the Chairman and Managing Director of the Company; Radheshyam Goenka and Sangeeta Goenka were Executive Directors.

5.23.By way of the Board Resolution dated November 27, 2009, EURAM Bank was authorized to use the Rainbow's GDR proceeds deposited with them, as security in connection with loans, if any. Ajay Goenka was authorized to sign, execute any application, agreement, escrow agreement, document, undertaking etc. as may be required by EURAM Bank. By way of the said Board Resolution, Ajay Goenka 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 this Company. From the copy of the board resolution received from EURAM Bank, which was certified to be true by Ms. Sangeeta Goenka and Mr. Radheshyam Goenka, it was seen that EURAM Bank was authorized to use Rainbow's GDR proceeds deposited with them, as security in connection with any loan. However, from the copy of the minutes of said meeting provided by Rainbow, it was observed that no such resolution authorizing the EURAM Bank to use the funds deposited with them as security in connection with any loan, was passed in the meeting of Board of Directors held on November 27, 2009.

5.24.The Noticee directors have also cited the decision of the Hon'ble SAT in a GDR mater, namely, *Chromatic India Vs. SEBI* (SAT Appeal No. 392 of 2020) wherein it was *inter alia* held that the Board Resolution itself does not create any suspicion or fraudulent act. However, the Hon'ble Supreme Court, vide order dated September 21, 2021 in another GDR matter, namely *SEBI vs. Adi Cooper*, has held that such a resolution facilitated the transaction with Vintage, and was a fraudulent transaction considering the fact that neither the arrangement nor the resolution was ever disclosed to the shareholders of the Company or the investors of the securities market through the stock exchange(s). Hence, the contention of the Noticees cannot be accepted.

5.25.It is further noted that the Pledge Agreement entered into by Rainbow with EURAM Bank, whereby a deposit account of Rainbow maintained with EURAM Bank having USD 27.02 million was given as security for all the obligations of

Vintage under the Loan Agreement, had been signed by Ajay Goenka. As noted above, vide letter dated October 8, 2018, EURAM Bank was instructed that upon exercising its right to set off, the GDRs pledged by Vintage which would have come to Rainbow, should be transferred to Vintage's account in Habib Bank AG Zurich.

5.26. I also note that the Noticee directors have stated that remittance of 76% GDR *Proceeds* was received in India and 23% was received in Dubai by Rainbow Papers JLT. As per the Noticees, Rainbow had transferred the amount to Vintage on behalf of Jainbow Papers JLT, UAE based wholly owned subsidiary of Rainbow (hereinafter referred to as 'JLT') as Earnest Money Deposit in connection with a "Long Term Procurement and Supply Facilities for BCTMP and NBSK Pulp from the North American Markets". I am unable to accept the same because of the following reasons:

- a. As noted above, Rainbow, vide letter dated October 8, 2012, had instructed EURAM to adjust the amount of USD 6.25 Million available in its account against the amount outstanding on the loan taken for subscribing for GDRs of Rainbow and the pledge agreement signed by
- b. The value of outstanding loan was USD 6,247,601.20 as per letter dated October 08, 2012 and the amount debited from Rainbow's EURAM account was USD 6,260,183 (including Interest). The same amount was accounted as advance towards the said procurement agreement.
- c. JLT entered into a contract with none other than the lone subscriber to the GDR issue of Rainbow.

5.27. Therefore it appears that the aforesaid procurement/ supply contract was created as an afterthought to camouflage the loan repayment of Vintage by Rainbow as an advance towards a procurement contract and that the consideration of USD 6.26 Million (including interest) received from Vintage for GDR issue was utilized towards repayment of loan availed by Vintage for subscribing to the GDR issue.

5.28. As noted above, Ajay Goenka, was the Chairman and Managing Director of the Company; Radheshyam Goenka and Sangeeta Goenka were Executive Directors of Rainbow. They were actively involved in the day-to-day activities of the

Company, and had full knowledge of the activities of Company during the process of issuance of GDRs. Thus, the facts show that the directors of the Company, namely, Ajay Goenka, Radheshyam Goenka and Sangeeta Goenka have violated the provisions of Section 12A(a), (b) and (c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

B. Directors of Vintage

Arun Panchariya

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

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

- a. SEBI does not have the jurisdiction to initiate action against natural persons resident outside India;
- b. other companies have come out with GDR issues which followed the market practices allegedly now found to be illegitimate by SEBI;
- c. the Noticee was a director in Vintage FZE only till 2007; and
- d. decisions of Vintage FZE including Loan default was taken in the circumstances in the best interest of the Company by its management.

5.31. The question of jurisdiction of SEBI has already been dealt with in the previous part of this Order. In this regard, reference is made to the loan agreement January 11, 2010 entered into by Vintage with EURAM Bank. The said agreement has been signed by Arun Panchariya and in the space for “Title”, MD has been mentioned. So, it clearly belies the claim of the Noticee that he was a director in Vintage FZE only till 2007. It is seen from a 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.

