

WTM/AB/IVD/ID4/14459/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

Under Sections 11(1), 11(4), 11(4A), 11B (1), 11B(2) and 15I of the Securities and Exchange Board of India Act, 1992 read with Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and Sections 12A(2) and 23I of Securities Contracts (Regulations) Act, 1956 read with Rule 5 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005.

In respect of:

Noticee no.	Name of the Entity	PAN
1.	Winsome Textile Industries Ltd	AAACW1910G
2.	Mr. Arun Panchariya	AEVPP6125N
3.	Vintage FZE (now known as Alta Vista International FZE)	Not available
4.	Aspire Emerging Fund	AALCA5544M
5.	Mr. Satish Bagrodia	ACUPB5163F
6.	Mr. Ashish Bagrodia	AEIPB4708E
7.	Mr. Manish Bagrodia	ADLPB0308A
8.	Mr. Chandra Mohan	ABOPM0675J
9.	Mr. Satish Girotra	AAEPG5906F
10.	Mr. Mukesh Chauradiya	AAVPC0966A
11.	Pan Asia Advisors Ltd. (Lead Manager)	Not available
12.	Golden Cliff	FII reg. no: INMUFD256111
13.	Stream Value Fund	AAQCS4646H
14.	Sparrow Asia Diversified Fund	AANCS3131Q
15.	Davos International Fund	AADCD7742G
16.	Highblue Sky Emerging Market Fund	AADCK9460G
17.	Leman Diversified Fund	AABCL8363M

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

In the matter of GDR Issue by Winsome Textile Industries Ltd.

1. Present proceedings have emanated from the show cause notice dated July 04, 2019 (hereinafter referred to as, “**the SCN**”) issued to all the Noticees and a supplementary show cause notice dated July 10, 2020 (hereinafter referred to as, “**the SSCN**”) issued to Noticee nos. 1, 2, 5, 6, 7, 8, 9 and 10, by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”). The SCN alleges violations of Section 12A(a), (b) & (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, “**SEBI Act, 1992**”) read with Regulations 3(a), (b), (c) & (d) and 4(1), (2)(f), (k) & (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations, 2003**”) by Winsome Textile Industries Ltd. (hereinafter referred to as “**the Company**”/ “**Noticee No. 1**”/ “**Winsome**”) and violations of Section 12A(a), (b) & (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d) and 4(1) of PFUTP Regulations, 2003 by Noticee No. 2 to 17. The SSCN which was only issued to Noticee nos. 1, 2, 5, 6, 7, 8, 9 and 10, further alleges the violation of Clause 32, 36(7) and 50 of the erstwhile Equity Listing Agreement read with Section 21 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as, “**SCRA, 1956**”) against Noticee nos. 1 and reiterates the allegation in the SCN against Noticee nos. 1, 2, 5, 6, 7, 8, 9 and 10.
2. The aforesaid SCN came to be issued against the Noticees in view of the fact that SEBI conducted an investigation into the Global Depository Receipts (hereinafter referred to as “**GDR**”) issue of Noticee no. 1, for the period March 01, 2011 to April 30, 2011. The focus of investigation was to ascertain whether shares underlying GDRs were issued with proper consideration and whether appropriate disclosures were made by Winsome with respect to its GDRs.
3. The SCN *inter alia* alleges the following:
 - 3.1. Winsome issued 1.29 million GDRs amounting to US \$ 9.99 million, on March 31, 2011.

- 3.2. Pan Asia Advisors Limited, (hereinafter referred to as “Pan Asia”/ “Noticee No.11”) a UK based entity was the Lead Manager of GDR issue of Winsome and Arun Panchariya (hereinafter referred to as “AP”/ “**Noticee no. 2**”) was the MD of Noticee no. 11. Local custodian for GDR issue of Winsome was DBS Bank, Mumbai and Bank of New York Mellon (hereinafter referred to as “**BONY**”) was the global depository bank. GDRs were listed on Luxembourg Stock Exchange.
- 3.3. On September 16, 2010, the directors of Winsome, namely Mr. Satish Bagrodia (Noticee no. 5), Mr. Ashish Bagrodia (Noticee no. 6), Mr. Manish Bagrodia (Noticee no. 7), Mr. Chandra Mohan (Noticee no. 8), Mr. Satish Girotra (Noticee no. 9) vide a Circular Resolution dated September 16, 2010 authorized the EURAM Bank to use the Winsome’s GDR proceeds deposited with European American Investment Bank AG (hereinafter referred to as “**EURAM Bank**”) as security in connection with loan and also authorized Noticee no. 6 to sign, execute any application, agreement etc. as may be required by the EURAM Bank.
- 3.4. The issue of GDR of Winsome was subscribed by only one subscriber i.e. Vintage FZE (hereinafter referred to as “**Vintage** / “**Noticee no. 3**”). Mukesh Chauradia (Noticee no. 10) was MD and director (subsequently MD also), of Noticee no. 3 and AP was its 100% beneficiary. For subscribing to the GDR issue of Winsome, Noticee no. 3 took a loan of USD 9.99 million from EURAM Bank, which is a bank, under the Loan Agreement dated March 23, 2011 (hereinafter referred to as “**Loan Agreement**”).
- 3.5. On the same day a Pledge Agreement was signed between EURAM Bank and Winsome (hereinafter referred to as “**Pledge Agreement**”) whereby Winsome pledged its GDRs proceeds, as a security for the loan availed by Noticee no. 3 for subscribing to the GDR issue of Winsome. Noticee no. 6 Winsome executed the Pledge Agreement, based on the Circular Resolution dated September 16, 2010.
- 3.6. Winsome pledged its GDR proceeds before issuance of GDRs to secure the rights of EURAM Bank against the loan given by EURAM Bank to Vintage for subscription of GDR issue of Winsome.

- 3.7. The SCN also further alleges that out of total GDR proceeds USD 9.99 million, Winsome transferred USD 1.04 million to its bank account in India during February 2012. Further, on October 09, 2012, EURAM Bank adjusted GDR proceeds to the extent of USD 9.018 million against the loan account of Vintage on October 09, 2012, in accordance with the Pledge Agreement dated March 23, 2011, since Vintage defaulted on payment of the loan to EURAM Bank. Thus, GDRs worth of USD 9.018 were allotted to Vintage free of cost.
- 3.8. AP connected sub-accounts namely Highblue Sky Emerging Market Fund (hereinafter referred to as “**HBSF**”/ “**Noticee no. 16**”) Sparrow Asia Diversified Opportunities Fund (hereinafter referred to as “**Sparrow**”/ “**Noticee No.14**”), Aspire Emerging Fund (hereinafter referred to as “**Aspire**”/ “**Noticee No.4**”) Davos International Fund (hereinafter referred to as “**Davos**” / “**Noticee No.15**”), Leman Diversified Fund (hereinafter referred to as “**Leman**” / “**Noticee No.17**”), Stream Value Fund (hereinafter referred to as “**SVF**”/ “**Noticee No.13**”) received total 64,50,000 shares on conversion of GDRs and Aspire sold converted shares worth Rs.1.11 Crores through AP connected FII Golden Cliff (hereinafter referred to as “**Noticee no. 12**”), in the Indian Securities Market.
- 3.9. The scheme of issuance of GDR involving subscription of the GDR issue by obtaining finance from EURAM Bank by pledging the GDR proceeds, non-repayment of complete loan availed by Vintage, and monetizing the GDRs through the sale of underlying shares in Indian stock exchanges by converting GDRs, was fraudulent.
- 3.10. AP in connivance with the GDR issuer company i.e. Winsome, devised and structured the fraudulent scheme through his connected entities Pan Asia Advisors Ltd., Aspire, HBSF, Davos, Leman, SAF, SVF, Golden Cliff, Vintage and Mr. Mukesh Chauradiya,
4. The SCN calls upon Noticee no. 1, to show cause as to why appropriate directions under Sections 11(1), 11B and 11(4) of the SEBI Act, 1992 including the direction to bring back the money to the extent of loan default, amounting to USD 9.018 million should not be issued against it on account of observations mentioned in the SCN. The SCN also calls upon Noticee Nos. 2 to 4 to show cause as to why appropriate

directions under Sections 11(1), 11B and 11(4) of the SEBI Act, 1992 including the direction for disgorgement of the amount to the extent of sale proceeds of converted shares amounting to Rs.1.11 Crores, should not be issued against them on account of observations mentioned in the SCN. SCN calls upon Noticee Nos. 5 to 17 to show cause as to why appropriate directions under Sections 11(1), 11B and 11(4) of the SEBI Act, 1992 should not be issued against them on account of observations mentioned in this SCN. The SSCN calls upon Noticee nos. 1, 2, 5, 6, 7, 8, 9 and 10 to show cause as to why penalties under 15HA read with Sections 11(4A) and 11B(2) of SEBI Act, 1992 and under Section 23E read with Section 12A(2) of SCRA, 1956, be not imposed upon Noticee nos. 1, 2, 5, 6, 7, 8, 9 and 10, on account of the observations mentioned in the SSCN.

5. The SCN issued to the Noticees, also contained the copies of documents relied upon in the SCN, which are as detailed below:

Annexure No	Details
1	Letter dated January 27, 2015 received from Winsome
2	Details of GDR allottees as provided by Winsome
3	Copy of the corporate announcement dated March 31, 2011
4	PAN Asia letter dated February 20, 2012
5	Copy of the Escrow Agreement dated March 23, 2011
6	Copy of the loan agreement dated March 23, 2011
7	Copy of the Know Your Customer (KYC) documents of Vintage
8	Copy of the Board Resolution dated September 16, 2010.
9	Winsome e-mail dated November 28, 2018
10	Pledge Agreement dated March 23, 2011
11	Loan account statement of Vintage
12	Escrow account statement of Winsome
13	Mr. Ashish Bagrodia's letter dated August 07, 2012
14	Copy of Administrative Fine Statement
15	AP's directorship with Pan Asia
16	AP was sole director of Alkarni Holdings Limited as on April 21, 2014
17	AP was the beneficial owner and director of IFCF from August 22, 2008 to October 28, 2010,
18	AP connected Pan Asia Advisors Ltd. had joint venture with EURAM Bank namely EURAM Bank Asia Limited
19	AP was director and president (resigned on September 22, 2011) of EURAM Bank Asia
20	AP was beneficial owner of Vintage FZE in which Mr. Mukesh Chauradiya served as Managing Director and Manager
21	Mukesh Chauradiya was director in Ramsai Investment Holdings P. Ltd

22	Mr. Mukesh Chauradiya was director in Alka India Ltd
23	AP and Mr. Anant Kailash Chandra Sharma were directors in Sai Sant Advisory (I) P. Ltd
24	Mr. Anant Kailash Chandra Sharma was the director in Alka India Ltd
25	Mr. Anant Kailash Chandra Sharma was the director in Ramsai Investment Holdings P. Ltd
26	Mr. Anant Kailash Chandra Sharma was the director in HBSF
27	Ms.Reema Narayan Shetty was the authorized signatory of India Focus Cardinal Fund
28	Mr.Anant Kailash Chandra Sharma was the director and 100% beneficial owner of Golden Cliff
29	Mr. Ashish Nanda was a director of Aspire
30	Connection of Leman Diversified Fund
31	Connection of Davos International Fund
32	Connection of Stream Value Fund
33	Connection of Sparrow Asia Diversified Opportunities Fund

6. The SSCN was issued on July 10, 2020 to Noticee nos. 1, 2, 5, 6, 7, 8, 9 and 10 reiterating the allegations in the SCN and additionally alleging that:

- 6.1. Noticee no. 1 did not inform the stock exchanges of the Pledge Agreement dated March 23, 2011, pledging of GDR proceeds for the loan availed by Noticee no. 3 from the EURAM Bank and the termination of the GDR program as well as the delisting of the GDRs from the Luxemburg Stock Exchange which were price sensitive information.
- 6.2. Noticee no. 1 had wrongly showed the amount of Rs. 4970.55 lakh and Rs. 4609.20 lakh, as on March 31, 2011 and March 31, 2012, respectively, as cash and cash equivalent in its financials.
- 6.3. Noticee no. 1 had failed to disclose contingent liability of Rs.44.60 crore and Rs. 46.09 crore in its financial statements for FY 2010-11 and FY 2011-12.
- 6.4. Noticee no. 1 did not comply with Accounting Standards- 1, 3 and 29 and consequently violated Section 21 of the SCRA, 1956 read with Clauses 32 and 50 of the erstwhile Equity Listing Agreement as well as Clause 36 (7) of the erstwhile Equity Listing Agreement read with Section 21 of the SCRA, 1956.
- 6.5. The SSCN calls upon Noticee nos. 1, 2, 5, 6, 7, 8, 9 and 10, to show cause as to why, in addition to the directions mentioned in the SCN, monetary penalty

should not be imposed on them under Section 15HA read with Sections 11(4A) and 11B (2) of the SEBI Act, 1992 and under Section 23 E read with Section 12A (2) of SCRA, 1956.

7. The SSCN issued to the Noticees, also contained the copies of documents relied upon in the SSCN, which are as detailed below:

Annexure no.	Details
1.	Corporate Announcements made by Noticee no.1 to BSE during the period March 22, 2011 to March 31, 2011
2.	Termination notice of GDR programme
3.	Details of corporate announcements made by Noticee no.1 to BSE during the period June 18, 2015 to June 30, 2015
4.	Copy of page nos. 29 and 27 of Annual Reports for FY 2010-11 and 2011-12 respectively
5.	Relevant pages of Annual Report for FY 2010-11 showing cash and cash equivalent
6.	Relevant pages of Annual Report for FY 2011-12 showing cash and cash equivalent
7.	Relevant pages of Annual Report evidencing that Noticee no. 1 did not show the amount outstanding in Vintage's loan account

Inspection, reply, hearing and written submissions

8. The SCN was served on all the Noticees by Speed Post except Noticee nos. 2, 3 and 11. Thereafter, several attempts were made to deliver the SCN to Noticee nos. 2, 3 and 11, none of them succeeded. Finally, the SCN was served on the Noticee no. 2 in his individual capacity and in the capacity of 100% beneficial owner of Noticee no. 3 on March 11, 2020. SCN pertaining to Noticee nos. 3 and 11 was also served upon Noticee no. 2 on March 11, 2020. In compliance with the principles of natural justice, an opportunity of hearing was granted to all Noticees on May 04, 2020 but none of the Noticees appeared for the said hearing. Thereafter, SSCN was issued on July 10, 2020 to Noticee nos. 1, 2, 5, 6, 7, 8, 9 and 10. Considering that proceedings for both Sections 11B (1) and 11B (2) had been initiated in the matter, to satisfy the principles of natural justice, a hearing date was granted on September 18, 2020 with respect to

both the SCN and SSCN. On September 18, 2020, the Authorized Representative (hereinafter referred to as “**AR**”) for the Noticee nos. 13, 14, 15 and 17 appeared and made submissions and the hearing was concluded *qua* these Noticees. Noticee no. 10 also appeared on the said date, but the hearing could not take place due to paucity of time. In view of the same, another date of hearing was granted to all the remaining Noticees on November 25, 2020. Vide email dated November 23, 2020, Noticee nos. 1 and 6 sought adjournment of the hearing stating that the settlement proceedings were underway. Vide email dated November 15, 2020, Noticee no. 4 sought adjournment of the hearing citing non-availability of counsel. It was also informed that Noticee no. 8 had passed away and a copy of the death certificate of Noticee no. 8 was submitted by the AR of Noticee no.1 vide letter dated September 16, 2020. On November 25, 2020, Noticee no. 10 appeared for the hearing and made submissions and the hearing was concluded *qua* this Noticee. The AR of Noticee nos. 1 and 6 appeared and stated that they had requested for physical inspection of documents which had not been provided to them. The AR of Noticee no. 4 also appeared and sought inspection of documents. Therefore, the hearing was adjourned with respect to these Noticees. An opportunity of inspection of documents was provided to Noticee nos. 1 and 6 on December 15, 2020 (adjourned on the request of the Noticees) and December 30, 2020 and on the said date the AR of Noticee no. 1 availed the opportunity of inspection of documents. A hearing was granted to all remaining Noticees on March 18, 2021 wherein the ARs of Noticee nos. 1, 6 and 7 appeared and made submissions and the hearing was concluded *qua* these Noticees. The AR of Noticee no. 2 and Noticee no. 4 appeared and sought an adjournment and a next date was granted to Noticee no. 2 on March 22, 2021. On March 22, 2021, the AR of Noticee no. 2 appeared and made submissions and the hearing was concluded *qua* this Noticee. On the request of Noticee no. 4, a hearing was granted to Noticee no. 4 on April 15, 2021 on which date the Noticee failed to appear. The Authorised Representative of Noticee no. 4 was directed to appear via video conferencing and he failed to appear. Thereafter vide email dated April 15, 2021 the AR of the Noticee no. 4 was informed that since he had failed to join the hearing the hearing stood concluded *qua* the Noticee no. 4 and if he so desired he could made written submissions within 7 days. Since several opportunities of hearing had already been

granted to it, the hearing was concluded *qua* Noticee No. 4 also. Vide email dated May 11, 2021, SEBI brought it on record that Noticee nos. 1, 6 and 9 has filed an application for settlement under the SEBI (Settlement Proceedings) Regulations, 2018

9. As mentioned in the previous para, Noticee nos. 1, 6 and 9 had made an application for settlement under the SEBI (Settlement Proceedings) Regulations, 2018. Regulation 8(1) of the said Regulations states as follows:

“8. (1) The filing of an application for settlement of any specified proceedings shall not affect the continuance of the proceedings save that the passing of the final order shall be kept in abeyance till the application is disposed of.”

In terms of Regulation 8(1), the hearing with respect to Noticee nos. 1, 6 and 9 were completed and the passing of the final order was kept in abeyance. It is noted that since, the issues with respect to all the other Noticees were inter linked to Noticee no.1, therefore, the passing of the final order in respect of all other noticees was also kept in abeyance. Vide email dated September 03, 2021, it was informed by the concerned department that the settlement applications filed by Noticee no. 1, 6 and 9 had been rejected. Thereafter, the matter was taken up for passing of final order in the matter *qua* all the Noticees.

10. The various submissions made by the Noticees vide their aforesaid replies and submissions made during the course of the hearing, are summarised as hereunder:

- A. Noticee nos. 1 and 6, vide letters dated March 11, 2021 and May 20, 2021 and September 03, 2021 (on behalf of only Noticee no.1), have mainly made the following submissions:

- (a) *Noticee no.1, the GDR issuer company, in the year 2010-11 decided to increase its capacity of dyeing units and decided to setup a new spinning unit and a new knitting unit and modernize the existing spinning unit for which the company required approximately Rs. 230 Crores. In order to arrange such funds, the Company explored various options such as issue of equity and debt instrument. The Company finally decided to borrow Rs. 173 Crores from the Banks and the*

balance money to be sourced by issuance of Global Depository Receipts ("GDR's"). After inquiring with various Lead Managers and Bankers, the Company came in touch with Pan Asia Advisors Ltd. ("Pan Asia"), who had acted as Lead Manager for various other Indian Companies. The Company thereafter finalized Pan Asia as its Lead Manager for the issuance of the GDR.

- (b) Accordingly GDR's were issued by the Company on 31st March, 2011 and where listed on Luxembourg Stock Exchange. The Company had raised a total sum of USD 99,97,500. The GDR proceeds which were kept with the European American Investment Bank AG ("EURAM Bank"), were later brought back into the Company in its bank account in India between the period 27th February, 2012 to 21st March, 2014.*
- (c) The said money received by the Company was thereafter used for the objects as specified in the GDR offer document viz. for (i) Capital expenditure for expansion and capacity enhancement (ii) strengthening its net working capital and (iii) other Corporate Purposes (iv) Setting up of Foreign Subsidiaries.*
- (d) In this regard the Company vide letter dated 10th May, 2010 informed the stock exchange that Board Meeting of the Company is scheduled on 18th May, 2010 to consider the following: "The issue of GDRs/ADRs/FCCBs/QIP/ securities convertible in to equity shares/fully or partly convertible debentures/ securities/ any other domestic/ international offering upto Rs. Fifty Crores."*
- (e) Accordingly 12,90,000 GDR's were issued and allotted by the Company on 31st March, 2011. Company raised a total of USD 99,97,500 by issuance of the GDR's (i.e. USD7.75/GDR).*
- (f) SEBI has alleged that the list of subscribers to the GDR provided by the Company to SEBI is false. It is stated that the said list was provided to the company by Pan Asia and if SEBI had any doubt about the genuineness of the list it could have asked the Depository to the GDR issue i.e. The Bank of New York Mellon, however no information was sought by SEBI from the Bank of New York Mellon in this regard. As per the RTA of the Company [Link Intime (India) Ltd.], the shareholding shown was of the Bank of New York Mellon, which is the depository and not the name of the actual subscribers.*
- (g) The funds received by the Company from the subscribers of the GDR's were kept in the Bank account with EURAM Bank. The Company also used to file the Form DR with the Reserve Bank of India on quarterly basis for the money lying outside*

India out of the GDR proceeds. This form is to be submitted to Reserve Bank of India, Foreign Investment Division, Central Office, Mumbai on quarterly basis.

- (h) The said funds including interest and excluding charges were in due course brought back by the Company in its Indian bank account between 27th February, 2012 and 21st March, 2014. The GDR subscription money coming back to the Company's bank account in India has also been certified by CA Firm (peer reviewed and empanelled with BSE/NSE). The details of the receipts are as under:

Receipt Date	Bank	Account no.	Amount (USD)	Amount (INR)
27.02.2012	Canara Bank	1625201002905	1038469	56160414
17.12.2012	Canara Bank	1625201002905	724963	3947061 1
11.01.2013	Canara Bank	1625201002905	699963	38235479
12.04.2013	Canara Bank	1625201002905	999884	54313699
20.06.2013	Canara Bank	1625201002905	1099949	65523932
27.06.2013	Canara Bank	1625261000044	24531	1462270
31.07.2013	Canara Bank	1625201002905	899979	54786191
11.09.2013	Canara Bank	1625201002905	999900	63217272
04.10.2013	Canara Bank	1625201002905	999890	61296851
23.12.2013	Canara Bank	1625201002905	999960	61852526
20.02.2014	Canara Bank	1625201002905	999960	62187512
21.03.2014	Canara Bank	1625201002905	706385	43183078
			10193833	601689835

- (i) The said money was later used by the Company for the objects as mentioned in the GDR offer document. In view of what is stated above it is clear that the issuance of GDR by the Company was completely genuine and not at all fraudulent as alleged in the SCN's.
- (j) The said fact is also duly certified by the Statutory Auditors of the Company in the Annual Report for the year 2013-14, that the GDR proceeds "have been utilized for the purpose the issue was made" in the explanatory notes to the account.