5.32. Thus, from the above, it is concluded that during the period when the process for issue of GDRs was initiated and the announcement of allotment of GDRs was done i.e., October 2010 to April, 2011, Arun Panchariya was the sole beneficial owner of Vintage and had a controlling position in it. 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), (b) and (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

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

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

- a. he has never been the Director or Managing Director of Vintage FZE, and he only held the position of Manager;

- b. the decisions to subscribe to the GDRs and obtain loan from Euram Bank for subscribing to the GDRs was taken by Arun Panchariya and the Noticee, had no role to play in it; and
- c. the Noticee did not gain any other advantage, monetary or otherwise for any of the acts done by him as an employee of Vintage FZE, working under Arun Panchariya.

5.35. In this regard, reference is made to the Loan Agreement entered into by Vintage with EURAM Bank. Mukesh Chauradiya signed the loan redemption letters to EURAM for the loan availed for subscription of Rainbow's GDR issue as Authorized Signatory of Vintage. A letter dated January 12, 2011 for extension of repayment date of loan by Vintage was also signed by Mukesh Chauradiya as Managing Director of Vintage. In addition to the above references, the General Trading License issued by the Jebel Ali Free Zone Authority, shows Mukesh Chauradiya as a Manager of Vintage. 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.

5.36. It is seen from the letter dated January 12, 2011 addressed to EURAM Bank and 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. The circumstances indicate that Mukesh Chauradiya was playing an important role in the affairs of Vintage during the relevant period. 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 the company Vintage FZE and he has never benefited anything in the alleged violation as he was only a salaried employee of Vintage FZE. In the matter, the Hon'ble SAT held as follows:

“It is an undisputed fact that the appellant has signed as Managing Director as we also note at page 94 of the Memo of appeal. It is not that he signed “for managing director” or “on behalf of managing director” etc. Therefore, irrespective of the dispute relating to the designation as contended by the appellant, the appellant was undoubtedly having the power to sign as managing director. In the certificate given by the JAFZA only 3 names [and 4 designations, with the sole Director, being named as the Secretary also] are indicated who are responsible people in Vintage FZE and appellant was one of them. Therefore, the dispute as to what was the exact designation of the appellant is irrelevant in the context that admittedly the appellant signed as Managing Director of Vintage FZE. It is also important to clarify here that using a designation in other jurisdictions, such as UAE in the instant case, or elsewhere, for comparison to similar designations in India is also not relevant because designations vary widely even with respect to similarly placed officials across multiple jurisdictions. What is relevant is only whether the appellant was holding a position in which he could put his signature, that too in a loan agreement for USD 13.24 million with a bank under the designation of Managing Director. In any case designation of a person and whether a person is “an officer in default” in an organization etc are irrelevant when the charge is that of aiding and abetting fraud under the PFUTP Regulations, which is the case herein.

5.37. As held by the Hon’ble SAT, the exact designation of the present Noticee is not relevant. I note that Mukesh Chauradiya executed several loan agreements/ signed other documents in various matters involving fraud related to GDR issues where Vintage was involved. Accordingly, I am of the opinion that Mukesh Chauradiya held key position in Vintage and cannot plead ignorance of the scheme of manipulation. In view of the same, I find that Mukesh Chauradiya has violated Section 12A(a), (b) and (c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

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

5.38. Pan Asia Advisors Ltd. (“**Pan Asia**”), a UK based entity, was the Lead Manager for GDR issue of Rainbow. 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 Rainbow. No replies/submissions have been received from Pan Asia.

5.39. 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 January 01, 2010 to February 28, 2010, Arun Panchariya was a director and had a controlling stake in Pan Asia.

5.40. In this respect, reference is also made to the letter dated February 20, 2012 of Pan Asia addressed to SEBI. By way of the said letter, Pan Asia has provided a summary of the various steps involved in the consummation of a GDR issue, right from the initiation of the issue till the closing of the issue. Pan Asia, as part of the letter, has also provided a list of activities that it is usually required to carry out as the Lead Manager which is given hereunder:

- “ 1) Signing the mandate with the Client (i.e. Indian Listed Company).*
- 2) Conducting the due diligence that includes documentary evidences as well as a check on the premises owned by the company.*
- 5) Then lead manager (PAA) enters into a tri-party Escrow Agreement wherein the parties are the (a) Issuer Company, (b) Lead manager (Pan Asia) and (c) Escrow Agent appointed by the company.*
- 6) PAA introduces all the parties to each other by circulating a Working Group List.*
- 7) PAA presents the project report of the Issuer Company along with the Offer document to the investor(s). This process runs simultaneously along with the progress on the working group co-ordination in terms of documentation for the listing.*

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

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

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

5.42. Further, reference is drawn to Order dated October 25, 2016 of the Hon’ble SAT in *Pan Asia Advisors Limited V. SEBI* in Appeal No. 126 of 2013. The Hon’ble SAT while considering the role of the lead manager i.e., Pan Asia Advisors Limited and its Managing Director, Arun Panchariya, with respect to the GDR issue of Asahi Infrastructure & Projects Ltd., which is similar to the present matter, has held, “...instead of ensuring that the foreign investors subscribe to the GDRs of Asahi, AP as Managing Director of PAN Asia planned to subscribe to the GDRs of Asahi through Vintage and in fact as Managing Director of Vintage took loan of 5.98 Million USD from Euram Bank for subscribing to the GDRs of Asahi and made Asahi to pledge to the Euram Bank the GDR subscription amount of 5.98 Million USD as security for the loan taken by Vintage. Similar modus operandi was adopted in case of other issuer companies. Thus, the investors in India were made to believe that in the global market the issuer companies have acquired high reputation in terms of investment potential and hence the foreign investors have fully subscribed to the GDRs, when in fact, the GDRs were subscribed by AP through Vintage which was wholly owned by AP. In other words, PAN Asia as a Lead Manager and AP as Managing Director of PAN Asia attempted to mislead the investors in India that the GDRs have been subscribed by foreign investors when in fact the GDRs were subscribed by AP through Vintage. Any attempt to mislead the investors in India constitutes fraud on the investors under the PFUTP Regulations...”

5.43. Accordingly, I find that Pan Asia has violated Section 12A(a), (b) and (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 India Focus Cardinal Fund (Noticee No. 9) and Highblue Sky Emerging Market Fund (Noticee No. 10), Aspire Emerging Fund (Noticee No.11), Sparrow Asia Diversified Opportunities Fund (Noticee No.12), Aries Capital Fund Ltd. (Noticee No.13) and the FIIs, EURAM Bank (Noticee No. 15) and Golden Cliff (Noticee No. 13) have acted in pursuance of the fraudulent scheme?

5.44. It has been alleged in the SCN that GDRs were issued through the fraudulent scheme to Vintage free of cost and at the cost of other investors of Rainbow to the extent of USD 6.26 million (including interest). The GDRs were thereafter converted by four sub-accounts (IFCF, HBS, Aspire and Sparrow) connected with Arun Panchariya into equity shares of Rainbow. Of these, three Sub accounts, namely, IFCF, HBS and Aspire sold the converted equity shares to the tune of Rs. 92.74 crore on Indian stock exchanges (BSE and NSE). Further, the three sub accounts (IFCF, HBS and Aspire) together continued to hold total of 2,06,07,945 shares of Rainbow. Therefore, it was observed in the investigation that the three sub-accounts, namely IFCF, HBS and Aspire, acted as conduits for Arun Panchariya in selling/ holding shares of Rainbow through the fraudulent scheme. It was also noted that Sparrow received GDRs from Aries Capital Fund Limited (Aries), which is connected to Arun Panchariya. Considering that GDRs were received by Vintage pursuant to the fraudulent GDR scheme and were partly at free of cost, Sparrow and Aries Capital Fund Limited were parties to the fraud.

5.45. It has been further alleged in the SCN that FIIs EURAM and Golden Cliff did not make any investment in India and facilitated Arun Panchariya connected sub-accounts in selling the shares received from Vintage on account of cancellation of GDRs. Based on the above, FIIs EURAM and Golden Cliff facilitated Arun Panchariya connected entities thereby parties to the fraudulent scheme of GDR issue.

5.46. In this regard, the liability of the above-named Noticees is being taken up for consideration hereinafter:

India Focus Cardinal Fund and Highblue Sky Emerging Market Fund

5.47. I note that India Focus Cardinal Fund has not filed any replies/submissions to SEBI.

5.48. It is seen from Table 2 of this Order that India Focus Cardinal Fund received 1,21,55,500 equity shares of Rainbow upon conversion of 43,91,100 GDRs. 92,75,000 shares were then sold by India Focus Cardinal Fund in the Indian capital market. The details of the sale of the shares are provided hereunder:

IFCF

Table – 8

Date	Shares received on GDR cancellations	No. of shares sold	Running balance of shares	Trade Value in INR
15-Mar-10	1,75,000		1,75,000	
16-Mar-10		1,75,000	-	2,27,85,040
22-Mar-10	1,55,000		1,55,000	
23-Mar-10	80,000		2,35,000	
25-Mar-10		1,10,000	1,25,000	1,48,84,046
26-Mar-10	40,000	1,25,000	40,000	1,66,32,385
29-Mar-10		40,000	-	55,65,010
26-Apr-10	2,00,000		2,00,000	
27-Apr-10		2,00,000	-	3,42,55,260
30-Apr-10	2,00,000		2,00,000	
03-May-10		2,00,000	-	4,08,59,275
22-Jun-10	2,00,000	2,00,000	-	4,37,34,968
23-Jun-10	2,00,000		2,00,000	
24-Jun-10		2,00,000	-	4,38,60,595

Date	Shares received on GDR cancellations	No. of shares sold	Running balance of shares	Trade Value in INR
01-Jul-10	2,00,000	2,00,000	-	4,35,99,132
05-Jul-10	2,00,000		2,00,000	
06-Jul-10		2,00,000	-	4,39,25,108
07-Jul-10	2,00,000		2,00,000	
09-Jul-10		2,00,000	-	4,42,38,659
12-Jul-10	2,00,000		2,00,000	
13-Jul-10		2,00,000	-	4,37,34,769
23-Jul-10	1,50,000		1,50,000	
26-Jul-10		1,50,000	-	3,18,75,000
09-Aug-10	2,50,000		2,50,000	
10-Aug-10		2,50,000	-	5,87,51,227
05-Oct-10	10,00,000		10,00,000	
06-Oct-10	-	10,00,000	-	5,54,01,649
07-Oct-10	10,00,000		10,00,000	
10-Nov-10	-	1,50,000	8,50,000	96,79,660
12-Nov-10	-	2,50,000	6,00,000	1,52,51,994
16-Nov-10	15,00,000		21,00,000	
07-Apr-11	-	5,00,000	16,00,000	3,15,00,000
25-Apr-11	-	6,00,000	10,00,000	3,79,35,525
27-Apr-11	7,50,000		17,50,000	
28-Apr-11	-	8,00,000	9,50,000	5,08,00,000
29-Apr-11	10,80,500		20,30,500	
03-May-11	-	6,00,000	14,30,500	3,72,00,000
04-May-11	5,00,000		19,30,500	