- (k) *The Company received the complete GDR proceeds in its bank account in India by March 2014. The GDR holder had not applied for the conversion of GDR's into shares for a period of approximately 4 years i.e. from the date of issuance viz. 31st March, 2011. However in March, 2015 the Company received an intimation from its depository i.e. The Bank of New York Mellon that they no more wish to continue as the depository for the Company. Upon receipt of such intimation the Luxembourg Stock Exchange called upon the Company to appoint a new depository at the earliest. However, despite of its best effort the Company was unable to appoint or find a new depository. It is only at this stage the GDR holders decided to convert their GDR's into shares. Only 1 out of the 6 entities who had cancelled their GDR's and then converting them into shares have sold shares in the Indian Market which constitutes barely 1.6% of the post GDR, paid up capital of the Company. This further shows that the holders of the GDR's were genuine and that there is no fraudulent scheme behind the issuance of GDR by the Company to sell the shares in the Indian market as alleged in the SCN's.*
- (l) *With respect to the allegation that the Company did not disclose delisting of the GDR's from the Luxembourg Stock Exchange it is submitted that, the GDRs were already converted into shares before de-listing and no GDRs existed as on the date of de-listing. However, the Company did file its shareholding pattern as mandated under the listing agreement, wherein the changes in share capital of the Company have been disclosed to the stock-exchange.*
- (m) *It is important to note that such conversion had only taken place after the subscription money of the GDR issue was received by the Company in its bank account in India. Therefore it cannot be alleged that the Company had financed the subscription of its GDR issue. Every GDR holder has the right to cancel and convert his or her GDR and thereafter sell the shares in the Indian stock market.*
- (n) *In this regard it is submitted that Mr. Ashish Bagrodia has not signed any such letter or agreement as an authorized signatory of Winsome nor is privy to any such letter or agreement being executed. The Company also has no record of any such agreement or letter. These documents seems to forged and fabricated and therefore SEBI is put to strict proof thereof. The Company had sought inspection of these documents, however only photocopies of these documents were shown. A bare perusal of these photocopies makes it evidently clear that the signatures on the letter and agreement are not Mr. Ashish Bagrodia's signatures. Even assuming whilst denying that such agreement and letter existed, no GDR proceeds*

were utilized for any loan repayment, the GDR proceeds have as on date have come back to the Company's bank account in India. Any such purported pledge agreement or letter will have no relevance to the present matter.

- (o) *It has also been alleged in the SCN's that the Company did not mention the alleged loan default by Vintage FZE in its Annual Report for FY 2012-13 and also did not inform the stock exchanges about the adjustment of GDR proceeds to the extent of USD 9.018 million by EURAM Bank against the loan default by Vintage FZE. In this regard it is submitted that no pledge agreement existed between the Company and the EURAM Bank nor the Company was aware about any alleged loan default by Vintage FZE, therefore the question of disclosing the same in Company's annual report or to the stock exchange does not arise. Also, for the same reason there is no violation of Section 21 of SCRA r/w clause 32 and 50 of Listing Agreement for not complying with Accounting Standards 1, 3 and 29 for the FY 2010-11 and 2011-12.*
- (p) *Because of such expansion of the Company after the GDR issue and from the profit earned from such investment, the book value of the shares of the Company has seen a substantial increase. Such phenomenal growth of the Company as mentioned above could not have been possible without the GDR issue and subscription money received from the GDR issue.*
- (q) *SEBI in the SCN dated 04th July, 2019 has inter alia asked the company to show cause as to why appropriate direction to bring back the money to the extent of loan default by Vintage FZE, amounting to USD 9.018 million should be issued against it. In this regard, it is to be noted that, as stated above the Company has received all the GDR proceeds in its bank account in India and there is no money out of the GDR proceeds lying outside the Company, therefore the direction to call back the money is not warranted.*

B. Noticee No. 2 (Arun Panchariya) in his replies dated November 24, 2020 and March 01, 2021 has *inter alia* submitted as under:

- (a) *He is a non-resident Indian for the last more than 20 years and has certifications in finance and has been in the financial service industry in Middle East and Europe and he has never registered with the SEBI or RBI or any other regulatory agency in India and never had a place of business in India and has not carried out any activities within India, being the jurisdiction of SEBI. Therefore, SEBI cannot be said to have*

jurisdiction over his business activities or him in personal capacity. Hence the said show cause notice has been issued without jurisdiction and ought to be recalled immediately. The provisions of SEBI Act do not have extra territorial operation, since all alleged acts of commission or omission like the loan agreement with EURAM Bank for subscribing to the GDRs, notwithstanding the fact that the security for the loan was the pledge of GDR proceeds, are acts were outside the territory of India and therefore, provisions of SEBI Act are not applicable.

- (b) He had established an independent entity Vintage FZE in the UAE, which is a limited liability company duly incorporated under the relevant laws of the UAE. Vintage was the subscriber to the GDR issue. He had also established Cardinal Capital Partners as a company in Mauritius. Cardinal Capital partners established India Focus Cardinal Fund (IFCF) wherein the capital to the extent of USD 1 only was held by Cardinal Capital. IFCF was licensed to operate a collective investment scheme and pursuant thereto IFCF issued different classes of Shares. He does not have any office or business in India. The activities of Vintage and IFCF and Cardinal Capital were wholly outside India. The subscription of Vintage was a purely commercial arrangement outside India, under the relevant laws and the SEBI has no jurisdiction to question this arrangement under the provisions of the SEBI Act and PFUTP Regulations. These entities are different from him.*
- (c) The mandates/arrangements/role in relation to the GDR issues outside India are granted/played by various entities like Vintage FZE, IFCF, Pan Asia. All this entity has a distinct and separate legal entity, which has its own management and decision making. He had already resigned from Vintage FZE (Resigned year 2009), IFCF (Resigned year 2010) and Pan Asia (year October 2011) and since then he was not part of its management team.*
- (d) The SCN is also very vague as it does not disclose the kind of measures SEBI is contemplating to take after 10 years. The Noticees are completely in the dark about what exactly SEBI has in mind, as regards the consequences, and are unable to address SEBI on the same. Therefore, the SCNs do not meet the principles of natural justice and need to set aside on this ground alone. There is inordinate delay in the proceedings due to which the proceedings should be dropped.*
- (e) Assuming there is violation of Section 12 of the Act and PFUTP Regulations, that by itself does not justify to issue Show Cause Notice in his name Arun Panchariya in his personal capacity ignoring the existence of corporate entities and transactions*

executed by and between with executions of legal and binding agreement in place with obligations to respective jurisdictions.

- (f) SEBI has no such powers to lift the corporate veil and hold the him as beneficiary. SEBI is ignoring key roles of Issuing Corporate company and its beneficial nature to execute the same. It is also submitted that the entities whose veil is lifted are not entities incorporated in India and hence the assumption of powers by the SEBI to lift the corporate veil of entities outside its jurisdiction and issue a SCN is beyond the scope of the powers of the SEBI under the SEBI Act.*
- (g) Despite conducting the investigations for a long period, SEBI failed to provide original or certified copies of the documents relied upon. Merely photocopies have been provided as annexures and unfortunately the SCNs relies on such legally invalid documents. The SCN issued is exclusively based on the Xerox/Photostat copy of the documents, the original of which are not available with SEBI. Since the allegations in the SCNs are based on the documents which are not originals, the conditions precedent laid down in Section 63 and 65(a) of the Evidence Act, 1872 are not satisfied and as such the Photostat copy of the documents relied upon by the SEBI cannot be and should not be admissible as evidence in the present proceedings. Even Photostat copies of documents have not been certified by any of the authorities from which they have been obtained. Section 35 of the Indian Stamp Act, 1899 provides that document which was not properly stamped shall not be admitted in evidence*
- (h) Further, the SCN proceeds on the basis that on account of such alleged connection, he exercised unilateral control over the parties allegedly involved in the 'scheme' purported by the SCN and thereby allegedly upon the alleged 'scheme' itself. In this regard, it is pertinent to note that assuming whilst denying that there was indeed such connection between the entities mentioned in the said SCN and him, the same does not and cannot imply that the decisions of such entities were controlled by him.*
- (i) In relation to the Vintage FZE, he had already resigned and was director till 2007. All the decisions of Vintage FZE including loan default was taken on the going circumstances in the best interest of the company by its management. In relation to India Focus, it is alleged that he was one of the directors of India Focus until October 2010. However, the same does not mean in any manner that he exercised any control over India Focus. At the point of time when he was a director, the investment decisions of India Focus were taken collectively by its Board of Directors and accordingly the orders for the trades would be placed with the brokers. He was*

neither the whole time director nor the managing director of India Focus. Further, in relation to the other FIIs/sub-accounts, there is no document or evidence provided to him in support of the allegation that they are connected to or controlled by him except showing few connections which totally independent Business relationships. It is respectfully submitted therefore that there is therefore no question of him being illegally or improperly connected to or being in control of the entities.

- (j) The economic interest of the GDRs always remained with EURAM Bank, which gave the loan, held the pledge of the GDRs and issue funds, purchased the GDRs, sold the GDRs to IFCF towards the class of shares held by EURAM Bank, and finally received the distribution proceeds arising out of share sale in India.*
- (k) The SCN fails to bring out the correct facts relating to the GDR issue, and the conversion of GDRs as per RBI Guidelines and sale of shares in the Indian markets as per RBI Guidelines and has wrongly held him as the perpetrator of the alleged irregularities and a beneficiary of the alleged fraud though the truth is that Issuer Company of GDR was the beneficiary in first place and EURAM Bank was on the second place who controlled the whole transaction through execution of Pledge and loan agreement separately with both entities.*
- (l) The proceedings/ directions / action proposed is under Section 11B of the SEBI Act, 1992 as amended by virtue of Finance Act, 2018 dated March 29, 2018 which came into force w.e.f March 08, 2019 and cannot be applied retrospectively. The explanation to sub section 1 of 11B was also inserted w.e.f July 18, 2013 whereas in the present case the investigation period is from March 01, 2011 to March 30, 2011 and thus, even directions of disgorgement cannot be issued against the Noticee.*
- (m) Section 11B(2) was also inserted w.e.f March 08, 2019 and thus cannot be invoked retrospectively in the present proceedings.*

C. Noticee No. 4 (Aspire) in its replies dated November 25, 2020 and April 21, 2021, has *inter alia* submitted as under:

- (a) Noticee No.4 had by its Interim Reply called upon SEBI to give inspection of documents more particularly set out at paragraph 4 of the said Interim Reply. SEBI was also called upon to provide copy of Investigation Report at the earliest. Till the date the copy of investigation report has not been provided There has been no written response from SEBI to the said request.*

- (b) Noticee No.4 was incorporated as a private limited company in Mauritius. Noticee No.4 has been registered as foreign portfolio investor Category-II .*
- (c) Noticee No.4 is a professionally managed Foreign Portfolio Investor incorporated under the laws of Mauritius. Noticee No.4 only accepts qualified investors such as institutional investors and financial intermediaries domiciled in FAFT-acknowledged jurisdictions.*
- (d) Mauritius laws require Noticee No.4 to have a dedicated investment advisor. Image Securities Ltd is the investment advisor of Noticee No.4. Noticee No.4 is registered sub-account of an FII -Golden Cliff.*
- (e) Aspire Emerging fund is incorporated in accordance with laws of Mauritius; and appointed Aurisse as Management Company and company secretary, which is also incorporated in accordance with the laws of Mauritius. Pertinently. Mr. Aslam was CEO of Aurisse. As per contractual agreement with Aurisse, two local directors were provided and appointed by Aurisse with Aspire and because of this reason Mr. Aslam was appointed as a director in Aspire and the same was also approved by FSC. It is pertinent to mention that this is very common practice in Mauritius, and Mauritius law allows companies to provide such service. Aspire's business decision are always taken by it and always taken in the best of interest of its investors and common directors don't establish the link between two entities.*
- (f) Further it is alleged in SCN (that Mr. Anant Sharma and Reema Shetty were the Beneficial owner of Golden cliff (FII of Aspire from 14.06.2013 to 28.02.2017). Further, it is alleged that Mr. Anant Sharma and Reema Shetty are connected to Mr. Arun. In this regards, at the outset it is humbly submitted that Golden cliff became FII of Aspire on 14.06.2013 when neither Mr. Anant Sharma nor Reema Shetty were beneficial owner of Golden Cliff. Pertinently Mr. Anant Sharma is the beneficial owner of Golden Cliff from 09.09.2014 till date and Ms. Reema Shetty is the beneficial owner of Golden Cliff only from 12.09.2013 to 09.09.2014.*
- (g) Ambrus Value Fund Ltd ("Ambrus") wanted to subscribe to 2006461 Class AEF-1 non-voting redeemable participating shares of Noticee No.4 valued at USD 2006461.21. On 19.09.2013 Noticee No.4 issued to Ambrus 2006461 Class AEF-1 non-voting redeemable participating shares for consideration of USD 2006461.21. The consideration for the said transaction was transfer of 593452 Global Depository Receipts of Winsome Textile Industries Limited ("Winsome") valued at USD 2006461.21 in favour of Noticee No.4. It is essential to note that the 593452 Winsome GDRs had underlying equity shares with value in the Indian market.*

Ambrus became a shareholder of Noticee No.4 for value of USD 2006461.21. Thus, Noticee No.4 acquired the Winsome GDRs in due course of its business for value without notice of any fraudulent scheme/fraud. Aspire is a bona fide purchaser of Winsome GDRs for value and in law is entitled to deal with the converted shares of Winsome without any restriction.

- (h) In or around March and May 2015 Noticee No.4 converted Winsome GDRs to Winsome shares at a conversion cost of Rs 0.45 per share. Noticee No.4 acquired Winsome Shares at rate of Rs 45.45. per share. The Transactions with regards to the conversion were in accordance with the law of India and Mauritius.*
- (i) A period of more then Four years has lapsed from the date of the transactions. Actions of SEBI are barred by doctrine of delay and laches.*
- (j) Noticee No.4 acquired Winsome GDRs for value without notice of any fraud.*
- (k) It is essential to note that effectively Noticee No.4 had acquired 315000 Winsome shares at a price of Rs 45 per share and incurred additional cost of Rs 0.45 towards conversion. Thus, it incurred a cost Rs 45.45 per share. Noticee No.4 sold each share at a sale price of Rs35. Thus, per share it made a loss of Rs10.45/- per share. Noticee No.4 made a total loss of Rs 32,91,750 (Rs 10.45 x 315000) on sale of 315000 Winsome shares. Noticee No.4 is a bona fide purchaser of Winsome shares for value without notice and the subsequent transaction of sale of 315000 Winsome shares was also bona fide in normal course of business.*
- (l) With reference to Sr No. 12, 13 and 14 it is submitted Noticee No.4 does not have any common directors which is undisputed position as setout in the SCN*
- (m) Noticee No.4 is not an AP connected entity. There is no specific allegation against Noticee No.4 in the SCN that it is an AP connected entity.*
- (n) The fact that Noticee No.4 did not sell all the remaining shares points to its bona fides. If Noticee No.4 was acting in connivance with any of the above referred entities, it would have sold all Winsome shares at once. The conduct of Noticee No.4 is impeccable and in due course of its business.*
- (o) In 2015 Noticee No.4 has executed thousands of trades in Indian markets. The value of Winsome shares sold is less in comparison to the value of all the trades of Noticee No. 4 executed by it in the Indian markets .*
- (p) Allegations of connivance against Noticee No.4 are categorically denied. SCN has failed to provide any particulars with regards to the alleged connivance between Mr. Mukesh Chauradiya and Noticee No.4.*

- (q) *All sales and purchases done by Noticee No.4 have been conducted through legal channels which are transparent in nature. Noticee No. 4 is a bona fide purchaser of Winsome GDRS/Winsome shares for value without any notice of any fraud or fraudulent scheme. Noticee No.4 has disclosed all the details of purchase and sale of Winsome Shares hereinabove.*
- (r) *It is essential to note that though the SCN has made references to various parties/entities the SCN does not list these entities/ parties as Noticees. The entities against whom various allegations have been made are necessary and proper parties to the present proceedings and without their presence the present proceedings should not be proceeded with. Though the allegation of commonality of directorship of Kanowah is sought to be relied upon to establish connections between Noticee No.4 and HBFS, Kanowah is not a party to the present proceedings. On this ground alone the proceedings are required to be dropped against Noticee No.4.*
- (s) *Allegations of fraud are to be provided with detailed particular and must be specific. General allegations are insufficient even to amount to an averment of fraud however strong the language in which they are couched may be. It is submitted that there are no specific allegations against Noticee No.4 that warrant any action by SEBI against Noticee No.4. The allegations are vague and on the said basis no charge of fraud can be imputed to Noticee No.4.*
- (t) *The SCN fails to take note of well-established principle of law that a duly incorporated company is a distinct entity separate from its shareholders and Directors. The allegations against Noticee No.4 in the SCN have been made in violation of the above well-established legal principle that fraud cannot be imputed to Noticee No.4 only on the alleged basis of commonality of directors and shareholders.*

D. Noticee No. 9 (Mr. Satish Girotra) in his reply dated September 12, 2020 and May 20, 2021 has *inter alia* submitted as under:

- (a) *He was an independent director of the Company and was also not a shareholder of the Company. Mr. Satish Girotra was not having any control over the day to day affairs of the Company, being a Non- Executive Independent Director. Furthermore, he was also not a part of "GDR committee" of the Board of Directors which was specifically formed to look after the matters connected with issuance of GDR's. Furthermore, in a recent order passed by the Ld. Adjudicating Officer, SEBI, in*

respect of Mr. B.M. Khanna in the matter of GDR issue of Winsome Yarns Ltd. (Order dated April 28, 2021), SEBI has disposed of the proceedings against Mr. Khanna without imposition of penalty.

- (b) The resolution dated 16th September, 2010 is the only basis on which the SCN has been issued to Mr. Satish Girotra, such presumption that Mr. Satish Girotra was party to the fraud because of such board resolution is farfetched and thus Mr. Satish Girotra cannot be alleged to have violated Section 12(a), (b), (c) of SEBI Act r/w Regulations 3(a), (b), (c), (d) & 4(1) of PFUTP Regulations, 2003.*

E. *Vide reply dated August 23, 2019 and July 24, 2020, Mr. Mukesh Chauradiya (Noticee no. 10) has submitted as follows:*

- (a) He was never the director or Managing Director of Vintage FZE as alleged in the SCN. He has tried to collect documents from Jebel Ali Free Zone Authority (JAFZA) UAE to prove that he was never director or MD, however, the authority has denied him the information without a court order. In a letter dated December 28, 2010 addressed to EURAM Bank, JAFZA has stated that Noticee no. 10 was a manager of Vintage.*
- (b) He was only an employee of Vintage, the subscriber to the GDR of Winsome. Vintage was fully owned and controlled by AP which is mentioned in the SCN itself.*
- (c) Under the implementing regulations number 1/92 pursuant to Law No.9 of 1992 of FZE Regulation under which Vintage was registered as a Free Zone Enterprise (FZE) stipulated that FZE was to have a single owner, in this case was AP who was beneficial and legal owner.*
- (d) AP was initially the sole director, later on his brother replaced him. Noticee No. 10 was never a director or MD. Even in his resident permits his designation is always mentioned as General Manager and not as director/ MD.*
- (e) Even in letter dated October 1, 2009 written by Vintage to ADCB it can be seen that he was referred as General Manager since September 2005 and the letter was signed by AP himself.*
- (f) Noticee no. 10 has also submitted copy of his employment card issued by JAFZA where he has been mentioned as an employee not a director or MD of Vintage.*
- (g) From a copy of the visa issued to AP by JAFZA valid from 12.1.2010 to 11.01.2013, it can be seen that AP was the MD of Vintage. The beneficial ownership of Vintage is also owned by AP who owned 99.99% of its shares.*

- (h) *The administrative fine statement passed by DSA imposing a fine of USD12,000 on AP also clearly indicates that AP was the licensed director in relation to vintage FZE.*
- (i) *Key decision-making powers in Vintage such as availing loans from banks, subscribing to GDRs or other investments and repayment of loans were with the owner and director of vintage FZE which was AP or his brother.*
- (j) *On the Loan Agreement dated May 30, 2008 between EURAM Bank and Vintage FZE in the GDR issue of Winsome AP signed as MD of Vintage. Somewhere in 2010 after AP set up EURAM Bank Asia limited in JV with EURAM Bank and got it UAE DIFC license there were concerns with respect to conflict of interest raised by EURAM Bank as AP was also signing, verifying transaction documents as President of EURAM Bank Asia, post which, AP, while continuing as the sole beneficiary owner of Vintage stepped down as director and was replaced by his brother. Also, on account of the above conflict Noticee no. 10 was instructed by AP to sign certain documents. With regard to the specimen signature format dated June 6, 2007 AP's name had been mentioned solely as owner in the second and Noticee no. 10's name appears as one of the persons with signing authority.*
- (k) *He did not get any other advantage monetary or otherwise from what has been done by him except for salary received as an employee of Vintage.*
- (l) *He signed the redemption requests for loan as and when AP generated liquidity.*
- (m) *There is a letter that Noticee no. 10 has signed where his designation is wrongly mentioned as directed MD.*
- (n) *Noticee no. 10 cannot be blamed for fraud on account of certain corporate noncompliance by Winsome and its officials. As an employee of Vintage Noticee no. 10 had no connection with Vintage signing a Loan Agreement and loan for subscribing to GDR of Farmax. He had no role to play in the same and was not instrumental in arranging loans.*
- (o) *He was holding one or two shares of Vintage FZE Holdings Private Limited which is normal business practice and nothing sinister can be attributed to him on account of the same. Merely by being on the Board as Nominee Director on Ramsai it does not make Noticee no. 10 connected in any sense other than existing relation of employer and employee. He also admits that he was on the board of Alka India Limited as Nominee Director but no adverse inference can be drawn from the same.*

F. Vide reply dated September 14, 2020, Stream Value Fund (Noticee no. 13), now known as Bao Value Fund, has submitted as follows:

- (a) *The Noticee is an Expert Fund of Unlimited duration, incorporated in Mauritius as Company limited by shares under the Financial Services Act, 2007 and the Securities Act, 2005. The Noticee is registered as a Foreign Portfolio Investor (FPI) with SEBI under the SEBI (Foreign Portfolio Investors) Regulations, 2014 and invests in India through the FDI route or the portfolio management route.*
- (b) *From time to time, the Noticee has been issuing its "Participating Shares" to the subscribers / investors by way of private placement. One such offering of Participating Shares was made by the Noticee pursuant to Private Placement Memorandum dated sep 30, 2011 (PPM). 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.*
- (c) *The Enlil Fund, a sub- fund of Global Emerging Strategies Fund Ltd, had subscribed to the Participating Shares of the Noticee by executing the Subscription Agreement dated March 27, 2015. As per the said Subscription Agreement, the Subscriber the Enlil Fund has paid Subscription amount in kind i.e. by delivering 1,97,757GDRs of Winsome Textiles Industries Ltd. At the time of GDR issuance in March/ April, 2011, each GDR represented 50 ordinary equity shares in the capital of Winsome. However, in July 2011, there was a stock split of 1:10. Accordingly, the Noticee received 9,88,785 equity shares of Winsome n the ratio of 1 :5 i.e 5 shares for every one GDR. The Noticee received the amount equal to the value of Winsome's GDRs as Subscription amount for its Participating March 27, 2015.*
- (d) *It may be observed from the Subscription Agreement dated March 16, 2015, (that Image Securities Ltd. had subscribed to the non- voting redeemable preference shares (the "Shares") of GESF's sub Fund, namely The Enlil Fund, by paying the Subscription money in kind i.e. by delivering 4,60,657 GDRs of Winsome to the The Enlil Fund. Image Securities Ltd. had also entered into another Subscription Agreement dated 24 February 2015, by investing USD 500000/in the shares of The Enlil Fund. Beside, Image Securities Limited, another investor namely, Mainspring Growth Fund Ltd. has also subscribed to the shares of The Enlil Fund under the Subscription Agreement dated 01 March 2015, by paying the Subscription amount in kind i.e. by delivering GDRs of Winsome to The Enlil Fund.*
- (e) *It may be observed from the above that Image Securities Limited and Mainspring Growth Fund have invested in the non- voting, redeemable preference shares of The Enlil Fund by paying the Subscription money in kind i.e by delivering to The Enlil*

Fund the GDRs of Winsome. In turn, The Enlil Fund has invested in the Participating Shares of the Noticee by delivering 1,97,600 GDRs of Winsome out of 790657 GDRs of Winsome delivered to it by Image Securities Ltd. and Mainspring Growth Fund.

- (f) As per the said Subscription Agreement, the Subscriber The Enlil Fund has paid Subscription amount in kind i.e. by delivering GDRs of Winsome Textiles Industries Ltd. Hence, it may be observed that the Noticee received the amount equal to the value of Winsome's GDRs as Subscription amount for its Participating Shares. Hence, it is incorrect that the Noticee is holding the said shares of Winsome free of cost as alleged in the SCN.*
- (g) Further, it is incorrect that Al Jalore and Image Securities Ltd. are investors in Davos (Noticee No. 15), the Fund connected with the Noticee through common directors. The Noticee or Davos has no connection or relationship with either of them. The investment in the Noticee and Davos has been made by The Enlil Fund, a sub-fund of Global Emerging Strategies Fund Ltd (GESF) and not by Image Securities Ltd or Al Jalore, as alleged in the SCN.*
- (h) Further, it is incorrect that Al Jalore and Image Securities Ltd. are investors in Davos (Noticee No. 15). The Noticee or Davos has no connection or relationship with either of them. The investment in the Noticee and Davos has been made by The Enlil Fund, a sub-fund of Global Emerging Strategies Fund Ltd (GESF) and not by Image Securities Ltd or Al Jalore, as alleged in the SCN.*
- (i) The said investment is in accordance with the laws of Mauritius and Bermuda. The Participating Shares of the Noticee issued to the investor The Enlil Fund are governed by the terms and conditions of the Subscription Agreement and PPM including the redemption right as per the Valuation formula provided in the PPM. Hence, there is no basis for the allegation in the SCN that the Noticee is holding the shares of Winsome free of cost or that the said shares have come as investment either from Image Securities Ltd or Al Jalore. The Noticee has no relation with either of them.*
- (j) The Noticee has no connection whatsoever with the FII Golden Cliff (Noticee No. 12) or the sub-funds, namely, Aspire Emerging Fund (Noticee No.4) and Highblue Sky Emerging Market Fund (HBSF/ Notice No. 16) and SCN had wrongly clubbed the name of the Noticee with them without any basis or material on record. It is submitted that the Noticee is connected only to Leman Diversified Fund (Noticee No. 17), Sparrow Asia Diversified Fund (Noticee No 14) and Davos International Fund (Noticee No. 15) as the Noticee and the aforesaid three funds have common*

Directors, namely Shailendr Ramsagur and Anouchka Adaya-Appadoo, residents of Mauritius. The Noticee and the said three funds are also incorporated under the laws of the Republic of Mauritius and each one of them have its registered office in Mauritius. The Noticee also has no connection whatsoever with Arun Panchariya (Noticee No. 2) or any of the entities connected with him. Further, the Noticee has no connection whatsoever with Winsome Textile Industries Ltd. (Noticee No. 1) or any of its directors and promoters. Hence, the Noticee is not aware of any fraudulent scheme on the investors in the Indian Securities market devised by Arun Panchariya, AP connected entities and the directors of Winsome.

G. *Vide reply dated September 14, 2020, Sparrow Asia Diversified Fund (Noticee no. 14) has submitted as follows:*

- (a) The Noticee, Sparrow Asia Diversified Opportunities Fund, is a company which was incorporated on July 03, 2008 under the laws of the Republic of Mauritius as a public Company. The Noticee is an Expert Fund of Unlimited duration, incorporated in Mauritius as Company limited by shares under the Financial Services Act, 2007 and the Securities Act, 2005. The Noticee's objective is to achieve long-term capital appreciation by investing in a diversified portfolio of listed equity and equity related securities primarily in India. However, the Company may also invest in other countries globally. The Noticee is registered as a Foreign Portfolio Investor (FPI) with SEBI under the SEBI (Foreign Portfolio Investors) Regulations, 2014 and invests in India through the FDI route or the portfolio management route.*
- (b) From time to time, the Noticee has been issuing its "Participating Shares" to the subscribers / investors by way of private placement. One such offering of Participating Shares was made by the Noticee pursuant to Private Placement Memorandum dated January 16, 2015 (PPM). Any eligible investor/subscriber could subscribe to the Participating Shares by paying the subscription amount either in cash or in kind.*
- (c) The Enlil Fund, a sub-fund of Global Emerging Strategies Fund Ltd, had subscribed to the Participating Shares of the Noticee by executing the Subscription Agreement dated March 16, 2015. As per the said Subscription Agreement, the Subscriber, The Enlil Fund has paid Subscription amount in kind i.e. by delivering GDRs of Winsome Textiles Industries Ltd. At the time of GDR issuance in March/ April, 2011, each GDR represented 50 ordinary equity shares in the capital of Winsome. However, in July*

2011, there was a stock split of 1:10. Accordingly, the Noticee received 9,89,000 equity shares of Winsome in the ratio of 1:5 i.e 5 shares for every one GDR.

- (d) Hence, it may be observed that the Noticee received the amount equal to the value of Winsome's GDRs as Subscription amount for its Participating Shares. The value of said GDRs was estimated as USD 423,401.14 against which the Noticee had issued and allotted 4,234.011400 Participating Shares to the Enlil Fund. It becomes clear from the above that the Noticee is holding the said shares of Winsome as investment / subscription amount of the Subscriber, namely, The Enlil Fund. Hence, it is incorrect that the Noticee is holding the said shares of Winsome free of cost as alleged in the SCN.
- (e) Further, it is incorrect that Al Jalore and Image Securities Ltd. are investors in Davos (Noticee No. 15). The Noticee or Davos has no connection or relationship with either of them. The investment in the Noticee and Davos has been made by The Enlil Fund, a sub-fund of Global Emerging Strategies Fund Ltd (GESF) and not by Image Securities Ltd or Al Jalore, as alleged in the SCN.
- (f) It may be observed from the Subscription Agreement dated March 16, 2015, that Image Securities Ltd. had subscribed to the non-voting redeemable preference shares (the "Shares") of GESF's subFund, namely The Enlil Fund, by paying the Subscription money in kind i.e. by delivering 4,60,657 GDRs of Winsome to the Enlil Fund. Image Securities Ltd. had also entered into another Subscription Agreement dated 24 February 2015, by investing USD 500000/- in the shares of Enlil Fund. Beside, Image Securities Limited, another investor namely, Mainspring Growth Fund Ltd. has also subscribed to the shares of The Enlil Fund under the Subscription Agreement dated 01 March 2015, by paying the Subscription amount in kind i.e. by delivering GDRs of Winsome to The Enlil Fund. It may be observed from the above that Image Securities Limited and Mainspring Growth Fund have invested in the non-voting, redeemable preference shares of The Enlil Fund by paying the Subscription money in kind i.e by delivering to The Enlil Fund the GDRs of Winsome. In turn, The Enlil Fund has invested in the Participating Shares of the Noticee by delivering GDRs of Winsome out of 790657 GDRs of Winsome delivered to it by Image Securities Ltd. and Mainspring Growth Fund.
- (g) The investment in the Participating shares of the Noticee has been made by Enlil Fund pursuant to the Subscription Agreement dated 16 March, 2015 which was entered into with reference to the PPM. The said investment is in accordance with the laws of Mauritius and Bermuda. The Participating Shares of the Noticee issued

to the investor The Enlil Fund are governed by the terms and conditions of the Subscription Agreement and PPM including the redemption right as per the Valuation formula provided in the PPM. Hence, there is no basis for the allegation in the SCN that the Noticee is holding the shares of Winsome free of cost or that the said shares have come as investment either from Image Securities Ltd or Al Jalore. The Noticee has no relation with either of them.

- (h) The Noticee has no connection whatsoever with the FII Golden Cliff (Noticee No. 12) or the sub-funds, namely, Aspire Emerging Fund (Noticee No.4) and Highblue Sky Emerging Market Fund (HBSF/ Notice No. 16) and SCN had wrongly clubbed the name of the Noticee with them without any basis or material on record. It is submitted that the Noticee is connected only to Leman Diversified Fund (Noticee No. 17), Stream Value Fund (now known as BAO Value Fund) (Noticee No 13) and Davos International Fund (Noticee No. 15) as the Noticee and the aforesaid three funds have common Directors, namely Shailendr Ramsagur and Anouchka Adaya-Appadoo, residents of Mauritius. The Noticee and the said three funds are also incorporated under the laws of the Republic of Mauritius and each one of them have its registered office in Mauritius. The Noticee also has no connection whatsoever with Arun Panchariya (Noticee No. 2) or any of the entities connected with him. Further, the Noticee has no connection whatsoever with Winsome Textile Industries Ltd. (Noticee No. 1) or any of its directors and promoters. Hence, the Noticee is not aware of any fraudulent scheme on the investors in the Indian Securities market devised by Arun Panchariya, AP connected entities and the directors of Winsome.

H. Vide reply dated September 14, 2020, Davos International Fund (Noticee no. 15) has submitted as follows:

- (a) The Noticee is registered as a Foreign Portfolio Investor (FPI) with SEBI under the SEBI (Foreign Portfolio Investors) Regulations, 2014 and invests in India through the FDI route or the portfolio management route.
- (b) From time to time, the Noticee has been issuing its "Participating Shares" to the subscribers / investors by way of private placement. One such offering of Participating Shares was made by the Noticee pursuant to Private Placement Memorandum dated August 22, 2012 (PPM)
- (c) The Enlil Fund, a sub-fund of Global Emerging Strategies Fund Ltd, had subscribed to the Participating Shares of the Noticee by executing the Subscription Agreement

dated March 27, 2015. As per the said Subscription Agreement, the Subscriber The Enlil Fund has paid Subscription amount in kind i.e. by delivering GDRs of Winsome Textiles Industries Ltd. At the time of GDR issuance in March/ April, 2011, each GDR represented 50 ordinary equity shares in the capital of Winsome. However, in July 2011, there was a stock split of 1:10. Accordingly, the Noticee received 9,87,500 equity shares of Winsome in the ratio of 1 :5 i.e 5 shares for every one GDR. The Noticee received the amount equal to the value of Winsome's GDRs as Subscription amount for its Participating Shares, The value of said GDRs was estimated as USD 581,440 against which the Noticee had issued and allotted 5,814.400000 Participating Shares to The Enlil Fund. It becomes clear from the above that the Noticee is holding the said shares of Winsome as investment / subscription amount of the Subscriber namely The Enlil Fund. Hence, it is incorrect that the Noticee is holding the said shares of Winsome free of cost as alleged in the SCN.

- (d) Further, it is incorrect that Al Jalore and Image Securities Ltd. are investors in Davos (the Noticee). The Noticee has no connection or relationship with either of them. The investment in the Noticee has been made by The Enlil Fund, a sub fund of Global Emerging Strategies Fund Ltd (GESF) and not by Image Securities Ltd or Al Jalore, as alleged in the SCN. It may be observed from the Subscription Agreement dated March 16, 2015, that Image Securities Ltd. had subscribed to the non- voting redeemable preference shares (the "Shares") of GESF's sub Fund, namely The Enlil Fund, by paying the Subscription money in kind i.e. by delivering 4,60,657 GDRs of Winsome to The Enlil Fund. Image Securities Ltd. had also entered into another Subscription Agreement dated 24 February 2015, by investing USD 500000/- in the shares of The Enlil Fund. Beside, Image Securities Limited, another investor namely, Mainspring Growth Fund Ltd. has also subscribed to the shares of The Enlil Fund under the Subscription Agreement dated 01 March 2015, by paying the Subscription amount in kind i.e. by delivering GDRs of Winsome to The Enlil Fund. It may be observed from the above that Image Securities Limited and Mainspring Growth Fund have invested in the non- voting, redeemable preference shares of The Enlil Fund by paying the Subscription money in kind i.e by delivering to The Enlil Fund the GDRs of Winsome. In turn, The Enlil Fund has invested in the Participating Shares of the Noticee by delivering 1,97,500 GDRs of Winsome out of 790657 GDRs of Winsome delivered to it by Image Securities Ltd. and Mainspring Growth Fund.
- (e) The investment in the Participating shares of the Noticee has been made by The Enlil Fund pursuant to the Subscription Agreement dated 27 March 2015 which was

entered into with reference to the PPM. The said investment is in accordance with the laws of Mauritius and Bermuda. The Participating Shares of the Noticee issued to the investor The Enlil Fund are governed by the terms and conditions of the Subscription Agreement and PPM including the redemption right as per the Valuation formula provided in the PPM. Hence, there is no basis for the allegation in the SCN that the Noticee is holding the shares of Winsome free of cost or that the said shares have come as investment either from Image Securities Ltd or Al Jalore. The Noticee has no relation with either of them.

- (f) The Noticee has no connection whatsoever with the FII Golden Cliff (Noticee No. 12) or the sub-funds, namely, Aspire Emerging Fund (Noticee No.4) and Highblue Sky Emerging Market Fund (HBSF/ Notice No. 16) and SCN had wrongly clubbed the name of the Noticee with them without any basis or material on record. It is submitted that the Noticee is connected only to Lemman Diversified Fund (Noticee No. 17), Stream Value Fund (now known as BAO Value Fund) (Noticee No 13) and Sparrow Asia International Fund (Noticee No. 14) as the Noticee and the aforesaid three funds have common Directors, namely Shailendr Ramsagur and Anouchka Adaya-Appadoo, residents of Mauritius. The Noticee and the said three funds are also incorporated under the laws of the Republic of Mauritius and each one of them have its registered office in Mauritius. The Noticee also has no connection whatsoever with Arun Panchariya (Noticee No. 2) or any of the entities connected with him. Further, the Noticee has no connection whatsoever with Winsome Textile Industries Ltd. (Noticee No. 1) or any of its directors and promoters. Hence, the Noticee is not aware of any fraudulent scheme on the investors in the Indian Securities market devised by Arun Panchariya, AP connected entities and the directors of Winsome.*

- I.** *Vide reply dated September 14, 2020, Lemman Diversified Fund (Noticee no. 17) has submitted as follows:*

- (a) The Noticee is an Expert Fund of Unlimited duration, incorporated in Mauritius as Company limited by shares under the Financial Services Act, 2007 and the Securities Act, 2005. The Noticee is registered as a Foreign Portfolio Investor (FPI) with SEBI under the SEBI (Foreign Portfolio Investors) Regulations, 2014 and invests in India through the FDI route or the portfolio management route.*
- (b) From time to time, the Noticee has been issuing its "Participating Shares" to the subscribers / investors by way of private placement. One such offering of*

Participating Shares was made by the Noticee pursuant to Private Placement Memorandum dated June 7, 2011 (PPM). 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.

- (c) The Enlil Fund, a sub-fund of Global Emerging Strategies Fund Ltd, had subscribed to the Participating Shares of the Noticee by executing the Subscription Agreement dated March 27, 2015. As per the said Subscription Agreement, the Subscriber the Enlil Fund has paid Subscription amount in kind i.e. by delivering 1,97,600 GDRs of Winsome Textiles Industries Ltd. At the time of GDR issuance in March/ April, 2011, each GDR represented 50 ordinary equity shares in the capital of Winsome. However, in July 2011, there was a stock split of 1:10. Accordingly, the Noticee received 9,88,000 equity shares of Winsome in the ratio of 1:5 i.e 5 shares for every one GDR. The Noticee received the amount equal to the value of Winsome's GDRs as Subscription amount for its Participating March 27, 2015*
- (d) It may be observed from the Subscription Agreement dated March 16, 2015, (that Image Securities Ltd. had subscribed to the non-voting redeemable preference shares (the "Shares") of GESF's sub Fund, namely The Enlil Fund, by paying the Subscription money in kind i.e. by delivering 4,60,657 GDRs of Winsome to the The Enlil Fund. Image Securities Ltd. had also entered into another Subscription Agreement dated 24 February 2015, by investing USD 500000/in the shares of The Enlil Fund. Beside, Image Securities Limited, another investor namely, Mainspring Growth Fund Ltd. has also subscribed to the shares of The Enlil Fund under the Subscription Agreement dated 01 March 2015, by paying the Subscription amount in kind i.e. by delivering GDRs of Winsome to The Enlil Fund.*
- (e) It may be observed from the above that Image Securities Limited and Mainspring Growth Fund have invested in the non-voting, redeemable preference shares of The Enlil Fund by paying the Subscription money in kind i.e by delivering to The Enlil Fund the GDRs of Winsome. In turn, The Enlil Fund has invested in the Participating Shares of the Noticee by delivering 1,97,600 GDRs of Winsome out of 790657 GDRs of Winsome delivered to it by Image Securities Ltd. and Mainspring Growth Fund.*
- (f) As per the said Subscription Agreement, the Subscriber The Enlil Fund has paid Subscription amount in kind i.e. by delivering GDRs of Winsome Textiles Industries Ltd. Hence, it may be observed that the Noticee received the amount equal to the value of Winsome's GDRs as Subscription amount for its Participating Shares. The*

value of said GDRs was estimated as USD 581,734.40 against which the Noticee had issued and allotted 5,801.575896 Participating Shares to The Enlil Fund. It becomes clear from the above that the Noticee is holding the said shares of Winsome as investment / subscription amount of the Subscriber namely The Enlil Fund. Hence, it is incorrect that the Noticee is holding the said shares of Winsome free of cost as alleged in the SCN.

- (g) Further, it is incorrect that Al Jalore and Image Securities Ltd. are investors in Davos (Noticee No. 15), the Fund connected with the Noticee through common directors. The Noticee or Davos has no connection or relationship with either of them. The investment in the Noticee and Davos has been made by The Enlil Fund, a sub-fund of Global Emerging Strategies Fund Ltd (GESF) and not by Image Securities Ltd or Al Jalore, as alleged in the SCN.

CONSIDERATION OF SUBMISSIONS AND FINDINGS

11. I have considered the SCN and SSCN issued to the Noticees, along with their annexures, and the aforementioned replies filed by the Noticees and the submissions made before me during the course of hearing. The question to be determined in the present proceedings is whether the Noticees have violated the provisions of SEBI Act, 1992, PFUTP Regulations, 2003, erstwhile Equity Listing Agreement and SCRA, 1956, as alleged in the SCN and SSCN.
12. Before dealing with the issue, it would be appropriate to refer to the relevant provisions of law which are alleged to have been violated by the Noticees and relevant extract thereof is reproduced hereunder:

Relevant extract of provisions of SEBI Act, 1992:

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

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

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

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

Relevant extract of provisions of Securities Contract (Regulation) Act, 1956:

Section 21: "Where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange."

Relevant extract of provisions of PFUTP Regulations, 2003:

Regulation 3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

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

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

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—
 - (a) ...
 - (b) ...
 -
 - (f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;
 - (g) ...
 - (h) ...
 -
 - (k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;
 - (l) ...
 - (m) ...
 -

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

Relevant Causes of the Equity Listing Agreement:

Clause 50

“The company will mandatorily comply with all the Accounting Standards issued by Institute of Chartered Accountants of India (ICAI) from time to time.”

Clause 32

“The Company will also give a Cash Flow Statement along with Balance Sheet and Profit and Loss Account. The Cash Flow Statement will be prepared in accordance with the Accounting Standard on Cash Flow Statement (AS-3) issued by the Institute of Chartered Accountants of India, and the Cash Flow Statement shall be presented only under the Indirect Method as given in AS-3.”

Clause 36

“Apart from complying with all specific requirements as above, the Company will keep the Exchange informed of events such as strikes, lock-outs, closure on account of power cuts, etc. both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the shareholders and the public to appraise the position of the Company and to avoid the establishment of a false market in its securities. In addition, the Company will furnish to the Exchange on request such information concerning the Company as the Exchange may reasonably require. The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company as well as price sensitive information. The material events may be events such as:

....

(7) Any other information having bearing on the operation/performance of the company as well as price sensitive information, which includes but not restricted to;

- i) Issue of any class of securities.
 - ii) Acquisition, merger, de-merger, amalgamation, restructuring, scheme of arrangement, spin off or selling divisions of the company, etc.
 - iii) Change in market lot of the company's shares, sub-division of equity shares of company.
 - iv) Voluntary delisting by the company from the stock exchange(s)
 - v) Forfeiture of shares.
 - vi) Any action, which will result in alteration in, the terms regarding redemption/cancellation/retirement in whole or in part of any securities issued by the company.
 - vii) Information regarding opening, closing of status of ADR, GDR, or any other class of securities to be issued abroad.
 - viii) Cancellation of dividend/rights/bonus, etc.
- The above information should be made public immediately.”