Date	Shares received on GDR cancellations	No. of shares sold	Running balance of shares	Trade Value in INR
10-May-11	-	4,00,000	15,30,500	2,50,00,000
23-Jun-11	-	4,00,000	11,30,500	2,47,20,000
24-Jun-11	-	4,00,000	7,30,500	2,47,00,098
29-Jun-11	6,75,000		14,05,500	
30-Jun-11	-	8,25,000	5,80,500	5,03,25,050
01-Jul-11	15,00,000		20,80,500	
08-Jul-11	-	9,00,000	11,80,500	5,49,40,008
11-Jul-11	17,00,000		28,80,500	
Total				90,61,54,458

5.49. In this regard, reference is made to Arun Panchariya's email dated July 12, 2010, wherein he has stated himself to be the Investment Manager of IFCF and Chief Investment Officer of Cardinal Capital Partners in the year 2010. Further, reference is drawn to letter dated April 02, 2012 addressed by India Focus Cardinal Fund to SEBI. In the said letter, it has been disclosed by the Noticee that for the period January 01, 2009 to May 31, 2010, the complete shareholding of Cardinal Capital Partners was held by Arun Panchariya. Arun Panchariya in his submissions before me has also stated that Cardinal Capital Partners, was established by him, and Cardinal Capital Partners in turn established India Focus Cardinal Fund. Reference is also made to the Administrative Fine Statement passed by the Dubai Financial Services Authority (DFSA), against Arun Panchariya, in which DFSA had imposed a fine of USD 12,000 for non-disclosure of certain directorships that he was holding, while applying for authorization as a Licensed Director of a Firm in Dubai International Financial Centre (DIFC). Such information furnished by him, which was false, misleading or deceptive, included *inter alia*, the failure to disclose his directorship/ controlling position in IFCF.

5.50. From the above, it is seen that the complete shareholding in India Focus Cardinal was held by Cardinal Capital Partners Ltd., and in turn the complete shareholding in Cardinal Capital Partners Ltd. was held by Arun Panchariya. So, both India Focus Cardinal Fund and Cardinal Capital Partners Ltd. were controlled by Arun Panchariya during the period of the sale of converted equity shares in the Indian securities market.

5.51. It has already been established that Vintage, an Arun Panchariya entity, fraudulently subscribed to the GDRs of Rainbow. It has also been brought out above that India Focus Cardinal Fund (which came to possess the GDRs and converted them into equity shares) was both owned and controlled by Arun Panchariya. In view of the same, I am convinced that India Focus Cardinal Fund provided a conduit for Arun Panchariya to sell the illegally acquired shares of Rainbow in the Indian securities market. Accordingly, I find that India Focus Cardinal Fund have violated Section 12A(a), (b) and (c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

Highblue Sky Emerging Market Fund and Golden Cliff

5.52. HBS in its submissions/replies submitted to SEBI has refuted the allegations made in the SCN. The same have been captured in the previous part of this order, and accordingly are not being reproduced here. It is, however, relevant to briefly mention herein the essential grounds of defence taken by the said Noticee in respect of the allegations made in the SCN –

- a. the allegation of the Noticee's connection with Arun Panchariya was on the ground that Anant Sharma and Reema Shetty were connected to Arun Panchariya. These relations do not establish any connection;
- b. Arun Panchariya and Anant Sharma being Directors in one Indian company cannot be used to conclude that Anant Sharma was connected with Arun Panchariya in all businesses; and
- c. the KYC documents of HBS showing its address and contact numbers being common with Aurisse fund was because Aurisse was the management

company for Highbluesky Emerging Market Fund, and provided services, viz., accounting, NAV calculations etc.

- a. It is seen from Table 2 of this Order that Highblue Sky Emerging Market Fund got 1,05,82,050 equity shares of Rainbow upon conversion of 21,16,410 GDRs. Out of the same, by May 10, 2016 a total of 33,51,548 shares were sold in the Indian capital market. The details of the sale of the shares are provided hereunder:

HBS

Table 9

Date	Shares received on GDR cancellations	No. of shares sold	Running balance of shares	Trade Value in INR
23-Nov-11	3,32,050		3,32,050	
09-Jun-15	1,02,50,000		1,05,82,050	
17-Aug-15		4,000	1,05,78,050	2,40,000
18-Aug-15		4,000	1,05,74,050	2,40,000
18-Sep-15		888	1,05,73,162	47,064
28-Mar-16		27,660	1,05,45,502	5,26,764
29-Mar-16		3	1,05,45,499	54
11-Apr-16		22,773	1,05,22,726	2,78,396
12-Apr-16		46,256	1,04,76,470	5,59,196
20-Apr-16		10,000	1,04,66,470	1,05,500
21-Apr-16		38,038	1,04,28,432	3,80,380
22-Apr-16		1,28,948	1,02,99,484	12,25,006
10-May-16		30,68,982	72,30,502	1,74,24,001
Total				2,10,26,362

5.53. From the above table it can be seen that HBS sold a total of 33,51,548 shares for a value of Rs. 2.10 crores and continues to hold 72,30,502 equity shares of Rainbow. The shares sold by the sub-account, Highblue Sky Emerging Market Fund were done through the FII, Golden Cliff.