13. Before proceeding with the merits of the matter, it would be appropriate to first deal with certain preliminary contentions raised by the Noticees. The Noticees have submitted that the SCN and SSCN pertains to issuance of GDR by the Company in the year 2011, which is more than eleven years old and the delay in the matter has

adversely affected their ability to present an appropriate defence in the matter. The Noticees have relied upon the observations of the Hon'ble SAT in the case of Ashok Shivilal Rupani & Ors vs. SEBI (Appeal no. 417 of 2018), Rakesh Kathotia & Ors vs. SEBI (Order dated May 27, 2019 in Appeal no. 7 of 2016), to contend that there has been inordinate delay in the initiation of the proceedings. In this regard, I note that in the present case, SEBI investigated issue of GDRs in the overseas markets by the Indian companies on receipt of a complaint, in the year 2009, regarding misuse of GDR route by few companies. The investigation *prima facie* revealed that in many of the GDR issues, money for subscribing to GDR was availed as a loan by the subscribers, from an overseas Bank wherein the issuer company gave security for such loan taken by the subscribers, by pledging/creating charge on the GDR issue proceeds. It was also observed that such subscribers subscribed the GDRs without any valid consideration and sold the underlying shares in the securities market in India. Accordingly, where such *modus operandi* was *prima facie* observed such GDR issues were examined. SEBI initiated investigation as soon as SEBI came to know that such companies have adopted the *modus operandi* as referred to above. Since, the GDRs are issued abroad and related transactions were carried out outside India, SEBI had to call information from the various entities situated abroad in such large number of fraudulent GDR issues. Such information *inter alia* included seeking information on diversion of funds and subsequent tracing of proceeds from large number of entities and the details of (a) GDR issuer companies, (b) custodian of securities, (c) overseas depository, (d) overseas banks, (e) subscribers of GDR issue (mostly overseas), (f) lead manager, (g) various layers of transactions, etc., which was not readily forthcoming. Therefore, SEBI had to collect information and documents from various sources including approaching the foreign regulators for assistance in procuring information and documents from the concerned entities situated outside India from many jurisdictions. The foreign regulators had also to collect this information from the concerned entities and then to furnish to SEBI. Thus, the process of collection of information in the matter was complex, tedious and time consuming. It is noted that in most of these cases Mr. Arun Panchariya – Noticee no. 2 herein and his connected entities were found to be involved in most of these cases. One of the connected entity of Noticee no. 2 i.e. Pan Asia Advisors Ltd. even

contested the jurisdiction of SEBI over the GDRs which was ultimately decided by Hon'ble Supreme Court in SEBI Vs. Pan Asia Advisors Ltd. & Anr. (2015) 14 SCC 71 on July 06, 2015. It is noted from SEBI order dated June 16, 2016 that investigation was initiated in respect of 59 GDR issues made by 51 Indian Companies during the period 2002 to 2014. Noticee No. 1 was one such GDR issuer where such *modus operandi* was also observed and the investigation was completed in December, 2018. I note that after completion of the investigation, the SCN was issued to the Noticees on July 04, 2019. The SCNs could not be delivered to Noticee nos. 2, 3 and 11 and service to these Noticees could be completed only in January 2020. In compliance with the principles of natural justice an opportunity of hearing was granted to all Noticees on May 04, 2020 but none of the Noticees appeared for the said hearing. Thereafter, SSCN was issued on July 10, 2020. Considering that proceedings under Sections 11B (1) as well as 11B (2) of SEBI Act, 1992 had been initiated in the matter, to satisfy the principles of natural justice, a hearing date was granted on September 18, 2020 with respect to both the SCN and SSCN. It is noted that Noticee nos. 1, 6 and 9 has filed an application for settlement under the SEBI (Settlement Proceedings) Regulations, 2018. Hearings took place on September 18, 2020, November 25, 2020. On November 25, 2020 the AR of Noticee nos. 1 and 6 appeared and stated that they had requested for physical inspection of documents which had not been provided to them. The AR of Noticee no. 4 also appeared and sought inspection of documents. Therefore, the hearing was adjournment with respect to these Noticees. An opportunity of inspection of documents was provided to Noticee nos. 1 and 6 on December 15, 2020 (adjourned on the request of the Noticees) and December 30, 2020. Thereafter, further hearings took place on March 18, 2021, March 22, 2021 and a final hearing was granted to Noticee no. 4, based on its request, on April 15, 2021 on which date the Noticee failed to appear. As mentioned in the previous para, Noticee nos. 1, 6 and 9 had made an application for settlement under the SEBI (Settlement Proceedings) Regulations, 2018 and in terms of Regulation 8(1), the hearing with respect to Noticee nos. 1,6 and 9, were completed and the passing of the final order was kept in abeyance and since the issues with respect to all the other Noticees were inter linked to Noticee no.1 therefore, the hearings of the remaining Noticees had also been completed except passing of the final order. The matter was

taken up for final order after rejection of the settlement applications. Replies were received on various dates from the Noticees, the last reply having been received on September 03, 2021 from Noticee no. 1. From the above facts and circumstances of the case, it cannot be said that there was inordinate and unnecessary delay in the matter as contended by the Noticees. It is further noted that there is no provision in the SEBI Act, 1992 which provides limitation period for taking action for the violation of the provisions of the Act or the Regulations made thereunder. In terms of Section 24(1) of the SEBI Act, 1992, any contravention to the provisions of SEBI Act and the Rules and Regulations framed thereunder is punishable with imprisonment for a term which may extend to the period of ten years and thus there is no limitation for initiating action for the same. In *Ravi Mohan & Ors. v. SEBI* and other connected appeals decided on August 27, 2013, the Hon'ble SAT while referring to its own decision in *HB Stockholdings Ltd. v. SEBI* (Appeal no. 114 of 2012 decided on August 27, 2003) and decision of Hon'ble Supreme Court in *Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India)* reported in 2003 (158) ELT 129 (S.C.), held as under:

“....Based on decision of this Tribunal in case of *HB Stockholdings Ltd. vs. SEBI* (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of *Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India)* reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice....”

14. In the facts and circumstances of the present matter, I note that the investigation has been conducted and proceedings have been initiated in reasonable time. Further, I note that none of the cases referred to by the Noticees deals with GDR issue which involved complex investigation where numerous entities involved were situated outside India and information had to be collected with the help of overseas regulators, whereas, in the matter of *Jindal Cotex Ltd. and others Vs. SEBI* (Appeal No. 376 of 2019 decided on 05.02.2020) while dealing with an appeal emanating from the similar

GDR issue wherein a plea of delay was also taken by the appellant therein, Hon'ble SAT observed as under:

“.....Arguments on delay in investigation and consequently affecting natural justice are also devoid of any merit in the matter since this Tribunal is aware of the complexity involved in the entire manipulative GDR issue; how long it took SEBI to gain information relating to the various entities from multiple jurisdictions in the matter of PAN Asia Advisors Limited (Supra) and Cals Refineries Limited (Supra) etc.....”

Moreover, I note that all the documents relied upon for making allegations in SCN and SSCN have been provided to the Noticees alongwith the SCN and SSCN. Noticees have not pointed out any specific document/evidence which they could not retrieve due to passage of time, which render them unable to put an effective defence in the matter. Hence, in view of the aforesaid facts and circumstances of the present case, I find that there is no such delay in the present matter as alleged by the Noticees and the contention of Noticees in this regard is untenable.

15. Noticee no. 4 has contended that certain documents sought for by them have not been furnished/given to the Noticee. In this respect, I note that copies of all documents which were relied upon by SEBI in making allegations in the SCN have been provided to the Noticees along with the SCN and SSCN, as detailed in paras 5 & 7, above. I find that it satisfies the requirement of principles of natural justice. Further, I note that the relevant findings of the investigation report have been provided for and captured in the SCN and SSCN that have been issued to the Noticees. Moreover, I note that vide a letter dated November 25, 2020, the Noticee no. 4 had sought certain documents which were provided to him vide email dated March 16, 2021, details whereof are as under:

a. Copy of letter dated January 27, 2015, received from Winsome.	Provided.
b. Copy of Corporate announcement dated March 31, 2011.	Provided.
c. Copy of Escrow Agreement dated March 23, 2011.	Provided.
d. Copy of the letter dated September 21, 2011.	Provided.
e. Proof that Mr. Anant Kailash Chandra Sharma was the director in HBSF.	Table at Annexure 26 of SCN

	provided.
f. Mr. Ashish Nanda was a director of Aspire.	Table at Annexure 29 of SCN provided.

Therefore, the contention of the Noticee no. 4 that SEBI has not provided complete documents is untenable. I find that the Noticees were provided with all the relevant documents as relied upon in the SCN and SSCN, as mentioned above. I note that the Noticee No. 4 has filed detailed reply dated April 21, 2021, to the SCN. I, further, note that the copies of some of the documents relied upon, were obtained by SEBI during investigation, through overseas regulators. The contents of these documents have been corroborated from various other documents and transactions, which have been provided as annexures to the SCN, as mentioned in para 5 and 7 above. Thus, I find that no prejudice has been caused to Noticee no. 4 in defending its interest and contesting the allegation made against it in the SCN. In this regard, it would be appropriate to refer to the Order of Hon'ble SAT dated February 12, 2020 in *Shruti Vora vs. SEBI* (Appeal No. 28 of 2020) wherein, it was observed that:

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

I note that the contention on the inspection of documents raised by the Noticee no. 4 is squarely covered by the decision of the Hon'ble SAT, in the aforesaid case. Thus, in view of the above, I find that the contention made by the Noticee no. 4 that SEBI has failed to provide inspection of all documents on which it has relied upon is untenable.

16. Further, Noticee no. 2 in his letter dated November 24, 2020 has submitted that photocopies have been provided as annexures and Noticee no. 2 has contended that the SCN relies on such legally invalid documents. Noticee no. 2 has submitted that since the allegations in the SCN and SSCN are based on the documents which are not originals, the conditions precedent laid down in Section 63 and 65(a) of the Evidence Act, 1872 are not satisfied and as such the photocopy of the documents relied upon by the SEBI cannot be and should not be admissible as evidence in the present proceedings. In this regard, I note that Noticee no. 2 has filed a single reply dated November 24, 2020 for 4 matters including the present matter, i.e. in the matters of Texmo Pipes and Products Ltd, Winsome Yarns Limited, Winsome Textiles Industries Ltd. and Aqua Logistic Limited. Hence, I note that his submissions have been generally made without specifying any particular document in this regard. Further, I note that he has not sought inspection of documents in the present matter. I note that the copies of some of the documents relied upon, were obtained by SEBI during investigation, through overseas regulators, which have been provided as annexures to the SCN, and I note that Noticee no. 2 has not disputed the contents of these documents. I also note that the Noticee no. 2 has referred to provisions of the Indian Evidence Act, 1872 to contend that for the admissibility of secondary evidence, the conditions in Section 65 of the Indian Evidence Act, 1872 must be fulfilled. In this regard, I note that the proceedings initiated under Section 11(4) and 11B of the SEBI Act, 1992 are in the nature of quasi-judicial proceedings, as held by the Hon'ble Supreme Court in *NSDL Vs. SEBI (2017) 5 SCC 517*. As such the provisions of Indian Evidence Act, 1872 are not strictly applicable to these proceedings. Further, Section 65 (a) of the said Act, itself allows admissibility of a document as secondary evidence when the original is in possession of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court. Most of the documents which Noticee no. 2 is contending can't be relied on being photocopies, are those documents to which the entities controlled by/connected with, Noticee no. 2 were the parties (EURAM Bank/ Vintage). As copies of all the documents relied upon by SEBI in the SCN were already provided to the Noticees as annexures to the SCN, I find that no prejudice has been caused to Noticee no. 2 in defending his interest and contesting the allegation made against him in the SCN.

Thus, in view of the above, I find that the contention made by the Noticee no. 2 that the documents submitted as annexures to the SCN should not be admissible as evidence in the present proceedings as they are merely photocopies, is untenable.

17. The allegations in the SCN and merits of the case are discussed below.

Allegation related to fraudulent scheme of issuance of GDRs of Winsome and furnishing of wrong list of allottees by Winsome

18. I note that Noticee no. 1 issued 1.29 million GDRs amounting to US \$ 9.99 million, on March 31, 2011. Summary of the GDR issues of Winsome, as provided by the Company is tabulated below:

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
31-Mar-2011	1.29 (at USD 7.75 per GDR)	9.99	DBS Bank Ltd.	6,45,00,000	The Bank of New York Mellon	Pan Asia Advisors Ltd	EURAM Bank, Austria	Luxembourg Stock Exchange

19. Vide letter dated January 27, 2015 to SEBI, Winsome provided the list of the GDR allottees which is tabulated below:

Sl. No.	Name of the subscriber	No. of GDRs allotted	Amount in USD
1	Scholari Investment Ltd.	3,00,000	23,25,000
2	Jasper Holdings Company Ltd.	2,75,000	21,31,250
3	Chromestar Assets Ltd	2,55,000	19,76,250
4	Albarma Limited	2,50,000	19,37,500
5	Cruise Waterford Investments Ltd.	2,10,000	16,27,500
	TOTAL	12,90,000	99,97,500

20. SCN alleges that aforesaid list of subscribers, provided by Winsome, is not correct as GDRs of Winsome were subscribed by only one entity i.e. Vintage (Noticee no. 3) by obtaining a loan, through a dollar term loan facility of USD 9.99 million through a loan agreement from the EURAM Bank, which Winsome was aware of. SCN alleged that Vintage took a loan from EURAM Bank to subscribe to the GDR issue of Winsome and security for this loan was provided by Winsome by pledging its Bank account held with EURAM Bank wherein proceeds of GDR issue of Winsome were to be deposited.

The SCN alleges that Noticee No. 1 had opened a bank account with EURAM Bank (bank account no. 580039) for the purpose of receiving GDR proceeds, and vide a Pledge Agreement dated March 23, 2011 entered into between Noticee no. 1 and EURAM Bank, Noticee no.1 pledged its GDR proceeds in bank account no. 580039 against the loan given by EURAM Bank to Vintage for subscription to GDR issue of Winsome, even before the GDRs were issued. The SCN also alleges that Winsome was aware of the Loan Agreement and that Vintage was the sole subscriber to its GDR issue and that Vintage had subscribed to the GDRs through a loan obtained from EURAM Bank and that this was a fraudulent scheme. The SCN also alleges that since Vintage defaulted on repayment USD 9.014 million of the loan to EURAM Bank, an amount USD 9.018 million (with interest) was adjusted by EURAM Bank against loan account of Vintage on October 09, 2012, in accordance with the Pledge Agreement dated March 23, 2011 and therefore, Vintage received allotment of GDRs worth USD 9.014 million free of cost. Further, the SCN alleges that Noticee no. 4, 13, 14, 15, 16 and 17 received GDRs, converted them and Aspire sold converted shares worth Rs.1.11 Crores through AP connected entity i.e. FII Golden Cliff, in the Indian Securities Market.

21. In this regard, Winsome and Noticee no. 6 in their replies have stated that Winsome was not aware of the loan agreement or the pledge agreement. Winsome has also stated that it had never authorized EURAM Bank to create pledge over its GDR proceeds for the purpose of extending any loan by EURAM Bank to Vintage. The Noticees have contended that on a plain reading of the Circular Resolution dated September 16, 2010 it is clear that it merely authorizes EURAM Bank to use the GDR proceeds deposited with them as security in connection with loans taken by Winsome, if any, as well as to enter into any escrow agreement or similar arrangements and that the board resolution did not specifically authorize Noticee No. 6, to create a pledge over proceeds of Winsome's GDR issue. It has been submitted that Winsome was unaware of the allegedly fraudulent scheme perpetrated by Noticee No. 2, EURAM Bank and the lead manager of the GDR issue-Noticee no. 11 and Winsome is not associated with Mr. Arun Panchariya or Vintage. It has also been submitted that the allotment of GDRs was done by Pan Asia Advisors Limited and the Depository Bank,

i.e. BONY and that Winsome relied upon said list provided by the lead manager and was under a *bona fide* belief that the names of the subscribers to the GDR issue are those set out in the SCN and accordingly, the same was disclosed to the BSE and NSE and provided to SEBI vide Winsome's letter dated January 27, 2015. Further, it has been submitted that an escrow account for the GDR issue was opened with EURAM Bank, which also acted as the escrow agent and Winsome was not aware of the details of payments received therein.

22. In order to examine the above-mentioned allegation against Winsome and its reply to the same, it is necessary to examine the various documents related to the GDR issue of Winsome. The details of the documents and findings on the same are given below:

a) Circular Resolution dated September 16, 2010

- 22.1. As per the material available on record and as confirmed by Winsome in its reply to the SCN, a Circular Resolution was passed by the Board of Directors of Winsome dated September 16, 2010 was signed by directors of Winsome, namely, Mr. Satish Bagrodia (Noticee no. 5), Mr. Ashish Bagrodia (Noticee no. 6) and Mr. Manish Bagrodia (Noticee no. 7) and Mr. Satish Girotra (Noticee no. 9), pertaining to opening of Bank Account with EURAM Bank. Relevant extracts of the resolution are as under:

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

“RESOLVED FURTHER THAT Mr. Ashish Bagrodia, Managing Director of the Company, be and is hereby authorised-

1) to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.

2) to draw cheques and other documents, and to give instructions from time to time as may be necessary to the said Euram Bank or any branch of Euram Bank, including the Offshore Branch, for the purpose of operation of and dealing with the said bank account and carry out other relevant and necessary transactions and generally to take all such steps and to do all such things as may be required from time to time on behalf of the Company,

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.”

22.2. From the wordings of the Circular Resolution, I find that Noticee no. 6 was expressly authorized to sign any agreement as may be required by EURAM Bank and to take all steps as required from time to time on behalf of the Company in connection with the bank account which was being opened by Winsome for receiving subscription money of GDRs. I note that a general authorization was granted to Noticee no. 6 by Winsome in relation to the current account opened with EURAM Bank. I note that the Pledge Agreement entered into by Noticee no. 6 with EURAM Bank on behalf of Winsome was in furtherance of the authorization given by the Circular Resolution mentioned above, since it was related to proceeds being received in the said account, pertaining to which Noticee no. 6 had been authorized to enter into any agreement. I also note that Winsome has never alleged that Noticee no. 6 has fraudulently entered into the Pledge Agreement on its behalf or taken any steps against Noticee no. 6 for such purported fraud. Therefore, I am unable to accept the submission of Winsome that the Circular Resolution did not authorize Noticee no. 6 to enter into a Pledge Agreement.

22.3. I note that Winsome has relied upon the order of the Hon'ble Securities Appellate Tribunal (hereinbefore referred to as “**Hon'ble SAT**”) in the matter of *Adi Cooper & Anr. Vs. SEBI (SAT Appeal No. 124 of 2019)* and *Adesh Jain Vs. SEBI (SAT Appeal No. 217 of 2020)* to contend that the resolution dated September 16, 2010 passed by Winsome cannot be inferred to mean that it was passed to authorize EURAM Bank to utilize the GDR proceeds as security in connection with a loan given to Vintage. In this regard, I note that the Hon'ble SAT while dealing with the interpretation of the board resolution, observed that “*the resolution could also mean that the proceeds would be utilized by the bank as security in connection with a loan taken by the company itself*”. Thus, as per Hon'ble SAT also, the interpretation canvassed by the Noticees is a possible interpretation. I also find that Hon'ble Supreme Court of India vide its judgment and order dated September 21, 2021 passed in Civil Appeal No. 380 of 2020 – *SEBI Vs. Adi Cooper* and other connected civil appeals, while setting

aside the order dated November 05, 2019 passed by Hon'ble SAT in the Adi Cooper matter, held as under:

“.....The Securities Appellate Tribunal was impressed by the fact that although the respondent was party to the resolution, being a whole-time director and member of the Board of Directors of the Company, had only resolved that Company may open an account with the EURAM Bank for the purpose of deposit of GDR proceeds. The resolution does not stipulate that the proceeds would be used as security in connection with the loan taken by another entity. The latter part of this submission is not in consonance with the purport of the resolution passed by the Board on January 30, 2008. Whereas, the SEBI had rightly noted that such 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 BSE. This aspect has not been reckoned by the Appellate Tribunal. This is a manifest error committed by the Appellate Tribunal.

In light of the above, we have no hesitation in taking the view that the Appellate Tribunal was unduly impressed by only one fact; but ought to have construed the resolution in the manner done by the SEBI and in particular, the inaction of the Board of not disclosing the arrangement to the shareholders or the investors of the securities market through BSE.

As a result, we set aside the impugned judgment and order and instead uphold the view taken by the SEBI vide its decision dated 28.02.2019.....”

In the present case also, resolution is similarly worded as the resolution involved in the case of Adesh Jain (supra) was and disclosures regarding loan agreement and pledge agreement were not made by the Winsome to the stock exchanges. I also note that the matter of Adesh Jain (supra) also, SEBI had preferred a Civil Appeal No. 180 of 2021 before Hon'ble Supreme Court of India, which has been disposed of by Hon'ble Supreme Court vide its order dated September 21, 2021 whereby order passed by Hon'ble SAT in Adesh Jain (supra) has been set aside and the parties have been relegated to Hon'ble SAT for consideration of the appeal of Adesh Jain afresh. Further, in the present case, I note that Circular Resolution states that it *“authorized to use the funds so deposited in the aforesaid bank account as security in connection with loans if any”*. Assuming, for the sake of arguments that authorization to give the monies lying in the Bank account of Winsome as security was in connection with the loan taken by the Winsome only (as contended by the

Winsome), then also it is quite irrational and patently wrong that a company would take loan of money by pledging its money. If Winsome had money to offer as security for loan then in the first place there was no need to take any loan by Winsome. Despite such patently wrong resolution, the Board of Directors of Winsome did not raise any issue related to whether any loans were proposed to be taken by Winsome from EURAM Bank and the necessity for such a loan in spite of Winsome having GDR proceeds at its disposal. This fact clearly points to the fact that the Circular Resolution was passed by Winsome not to facilitate its own loans but to facilitate the loan taken by Vintage by entering into the Pledge Agreement dated March 23, 2011. I find that a company has to be held responsible for all resolutions passed by the board of directors of the company for actions taken to implement such decisions and the company also reaped the benefit of such GDR issue/subscription money. A company cannot wriggle out of its obligations with respect to resolutions passed by it in its board meetings, agreements entered into by it with banks and transactions made by them pursuant to such agreements, and simply throw the entire obligation and liability of the company and its directors on the Merchant Banker/Lead Manager.

b) Loan Agreement between Vintage and EURAM Bank

22.4. I note that, Vintage had entered into a Loan Agreement dated March 23, 2011 with EURAM Bank relating to a dollar term loan facility of USD 9.99 million for the purpose of subscribing to the GDR issue of Winsome. The Loan Agreement was signed by Mr. Mukesh Chauradiya (Noticee No.10) in the capacity of Managing Director of Vintage. On perusal of copy of the Know Your Customer documents of Vintage for opening an account with EURAM Bank, it was observed that AP (Noticee no. 2) was the beneficial owner and Managing Director of Vintage as on June 06, 2007. AP was also the MD of the Lead Manager for the GDR issue, i.e. Noticee no. 11. It was further observed that Alkarni Holding Ltd. was the shareholder of Vintage as on December 28, 2010 and as on April 21, 2014, AP was the sole shareholder and director of Alkarni Holding Ltd. For the purpose of availing the loan from EURAM Bank, Vintage opened a loan account (a/c no. 540012-052-1) with EURAM Bank. I note that the following was *inter alia* mentioned in the Loan agreement:

2 Nature and purpose of facility:

To provide funding enabling Vintage FZE to take down GDR issue of 1,290,000 Luxembourg public offering and may only be transferred to EURAM account nr. 580039, Winsome Textile Industries Limited."

6. Security

it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be demanded by the Bank:

- 1) Pledge of certain securities held from time to time in the Borrower's a/c no. 540012 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*
- 2) Pledge of the account no. 580039 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."*

22.5. From the above, I find that it was clearly mentioned in the Loan Agreement that Vintage had availed of loan facility from EURAM Bank to subscribe to the GDRs of Winsome and thus, EURAM Bank granted loan to Vintage specifically for subscription of GDRs of Winsome. The loan agreement clearly provided that account of Winsome held with EURAM Bank, i.e. Account No. 580039, was pledged with EURAM Bank, as security for the loan given by the EURAM Bank to Vintage for subscribing to the GDR issue of Winsome.

c) Pledge Agreement dated March 23, 2011

22.6. I note that Mr. Ashish Bagrodia (Noticee No.6), in his capacity as director of Winsome, as authorized by the Circular Resolution dated September 16, 2010, signed a Pledge Agreement dated March 23, 2011 on behalf of Winsome with EURAM Bank. The salient clauses of the Pledge Agreement states as under:

1. Preamble

"By Loan Agreement K220311-004 (hereinafter referred to as the "Loan Agreement") dated 23.3.2011, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates (the "Borrower") in the amount of USD 9,997,500.- The pledger has received a copy of the Loan Agreement No. K220311-004 and acknowledges and agrees to its terms and conditions."

2. Pledge

2.1 In order to secure any and all obligations, present and future, whether conditional or unconditional of the Borrower towards the Bank under the Loan Agreement and any and all respective amendments thereto and for any and all other current or future claims which the Bank may have against the Borrower in

connection with the Loan Agreement- including those limited as to condition or time or not yet due-irrespective of whether such claims have originated from the account relationship, from bill of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations") the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank 2.1.1 all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount USD 9,997,500.- existing from time to time at present or hereafter on the securities account(s) no. 580039 held with the Bank (hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein

2.1.2 all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 580039 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and all amounts credited at any particular time therein....

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

2.2 The Pledgor agrees to deposit with the Bank all dividends, interest and other payments, distributions of cash or other property resulting from the Pledged Securities and funds.

2.3 The Bank herewith accepts the pledge established pursuant to section 2.1 hereof."

Realisation of the Pledge:

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

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

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

22.7. As explained in point a) above, the Circular Resolution dated September 16, 2010 granted Noticee no. 6 due authorization to enter into the Pledge Agreement on behalf of Noticee no.1. I also note that the Pledge Agreement clearly states that the said agreement was to secure any and all obligations, present and future, whether conditional or unconditional of the Borrower (defined as Vintage therein) towards the

EURAM Bank under the Loan Agreement dated March 23, 2010, details of which were also given in the Pledge Agreement. Thus, I find that the Loan Agreement was integral part of Pledge Agreement and *vice versa* and both were executed concurrently. Moreover, the preamble of the Pledge Agreement dated March 23, 2010 executed between Winsome and EURAM Bank referred to the Loan Agreement. Therefore, Winsome with full knowledge entered into the pledge agreement with EURAM Bank to provide security for the loan availed by Vintage from EURAM Bank, for the purpose of subscribing to the GDR issue of Winsome.

23. The Noticees have stated that they were unaware of the Loan Agreement and Pledge Agreement and became aware of the same only when SCN was issued to them (i.e. 2019). As discussed in previous paras, the wordings of the Circular Resolution and Pledge Agreement indicate that Noticee no. 1 was aware of the scheme by which the GRD proceeds were pledged as security for obtaining loan for subscribing to the same GDRs. Moreover, I find that there is nothing on record to show that Noticee no.1 has approached any appropriate forum to declare the Pledge Agreement as fraudulent/ null. If there is any document which is claimed to be wrongly executed the applicable law provides appropriate remedy for rectification of such document in order to declare the same *non est* before the appropriate forum at the earliest. If Winsome was aggrieved, it should have taken the appropriate step in this regard, at the earliest opportunity, before appropriate forum and no such claim can be entertained in these proceedings. This shows that the argument related to ignorance of Loan and Pledge Agreement pleaded by Winsome and Noticee no. 6 is an afterthought and they were aware of the existence of these agreements since their inception. Moreover, I find from the material made available on record that Winsome, vide letter dated August 07, 2012 which was signed by Noticee No. 6 (on the basis of authority given to him by the Board of Directors of Winsome), had instructed the EURAM Bank to transfer the remaining GDRs to Vintage's account with Habisi Bank AG Zurich. I note from the Annexure to the SCN that in response to EURAM Bank's letters dated April 02, 2012 and April 16, 2012, reminding Vintage for repayment of outstanding loan amount of USD 9.014 million, Winsome vide its letter dated August 07, 2012, signed by Mr. Ashish Bagrodia *inter-alia* replied to EURAM Bank as follows:

“..We WINSOME TEXTILE INDUSTRIES LTD. were informed by Alta Vista International FZE of your letter dated 2nd April 2012 and 16th April 2012 that the loan in the amount of USD 9,014,500.00 is due and that the loan has to be repaid within 10 days, otherwise the pledged cash deposit will be set off with the outstanding loan amount plus any outstanding interest.

We hereby confirm that the pledge agreement entered into by and between WINSOME TEXTILE INDUSTRIES LTD. and European American Investment Bank AG is valid and was duly signed by WINSOME TEXTILE INDUSTRIES LTD.

Further, we confirm the right of European American Investment Bank AG to set off the pledged cash deposit with the outstanding loan amount 9,014,500.00 USD.

As soon as European American Investment Bank AG has exerted its right to set off, all remaining GDR's regarding WINSOME TEXTILE INDUSTRIES LTD. (ISIN: US97550T1060) held in deposit no: 540012 1 E of Alta Vista International FZE with European American Investment Bank AG shall be transferred by European American Investment Bank AG to the following deposit account:

Beneficiary Bank: Habib Bank AG Zurich, Zurich (account number 20311-333-196205) Euroclear account number: 94285

Contact details at bank: Mr. Zeeshan Mishra, Phone: +41 (0) 44-269-45-44

....After such transfer has been effected, you shall close all of WINSOME TEXTILE INDUSTRIES LTD. accounts held with European American Investment Bank AG...”

I note that in their replies neither Noticee no. 1 nor 6 has made any comments on the said letter. Thus, I find that the Noticees were aware of the Pledge Agreement and Loan Agreement and their argument related to the ignorance of the same is untenable. Further, Winsome in its capacity as a principal to its agent i.e. Noticee no. 6, is responsible for the actions of Noticee no. 6. I also note that the Pledge Agreement was signed between Winsome and EURAM Bank on March 23, 2011, which is just before the date of approval of its Board on March 31, 2011 for the issue and allotment of the GDRs of Winsome. From the timing, it is evident that Winsome was aware of the Loan Agreement dated March 23, 2011 entered into between Vintage and EURAM Bank for subscription of GDRs of Winsome.

24. Winsome has also submitted that management of Winsome did not possess expert knowledge relating to GDR issue and relied upon the guidance of Noticee no. 2-AP and his connected entities who were the lead managers to the issue. It is further argued by Winsome that it had received a list of allottees of GDRs from the Lead Manager i.e. Noticee no. 11 and had believed the same to be true and thus, forwarded the said list to SEBI. Firstly, as discussed in the previous paras, loan agreement entered into between EURAM Bank and Vintage and pledge agreement entered into between Winsome and EURAM Bank were intrinsically linked to each other wherein the party taking the loan i.e. Vintage did not provide any security for the loan taken by it rather the security for the loan was provided by Winsome only by pledging its bank

account wherein GDR proceeds were to be kept. Therefore, Winsome was aware that there was only one subscriber to its GDR issue. I note that at the time of GDR issue the funds were received into the EURAM Bank account of Winsome only from one person i.e. Noticee no. 3. Therefore, Winsome should have suspected the veracity of the list of subscribers purportedly provided by Noticee no.11, from this very fact. I am unable to accept the submission of the Noticee no.1 that the EURAM Bank account was an escrow account it was operated by Noticee no. 11 (Lead manager). I find that the account no. 580039 of Winsome with EURAM Bank is a retail account wherein proceeds of GDR were deposited from the escrow account. Therefore, it is not acceptable that the account holder did not have access to the said account. The list of subscribers to the GDR issue could also have been sought/cross checked from the Overseas Depository Bank. Being a listed company, Winsome ought to have known the subscribers to its issue to whom the allotment was made and the Company had also claimed in its disclosure to BSE that the issue was successfully subscribed. I note that the depository bank is the legal owner but the subscriber is the beneficial owner of the GDRs which the issuing company ought to have known for the purpose of making payments such as dividends, etc. Therefore, I am unable to accept the contention of Winsome that it was unaware of the number of subscribers to its GDR issue. As noted above, Circular Resolution of Winsome dated September 16, 2010 clearly authorized EURAM Bank to use the funds deposited in the Winsome's EURAM Bank account as a security in connection with loans, if any. Passing of such a resolution by Winsome wherein it was contemplated to pledge entire funds kept therein for securing the loan taken, if any, without questioning the same also gives rise to a reasonable inference that Winsome was aware of the arrangement wherein the subscriber to the GDR issue had taken a loan in order to subscribe to the GDRs and the said loan was secured by pledging the GDR proceeds. This further points to the fact that Winsome was aware of the scheme to subscribe to the GDRs and submitted wrong list of allottees to SEBI and stock exchanges.

25. From the above, I find that since the Loan Agreement was entered into by Vintage for the purpose of subscribing to the GDRs of Winsome, as detailed in para 22 above, and since, Vintage was the only subscriber to the GDRs of Winsome, as discussed in

para 24 above, thus, I find that the scheme of issuance of GDR of Winsome involved subscription of the GDR issue by obtaining finance from EURAM Bank by pledging the GDR proceeds. I note that the purpose of GDR issue is to raise further capital from overseas market for the company. If the same proceeds are pledged for the purpose of facilitating the subscriber to subscribe to the GDR issue, then the purpose of raising capital itself is defeated. I also note from statement of Winsome's retail bank account held with EURAM Bank (where GDR proceeds were deposited) and Vintage's loan account statement that only after Vintage repaid the loan amount, less/equal amount of money was transferred from Winsome's EURAM Bank account to Winsome's bank account in India and various entities. Thus, the transfer of funds from Winsome's EURAM Bank account was dependent on the repayment of the loan by Vintage and I find that though the GDR proceeds were deposited in the bank account of Winsome, the amount deposited in the account was not at the disposal of the Winsome, as the same was kept as collateral for the loans availed by Vintage even prior to issuance of GDRs. Therefore, I find that this was an artificial arrangement for the issuance and subscription of the GDR issue of Winsome and was not for the benefit of the shareholders of Winsome and I note that Winsome did not take any step to safeguard the interest of the Company or its shareholders.

26. In this regard, the Hon'ble SAT in *Jindal Cortex Ltd. Vs. SEBI (Appeal No. 376 of 2019 decided on February 05, 2020)* observed as under:

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

27. From the discussions above, I find that Winsome was aware and party to the fraudulent scheme to subscribe to the GDRs issued by it, on March 31, 2011. Moreover, I also find that the existence of such a scheme was concealed by it from the market and its shareholders. On perusal of corporate announcements made by Winsome to Bombay Stock Exchange (hereinafter referred to as "BSE") during the

period March 2011- April 2011, it was observed that Winsome disclosed to the exchanges on March 31, 2011 that:

“the Global Depository receipts (GDRs) issue of the company which was closed on March 30, 2011 has been successfully subscribed. Board of Directors of the Company at its meeting held on March 31, 2011, has allotted 6,45,00,000 (Sixty crores forty five lakh) equity shares of Re. 1/- each in the name of Company's depository, THE BANK OF NEW YORK MELLON against 12,90,000 GDRs”

28. I agree with the allegation in the SCN that Winsome did not inform stock exchange about Circular Resolution dated September 16, 2010 or entering into Pledge Agreement/ collateral security in its corporate announcements during the period March 2011 - April 2011. I find that the artificial arrangement of Loan and Pledge agreements, which resulted in the subscription of GDR issues of the Company, were not disclosed to the stock exchange in a true and complete manner but was reported as misleading news to the stock exchange which contained information in a distorted manner. Thus, I find that the corporate announcements made by the Winsome were false and misleading and the following material information were suppressed viz. (i). execution of Loan Agreement dated March 23, 2011 by Noticee no. 3 for obtaining loan from EURAM Bank for subscribing the GDR issue of Winsome, (ii) execution of Pledge Agreement dated March 23, 2011 between Winsome and EURAM Bank, for pledging the GDR proceeds to provide security for the loan taken by Noticee no. 3, and (iii) Noticee no. 3 was the only subscriber of 1.29 million GDRs amounting to USD 9.9 million issued by Winsome. I find that all these events were critical information for the investors to take an informed decision regarding their investment in the securities of Winsome. I also find that Clause 36 of the erstwhile Equity Listing Agreement mandated that a listed company will also immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company. In the present matter, I note that GDRs are issued by any company for fund raising purposes and the proceeds of such GDR issue has to be used by the company for the specific business and operational purposes as disclosed by the issuing company in the offer documents. Therefore, if the proceeds of the issue are not received then it will affect the operations of the issuer company. The fact that Winsome had not received USD 9.018 million from its GDR proceeds for utilisation in its business was an important fact had an impact on the operations of Winsome. Therefore, I find that Winsome had

failed to disclose the Pledge Agreement dated March 23, 2011 to BSE in violation of Clause 36 of the erstwhile Equity Listing Agreement read with Section 21 of the SCRA, 1956. I, further find that the corporate announcements made by Winsome from March 2011 to April 2011 regarding allotment of GDR issues without disclosing the actual scheme of GDR issue had the potential to mislead the investors and/or influence the price of the scrip of Winsome and/ or created a false impression in the minds of the investors that the GDR issue was fully subscribed. Winsome itself had facilitated subscription of its GDR issue wherein the subscriber i.e. Noticee no. 3 obtained loan for subscribing to the GDR issue of Winsome, and Winsome secured that loan by pledging the GDR proceeds with EURAM Bank and, in this connection, Winsome did not receive GDR proceeds to the extent of USD 9.018 million from EURAM Bank as the Noticee no. 3 defaulted on the repayment of loan as a consequence of which EURAM Bank invoked its pledge on the remaining GDR proceeds of Winsome (discussed in subsequent paras).

29. I also note that it would be appropriate to refer to the Order of the Hon'ble SAT dated October 25, 2016 in *Pan Asia Advisors Limited vs. SEBI (Appeal No. 126 of 2013)* wherein, while interpreting the expression of 'fraud' under the PFUTP Regulations, 2003, it was observed that:

"From the aforesaid definition (of 'fraud') it is absolutely clear that if a person by his act either directly or indirectly causes the investors in the securities market in India to believe in something which is not true and thereby induces the investors in India to deal in securities, then that person is said to have committed fraud on the investors in India. In such a case, action can be taken under the PFUTP Regulations against the person committing the fraud, irrespective of the fact any investor has actually become a victim of such fraud or not. In other words, under the PFUTP Regulations, SEBI is empowered to take action against any person if his act constitutes fraud on the securities market, even though no investor has actually become a victim of such fraud. In fact, object of framing PFUTP Regulations is to prevent fraud being committed on the investors dealing in the securities market and not to take action only after the investors have become victims of such fraud."

30. From the above, I find that by indulging in an artificial scheme in its GDR issue on March 31, 2011 and concealing the same from the market and shareholders, Winsome perpetrated a fraudulent scheme and played its assigned role and this fraudulent scheme would not have been possible without the active participation of

the issuer company. In view of the above, I find that the arrangement of Winsome, in allotting GDR issue to only one entity i.e. Vintage which subscribed to the GDR issue of Winsome by obtaining loan from EURAM Bank and the said loan was secured by Winsome by pledging its GDR proceeds, seen along with the misleading corporate announcements made by Winsome during the period March 2011 - April 2011, lead to conclusion that the same were done in a fraudulent manner which had the potential to mislead or induce the investors to sale or purchase of its scrip.

Allegation related to non-receipt of GDR proceeds by Winsome

31. The SCN states that GDR proceeds of USD 9.97 million were deposited in Winsome's account no. 580039 held with EURAM Bank on March 30, 2011, details of which is given below

Source: WINSOME's EURAM Bank a/c statement)

Date of credit of funds	Credit amount (US\$)
30/03/2011	9,997,500.00

32. Details of transfer of GDR proceeds from the account no. 580039, as given in the SCN, are tabulated below:

Date of transfer of funds	USD transferred from Winsome's EURAM Bank a/c	Remarks
30/03/2011	2,500	Escrow Fee GDR Issue
30/03/2011	210.99	Account Opening Fees
27/05/2011	354.20	Balance confirmation fee 2011
13/04/2012	328.70	Balance confirmation fee 2012
SUB TOTAL (A)	3,393.89	
23/02/2012	290,000.00	Winsome's Bank a/c in India
24/02/2012	749,000.00	Winsome's Bank a/c in India
SUB TOTAL (B)	10,39,000	
GRAND TOTAL (A+B)	10,42,393.89	

33. The SCN alleges that that out of GDR proceeds of USD 9.99 million, Winsome transferred USD 1.04 million to its bank account in India during February 2012. Further, on October 09, 2012, Euram Bank adjusted GDR proceeds to the extent of USD 9.018 million against the loan account of Vintage. The SCN alleges that out of the total loan amount of USD 9.99 million, Vintage repaid the loan amount to the extent of USD 0.98 million in two instalments on February 2012 and thereafter defaulted on loan repayment and on October 09, 2012, as a result, EURAM Bank adjusted GDR

proceeds to the extent of USD 9.018 million (USD 9.014 million and interest) against the loan account of Vintage, in accordance with terms of loan agreement. The details of repayment of loan by Vintage, as provided by EURAM Bank, as detailed in the SCN, are tabulated below:

(Date of repayment of loan by Vintage)	Loan Amount repaid by Vintage (USD)	Date of transfer of USD from Winsome's EURAM Bank account	Amount (USD) transferred from Winsome's EURAM Bank*	Cumulative Loan Amount repaid by Vintage (USD)	Cumulative amount (USD) transferred from Winsome's EURAM Bank a/c
17/02/2012	238,000	23/02/2012	290,000	238,000	290,000
24/02/2012	745,000	24/02/2012	749,000	983,000	1,039,000

34. Based on the above, the SCN alleges that GDRs to the tune of USD 9.014 million was issued by Winsome to Vintage without any consideration. The SCN also alleges that Winsome's Annual Report for FY 2012-13, did not mention about the loan default by Vintage and Winsome did not inform the stock exchanges regarding loan default by Vintage and subsequent adjustment of GDR proceeds against such loan default.
35. In response to this Winsome has contended that the GDR proceeds has been received in the bank accounts of the Company and utilized. The details provided by Winsome is as follows:

Receipt Date	Bank	Account no.	Amount (USD)	Amount (INR)
27.02.2012	Canara Bank	1625201002905	1038469	56160414
17.12.2012	Canara Bank	1625201002905	724963	3947061 1
11.01.2013	Canara Bank	1625201002905	699963	38235479
12.04.2013	Canara Bank	1625201002905	999884	54313699
20.06.2013	Canara Bank	1625201002905	1099949	65523932
27.06.2013	Canara Bank	1625261000044	24531	1462270
31.07.2013	Canara Bank	1625201002905	899979	54786191
11.09.2013	Canara Bank	1625201002905	999900	63217272
04.10.2013	Canara Bank	1625201002905	999890	61296851

23.12.2013	Canara Bank	1625201002905	999960	61852526
20.02.2014	Canara Bank	1625201002905	999960	62187512
21.03.2014	Canara Bank	1625201002905	706385	43183078
			10193833	601689835

Winsome has submitted that the money was later used by it for the objects as mentioned in the GDR offer document and that the issuance of GDR by it was completely genuine and not at all fraudulent as alleged in the SCN. Winsome has submitted that the said fact is also duly certified by the Statutory Auditors of the Company in the Annual Report for the year 2013-14, that the GDR proceeds “*have been utilized for the purpose the issue was made*” in the explanatory notes to the account. Winsome has stated that it received the complete GDR proceeds in its bank account in India by March 2014.

36. In this regard, I note that in the bank statement pertaining to the account no. 580039 of Winsome with EURAM Bank, entry dated October 09, 2012 clearly states “Realisation of pledge in respect of loan no. K220311-004 Alta Vista Intl FZE” and shows a deduction of USD 9.018 million (approx.). I note that Alta Vista International FZE is the present name of Vintage FZE. Therefore, it is obvious that EURAM Bank has forfeited an amount of USD 9.018 million from the GDR proceeds which were deposited in the bank account no. 580039 in order to adjust with the loan default of Vintage FZE. I also find from the bank account statements of Winsome’s Indian accounts with various banks submitted by it that there are certain remittances in USD subsequent to October 09, 2012, but the narration of the remittance does not indicate the sender or the account from which it has been remitted, making it impossible to say that the said amount was received as part of the GDR proceeds. Therefore, I am unable to accept the submission of Winsome that the full amount of GDR proceeds was received by it. With respect to the remittances in USD in Winsome’s Indian bank accounts subsequent October 09, 2012, I observe that in terms of Section 177(4) (viii) of the Companies Act, 2013, the audit committee has to monitor the end use of funds raised through public offers and, therefore, the audit committee of the Company may look into the correctness of information submitted by the Noticees with respect to

whether the USD 9.018 million which was adjusted by EURAM Bank from the GDR proceeds, were thereafter remitted back to Winsome and report the same to the Board of Directors of Winsome for taking appropriate corrective action, if any.

37. I find that from the bank account statement of account no. 5800399 (retail account), of Winsome with EURAM Bank it is evident that on October 09, 2012, EURAM Bank adjusted USD 9.018 million (approx.) from the GDR proceeds in furtherance of the Loan Agreement dated March 23, 2011 (executed between EURAM Bank and Vintage) and Pledge Agreement dated March 23, 2012 (executed between EURAM Bank and Winsome). Further, I note that Winsome failed to inform stock exchanges about the non- receipt of GDR proceeds to the extent of USD 9.018 million from its EURAM Bank account to its Indian account in its corporate announcements made on stock Exchanges (BSE and NSE) during the period from October 09, 2012 (pledge realised by EURAM Bank in respect of loan default of Vintage). I also find that Vintage has not brought any material on record to show that it had paid the remaining USD 9.014 million to EURAM Bank and I also find that this effectively indicates that as on October 09, 2012 GDRs worth USD 9.014 million had been allotted to Vintage for free. The Annual Report pertaining to FY 2012-13 of Winsome states as follows:

“During the year 2010-11, the Company had issued and allotted 12,90,000 nos. GDR's entitling 6,45,00,000 (now 64,50,000 equity shares of Rs.10/- each) nos. equity shares of Re.1/- each at price of Rs.6.94 per share (including premium of Rs.5.94, now premium is Rs.59.40 on Rs.10/- per share). As on 31.03.2012, Rs.4,586.69 lacs (including exchange gain) was pending to be received in India against above issue made, during the year Rs.777.14 lacs, as explained, have been received/credited to account of the company in India. As stated in the note no. 2.3 balance amount of Rs. 4147.07 lacs as on 31 March 2013 (excluding amount lying in bank outside India of Rs. 13.35 lacs) is invested outside India with a money market fund.”

The Annual Report pertaining to FY 2013-14 of Winsome states as follows:

“During the year 2010-11, the Company had issued and allotted 12,90,000 nos. GDR's entitling 6,45,00,000 (now 64,50,000 equity shares of Rs. 10/- each) nos. equity shares of Re.1/- each at a price of Rs. 6.94/- per share (including premium of Rs. 5.94/-, now premium is Rs. 59.40/- on Rs. 10/- per share).As on 31.03.2013, balance Rs. 4,160.43 Lacs which was invested outside India (including balance in bank Rs. 13.35 lacs). During the year the Company has received in India balance amounting to Rs. 4626.54 (including exchange gain of Rs 479.47) and the same have been utilized for the purpose the issue was made.”

From the above statement in the Annual Report for FY 2012-13 and FY 2013-14 of Winsome I find that that Winsome had failed to disclose the non-receipt of GDR proceeds to the tune of USD 9.018 million on account of loan default by Vintage and adjustment for the same by EURAM Bank from the GDR proceeds of Winsome on October 09, 2012 against the loan taken by Vintage, in its Annual Report.

38. I further note that Winsome in its Annual Report for FY 2010-11 and 2011-12 stated as follows in the notes forming part of the accounts:

Annual Report- FY 2010-11:

“(i) These accounts are prepared on the historical cost basis and on the accounting principles of a going concern.

(ii) Accounting policies not specifically referred to otherwise are consistent and in consonance with generally accepted accounting principles and mandatory Accounting Standards as per company (Accounting Standard) rules 2011”.

Annual Report- FY 2011-12:

“(i) These accounts are prepared on the historical cost basis and on the accounting principles of a going concern.

(ii) Accounting policies not specifically referred to otherwise are consistent and in consonance with generally accepted accounting principles and mandatory Accounting Standards as per company (Accounting Standard) Rules, 2006”.

39. While Winsome declared the above in its Annual Reports, as discussed above, it failed to disclose the Pledge Agreement dated March 23, 2011 as well as the fact of adjustment of GDR proceeds based on the said Pledge Agreement. I note that, Winsome, in its financials disclosed in Annual Report for financial year 2010-11 showed cash and cash equivalent (hereinafter referred to as “CCE”) as Rs. 4970.55 lakh (which is the total amount of GDR issue, i.e. USD 9.99 million) as on March 31, 2011. I also note that Vintage has not repaid any part of the loan during the financial year 2010-11 and therefore a loan amount of USD 9.99 million (i.e. Rs.4460.53 lakh at the rate of Rs. 44.65 per 1 USD on March 31, 2011) was outstanding against Vintage. I also note from the financials disclosed in Annual Report for the financial year 2011-12 that Winsome showed CCE as Rs. 5949.55 lakh as on March 31, 2012. During this financial year Vintage had repaid loan to the extent of USD 0.98 million and therefore, balance loan amount of USD 9.014 million (Rs. 4609.20 lakh at the rate of Rs. 51.1565 per 1 USD on March 31, 2012) was outstanding as on March 31, 2012.