5.54. KYC documents of HBS obtained from custodian ICICI Bank Ltd. showed that its registered was – *C/O Aurisse International Ltd, 2nd Floor, Wing A, Cybertower 1, Ebene, Cybercity Ebene, Mauritius*. The email address of HBS is mentioned as

fundadmin@aurisse.com and its contact no. is mentioned as +2304640077. Further, in SEBI's records, HBS has mentioned its email id as saleem@aurisse.com. Investigation revealed that Aurisse International Limited is based out of Mauritius and was formerly known as Al Jabha (Mauritius) Limited, wherein Mr. Mukesh Chauradiya was director and CFO in 2011. Examination of website of Aurisse International Limited also revealed that it shares common address and contact number with HBS.

5.55. Further, I note that Golden Cliff is 100% shareholder of HBS since April 21, 2014. Mr. Anant Kailash Chandra Sharma was a director (from July 16, 2014) and 100% beneficial owner (from September 09, 2014) of Golden Cliff. Further, he was a director (from August 11, 2014) and beneficial owner (from September 09, 2014) of HBS. Summary of connection of Mr. Anant Kailash Chandra Sharma with Golden Cliff and HBS is tabulated below:

Table 10

Connection with HBS		Connection with Golden Cliff	
1	Director since August 11, 2014	1.	Director since July 16, 2014
2	Beneficial owner (100% shareholder) since September 09, 2014 (by virtue of being beneficial owner of Golden Cliff since September 09, 2014 which in turn is beneficial owner of HBS since April 21, 2014).	2.	Beneficial owner (100% shareholder) since September 09, 2014.

5.56. A summary of connection of Reema Narayan Shetty with HBS and Golden Cliff is tabulated below:

Table 11

Connection with Golden Cliff		Connection with HBS	
1	Director from May 16, 2013 to August 01, 2014	1.	Beneficial owner (100% shareholder) from April 21, 2014 to September 09, 2014 (by virtue

2	Beneficial owner (100% shareholder) from September 12, 2013 to September 09, 2014	of being beneficial owner of Golden Cliff from September 12, 2013 till September 09, 2014 which in turn is beneficial owner of HBS since April 21, 2014)
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5.57.Mr. Anant Kailash Chandra Sharma (who worked with Arun Panchariya) and Reema Narayan Shetty (who worked with Arun Panchariya connected entity i.e. IFCF), are associated with HBS as beneficial owners.

5.58.In this regard, it is seen that Reema Narayan Shetty was a director of Golden Cliff from May 16, 2013 to August 01, 2014. Reference is made to emails dated March 02, 2016 and April 29, 2016 whereby Highblue Sky Emerging Market Fund has provided shareholding and directorship details of itself and Golden Cliff. 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 authorized 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.

5.59.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.

5.60. 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

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

Table-12

Serial No.	Director	Company	Start Date	End Date
1	Arun Panchariya	Sai Sant Advisory (India) Private Ltd.	31/08/2007	20/10/2010

5.62. 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
2	Mukesh Chauradiya	Ramsai Investment Holdings Private Limited	17/08/2010	17/03/2016

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

Table-14

Serial No.	Director	Company	Start Date	End Date
1	Satish Ramswaroop Panchariya	Alka India Limited	01/02/2000	-
2	Ashok Ramswaroop Panchariya	Alka India Limited	29/04/2005	-

5.64. So, from the above-mentioned tables, it is seen that Anant Sharma was a director in the companies where the directorships were either held by Arun Panchariya or Arun Panchariya related entities. Also, it would be relevant to see the shareholding pattern of the companies in which Anant Sharma held directorships:

Table-15

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

		<i>As on September 30, 2013</i> ▪ Vintage FZE – 99.99 % (9998 shares) ▪ Mukesh Chauradiya – 0.02% (2 shares)
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5.65. Thus, it is seen from the above that Anant Sharma was involved in such businesses which were owned/managed by Arun Panchariya or related entities. It is to be noted that Anant Sharma became the owner of Golden Cliff upon receiving the shares from Reema Narayan Shetty. As detailed above, Anant Sharma and Reema Narayan Shetty are related to Arun Panchariya. Furthermore, Highblue Sky Emerging Market Fund is owned by Golden Cliff.

5.66. In the present proceedings, the allegation is that Golden Cliff, a registered FII facilitated Highblue Sky Emerging Market Fund, its sub-account to sell the illegally acquired shares in the Indian securities market. It has already been established that Vintage, an Arun Panchariya entity, fraudulently subscribed to the GDRs of Rainbow. It has also been brought out that Highblue Sky Emerging Market Fund, which came to possess the GDRs and converted them into equity shares, and Golden Cliff were both Arun Panchariya related entities. I note that in their replies, the Noticees have not denied the connections but has stated that these do not imply that the business decisions were not taken independently. However, looking at the entire scheme of manipulation where the entities were seen to be connected with each other and/ or Arun Panchariya, I am unable to accept the submission of the Noticees. In view of the same, I am convinced that Highblue Sky Emerging Market Fund worked as a conduit for Arun Panchariya to sell the illegally acquired shares of Rainbow in the Indian securities market. I also find that FII Golden Cliff facilitated the same. Accordingly, I find that the Golden Cliff and Highblue Sky Emerging Market Fund have violated Section 12A(a), (b) and (c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

EURAM Bank

5.67. EURAM Bank in his submissions/replies submitted to SEBI has refuted the allegations made in the SCN. The essential grounds of defence taken by the said Noticee in respect of the allegations made in the SCN are provided hereunder –

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

5.68. The Noticee has specifically placed reliance on *Hope Plantation Ltd. v. Taluk Land Board*, (1999) 5 SCC 590 and *Vijayabai and Others v. Shriram Tukaram, and Others* (1999) 1 SCC 693 and *Bhanu Kumar Jain v. Archana Kumar*, (2005) 1 SCC 787 to assert issue estoppel / cause of action estoppel. In respect of the assertion made by the Noticee, it would be relevant to examine the principle as laid down in the above-mentioned cases. The specific references made by the Noticee are as follows:

Hope Plantation Ltd. –

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

same suit in which the issue had been determined. It also operated in subsequent suits between the same parties in which the same issue arises.”

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

Vijayabai –

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

Bhanu Kumar Jain –

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

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

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

5.69. At this juncture, I find it relevant to upfront clarify that the Order referred to by the Noticee, wherein EURAM Bank has been discharged of the allegations made in the SCN was purely based on the facts and circumstances as available on record. However, this does not entitle it to advance the ground of issue estoppel/ cause of action estoppel in relation to the present proceedings, in view of the difference in the factual matrix. In this regard, reliance is placed on the case of **Gopal Prasad**

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

5.70. Coming to the merits of the allegation made against EURAM Bank, which is that it facilitated India Focus Cardinal Fund to become its sub account and sell the converted shares of Rainbow in the Indian securities market; it has already been established in the previous part of this order that the issuance of GDRs to Vintage (an Arun Panchariya related entity) was illegal. It has also been established that India Focus Cardinal Fund was controlled and managed by Arun Panchariya. In view of the above, the fact that Arun Panchariya was a director in EURAM Bank Asia Ltd., which was a joint venture between EURAM Bank and Pan Asia Advisors Ltd., another Arun Panchariya entity becomes quite relevant. It has been stated by EURAM Bank that “*AP was never the director or had any material role in Euram Bank*”. In this regard I note that the same modus of manipulation by a similar set of entities has been found in several matter, and the instant case is not an isolated instance.

5.71. In view of the same, I am unable to accept the contention of the Noticee. There was certainly a relationship between EURAM Bank and Arun Panchariya which existed beyond EURAM Bank Asia Ltd. Further, it has been brought out that during the relevant period the sub-account availing the services of EURAM Bank as an FII happened to be an Arun Panchariya entity. In this regard, EURAM Bank has contended that they provided a bouquet of services, which included the sub-account facility to clients, and that it was simply a business decision. I am not at all convinced with this defence. It is a matter of record that as an FII, it did not make any direct investments in the Indian securities market, but was using its FII status to provide sub-account facilities to its clients to access the Indian securities market. Thus, it cannot be a simple business decision or coincidence that the entity availing the sub-account facility happens to be an entity managed and controlled by Arun Panchariya, at a time when EURAM Bank was in a joint venture with him and he was signing the agreements that were being entered into by EURAM Bank. There is a clear and evident nexus between EURAM Bank and Arun Panchariya. Thus, I find that EURAM Bank was acting as a conduit of Arun Panchariya and facilitated India Focus Cardinal Fund to become its sub-account and sell the converted shares of Rainbow in the Indian securities market. Accordingly, I find that EURAM Bank 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.

Aspire Emerging Fund, Sparrow Asia Diversified Opportunities Fund and Aries Capital Fund Limited

- A. As noted above, post cancellation of GDRs, apart from India Focus Cardinal Fund and Highblue Sky Emerging Market Fund, FII-sub accounts namely Aspire Emerging Fund (Noticee No.11) and Sparrow Asia Diversified Opportunities Fund (Sparrow) (Noticee No.12) received equity shares on conversion of GDRs.
- a) I note that Aspire Emerging Fund cancelled 21,00,000 GDRs and received 1,05,00,000 shares of Rainbow and it sold 3,057 shares on August 27, 2015

for a value of Rs. 1,71,192. Aspire continued to hold the balance 1,04,96,943 shares.