In this regard, I note that Accounting Standard 3 which pertains to Cash Flow Statements *inter alia* states that cash comprises cash on hand and demand deposits with bank and it also states that cash equivalents are short term, highly liquid investments that are readily convertible into known amounts of cash and which are subject to an insignificant risk of changes in value.

40. I find that the GDR proceeds which were received in the escrow account of Winsome and thereafter, transferred to retail account no. 580039 of Winsome held with EURAM Bank was not freely available to Winsome and was encumbered in terms of the Pledge Agreement dated March 23, 2011 and the GDR proceeds were only released to Winsome after Vintage repaid parts of its loan taken from EURAM Bank. Therefore, such GDR proceeds lying in the EURAM Bank account of Winsome cannot be considered cash or cash equivalent in the hands of Winsome before the loan is fully repaid by Vintage. Hence, I find that the disclosure of CCE in the financials and Annual Reports pertaining to financial years 2010-11 and 2011-12 was inaccurate and not in compliance with Accounting Standard-3 and Winsome had made wrong disclosures in its financial statements and Annual Reports to that extent. I note that Clause 32 of the erstwhile Equity Listing Agreement mandated that the Cash Flow Statement will be prepared in accordance with the Accounting Standard on Cash Flow Statement (AS-3) issued by the Institute of Chartered Accountants of India. Therefore, I find that Winsome has not complied with Clause 32 and Clause 50 of the erstwhile Equity Listing Agreement read with Section 21 of SCRA, 1956.
41. I also note that Winsome could utilise its GDR proceeds only to the extent of amount of loan repaid by Vintage and therefore there was a possible obligation on Winsome for an amount of USD 9.99 million (i.e. Rs. 44.60 crore at the rate of Rs. 44.65 per USD) and USD 9.014 million (Rs.46.09 crore at the rate of Rs. 51.1565 per USD) as on March 31, 2011 and March 31, 2012, respectively. Therefore, a contingent liability to the extent of Rs. 44.60 crore and Rs. 46.09 crore was required to be disclosed by Winsome in its financial statements for the financial years 2010-11 and 2011-12, respectively. I note that Accounting Standard -29 explains a contingent liability to be a possible obligation that arises from past events and the existence of which will be

confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the enterprise. I find that Winsome could incur a liability on its GDR proceeds in terms of the Pledge Agreement dated March 23, 2011 in the event of loan default by Vintage. As on March 31, 2011, since Vintage had not started paying back the loan this liability would amount to the whole of the loan amount, i.e. Rs. 44.60 crore and as on March 31, 2021 it would amount to the outstanding loan amount, i.e. Rs. 46.09 crore. I note that the financial statements of Winsome pertaining to financial years 2010-11 and FY 2011-12 did not disclose the aforementioned amounts as contingent liabilities thereby Winsome has not complied with Accounting Standard -29 and thus not complied with Clause 50 of the erstwhile Equity Listing Agreement to that extent. I am also of the view that Winsome (in its financial statement for the Annual Report 2010-11 and 2011-12) did not follow prudence since it did not disclose the contingent liability/ make provision for potential liability, did not follow substance over form as it presented its bank balance with EURAM Bank as free cash available with the Company and also did not follow materiality as it did not disclose the fact of signing of Pledge Agreement and pledging of GDR proceeds, and thus, not complied with Accounting Standard-1 therefore, violating Clause 50 of the erstwhile Equity Listing Agreement read with Section 21 of the SCRA, 1956. I also find that Clause 36 of the erstwhile Listing Agreement specifically mentions that voluntary delisting of securities of a listed company has to be disclosed to the stock exchange. I find that Winsome failed to inform the stock exchanges about the delisting of the GDRs from the Luxemburg Stock exchange, therefore, Winsome has also violated Clause 36 of the erstwhile Equity Listing Agreement.

42. I note that Noticees have referred to orders passed by the Hon'ble Supreme Court and Hon'ble SAT to substantiate their arguments on the level of evidence required for establishing serious charges of fraud. Judgment of Hon'ble Supreme Court in *Union of India v. Chaturbhai M. Patel & Co.* (AIR 1976 SC 712) and *A.L.N. Narayanan Chettyar v. Official Assignee* (AIR 1941 PC 93) and *SEBI and Ors. v. Kanhaiyalal Baldevbhai Patel and Ors.* (2017) 15 SCC 1) and judgements of Hon'ble SAT in *KSL & Industries v. Chairman, SEBI* (Appeal No. 9 of 2003 decided on September 30,

2003) have *inter alia* been relied upon by the Noticees to contend that fraud is a serious charge and hence, must be supported by higher degree of proof. In this regard, in the present case, I note that vide the Circular Resolution dated September 16, 2010, Winsome approved the opening of account with EURAM Bank along with authorization to pledge the GDR proceeds to be deposited in it to secure the loans taken, if any. Subsequently, a Pledge Agreement was also entered into between Winsome and EURAM Bank pledging the GDR proceeds in the account opened, as authorized in the Circular Resolution dated September 16, 2010, as security for loan taken by Vintage in order to subscribe to the GDRs of Winsome. The Circular Resolution or Pledge Agreement was not disclosed to the investors and a wrong disclosure was made to the stock exchanges regarding subscription of GDRs. Moreover, the default of loan by Vintage and consequent adjustment of USD 9.018 from the GDR proceeds by EURAM Bank in accordance with the Pledge Agreement was also not disclosed to the investors by Winsome. In the *Adi Cooper matter (supra)* the Hon'ble Supreme Court has observed that such 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 BSE. In my view, this non-disclosure had the potential to 'induce' or to mislead the investors to remain invested or to invest or to divest in the securities of the Company. I note that the evidence available on record in the form of board resolutions, Pledge Agreement, Loan Agreement, disclosure made to the stock exchanges by Winsome, bank statements of Winsome, etc. shows higher degree of probability, of bringing out of inducement or misleading investors to deal or abstain from dealing in the securities of the Company and consequential fraud committed. Therefore, I find that evidence available on record and inferences drawn from such evidence show higher degree of probabilities and is in accordance with observations made by the Hon'ble Supreme Court and Hon'ble SAT, in the cases, relied upon by the Noticees.

43. From the discussions above, I find that Winsome perpetrated a fraudulent scheme for its GDR issue in which the GDRs of Winsome were subscribed by only one entity i.e. Vintage (Noticee no. 3) by obtaining a loan through a dollar term loan facility of USD

9.99 million through a loan agreement from the EURAM Bank, for which Winsome provided security by pledging its Bank account held with EURAM Bank wherein proceeds of GDR issue of Winsome were to be deposited. I also find that since Vintage defaulted on payment of the loan for an amount of USD 9.014 to EURAM Bank an amount of USD 9.018 (with interest) was adjusted by EURAM Bank against loan account of Vintage on October 09, 2012, in accordance with the Pledge Agreement and therefore, Vintage received allotment of GDRs worth USD 9.014 million free of cost. I further find that Winsome caused the investors in the securities market in India to believe that the full consideration for GDRs had been received by it which was not true and thereby, induced the investors in India to deal in securities, and committed fraud on the investors in India and thus, violated the provisions of Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1), (2)(f), (k), (r) of PFUTP Regulations, 2003 and Clauses 32, 36 and 50 of the erstwhile Equity Listing Agreement read with Section 21 of the SCRA, 1956.

Liability of Directors of Noticee no.1

44. The SCN alleges that on September 16, 2010, the directors of Winsome, namely, Mr. Satish Bagrodia (Noticee no. 5), 2) Mr. Ashish Bagrodia (Noticee no. 6), 3) Mr. Manish Bagrodia (Noticee no. 7), 4) Mr. Chandra Mohan (Noticee no. 8), and 5) Mr. Satish Girotra (Noticee no. 9), vide a Circular resolution dated September 16, 2010 authorized the EURAM Bank to use the Winsome's GDR proceeds deposited with EURAM Bank as security in connection with loan and also authorized Noticee no. 6 to sign, execute any application, agreement etc. as may be required by the EURAM Bank. Further the said resolution was taken note of in Board Meeting of Winsome dated November 11, 2010. The SCN alleges that based on this resolution the GDR proceeds were subsequently used as security against loan to a third party i.e. Vintage FZE which was also the sole subscriber to the GDR issue. Therefore, it has been alleged that these Noticees who were directors of Winsome, who approved the board resolution, acted as a party to the fraudulent scheme of GDR issuance.
45. I note that Noticee nos. 5 and 8 have passed away on March 05, 2019 and December 25, 2019, respectively, and their death certificates are placed on record. In view of the

same, the proceedings against Noticee nos. 5 and 8 stand abated. Regarding the said allegation made in the SCN, I find that Hon'ble Supreme Court in its judgment and order in Adi Cooper case (supra) has held that *such resolution* (as the circular resolution dated September 16, 2010) *facilitated the transaction with Vintage* (subscriber in that case also) *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 BSE*. Thus, the directors of Winsome who passed the aforesaid board resolution can *prima facie* be termed as party to the fraudulent act of Winsome.

46. I note that Noticee no. 6 who was the Managing Director of Winsome during the relevant period including financial years 2011-12 and 2012-13, has mainly adopted the arguments of Noticee no.1. I note that Noticee no. 6 was signatory to the Circular Resolution dated September 16, 2010 and on the basis of the authority granted vide Circular Resolution dated September 16, 2010, Noticee no. 6 signed the Pledge Agreement dated March 23, 2011 on behalf of Winsome with EURAM Bank. I also note that Noticee no. 6 signed a letter dated August 07, 2012 confirming the rights of EURAM Bank to set off the pledge deposit with the outstanding loan amount and interest. I note that the sole purpose of the Pledge Agreement dated March 23, 2011 was to secure the loan taken by Vintage from EURAM Bank for subscribing to the GDR issue of Winsome, as discussed in the previous paras. I find that Noticee no. 6 has been the Managing Director of the Company not only at the time of passing of resolution dated September 16, 2010, authorizing opening of bank account with EURAM Bank and pledging the GDR proceeds with EURAM Bank for the loans taken, but also at the time of taking of loan by Vintage (Noticee no. 3) from EURAM Bank and entering into Pledge Agreement between Winsome and EURAM Bank which he himself signed, securing the loan of Vintage. Further, Noticee no. 6 was also the Managing Director of Winsome at the time of making of wrong disclosures by the Winsome to the stock exchanges regarding subscription of GDRs and also when Winsome concealed the adjustment of USD 9.018 million from the GDR proceeds by EURAM Bank in view of the loan default by Vintage. I also note that Noticee no. 6 was a signatory to the Annual Reports for the financial years 2011-12 and 2012-13 of Winsome during which period the fraudulent scheme of GDR issue took place

Winsome concealed the same in its Annual Reports. I further note that Noticee no. 6 was also one of the directors of Winsome who was authorized to decide the pricing of GDR issue and do the needful related to offer/ issue/ allotment of GDRs and utilization of its proceeds, etc., in the meeting of the Board of Directors of Winsome on March 25, 2011. From all these facts, I find that Noticee no. 6 was aware of the fraudulent scheme of issuance of GDRs of Winsome and played an active role in the said scheme.

47. I note that Noticee no. 9, apart from adopting the common submissions of Noticee no. 1 dealt in detail in the previous paras, has submitted that he was an independent director of Winsome and not responsible for the day to day running of the Noticee no.1. Noticee no. 7 has not submitted any reply to the SCN.
48. In this regard, I find from the Annual Reports of Winsome that Noticee no. 7 was a Non-Executive Director and Noticee no. 9, was a Non-Executive Independent director of Winsome during the financial years 2011-12 and FY 2012-13 when the GDR issue of Winsome took place. I note that Noticee nos. 7 and 9 signed the Circular Resolution dated September 16, 2010. Neither of these Noticees have placed any material on record to show that they had raised any objection or query regarding the Circular Resolution which proposed to pledge the entire GDR proceeds for any loan. As discussed in previous paras, the Circular Resolution was an integral part of the fraudulent scheme of issuance of GDRs by Winsome. I further note that Noticee no. 9 was also a member of the Audit Committee of Winsome during financial year 2012-13 and attended 4 meetings (out of 4) of the audit committee. I note that the default of loan by Vintage and subsequent adjustment of loan by EURAM Bank from the GDR proceeds resulting in non- remittance of GDR proceeds amounting to USD 9.018 million to Winsome occurred during this financial year. In this regard, Clause 49(II)(D) of the Erstwhile Equity Listing Agreement which dealt with the role of the Audit Committee of listed companies specified that one of the duties of the Audit Committee is the oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible. In terms of the said clause, it was the duty of the Audit Committee of

Winsome to examine the financials of Winsome and ensure that the same is reported correctly. As discussed in the previous paras, the non-receipt of USD 9.018 million from the GDR proceeds due to loan default by Vintage was fraudulently not disclosed by Winsome in its Annual Reports or to the stock exchanges. I find that failure to raise any concern regarding the non-receipt of USD 9.018 million, as member of the audit committee as well as the board of directors of Winsome, shows that Noticee no. 9 did not act diligently. I further find that though Noticee nos.7 and 9 were Non-Executive Director and Non-Executive Independent Director of Winsome, respectively, however they were both signatories to the Circular Resolution dated September 16, 2010 and Noticee nos. 9 was member of the Audit Committee of Winsome, leading to the conclusion that these two directors were also involved in the fraudulent GDR issue by Winsome.

49. In respect of liability of the directors for the fraud committed by a Company, the Hon'ble Supreme Court, in the matter of *N. Narayanan v. Adjudicating Officer, SEBI* (2013) 12 SCC 152 has observed as under:

“33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in *Official Liquidator v. P.A. Tendolkar* (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.”

50. In view of the discussions above, I find that Noticees No. 6, 7 and 9 were part of the fraudulent arrangement which resulted in facilitating the subscription of GDR issue of Winsome wherein Noticee no. 3 obtained loan from EURAM Bank for subscribing to the GDR issue of Winsome and, Winsome pledged the GDR proceeds with the EURAM Bank securing the loan taken by Noticee no. 3. Thus, I find that the Noticee

nos. 6, 7 and 9 have violated the provisions of Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1) of PFUTP Regulations, 2003.

51. I note that it has been alleged in the SCN that AP (Noticee no. 2) was key person in structuring the GDR issue of Winsome who devised the GDR issue in connivance with Winsome. It has been alleged that AP connected entities were involved at all stages of the GDR issue of Winsome. AP controlled Pan Asia Advisors Ltd. (Noticee no. 11) was Lead Manager to GDR issue of Winsome. Another entity connected to AP i.e. Vintage FZE (Noticee no. 3), subscribed to GDR issue by entering into Loan Agreement with EURAM Bank for which Winsome pledged its GDR proceeds as security. Vintage subsequently defaulted in repayment of balance loan amount of USD 9.014 million accordingly, said an amount of USD 9.018 million (with interest) was adjusted by the EURAM Bank from the GDR proceeds of Winsome, in terms of the pledge agreement between Winsome and EURAM Bank. Resultantly, GDRs to the extent of USD 9.014 million which were issued to Vintage FZE remained with Vintage for free. AP connected sub-accounts, namely, Noticee nos. 4, 13, 14, 15, 16 and 17, received GDRs and Aspire (Noticee no.4) converted those into equity shares and sold converted equity shares of Winsome on Indian stock exchanges for a value of Rs.1.11 Crores. Both HBSF (Noticee no. 16) and Aspire were registered as sub-accounts with AP connected FII, namely, Golden Cliff (Noticee no. 12). The other sub-accounts continued to hold the shares. SCN alleged that shares sold by Aspire are the shares which were acquired by Vintage without any consideration. Thus, it was alleged that Noticee no. 2 devised GDR scheme along with Winsome wherein Winsome misled the Indian investors by concealing the information of entering into Pledge Agreement dated March 23, 2011 and informing GDR related news in a distorted manner to stock exchange which made investors believe that GDRs were genuinely subscribed and Winsome did not receive GDR proceeds to the tune of USD 9.018 million. Noticee no. 10, who was a long term associate of AP, entered into Loan Agreement, as the MD of Noticee no. 3, with EURAM Bank for subscription of GDR issue of Winsome and also opened a loan account (a/c no. 540012-052-1) with EURAM Bank and Vintage defaulted on loan of USD 9.014 million thereafter. The SCN further alleges that Noticee no. 2 and connected entities i.e. Noticee no. 3 and

4 and Noticee no. 10 to 17 participated in the fraudulent scheme of issuance of GDRs of Winsome, in violation of provision of SEBI Act, 1992 and PFUTP Regulations.

52. Summary of the connection/ association of Noticee no. 2 with Noticees no. 3, 4 and 10 to 17 and other associated entities, as depicted in the SCN, is reproduced below:

Sl. No.	Name of entity	Connection/association of AP with entity
1	Pan Asia Advisors Ltd. (now known as Global Finance and Capital Ltd.)	AP was director (April 24, 2006 to September 29, 2011) and 100% shareholder (July 01, 2008 to January 20, 2012)
2	Vintage FZE (now known as Alta Vista International FZE)	AP was beneficial owner and Managing Director (as on June 06, 2007 and June 07, 2010 respectively). Alkarni Holdings Limited was shareholder of Vintage as on December 28, 2010 and Mr. Arun Panchariya was sole director of Alkarni as on April 21, 2014.
3	India Focus Cardinal Fund (IFCF)	AP was director from August 22, 2008 to October 28, 2010, and beneficial owner
4	EURAM Bank, Austria	AP connected Pan Asia Advisors Ltd. had joint venture with EURAM Bank namely EURAM Bank Asia Limited.
5	EURAM Bank Asia Limited	AP was director and president (resigned on September 22, 2011)
6	Mr. Mukesh Chauradiya	AP was beneficial owner of Vintage FZE in which Mr. Mukesh Chauradiya served as Managing Director and Manager In Ramsai Investment Holdings P. Ltd, where Vintage FZE was holding 99.99% shareholding through its director AP (for the period 2009-2013) and AP was director for the period from February 04, 2008 to August 18, 2010, Mr. Mukesh Chauradiya was director in the same company (first appointment from February 04, 2008 and second appointment from August 17, 2010 till March 17, 2016) AP is one of the promoters of Alka India Ltd. from the quarter ended December 2005 to March 2018 (As observed from shareholding pattern of ALKA available on BSE website) Mukesh Chauradiya was director in Alka India Ltd. from January 31, 2006 to June 01, 2010.
7	Mr. Anant Kailash Chandra Sharma ('AKCS')	AP and AKCS were directors in Sai Sant Advisory (I) P. Ltd- AP-August 31, 2007 to October 20, 2010 AKCS-December 01, 2009 to March 18, 2016. AP is one of the promoters of Alka India Ltd. from the quarter ended December 2005 to March 2018 (As observed from shareholding pattern of ALKA available on BSE website) AKCS was director in Alka India Ltd From December 01, 2009 to April 26, 2018. In Ramsai Investment Holdings P. Ltd, AKCS was director from September 01, 2015 to March 18, 2016. AKCS has worked with Vintage FZE
8	Highblue Sky Emerging Market Fund (HBSF)	AKCS is director (since August 11, 2014 till date) and beneficial owner (since September 09, 2014 till date) of HBSF. AKCS is connected to AP. Ms. Reema Narayan Shetty was beneficial owner of HBSF from April 21, 2014 to September 09, 2014 (by virtue of being beneficial owner of Golden Cliff from September 12, 2013 till September 09, 2014 which in turn is beneficial owner of HBSF since April 21, 2014). Ms. Reema Narayan Shetty is connected to AP as she was authorized signatory of India Focus Cardinal Fund.
9	Golden Cliff (previously known as Vaibhav Investments Limited)	AKCS is director (since July 16, 2014 till date) and 100% beneficial owner (since September 09, 2014 till date) of Golden Cliff. AKCS is connected to AP. (Reema Narayan Shetty was director and 100% beneficial owner (from September 12, 2013 till September 09, 2014)) of Golden Cliff. She was authorized signatory for the bank account of AP connected entity India Focus Cardinal Fund which was maintained with EURAM Bank Austria.
10	Aspire Emerging Fund (ASPIRE)	Mr. Ashish Nanda was a director of Aspire along with Mr. Aslam Kanowah who was also a director of HBSF.
11	Leman Diversified Fund (LEMAN)	Investors include Al Jalore and Image Securities Ltd. Mr. Ashish Nanda is Managing Director of Image Securities Ltd.
12	Davos International Fund (DAVOS)	Common directors with SAF, LEMAN and SVF

Sl. No.	Name of entity	Connection/association of AP with entity
13	Stream Value Fund (SVF) (now known as Bao Value Fund)	Common directors with DAVOS
14	Sparrow Asia Diversified Opportunities Fund (SAF)	Common directors with DAVOS and LEMAN

53. The allegations made against Noticees no. 9 to 15 in the SCN and their replies, are discussed in the following.

Role of Pan Asia Advisors Ltd. (Noticee no. 11)

54. Noticee no. 11 was the Lead Manager to the issue of GDRs by Winsome. I note from the material available on record that, Noticee no. 11, provided details of its directorship and its connection with AP to SEBI. On perusal of the same, it was observed that Noticee no. 11 was incorporated on April 24, 2006 and AP was director of Pan Asia during the period August 30, 2006 to September 29, 2011. Vide letter dated February 20, 2012, Pan Asia had submitted that AP held 100% shareholding in the company during the period July 2008 to January 2012, i.e. the period when the fraudulent scheme of GDR issue of Winsome took place.
55. I further note that Pan Asia Advisors Ltd. wherein AP (Noticee no. 2) was director and 100% shareholder was the Lead Manager which managed the GDR issue of Winsome and procured the subscriber, i.e. Vintage (Noticee no. 3). I also note that Pan Asia supplied the list of 6 subscribers to the GDR issue to Winsome which was thereafter, disclosed by Winsome to SEBI. I also note that in reality AP controlled Vintage was sole subscriber to GDR issue which subscribed to GDR issue by obtaining a loan and entering into Loan Agreement with EURAM Bank and defaulted in repayment of balance loan amount of USD 9.014 million as a result of which the GDR proceeds of USD 9.018 million (with interest) were forfeited by EURAM Bank to that extent. From the fact that AP controlled Noticee no. 11, being its 100% shareholder and director and the fact that Noticee no. 11 was the Lead Manger managing the placement of the GDRs wherein it procured another AP connected entity as the sole subscriber, I note that the whole scheme of subscription was fraudulent, as discussed in the previous

paras, I find that Noticee no. 11 in connivance with Noticee no. 2 and its connected entities played an active role in fraudulent scheme of GDR issue of Winsome. In the order dated October 25, 2016 in *Pan Asia Advisors Limited vs. SEBI* (Appeal No. 126 of 2013), the Hon'ble SAT has examined the role of a lead manager in a GDR issue and observed as follows:

“Thus, the investors in India were made to believe that in the global market the issuer companies have acquired high reputation in terms of investment potential and hence the foreign investors have fully subscribed to the GDRs, when in fact, the GDRs were subscribed by AP through Vintage which was wholly owned by AP. In other words, PAN Asia as a Lead Manager and AP as Managing Director of PAN Asia attempted to mislead the investors in India that the GDRs have been subscribed by foreign investors when in fact the GDRs were subscribed by AP through Vintage. Any attempt to mislead the investors in India constitutes fraud on the investors under the PFUTP Regulations.”

56. In view of the facts narrated above and the observations of the Hon'ble SAT, I find that Noticee no. 11 has violated Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1), (2)(f), (k), (r) of PFUTP Regulations, 2003.