- b) On the other hand, Sparrow cancelled 15,65,051 GDRs and received 78,25,256 shares of Rainbow. It did not sell any shares. Investigation revealed that the GDRs of Rainbow were received by Sparrow towards subscription into its fund by Aries Capital Fund Limited. Investigation noted that Anant Kumar Sharma was the director of Aries Capital Fund Limited. As noted above, Anant Kumar Sharma was connected to Arun Panchariya.
- c) In this regard, I note that Sparrow has denied that it received the GDRs from Aries, and has stated that actually they were received through GEOFF. However, I note that at the time of investigation, Sparrow had submitted that GDRs of Rainbow were received by Sparrow towards subscription into its fund by Aries Capital Fund Limited. Even if the submissions of Sparrow are to be accepted, it is seen that the receipt of shares by GEOFF was from Aries and in turn GEOFF invested in the participating shares of Sparrow by delivering 7,825,256 shares of Rainbow. Hence, it ultimately the shares were received from Aries, albeit through another entity.
- d) It was observed that Aspire and Sparrow are connected. Nayan Agarwal was a common authorized signatory for Sparrow and one Leman Diversified Fund. Investors of Leman Diversified included Image Securities Limited, and the Managing Director of Image Securities Limited, namely, Ashish Nanda was also a director of Aspire.
- e) Further, Mr. Aslam Kanowah is a director of Aspire and was also a director of HBS. As noted above, HBS is connected to Mr. Anant Kailash Chandra Sharma, who in turn is connected to Arun Panchariya as noted above.
- f) Thus, I find that Aspire was connected to Arun Panchariya in the manner depicted above. Further, I also note that Sparrow received GDRs from Aries Capital Fund Limited which is connected to Arun Panchariya. Considering that said GDRs were received by Vintage pursuant to the fraudulent GDR scheme and were in part free of cost, I am of the view that Sparrow and

Aries Capital Fund Limited were parties to the fraud. Accordingly, I find that the aforementioned Noticees have violated Section 12A(a), (b) and (c) of the SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

Whether Rainbow (Noticee No. 1) should be directed to bring back the money, and Vintage (Noticee No. 7), India Focus Cardinal Fund (Noticee No. 9), Highblue Sky Emerging Market Fund (Noticee No. 10) and Aspire Emerging Fund (Noticee No. 11) should be directed to disgorge the illegal gains?

5.72.As already stated a Supplementary Show-cause Notice dated June 12, 2018 was issued to Noticee No. 1 with respect to bringing the money back and a common Supplementary Show-cause Notice dated June 18, 2018 was issued to Noticee Nos. 7, 9, 10 and 11 for the disgorging of profits made through the sale of shares, upon conversion of fraudulently acquired GDRs of Rainbow.

5.73.It has been brought out in the previous part of this Order that EURAM Bank had utilized the cash, amounting to USD 6.26 million, lying in Rainbow's bank account for the realization of the outstanding loan amount of Vintage. However, vide order dated February 27, 2019 of the NCLT, the Corporate Insolvency Resolution Process against Rainbow was completed with approval of the Resolution Plan proposed by Kushal Ltd. Further, as per the website of the Ministry of Corporate Affairs (MCA), the company Rainbow has been dissolved. In this background, I find directions to the Company under Sections 11(1), 11(4) and 11B of the SEBI Act for bringing back the money at this juncture would not be efficacious. However, if the status of the Company/ order of the NCLT is reversed due to any reason, then the amount would have to be brought back to the Company.

5.74.With respect to the disgorging of profits, from the tables above, it is observed that IFCF, HBS and Aspire received shares on conversion of GDRs and sold shares of Rainbow. The sub-account wise summary is tabulated below:

Table 16

S.no	Name of the Fund	Trade Value in INR
1.	India Focus Cardinal Fund	90,61,54,458
2.	Highblue Sky Emerging Market Fund	2,10,26,362
3.	Aspire Emerging Fund	1,71,192
Total		92,73,52,012

5.75. Thus, the aforesaid three Noticees made a total gain of **Rs.92,73,52,012**. I also note that the acquisition of the GDRs was due to Vintage, which had subscribed to the GDR issue of Rainbow, transferring the GDRs to HBS, Aspire and IFCF, who then converted the GDRs into equity shares and sold them in the market for the above mentioned amount. Thus, the total gain of **Rs.92,73,52,012** made was a consequence of the collective action of Noticee Nos. 7, 9, 10 and 11. In view of the above, as alleged in the Supplementary SCN, I find that Noticee Nos. 7, 9, 10 and 11 are jointly and severally liable to disgorge **Rs.92,73,52,012**. I find that the SCN/Supplementary SCN does not identify any particular investor or any specific group of investors who have suffered losses due to manipulation by the above mentioned Noticees.

6. Conclusion –

6.1. Thus, from the above, it is concluded that Rainbow 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 Rainbow. I also note that vide order dated February 27, 2019 of the NCLT, the Corporate Insolvency Resolution Process against Rainbow was completed with approval of the Resolution Plan proposed by one Kushal Ltd. Further, as per the website of the Ministry of Corporate Affairs (MCA), the company Rainbow has been dissolved.

- 6.2. Besides Rainbow, I note that, Ajay Goenka and Sangeeta Goenka are liable for the above mentioned fraudulent scheme as they were fully involved in the day-to-day activities of the Company as its directors, and had complete knowledge of the activities of the Company during the process of issuance of GDRs. However, I note that Radheshyam Goenka is now deceased. Further, Vintage FZE, was part of the fraudulent scheme as a consequence of which, it received a large number of GDRs without payment of consideration. Mukesh Chauradiya, a key manager in Vintage was fully involved in the day-to-day activities of Vintage. Pan Asia Advisors Ltd., the lead manager for the GDR issue, which was owned and controlled by Arun Panchariya carried out its activities to further the fraudulent scheme, and as such was a party to the same. Furthermore, the GDRs illegally acquired by Vintage were sold in the Indian securities market by India Focus Cardinal Fund, Noticee No. 9 and Highblue Sky Emerging Market Fund, Noticee No. 10. The above entities were sub-accounts of EURAM Bank and Golden Cliff. Further, Aspire Emerging Fund and Sparrow Asia Diversified Opportunities Fund also received shares issued on account of GDR issue. Sparrow received GDRs from Aries Capital Fund Limited which is connected to Arun Panchariya and were parties to the fraud. 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. 9-11 acted as conduits for Arun Panchariya by facilitating the sale of illegally acquired securities in the Indian securities market.
- 6.3. Arun Panchariya, Noticee No. 5, as 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. In this context, it is noted that in the matter of ***Pan Asia Advisors Limited and Another vs. SEBI*** (Appeal No. 126 of 2013), the Hon'ble SAT, while dismissing the appeal filed by the appellants therein (against the SEBI Order inter alia prohibiting Arun Panchariya from accessing the capital market directly or indirectly, for a period of 10 years), had inter alia observed: “... *apart from making it artificially appear that GDRs have been subscribed by foreign investors when in fact the GDRs were subscribed by Arun Panchariya through Vintage, Arun Panchariya ensured that the GDRs were sold by Vintage to the entities controlled by Arun*

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

7. Directions –

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

7.1.1. In view of the findings in para 6 above, the Show-cause Notice dated March 16, 2018 and Supplementary Show-cause Notice dated June 12, 2018 issued to Noticee No.1 (Rainbow Papers Ltd.) shall:

- a. stand disposed of without any directions at present, in view of the approval of the Resolution Plan for the Company vide order dated February 27, 2019 of the NCLT, and the current status of the Company as *dissolved*.
- b. However, if in any case the abovementioned order of the NCLT/ status of the Company is reversed, for any reason whatsoever, then in such eventuality, the Noticee No. 1 shall:
 - (i) be restrained from accessing the securities market and also remain prohibited from buying, selling or dealing in securities, directly or indirectly, in any manner whatsoever or being associated with the securities market in any manner whatsoever, for a period of 3 years from the date of such reversal; and
 - (ii) continue to pursue the measures to bring back the outstanding amount of USD 6,260,183 into its bank account in India and furnish a Certificate from a Chartered Accountant of ICAI along with necessary documentary evidences, certifying the compliance of this direction to “*The Division Chief, EFD, DRA-1, Securities and Exchange Board of India, SEBI Bhawan, Plot NO. C4 A, G Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400051*”.

7.1.2. Noticee No. 2 (Ajay Goenka) and Noticee No.4 (Sangeeta Goenka) shall:

- a. be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner whatsoever, for a period of 3 years; and

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

7.1.3. The present proceedings initiated against Noticee No.3 (Radheshyam Goenka) vide the Show-cause Notice dated March 16, 2018 shall stand abated.

7.1.4. Noticee No.5 (Arun Panchariya) shall:

- a. 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 10 years; and
- b. be restrained for a period of 10 years from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, and during the said period shall be restrained from associating themselves with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI;

7.1.5. Noticee No. 6 (Mukesh Chauradiya) shall:

- a. be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner whatsoever, for a period of 3 years; and
- b. be restrained for a period of 3 years from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, and during the said period shall be restrained from associating themselves with any listed public company or a public company

which intends to raise money from the public or any intermediary registered with SEBI;

7.1.6. Noticee No. 7 (Vintage FZE) shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 8 years.

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

7.1.8. Noticee No. 9 (India Focus Cardinal Fund), Noticee No. 10 (Highblue Sky Emerging Market Fund), Aspire Emerging Fund (Noticee No.11), Sparrow Asia Diversified Opportunities Fund (Noticee No.12) and Aries Capital Fund Limited (Noticee No. 13); shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 8 years.

7.1.9. Noticee No. 14 (European American Bank AG) 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 2 years.

7.1.10. Vintage (Noticee No. 7), India Focus Cardinal Fund (Noticee No. 9), Highblue Sky Emerging Market Fund (Noticee No. 10) and Aspire Emerging Fund (Noticee No. 11) are further directed to disgorge illegal gains of Rs.92,73,52,012, made by way of sale of equity shares of Rainbow along with interest of 12% per annum from the date of sale of the shares till the payment of disgorgement amount, within a period of 45 days from the date of this order. The liability of Noticee Nos. 7, 9, 10 and 11 to disgorge the said amount shall be joint and several. In the event that Noticee Nos. 7, 9, 10 and 11 fail to comply with the said direction, proceedings for recovery of the outstanding amount

under Section 28A of SEBI Act, 1992 shall ensue. The said Noticees shall also be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in the securities market, till the actual payment or recovery of disgorgement amount or till the completion of the debarment directed, whichever is later.

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

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

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

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

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

Place: Mumbai

Date: October 26, 2021

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