Role of Vintage FZE (Noticee no. 3)

57. Noticee no. 3 was the sole subscriber to the GDRs issued by Winsome. The SCN states that on perusal of copy of the Know Your Customer documents of Vintage for opening an account with EURAM Bank, it was observed that AP was the beneficial owner and Managing Director of Vintage as on June 06, 2007. It was further observed that Alkarni Holding Ltd was the shareholder of Vintage as on December 28, 2010 and as on April 21, 2014 and AP was the sole shareholder and director of Alkarni Holding Ltd. Thus, I note that AP is beneficial owner of Vintage which was the sole subscriber of GDR issue of Winsome and subscription was arranged through a loan availed from EURAM Bank to the extent of USD 9.99 million. As discussed in the previous paras of this order, Winsome pledged its GDR proceeds as security against the loan availed by Vintage. I also note that Vintage repaid loan to the tune of USD 0.98 million and defaulted on the loan repayment thereafter and the outstanding loan amount of USD 9.014 million was adjusted by EURAM Bank from Winsome's GDR proceeds, with interest, deposited in its EURAM Bank account. Thus, I find that

Noticee no. 3 received allotment of GDRs of Winsome worth USD 9.014 million without effective payment of any consideration. Noticee nos. 4 and 13 to 17 received GDRs and converted them to equity shares, Aspire (Noticee no. 4) converted them and sold converted shares worth Rs.1.11 Crore through AP connected FII Golden Cliff (Noticee no.12). Hence, I find that Noticee no. 3 along with Noticee no. 2 and his connected entities are jointly and severally responsible for Winsome not receiving commensurate consideration to the extent of USD 9.018 million for its GDRs issued in 2011. In view of the same, I find that Noticee no. 3 (where Noticee no. 2 was the beneficial owner and Managing Director) also acted as party to fraudulent scheme of GDRs issue of Winsome and violated Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1), (2)(f), (k), (r) of PFUTP Regulations, 2003.

Role of Mukesh Chauradiya (Noticee no. 10)

58. It is alleged in the SCN that Mr. Mukesh Chauradiya was a long term associate of AP. Mr. Mukesh Chauradiya entered into Loan Agreement with EURAM Bank for subscription of GDR issue of Winsome in the capacity of Managing Director of Vintage. Further, Vintage opened a loan account (a/c no. 540012-052-1) with EURAM Bank and Vintage defaulted on loan of USD 9.014 million when Mr. Mukesh Chauradiya was the Managing Director and authorized signatory of Vintage. The SCN also states that Noticee no. 10 was also a director in the company Ramsai Investment Holdings Private Limited, where Noticee no. 3 was holding 99.99% shareholding through its director Noticee no. 2. Hence, it has been alleged that Noticee no. 10 is a close associate of Noticee no. 2.
59. Noticee no. 10 vide his reply has submitted that he was the authorized signatory in relation to the Bank account held by Noticee no. 3 with EURAM Bank, Austria. He has submitted that he was never the director or the Managing Director of Noticee no. 3 or held any beneficial interest in Noticee no. 3. Noticee no. 10 has submitted that the loan agreement in relation to Winsome was signed by him for and on behalf of Noticee no. 3 as its Authorised Signatory in relation to its bank account with EURAM Bank. That the agreement was signed by him as per the instruction and direction of Noticee no. 2, the ultimate owner and beneficiary of Noticee no. 3.

60. In this regard, I note that even though Noticee no.10 claims that he has signed the Loan Agreement as per the instructions of Noticee no. 2, as per the Loan Agreement dated March 23, 2011, Noticee no. 10 has signed the same as the Managing Director of Noticee no. 3 for obtaining loan of USD 9.99 million from EURAM Bank for subscribing to the GDR issue of Winsome. Therefore, I find that Noticee no. 10 has acted as party to the fraudulent scheme of GDR issue of Winsome in connivance with AP and his connected entities and cannot escape any liability for the same as he has been instrumental in signing the Loan Agreement that has facilitated the subscription of GDRs by Noticee no. 3. Further, I also note that Noticee no. 10 has signed the loan agreements for GDR issuance of approximately 10 other listed companies including: Vikash Metal & Power Ltd. and Rasoya Proteins Ltd., Winsome Yarns Ltd., wherein similar fraudulent scheme of GDR issuance was devised by AP. I note that Noticee no. 10 was connected to AP through various other entities owned by AP such as Ramsai and Alka India Ltd. and he was a director in both these companies. I also note that in the Loan agreement dated February 14, 2011 between Vintage and EURAM Bank for the purpose of availing loan for subscription of GDRs of Rasoya Proteins Ltd., Noticee no. 10 was again mentioned as Managing Director. Therefore, it is too much coincidence of mistake that Vintage repeatedly designated Noticee no. 10 as a director on more than one occasion by mistake. In this regard, I note that from similar transactions related to the fraudulent GDR issue of Winsome Yarns Ltd. on March 29, 2011, adjudication proceedings were also initiated against Noticee no. 10 and penalty was imposed on him. Noticee no. 10 challenged the order of the Adjudicating officer. The Hon'ble SAT, vide its order dated January 07, 2021 in *Mukesh Chauradiya vs. SEBI (Appeal no. 260 of 2020)*, dismissed the appeal observing as follows:

"10. 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.

11. It is also held in the impugned order that the appellant was also a director of Ramsai Investment Holdings P. Ltd. wherein Arun Panchariya was also a director holding 99.98% of shares through Vintage FZE. This clearly demonstrates appellant's strong connection with Panchariya. Appellant's stated lack of awareness relating to details of the loan or other operations of Vintage is clearly feigning ignorance as the appellant has been working at senior level since 2005 and is admittedly signatory to many such agreements. In the instant matter the loan agreement clearly spells out that it is for the purpose of subscribing to the Winsome GDR and the amount of GDR issue and the amount of loan matches indicating that Vintage is going to be the sole subscriber of the GDRs in question. Pledge Agreement was annexed to the loan agreement, as given in the impugned order quoted in para 2 of this Order.

...

13. This Tribunal is fully aware of the *modus operandi*, as in the impugned matter, used by various entities in the manipulation of several GDR issues by Indian Companies as held in various orders passed by us such as in Pan Asia Advisors Ltd. (another Panchariya entity), Cals Refineries etc.”

61. In light of the aforementioned order of the Hon'ble SAT, it becomes clear the present matter is not the only matter where Noticee no. 10 has signed loan agreements on behalf of Noticee no. 3. His strong connection with Noticee no. 2 has also been upheld by the Hon'ble SAT in the aforesaid order. Further, from his directorship in various entities controlled by Noticee no. 2 and the fact that he was an authorized signatory for Noticee no. 3, I find that Noticee no. 10 was not merely an employee but was a close associate of Noticee no. 2 and as such Noticee no. 10 was aware of the scheme devised by Noticee no. 2 for various GDR issues and was a party to the fraudulent scheme related to the GDR issue of Winsome and violated Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1), (2)(f), (k), (r) of PFUTP Regulations, 2003. I also note that Noticee no. 10 has been alleged to be involved in 14 GDR issues involving fraudulent schemes orchestrated by Noticee no. 2 and he has already been debarred in multiples cases for his involvement in fraudulent GDR schemes orchestrated by Noticee no. 2, such as in the matters of Visu International Ltd. (SEBI

Order dated February 20, 2020), Farmax India Ltd (SEBI Order dated July 14, 2020) and Zenith Birla (India) Ltd. (SEBI Order dated March 30, 2021).

Role of Noticee nos. 4, 12, 13, 14, 15, 16 and 17

62. The SCN states that the GDRs were converted into equity shares and these shares were sold in the Indian Capital Market. All the 12,90,000 GDRs issued by the Company were cancelled during the period from February 09, 2015 to May 18, 2015. The SCN states that post cancellation, FII-sub accounts, namely, Highblue Sky Emerging Market Fund (NoticeeNo.16), Sparrow Asia Diversified Opportunities Fund (Noticee No.14), Aspire Emerging Fund (Noticee No.4) Davos International Fund (Noticee No.15), Leman Diversified Fund (Noticee No.17), Stream Value Fund (Noticee No.13) received total 64,50,000 shares on conversion of GDRs. Termination notice of GDR program was given by Depository Bank on March 16, 2015 indicating the termination date as June 15, 2015. On termination of GDR program, no shares were sold by Custodian, DBS Bank Ltd. as all the GDRs issued by the Company had been cancelled prior to termination. The summary of the equity shares received post cancellation of GDRs, as given in the SCN, is tabulated below:

Date of conversion of GDRs	No. of GDRs converted	No. of outstanding GDRs	Shares issued on conversion of GDRs	Entity becoming holder of equity shares post conversion of GDRs
9-Feb-15	40,625	1,249,375	203,125	HighBlueSky Emerging Market Fund
13-Mar-15	396,000	853,375	1,980,000	Aspire Emerging Fund
6-Apr-15	197,500	655,875	987,500	Davos International Fund GDR - Client
6-Apr-15	197,800	458,075	989,000	Sparrow Asia Diversified Opportunities Fund
6-Apr-15	197,600	260,475	988,000	Leman Diversified Fund
7-Apr-15	197,757	62,718	988,785	Stream Value Fund
18-May-15	62,718	0	313,590	Aspire Emerging Fund
Total	1,290,000	-	6,450,000	

63. The SCN states that the aforesaid six sub-accounts cancelled 12,90,000 GDRs and received 64,50,000 shares. The sub-account wise summary of shares sold/ held after cancellation of GDRs is tabulated below:

S.no	Name of the entity	No of shares sold	Trade Value in INR	Winsome's Shares held
1	ASPIRE	3,15,000	1,11,52,500	19,78,590
2	HBSF	0	0	2,03,125
3	DAVOS	0	0	9,87,500
4	LEMAN	0	0	9,88,000
5	SAF	0	0	9,89,000

6	SVF	0	0	9,88,785
TOTAL		3,15,000	1,11,52,500	61,35,000

From the above, SCN observes that the FII sub-account Aspire sold shares for a value of Rs.11.15 million in the Indian securities market and continues to hold 19,78,590 of the converted shares. The five sub-accounts, HBSF, Davos, Leman, SAF and SVF did not sell any of the converted shares.

64. With regard to HBSF (Noticee no. 16), I note that the SCN alleges the following connection of HBSF (Noticee no. 16) to AP:

- KYC documents of HBSF obtained from custodian show its registered address at – *C/O Aurisse International Ltd, 2nd Floor, Wing A, Cybertower 1, Ebene, Cybercity Ebene, Mauritius*. E-mail address is mentioned as fundadmin@aurisse.com and contact no. is mentioned as +2304640077. In SEBI's records, company has mentioned e-mail id as saleem@aurisse.com. The SCN states that Aurisse International Limited is based out of Mauritius and it was earlier known as Al Jabha (Mauritius) Limited wherein Mr. Mukesh Chauradiya (Noticee No.9) who is an associate of AP, as detailed in above paragraphs, was director and CFO in 2011. Examination of website of Aurisse International Limited reveals that it shares common address and contact number with HBSF.
- Golden Cliff is 100% shareholder of HBSF since April 21, 2014 and an AP connected entity Mr. Anant Kailash Chandra Sharma is the director of HBSF since August 11, 2014 and he is also the director of Golden Cliff since July 16, 2014. Mr. Anant Kailash Chandra Sharma was the beneficial owner of Golden Cliff since September 09, 2014 till date. Mr. Anant Kailash Chandra Sharma and AP are connected to each other as both were director in Sai Sant Advisory (India) Private Limited during a common period. Mr. Anant Kailash Chandra Sharma was director from December 01, 2009 to March 18, 2016 and AP was director from August 31, 2007 to October 20, 2010. Mr. Anant Kailash Chandra Sharma is also connected to Mr. Mukesh Chauradiya, having served as Additional Director of Alka India Limited (from December 01, 2009 till date) and Mr. Mukesh Chauradiya served as director of Alka India Limited from January 31, 2006 till June 01, 2010. Further, in Ramsai Investment Holdings Private Limited, Mr. Mukesh Chauradiya and Mr. Anant Kailash Chandra Sharma served as director from August 17, 2010 to March 17, 2016 and from September 01, 2015 to March 18, 2016 respectively. AP was

99.98% shareholder in Ramsai Investment Holdings Private Limited (for the period 2009-2013) and director from February 04, 2008 to August 18, 2010.

- From the period from September 12, 2013 to September 09, 2014 the beneficial owner of Golden Cliff was Ms. Reema Narayan Shetty who was also a director of Golden Cliff from May 16, 2013 to August 01, 2014. Since Golden Cliff was 100% owner of HBSF thus Reema Narayan Shetty was also the 100% beneficial owner of HBSF. Reema Narayan Shetty worked with AP owned entity i.e. India Focus Cardinal Fund (IFCF).

65. I note that Noticee no. 16 has not submitted any reply to the SCN. I note that Noticee no. 2 is 100% shareholder of Noticee no. 16 since April 21, 2014 and from the period from September 12, 2013 to September 09, 2014 the beneficial owner of Noticee no. 12 and consequently, Noticee no. 16 was Ms. Reema Narayan Shetty who was an employee of an AP owned entity. Mr. Anant Kailash Chandra Sharma, who is connected to AP as well as Noticee no. 10, as detailed above, was the beneficial owner of Golden Cliff since September 09, 2014 till date. From the above-mentioned connections between Noticee no. 16 and AP such as beneficial owners of Noticee no. 16 being associates of AP, and the fact that Noticee no. 16 received the equity shares after conversion of GDRs (which were issued without consideration), I find that Noticee no. 16 was also a participant of the fraudulent scheme of issuance of GDRs and their subsequent conversion into equity shares and sale in the Indian securities market. I also note that Noticee no. 16 has been involved in several other fraudulent GDR issues devised by AP and regulatory directions have also been issued against it in several matters including Zenith Birla (India) Ltd. (order dated March 30, 2021), Farmax India Ltd. (order dated July 14, 2020), Southern Ispat and Energy Ltd. (order dated October 22, 2021), Winsome Yarns Ltd. (order dated October 26, 2021), Rainbow Papers Ltd. (order dated October 26, 2021), etc.
66. With regard to Aspire (Noticee no. 4), a summary of sale of the shares by Noticee no. 4, received pursuant to cancellation of GDRs, as given in the SCN, is tabulated as follows:

Trade date	Exchange	No. of shares sold	Trade Value (INR)
26/03/2015	BSE	75,000	26,32,500
30/03/2015	BSE	80,000	28,40,000
31/03/2015	BSE	80,000	28,40,000
01/04/2015	BSE	80,000	28,40,000
TOTAL		31,5,000	1,11,52,500.00

67. Noticee no. 4 has contended that Mr. Ashish Nanda (i.e. Director of Aspire) was its Director (30.11.2012 to 09.07.2014) along with Mr. Aslam Kanowah ("Mr. Aslam") who was a director of Noticee no. 16 and CEO of Aurisse International Ltd. (Aurisse), the management company of Noticee no. 4. Noticee no. 4 has submitted that as per contractual agreement with Aurisse, two local directors were provided and appointed by Aurisse with Noticee no. 4 and because of this reason Mr. Aslam was appointed as a director in Noticee no. 4. Noticee no. 4 has also submitted that Golden cliff became FII of Aspire on 14.06.2013 when neither Mr. Anant Sharma nor Ms. Reema Shetty were beneficial owner of Golden Cliff. Aspire has also submitted that Ambrus Value Fund Ltd ("Ambrus") wanted to subscribe to 2006461 Class AEF-1 non-voting redeemable participating shares of Noticee No.4 valued at USD 2006461.21 and on March 19, 2013, Noticee No.4 issued to Ambrus 2006461 Class AEF-1 non-voting redeemable participating shares for consideration of USD 2006461.21 and that the consideration for the said transaction was transfer of 593452 GDRs of Winsome valued at USD 2006461.21 in favour of Noticee No.4.
68. I note that although Noticee no. 4 has submitted that it issued its participating shares in exchange for the GDRs of Winsome, however, no documents supporting the said submission has been submitted by Noticee no. 4. I note that although Noticee no. 12 is the FII of Noticee no.4 from June 14, 2013 while Mr. Anant Sharma and Ms. Reema Shetty became associated with Noticee no. 12 at a later date, however, apart from the said connection, I note that the management company of Noticee no. 4, as submitted by this Noticee itself, was Aurisse wherein Noticee no. 10 (who is an associate of AP) was CEO in 2011. Therefore, I find that Noticee no. 4 is connected to AP related entities in more ways than one and the said connections, along with the fact that it received GDRs of Winsome and thereafter, converted them to equity shares and sold them in the Indian securities market, indicates that Noticee no. 4 was also

part of the fraudulent scheme of issuance and conversion of GDRs of Winsome. I also note that Noticee no. 4 has been involved in several other fraudulent GDR issues devised by AP and regulatory directions have also been issued against it in several matters including Southern Ispat and Energy Ltd. (order dated October 22, 2021), Winsome Yarns Ltd. (order dated October 26, 2021), Rainbow Papers Ltd. (order dated October 26, 2021, etc. This fact further shows the connection of Noticee no. 4 to AP and that it played its assigned role in the fraudulent GDR issues which were being carried out by issuer companies in connivance with AP and associated entities.

69. I note from the above that Aspire sold 3,15,000 shares out of 22,93,590 shares received pursuant to cancellation of GDRs, during March 26, 2015 to April 01, 2015, in the Indian securities market for a value of Rs.1.11 Crores. I note that Aspire was registered as sub-account under FII Golden Cliff. However, it is observed that as FII, Golden Cliff did not make investment in India except its sub-account Aspire which sold shares in the Indian market.
70. I also note that Noticee nos. 13, 14, 15 and 17 have all submitted replies, all dated September 14, 2020, on similar lines that the Enlil Fund, a sub-fund of Global Emerging Strategies Fund Ltd., had subscribed to the Participating Shares of these Noticees and had paid subscription amount in kind i.e. by delivering GDRs of Winsome Textiles Industries Ltd. and that the Noticees received the amount equal to the value of Winsome's GDRs as subscription amount for its Participating Shares which implies that the Noticees were holding the said shares of Winsome as investment / subscription amount of the subscriber, namely, The Enlil Fund. These Noticees have also submitted that an entity called Image Securities Ltd. had subscribed to the non-voting redeemable preference shares of The Enlil Fund, by paying the subscription money in kind i.e. by delivering 4,60,657 GDRs of Winsome to the Enlil Fund and another investor namely, Mainspring Growth Fund Ltd. has also subscribed to the shares of The Enlil Fund by paying the subscription amount in kind i.e. by delivering GDRs of Winsome to The Enlil Fund. In turn, The Enlil Fund has invested in the Participating Shares of the Noticee nos. 13,14,15 and 17 by delivering GDRs of Winsome out of 790657 GDRs of Winsome delivered to it by Image Securities Ltd. and Mainspring Growth Fund.

71. These four Noticees have submitted purported copies of Subscription Agreements for the said two legs of the transactions (Image Securities Ltd. and Mainspring Growth Fund investing in The Enlil Fund and The Enlil Fund investing in Noticee nos. 13, 14, 15 and 17). On a perusal of the said Agreements, I note as follows:
- a. With respect to Subscription Agreement for The Enlil Fund investing in Stream Value Fund, no witness signature is available, no acceptance signature on behalf of Noticee no. 13 is available, no ISIN number is available.
 - b. With respect to the purported Subscription Agreement for The Enlil Fund investing in Sparrow Asia Diversified Fund, copy of Subscription Agreement is not available, only a copy of an application form is available, and the copy of the Noticee no. 14's register is also not stamped or have any proof of authenticity.
 - c. With respect to the purported Subscription Agreement for The Enlil Fund investing in Leman, there are no signature of the witnesses, the date is left blank, no counter signature from the manager is available and the copy of the Noticee no. 17's register also is not stamped or have any proof of authenticity.
 - d. With respect to the purported Subscription Agreement for The Enlil Fund investing in Davos, the signature page is not available and the copy of the Noticee no. 15's register also is not stamped or have any proof of authenticity.
 - e. With respect to Subscription Agreement for Mainspring Growth Fund investing in The Enlil Fund, no date of execution is available.
 - f. None of the Agreements bear any stamp on the signature pages.
72. Based on the above, I am unable to accept the copies of documents submitted by Noticee nos. 13,14,16 and 17 in support of their submissions. I note that these four Noticees have common directors and have all received the GDRs of Winsome, *inter alia* from one Image Securities Ltd., where one Mr. Ashish Nanda was a director. I note that Mr. Ashish Nanda is also a director of Aspire which also received GDRs of

Winsome and converted then to equity shares and sold the same in the Indian markets. As discussed in previous paras, Aspire was an entity connected with AP. All these facts and circumstances point to the preponderance of probabilities that Noticee nos. 13,14,15 and 17 were also part of the fraudulent scheme of issuance of GDRs of Winsome.

73. From the discussion above, I note that on account of loan default by AP connected Vintage, USD 9.018 million were adjusted by EURAM Bank from the GDR proceeds of Winsome, i.e. Vintage received allotment of GDRs worth USD 9.014 million without paying any consideration for it. Thereafter, AP connected sub-accounts, namely, Noticee nos. 4, 13, 14, 15, 16 and 17 received GDRs, converted them and Noticee no. 4 sold converted shares worth Rs.1.11 Crore through AP connected FII Golden Cliff, in the Indian securities market. Further, Noticee no. 4, 13, 14, 15, 16 and 17 continue to hold converted shares of Winsome. I note that the shares sold by Noticee nos. 4 are the shares which were acquired by Vintage without any consideration. Thus, I find that Noticee nos. 4, 13, 14, 15, 16 and 17 acted as conduit to AP by receiving GDRs of Winsome without consideration and thereafter, converting them to equity shares and Aspire (Noticee no.4) sold converted equity shares of Winsome in the Indian securities market and these Noticees acted as party to the fraudulent scheme and have violated Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1), (2)(f), (k) & (r) of PFUTP Regulations, 2003.

Role of Golden Cliff (Noticee no. 12)

74. I note that Noticee no. 12 has not submitted any reply to the SCN. From the discussion in the previous paras, I note that as an FII, Noticee no. 12 did not make any investment and was registered as an FII only to facilitate the AP connected FII sub-account Aspire in selling the converted equity shares of Winsome. I also note that as provided in the table at para 52, Noticee no. 12 is also connected to AP. Thus, I find that Noticee no. 12 also connived with AP/ AP connected entities in fraudulent scheme of GDR issue by Winsome and hence, Noticee no. 12 acted as party to fraudulent scheme and thus, has violated Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1), (2)(f), (k) & (r) of PFUTP Regulations, 2003. I also note that Noticee no. 12 has been

involved in several other fraudulent GDR issues devised by AP and regulatory directions have also been issued against it in several matters including Zenith Birla (India) Ltd. (order dated March 30, 2021), Southern Ispat and Energy Ltd. (order dated October 22, 2021), Winsome Yarns Ltd. (order dated October 26, 2021), Rainbow Papers Ltd. (order dated October 26, 2021), etc.

Role of Arun Panchariya (Noticee no. 2)

75. It has been alleged in the SCN that Noticee no. 2 is key person in structuring the GDR issue of Winsome who devised and structured the GDR issue in connivance with Winsome. As discussed in the aforesaid paras with respect to Noticees no. 3, 4, 11, 12, 13, 14, 15, 16, 17, each of these Noticees were part of the GDR issue and was connected to Noticee no. 2. Noticee no. 2 was the beneficial owner and Managing Director of Noticee no. 3, which was the sole subscriber of GDR issue of Winsome and the subscription was arranged through a loan availed from EURAM Bank to the extent of USD 9.99 million for which security was provided by Winsome by pledging its GDR proceeds. Noticee no. 11 was the Lead Manager for GDR Issue of Winsome which was wholly owned and managed by Noticee no. 2. Noticee no. 3 defaulted on the repayment of loan to the extent of USD 9.014 million and an amount of USD 9.018 million (with interest) was adjusted by EURAM Bank from the GDR proceeds of Winsome, effectively implying that Noticee no.3 received GDRs worth USD 9.014 million without paying any consideration. Noticee no. 10, an associate of Noticee no. 2, who had signed the Loan Agreement dated March 23, 2011, on behalf of Noticee no. 3, was the Managing Director of Noticee no. 3, which was a wholly owned entity of Noticee no. 2. Further, Noticee no. 4 and 12 to 17 who were also connected to Noticee no. 2, had converted GDRs of Winsome and Noticee no. 4 sold the converted equity shares in the Indian securities market for Rs.1.11 Crore.
76. I note that Noticee no. 2 has filed a single reply dated November 24, 2020 for 4 matters i.e. Texmo Pipes and Products Ltd, Winsome Yarn Limited, Winsome Textiles Industries Ltd and Aqua Logistic Limited. Hence, I note that his submissions have been generally made without making any specific reply to the allegations in the SCN

in the present matter. Noticee no. 2 has *inter alia* submitted that the mandates/arrangements/role in relation to the GDR issues outside India are granted/played by various entities like Vintage FZE, IFCF, Pan Asia and that all these entities have a distinct and separate legal entity, which has its own management and decision making. Further, that he has already resigned from Noticee no. 3 (year of resignation - 2009) and since then he was not part of its management team. However, I note that Noticee no. 2 has not submitted any document/evidence to prove that he has resigned from Noticee no. 3 or that he is no longer the beneficial owner of these Noticees. From the material available on record, I find that Noticee no. 2 was the beneficial owner and Managing Director of Noticee no. 3. Therefore, I find the contention of Noticee no. 2 that he is not responsible for the actions of Noticees no. 3, is untenable.

77. Noticee no. 2 has submitted that vide the SSCN, which has been issued to him *inter alia* under Section 11B(2) of the SEBI Act, 1992 penalty has been proposed to be imposed on him. The Noticee no. 2 has contended that this provision was introduced with effect from March 10, 2018 and since the GDR issue happened in 2011 this provision cannot be invoked in the present proceedings. In this regard, I note that under the SEBI Act, 1992, SEBI had the power to impose penalties even prior to the introduction of the Section 11B(2) in the said Act. Prior to the introduction of Section 11B(2) this power could be exercised by SEBI by appointing an Adjudicating Officer under Section 15I of the SEBI Act, 1992, However, after the introduction Section 11B(2) imposition of penalty which could be done through the appointment of an Adjudicating Officer can also be done by the Board. So, the amendment which introduced the Section 11B(2) of the SEBI Act, 1992 with effect from March 10, 2018 merely changed the authority which could impose penalty but the power to impose penalty vested in SEBI even before such an amendment. Thus, this change in authority from Adjudicating Officer to Board is only procedural in nature and can be applied retrospectively. Thus, the submission of Noticee no. 2 in this regard is not tenable.

78. Noticee no. 2 has also submitted that he is a non-resident Indian for the last more than 20 years and has never registered with SEBI or RBI or any other regulatory agency in India and never had a place of business in India and has not carried out any activities within India, being the jurisdiction of SEBI. Therefore, Noticee no. 2 has submitted that the provisions of SEBI Act, 1992 do not have extra territorial operation *qua* him in his individual or personal capacity, since all alleged acts of commission or omission like the loan agreement with EURAM Bank for subscribing to the GDRs, notwithstanding the fact that the security for the loan was the pledge of GDR proceeds, are acts were outside the territory of India and therefore, provisions of SEBI Act are not applicable. In this regard, I note that the Hon'ble Supreme has already dealt with this issue when it came for consideration of the Hon'ble Supreme Court of India in the matter of *Pan Asia* matter (*supra*) wherein the issue was discussed in detail and pertained to submission of Noticee no. 2 himself who was the Noticee in the matter of *Pan Asia*. The relevant portion of the judgment of Hon'ble Supreme Court is reproduced as under:

"80. It is true that the creation of GDR and its trading in the global market are governed by the respective laws of the country in which they are dealt with. But one special feature to be borne in mind is that in the case on hand, the allegations levelled against the issuing company in connivance with the respondents are that a make believe affair was created, as though there was genuine creation of GDR and its investments by the foreign investors on the very date when the GDR were issued and thereby the global performance of the issuing company in the local market of the issuing company had a boost in the commercial sector, which lured the local investors to develop their keen interest to make the investments on a higher share value by virtue of the investment made by the foreign investors and in that process it is alleged that the issuing company itself provided every scope for the foreign investments to be financed and in reality the ultimate investment was made by Indian investors viz., the ordinary shareholders. The said fact would certainly call for a probe at the hands of SEBI on whom a duty is cast under Section 11(1) to protect the interest of investors in securities and the security market.....

81.

82. We are therefore convinced that having regard to the nature of allegations in the interests of investors in securities as well as the statutory obligation/duty cast upon SEBI to protect their interests, SEBI has got every jurisdiction to proceed against the respondents as well as the issuing company. The contention made on behalf of the respondents that the only authority which can proceed against the issuing company can be only for violation of the FEMA Act or the RBI Act is therefore not appealing to us....."

79. In view of the aforesaid judgment, I find that the submissions of the Noticee no. 2 with regard to SEBI not having any jurisdiction is untenable. I also note from the Pledge Agreement dated March 23, 2011 that Noticee no. 2, as the director of EURAM Bank Asia, had verified the signatures of the Pledge Agreement between Winsome and EURAM Bank. Hence, I find that Noticee no. 2 was aware of the Pledge Agreement dated March 23, 2011 being signed between Winsome and EURAM Bank which was to provide security for the loan taken by Noticee no. 3 (where Noticee no. 2 was the beneficial owner and Managing Director) from EURAM Bank. Further, Noticee no. 3 defaulted on repayment of loan to EURAM Bank to the extent of USD 9.014 million, thereby, GDR proceeds to the extent of USD 9.018 million (with interest) were adjusted by EURAM Bank. Noticee no. 2 connected 6 FII-sub accounts, cancelled 1,290,000 GDRs and received 64,50,000 shares and Noticee no. 4 sold 31,5,000 converted equity shares in the Indian securities market amounting to Rs.1.11 Crore. According to the fraudulent scheme perpetrated, Noticee no. 2 arranged loan for the subscription to GDRs, subscribed to GDRs, and sold the GDRs to FII-Sub accounts which, in turn, sold the converted equity shares in the Indian securities market. Therefore, I find that Noticee no. 2 in connivance with the Winsome devised and structured fraudulent scheme through his connected entities like Noticee no. 3, Noticee no. 10, Noticee no. 4, Noticee no. 11, Noticee nos. 12 to 17.
80. From the above, I note that Noticee no. 2, is the common thread which runs through Noticee no. 3, 4, 10 to 17 and each stage of the fraudulent transactions which ultimately resulted in the loss of USD 9.018 million to Winsome and its investors. I note that there was an increase in the capital of Winsome through issue of GDRs for which Winsome did not receive commensurate consideration. In the case of *Jindal Cortex Ltd. (supra)* the Hon'ble SAT held that this was an artificial arrangement supported by the company itself which enables the subscription to the GDR. In this case, the beneficiary of this scheme appears to be, in the first stage, Noticee no. 3 who received allotment of 1.29 million GDRs of Winsome but defaulted on the loan taken from EURAM Bank to the extent of USD 9.014 million and based on the Loan Agreement and Pledge Agreement dated March 23, 2011 the outstanding loan amount with interest was realized from GDR proceeds. I note that Noticee no. 2 was

the beneficial owner of Noticee no. 3. Thereafter, GDRs were transferred to Noticee nos. 4, 13, 14, 15, 16 and 17, connected to Noticee no. 2 and Noticee no. 4 sold the converted equity shares worth Rs.1.11 Crore in the Indian market. I note that in the Order of the Hon'ble SAT dated October 25, 2016 in Appeal No. 126 of 2013 (*Pan Asia Advisors Limited vs. SEBI*), the Hon'ble SAT has discussed the role of Noticee no. 2 in six GDR matters wherein the *modus operandi* adopted was similar. In the said matter the Hon'ble Tribunal has held as follows:

“Even though all GDRs were not converted and sold, it is apparent that the *modus operandi* adopted by the appellants was not only to create an artificial impression that the GDRs have been subscribed by foreign investors, but also to create an impression that after the GDR issue, investors in India have started subscribing to the shares of issuer companies when in fact the shares were sold and acquired by the entities controlled by AP. In these circumstances inference drawn by SEBI that at every stage of the GDR issue, the acts committed by the appellants constituted fraud on the investors in India cannot be faulted.”

81. As discussed in previous paras, the said scheme of issue of GDRs of Winsome constitutes 'fraud' and I find that Noticee no. 2 connived with Winsome to structure the fraudulent issue of GDRs wherein Winsome did not receive commensurate consideration for its GDR issue to the tune of USD 9.018 million. Therefore, in view of the above, I find that Noticee no. 2 has violated Sections 12A (a) of SEBI Act, 1992 read with Regulation 3(b) and 4(1) of PFUTP Regulations, 2003. In view of the finding that Noticee no. 3 received GDRs worth USD 9.014 million without any consideration and the same with interest amounting to USD 9.018 million was recovered from the GDR proceeds, at the expense of the shareholders of Winsome and thereafter, the GDRs after conversion to equity shares were sold by Noticee no. 4 for an amount of Rs. 1.11 Crore, I am of the view that this amount is liable to be disgorged jointly and severally from Noticee nos. 2, 3 and 4.
82. I note that the SCN has called upon Noticee no. 1 to show cause as to why suitable directions under Sections 11, 11B and 11(4) of the SEBI Act, 1992 including the direction to bring back an amount of USD 9.018 million should not be issued against them. I find that GDRs were issued by Winsome to Noticee no. 3 fraudulently, and GDRs worth of USD 9.014 million were issued without any consideration, as

discussed in previous paras. I also note that an amount of USD 9.018 (which included amount of loan default by Vintage and interest) was recovered from the GDR proceeds. Accordingly, I find that it is imperative that Winsome has to bring back the amount of USD 9.018 million to the Company. However, as discussed in para 36, Winsome has submitted that certain amounts have been remitted to its Indian bank accounts from the GDR proceeds after 2012 and I find that the audit committee of the Company may look into the correctness of information submitted by the Noticees and report the same to the Board of Directors of Winsome for taking appropriate corrective action, if any. Having regard to the nature of violations and conduct of Winsome and the directors (Noticees no. 1, 6, 7 and 9), issue of regulatory directions under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992, against these Noticees are called for in the present matter. Further, the violations committed by the Noticees no. 1 to 17 (except deceased Noticee nos. 5 and 8) as detailed in previous paras wherein a fraudulent scheme of GDR issue was carried out to mislead the Indian investors, which was prejudicial to the interest of the investors and the securities market, call for issue of directions as contemplated under the SEBI Act, 1992. For the reasons stated in para 81 above, amount of Rs. 1.11 Crore, is liable to be disgorged jointly and severally from Noticee nos. 2, 3 and 4.

83. Further, I note that the SSCN has called upon Noticee nos. 1, 2, 5, 6, 7, 8, 9 and 10, to show cause as to why, in addition to the directions mentioned in the SCN monetary penalty should not be imposed on them under Section 15HA read with Sections 11(4A) and 11B(2) of the SEBI Act, 1992 and Section 23 E read with Section 12A(2) of the SCRA, 1956. Relevant extract of these penalty provisions, as existing at the time of violations, is reproduced, hereunder:

Relevant extract of 15HA of SEBI Act, 1992:

Penalty for fraudulent and unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Relevant extract of Sections 23E of SCRA, 1956:

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.

84. From the analysis of the aforesaid penalty provisions, I find that penalty under Sections 15HA of SEBI Act, 1992 and 23H of SCRA, 1956, is attracted and not the penalties under Sections 23E of SCRA, 1956. I note that Section 23E of SCRA, 1956 provides for penalty for failure to comply with, *inter alia*, listing conditions by “a company or any person managing collective investment scheme or mutual fund”. In the present case, it has been found that Winsome is in violation of listing conditions, however, Winsome was not managing any collective investment scheme or mutual fund, so as to attract penalty under Section 23E of SCRA, 1956. In my view a penalty under Section 23H of SCRA, 1956 is attracted in the case of Noticee no. 1 for violation of clauses of the erstwhile Equity Listing Agreement read with Section 21 of the SCRA, 1956, as Section 23H provides for penalty for failure to comply with any provision of SCRA, 1956, the rules or articles or bye- laws or the regulations of the recognized stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided and no separate penalty has been provided for cases where provisions of the Equity Listing Agreement read with Section 21 of SCRA, 1956 is violated by the listed entity, as in the present case . I note that in the SCN Section 23H has not been invoked against Winsome but only Section 23E has been invoked. In this regard, reference may be made to the decision of the Hon'ble Supreme Court of India in *N. Mani Vs. Sangeetha Theatre and Others* (2004)12 SCC 278 has held that:

“9. It is well-settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.”

Similarly, the Hon'ble Bombay High Court in *SEBI Vs. Sageeta Jayesh Valia* (Appeal No. 2/2004 and SEBI Appeal No. 17/200 decided on December 05, 2003) wherein it has been held as follows:

“32. It is well settled that if the power to act in the authority exists in a fact situation, such exercise of power is not vitiated by the reference to wrong provision of law. Mention of wrong provision of law shall not render the exercise of power by the authority bad in law if the source of power can be traced in some other provision.”

In view of the said decision of the Hon'ble Supreme Court of India and Hon'ble High Court, I find that the SCN wrongly invoked Section 23E against Noticee no.1 instead of Section 23H and penalty is attracted on Winsome under Section 23H of SCRA, 1956 for violation of provisions of the erstwhile Equity Listing Agreement read with Section 21 of SCRA, 1956. I also note that the SCN clearly informed Noticee no.1 of the clauses of the erstwhile Equity Listing Agreement which it had been alleged to have violated and Noticee no.1 has submitted a detailed reply to the said allegations and no prejudice has been caused to him in this regard. Section 23 H of SCRA, 1956 reads as follows:

Penalty for contravention where no separate penalty has been provided.

23H. Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

85. I note that Section 15HA of the SEBI Act, 1992 provides for imposition of penalty in case of fraudulent and unfair trade practices committed by any person. As in the present case, it has been found that Noticee nos. 1, 2, 3, 4, 6, 9,10, 11, 12, 13, 14, 15, 16 and 17 have violated Section 12A (a) of SEBI Act, 1992 read with Regulations 3 (b) and 4(1), (2)(f), (k) & (r) of PFUTP Regulations, 2003 therefore, penalty under Section 15HA of SEBI Act, 1992 is attracted against these Noticees.

86. For imposition of penalty under the provisions of the SEBI Act, 1992, Section 15J of the SEBI Act, 1992 provides as follows:

“Factors to be taken into account while adjudging quantum of penalty.

15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to an investor or group of investors as a result of the default;
- (c) the repetitive nature of the default.

Explanation. — For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”

Section 23 J of the SCRA, 1956 is also similarly worded.

87. I find that the SCN and SSCN does not mention the amount of disproportionate gain or unfair advantage made as a result of the violations. I find that Noticee no.1 along with Noticee no. 2 orchestrated the fraudulent scheme of GDR issue discussed in the previous paras in March 2011, the size of the issue as on the date of the issue was Rs. 44 crores (approx.). I find that Noticee no. 3, who was the sole subscriber to the GDR issue had taken a loan from EURAM Bank in order to subscribe to the GDR issue of Winsome. The security for this loan was provided by Winsome by pledging its GDR proceeds. I find that Noticee no. 3 had defaulted in the loan repayment to the tune of USD 9.014 million and therefore, an amount of USD 9.018 million (including interest) was adjusted from the GDR proceeds by EURAM Bank. Therefore, it is clear that Noticee no. 3, whose MD and holder of 100% shares through Alkarni Holdings Ltd. was Noticee no. 2, received GDRs worth USD 9.018 million without payment of any consideration as a result of the fraudulent scheme of GDR issue of Winsome and thus, made illegal gains the value of which is presently Rs. 67.53 Crore and no material is available on record to show that this amount has been paid by Noticee no. 3 to the Company. I also note that all the 12,90,000 GDRs issued by the Company to Noticee no. 3 were cancelled/ converted to equity shares during the period from February 09, 2015 to May 18, 2015 and six sub-accounts, i.e Noticee nos. 4, 13, 14, 15, 16 and 17 cancelled 12,90,000 GDRs and consequently, received 64,50,000 shares. Thereafter, Noticee no.4 sold shares for a value of Rs.1.11 Crore in the Indian securities market and as submitted during the hearing, continues to hold 19,78,590 of the converted shares. The remaining five sub-accounts, i.e Noticee nos. 13 to 17 did not sell any of the converted shares during the investigation period. With regards to the directors of Noticee no.1, I note that Noticee no. 7 and 9 were independent directors of Noticee no.1, both of whom signed the Circular Resolution dated September 16, 2010. Noticee no.9 was also a member of the Audit Committee of Noticee no.1. Noticee no. 6 was the MD and was signatory to the Circular Resolution dated September 16, 2010 and also signed the Pledge Agreement dated March 23, 2011

on behalf of Winsome with EURAM Bank. I also note that Noticee no. 6 signed a letter dated August 07, 2012 confirming the rights of EURAM Bank to set off the pledge deposit (i.e the GDR proceeds lying in the bank account of Noticee no. 1 with EURAM Bank) with the outstanding loan amount, which was taken by Noticee no. 3 to subscribe to the GDRs of Noticee no.1, along with interest. I find that Noticee no. 6 has been the Managing Director of the Company not only at the time of passing of resolution dated September 16, 2010, authorizing opening of bank account with EURAM Bank and at the time of pledging the GDR proceeds with EURAM Bank for the loans taken, but also at the time of taking of loan by Vintage (Noticee no. 3) from EURAM Bank and entering into Pledge Agreement between Winsome and EURAM Bank which he himself signed, securing the loan of Vintage. Further, Noticee no. 6 was also the Managing Director of Winsome at the time of making of wrong disclosures by the Winsome to the stock exchanges regarding successful subscription of GDRs and also when Winsome did not disclose to the stock exchange about the adjustment of USD 9.018 million from the GDR proceeds by EURAM Bank in view of the loan default by Noticee no. 3. I also note that Noticee no. 6 was a signatory to the Annual Reports for the financial years 2011-12 and 2012-13 of Winsome during which period the fraudulent scheme of GDR issue took place and Winsome did not make required disclosure with respect to its GDR issue in its Annual Reports.

DIRECTIONS AND PENALTIES

88. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B(1), 11B(2) of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992, and Sections 12A(2) of the SCRA, 1956 hereby direct that:
- i) Winsome Textile Industries Ltd. (Noticee no. 1) is hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 3 years from the date of this order.
 - ii) Winsome Textile Industries Ltd. (Noticee no. 1) is hereby directed to undertake the

measures to bring back the outstanding amount of GDR proceeds, if any, as may be arrived at by the Audit Committee, within a period of one year from such identification by the Audit Committee in terms of observation in para 36. The present directors of Noticee No. 1, shall take appropriate steps for the compliance of this direction by Noticee No. 1.

- iii) Mr. Ashish Bagrodia (Noticee No. 6), is hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 2 years from the date of this order.
- iv) Mr. Satish Girotra (Noticee No. 9) and Mr. Manish Bagrodia (Noticee no. 7) are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 1 year from the date of this order.
- v) Vintage FZE (Noticee No. 3), Mr. Arun Panchariya (Noticee no. 2), Mr. Mukesh Chauradiya (Noticee no. 10) and Pan Asia Advisors Ltd. (Noticee no. 11), are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 3 years from the date of this order.
- vi) Golden Cliff (Noticee no. 12), Aspire Emerging Fund (Noticee no. 4), Stream Value Fund (Noticee no. 13), Sparrow Asia Diversified Fund (Noticee no. 14), Davos International Fund (Noticee no. 15), Highblue Sky Emerging Market Fund (Noticee no. 16) and Leman Diversified Fund (Noticee no. 17), are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 1 year from the date of this order.
- vii) Noticee no. 4 is further directed to disgorge illegal gains of specified in para 66 of this order made by way of sale of equity shares (after conversion of GDRs) of Winsome by them along with interest of 12% per annum from the date of sale of those equity

shares till the payment of disgorgement amount, within a period of 45 days from the date of this order. Having regard to the close connection and role played, the liability of Noticee no. 2, 3 and 4 shall be joint and several, as discussed in para 81. In case Noticee no. 2, 3 and 4 fail to comply with the said direction, SEBI shall be free to recover the said amount from the Noticees under Section 28A of SEBI Act, 1992 and these Noticees shall also be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in the securities market, till the actual payment or recovery of disgorgement amount or till the completion of the debarment directed, to the respective Noticees herein at sub-paras (v) and (vi) above, whichever is later. This direction is without prejudice to any other action against these Noticees which may be initiated by SEBI.

- viii) The amount, as directed to be disgorged in sub-para vii) above, shall be remitted to Investor Protection and Education Fund (IPEF) referred to in Section 11(5) of the SEBI Act, 1992. An intimation regarding the payment of said disgorgement amount directed to be paid herein, shall be sent to “The Division Chief, EFD, DRA-1, Securities and Exchange Board of India, SEBI Bhavan II, Plot NO. C 7, G Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400051”.
- ix) The following Noticees, are hereby imposed with, the following penalties as specified hereunder:

Noticee No.	Name of Noticee	Provisions under which penalty imposed	Penalties
1	Winsome Textile Industries Ltd	Section 15HA of SEBI Act, 1992 and Section 23H of SCRA, 1956	Rs. 4,40,00,000/- (Rupees Four Crore Forty Lakhs)
2	Arun Panchariya	Section 15HA of SEBI Act, 1992	Rs. 67,00,00,000/- (Rupees Sixty Seven Crore)
6	Ashish Bagrodia	Section 15HA of SEBI Act, 1992	Rs. 44,00,000/- (Rupees Forty Four Lakhs)
7	Manish Bagrodia	Section 15HA of SEBI Act, 1992	Rs. 5,00,000/- (Rupees Five Lakhs)
8	Satish Girotra	Section 15HA of SEBI Act, 1992	Rs. 10,00,000/- (Rupees Ten Lakhs)
10	Mukesh Chauradiya	Section 15HA of SEBI Act, 1992	Rs. 67,00,000/- (Rupees Sixty Seven Lakhs)

- x) Proceedings against Noticee nos. 5 and 8 is disposed of for reasons stated in para

45 of this order.

89. During the period of restraint, the existing holding of securities including units of mutual funds of the Noticees shall also remain frozen. However, the obligation of the Noticees, restrained/prohibited by this Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, are allowed to be discharged irrespective of the restraint/prohibition imposed by this Order, however, shall be subject to any other restraint order operating against these entity(ies). Further, all open positions, if any, of the Noticees, restrained/prohibited in the present Order, in the F&O segment of the recognised stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this order, however, shall be subject to any other restraint order operating against these entity(ies).
90. This Order comes into force with immediate effect.
91. A copy of this Order shall be forwarded to the Noticees, recognized stock exchanges, depositories and Registrars and Transfer Agents (RTA) of mutual funds for information and necessary action.
92. A copy of this order may also be sent to the RBI, Enforcement Directorate and Ministry of Corporate Affairs for information and necessary action, if any.

Place: Mumbai

Date: December 15, 2021

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA