

WTM/AB/IVD/ID4/15397/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

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

In respect of:

Noticee no.	Name of the Entity	PAN
1.	Pentamedia Graphics Ltd.	AAACP1647B
2.	Teigh Holdings Limited.	Not available
3.	Numero Uno Overseas Ltd.	Not available
4.	Gemgrove Corporation.	Not available
5.	Daylon Limited	Not available
6.	Mr. S Ramasamy	Not available
7.	Dr. V Chandrasekaran	AAMPC9187G
8.	Dr. S Ramani	Not available
9.	Mr. S Ranganathan	Not available
10.	Mr. T V Krishnamurthy	Not available
11.	Mr. Ramesh Pillai	Not available

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 Pentamedia Graphics Ltd.

1. Present proceedings have emanated from the show cause notice dated December 16, 2019 (hereinafter referred to as, “**the SCN**”) issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) to the Noticees, alleging violations of Sections 12A(a), (b), (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as, “**SEBI Act, 1992**”), Regulations 3, 5(1) & 6(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as “**PFUTP Regulations, 1995**”, since repealed) read with Regulation 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations, 2003**”) by Pentamedia Graphics Limited (hereinafter referred to as “**the Company**”/ “**PGL**”) and violations of Sections 12A(a), (b), (c) of SEBI Act, 1992, Regulations 3 & 6(a) of PFUTP Regulations, 1995 read with Regulation 13 of PFUTP Regulations, 2003 by Noticee No. 2 to 11.
2. The aforesaid SCN came to be issued against the Noticees in view of the fact that SEBI conducted an investigation into two Global Depository Receipts (hereinafter referred to as “**GDRs**”) issuances made by PGL for the period January 01, 2002 to February 28, 2002 and November 01, 2002 to December 31, 2002 (hereinafter also referred to as “**investigation period**”). The focus of investigation was to ascertain whether shares underlying GDRs were issued with proper consideration and whether appropriate disclosures were made by PGL with respect to its GDRs.
3. The SCN *inter alia* alleges the following:
 - 3.1. PGL had issued GDRs in two tranches in the year 2002. The first tranche pertained to issuance of 14.50 million GDRs (amounting to USD 20.30 million) made on February 13, 2002 (hereinafter referred to as “**GDR ONE**”) and the second tranche pertained to issuance of 62.50 million GDRs (amounting to USD

23.75 million) made on November 25, 2002 (hereinafter referred to as “**GDR TWO**”).

- 3.2. It was observed from the Listing Particular document filed by the Company with Luxembourg Stock Exchange that GDR ONE was issued on private placement basis. Relevant extract of the Listing Particular, as given in the SCN, is reproduced below:

PRIVATE PLACEMENT

The Company has placed the GDRs privately with two companies. The underlying shares have been issued from the Company's authorised share capital. The GDSs issued will rank pari passu with GDRs previously placed by the Company.

Pursuant to a placement agreement dated 21 January 2002, Numero Uno Overseas Limited, a company incorporated in the British Virgin Islands, has subscribed for 5 million GDRs, each GDR representing one equity share in the company at par value of Rs. 10 each.

Teigh Holdings Limited, also incorporated in the British Virgin Islands, has subscribed for the remaining 9.5 million GDRs pursuant to a placement agreement dated 21 January 2002. Each GDR is to represent one equity share in the Company at par value of Rs. 10 each. The GDRs have been placed with Numero Uno Overseas Limited and Teigh Holdings Limited at a price of \$1.40 each which will result in a total issue of \$20.3 million and net proceeds of \$19.5 million are forecast to be available to the Company after payment of fees, commissions and related expenses.

- 3.3. Investigation revealed that the subscribers to GDR ONE were entities called Teigh Holdings Ltd. (hereinafter referred to as “**Teigh**” or “**Noticee no. 2**”) and Numero Uno Overseas Ltd. (hereinafter referred to as “**Numero**” or **Noticee no. 3**”) and that subscribers to GDR TWO were entities called Gemgrove Corporation (hereinafter referred to as “**Gemgrove**” or **Noticee no. 4**”) and Daylon Limited (hereinafter referred to as “**Daylon**” or **Noticee no. 5**”).
- 3.4. Noticee nos. 2 and 3 namely, Teigh and Numero, (i.e subscribers of GDR ONE) had entered into credit agreements with Banco Efisa, S.F.E., S.A. (hereinafter referred to as “**Banco**”), a bank based in Lisbon, on February 13, 2002 relating to a dollar term loan facility of up to USD13.30 million and USD 7 million respectively for subscription to GDR ONE of PGL.
- 3.5. The details of said credit agreements are given in the following paragraphs.
- 3.6. Credit Agreement - GDR ONE

Teigh, a company incorporated in the British Virgin Islands with registered number 467442 of 2nd Floor, 31, Broad Street, St. Helier, Jersey and Numero, a company incorporated in the British Virgin Islands with registered number 308352 of PO Box 3162, Woodbourne Hall, Road Town, Tortola, had entered into credit agreements with Banco on February 13, 2002 relating to a dollar term loan facility of up to USD 13.30 million and USD 7 million respectively for subscription to GDR ONE of PGL. The credit agreements were signed by authorized signatories of Teigh and Numero.

- 3.7. The following was *inter alia* mentioned in the Credit Agreement dated February 13, 2002:

Drawdown Date means the date on which the advance is made, or proposed to be made.

Drawdown Notice means a notice substantially in the form set out in Schedule 2.

Drawdown Period means the period starting on the date of this agreement and ending on 14 days later.

Facility means the Dollar term loan facility granted to the borrower under this agreement.

Facility limit means \$13,300,000 (\$7,000,000 for Numero) as reduced or cancelled in accordance with this agreement.

Facility period means the period starting on the date of this agreement and ending on the date on which all the obligations and liabilities of the borrower under the financing documents are discharged in full and the Bank has no continuing obligation in relation to the facility.

Final Repayment Date means 31 December 2002.

Purpose- The borrower shall use the proceeds of the advance to subscribe for 9,500,000 (5,000,000 for Numero) global depository shares (at a price of \$1.40) issued by Pentamedia Graphics Limited on the terms of the Listing particulars to be delivered to the Luxembourg Stock Exchange on 9 January 2002.

No monitoring: The Bank shall not be obliged to investigate or monitor the use or application of the proceeds of the advance.

Conditions precedent: Notwithstanding any other term of this agreement, the bank shall not be under any obligation to make the facility available to the borrower unless it has notified the borrower that it has received all the documents listed in the schedule 1 (in form and content satisfactory to it.)

Drawdown

Drawdown period: Subject to the terms of this agreement, the Advance shall be made to the Borrower at any time during the Drawdown period by means of a Drawdown Notice in accordance with this Clause 5.

Drawdown Notice: When the Borrower wishes to drawdown under the Facility, it shall give a duly completed Drawdown notice to the Bank to be received not later than 11.00 a.m. on the third business day before the Drawdown Date. A drawdown notice shall be irrevocable and the borrower shall be obliged to borrow in accordance with its terms.

Payments: The payment to the Borrower shall be made to the account of the Borrower with the Bank, account number 6014680.10.1 (6014777.10.1 for Numero).

3.8. Credit Agreement - GDR TWO

Daylon, a company incorporated in the British Virgin Islands with registered number 474536 and Gemgrove, a company incorporated in the British Virgin Islands with registered number 41970/C2/GB1 entered into credit agreements with Banco on November 07, 2002 relating to a dollar term loan facility up to USD 25 million for subscription to GDR TWO of PGL. The credit agreements were signed by authorized signatories on behalf of Daylon & Gemgrove.

3.9. The following was *inter alia* mentioned in the Credit Agreement dated November 07, 2002:

Drawdown Date means the date on which the advance is made, or proposed to be made.

Drawdown Notice means a notice substantially in the form set out in Schedule 2.

Drawdown Period means the period starting on the date of this agreement and ending on 14 days later.

Facility means the Dollar term loan facility granted to the borrower under this agreement.

Facility limit means \$25,000,000 as reduced or cancelled in accordance with this agreement.

Facility period means the period starting on the date of this agreement and ending on the date on which all the obligations and liabilities of the borrower under the financing documents are discharged in full and the Bank has no continuing obligation in relation to the facility.

Final Repayment Date means the date falling three months after the date of this Agreement.

Purpose- The borrower shall use the proceeds of the advance to subscribe for 64,800,000 global depository shares issued by Pentamedia Graphics Limited on the terms of the Listing particulars to be delivered to the Luxembourg Stock Exchange.

No monitoring: The Bank shall not be obliged to investigate or monitor the use or application of the proceeds of the advance.

Conditions precedent: Notwithstanding any other term of this agreement, the

bank shall not be under any obligation to make the facility available to the borrower unless it has notified the borrower that it has received all the documents listed in the schedule 1 (in form and content satisfactory to it.)

Drawdown

Drawdown period: Subject to the terms of this agreement, the Advance shall be made to the Borrower at any time during the Drawdown period by means of a Drawdown Notice in accordance with this Clause 5.

Drawdown Notice: When the Borrower wishes to drawdown under the Facility, it shall give a duly completed Drawdown notice to the Bank to be received not later than 11.00 a.m. on the third business day before the Drawdown Date. A drawdown notice shall be irrevocable and the borrower shall be obliged to borrow in accordance with its terms.

Payments: Payment to a Borrower shall be made to the account of the Borrower with the Bank:

Gemgrove Corp : Account Number 6030394

Daylon Limited : Account number 6029618

- 3.10. From the examination of the above mentioned Credit Agreements along with relevant bank account statements, it was observed that Teigh and Numero had availed loan facility to the extent of USD 20.3 million to subscribe to the GDR ONE of PGL. It was further observed that Daylon and Gemgrove had drawn loan amount of USD 23.75 million from Banco to subscribe to GDR TWO of PGL.
- 3.11. The investigation also revealed that Account Charge Agreements were executed between PGL and Banco with respect to both GDR ONE and GDR TWO. The details thereof are given in the following paragraphs:
- 3.12. Account Charge Agreement- GDR ONE

It was observed that prior to the execution of the Account Charge Agreement with respect to GDR ONE, the Board of Directors of PGL had passed a resolution in its Board meeting dated November 29, 2001. The relevant extracts of the said Board resolution are as follows:

The Chairman and CEO informed the Board that it was considered necessary to open a GDR subscription A/c, with Banco Efisa, S.A. Lisbon for future allocation of Subscription. The matter was considered in detail and thereafter the following resolutions were passed unanimously.

A. RESOLVED THAT a subscription account be opened with Banco Efisa, S.A., Lisbon in the name of PENTAMEDIA GRAPHICS LIMITED- GDR Subscription A/c and that the said bank be instructed to honour all

cheques or any other negotiable instruments or other orders which may be drawn by/accepted/made by on behalf of the Company

including acceptance of subscription money and to act on any instructions so given relating to the account whether the same be overdrawn or not or relating to the transactions of the Company by any of the following signatories individually without any limit”

<u>Name</u>	<u>Designation</u>
Mr. V. Chandrasekaran	Chairman & CEO
Mr. S. Chandrasekaran	Chief Finance Officer
Mrs Viji Kannan	General Manager – Coordination
Mr. S. Ramasamy	Company Secretary & G M – Corporate Finance

- 3.13. Subsequently, an Account Charge Agreement dated February 13, 2002 was signed between PGL and Banco. Also, a document titled ‘Mortgage or Charge Document’ dated February 20, 2002 was created by Banco. The Account Charge Agreement was signed by Mr. S Ramasamy, Company Secretary of PGL. The following was *inter alia* mentioned in the Account Charge Agreement dated February 13, 2002:

1. *Loan agreement A means the Loan agreement signed between Teigh and the Bank dated on or approximately on the date of this agreement by which the bank lent to Teigh the amount of US\$ 13.300.000.*
2. *Loan agreement B means the Loan agreement signed between Numero Uno and the Bank dated on or approximately on the date of this agreement by which the bank lent to Numero Uno the amount of 7.000.000.*
3. *Account Charge:*
Subject to the terms of this agreement, Pentamedia deposited in the Bank’s account number 6014195.10.1 (hereinafter the Account) the amount of US\$ 20.300.000 as security for all the obligations of Teigh under the Loan Agreement A and as security for all obligations of Numero Uno under the Loan Agreement B (hereinafter the Secured Obligations) and with full title guarantee hereby assigns to and charges by way of first fixed charge in favour of the Bank all the rights, title, interest and benefit in and to the account as well as the all the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof. Such assignment and charge shall be a continuing security for the due and punctual payment and discharge of the secured obligations.
4. *Upon payment and final discharge in full of all the Secured Obligations, this Agreement and the rights and obligations of the Parties shall*

- automatically cease and terminate and the Bank shall, at the request of Pentamedia, release the deposit made in the Account.*
- 5. Pentamedia covenants with the Bank that it will on demand pay and discharge the secured obligations when due to the Bank.*
 - 6. At any time after the bank shall have demanded payment of all or any of the Secured Obligations the Bank may without further notice apply all or any part of the Deposit against the Secured Obligations in such order as the bank in it's discretion determines.*
 - 7. Pentamedia hereby irrevocably appoints by way of security the Bank as the attorney of Pentamedia with full power in the name and on behalf of Pentamedia to sign, seal and deliver any deed, assurance, instrument or act in order to perfect this charge and at any time after an event of default by Pentamedia to sign, seal and deliver any deed assurance, instrument or act which may be required for the purpose of exercising fully and effectively all or any of the powers hereby conferred to the Bank to take all necessary action whether in the nature of legal proceedings or otherwise to recover any moneys which may be held in the Account and to give valid receipts for payment of such moneys and also for the purpose of enforcement and realization of the security hereby created.*
 - 8. Pentamedia hereby warrants and declares that any and all such deeds, instruments and documents executed on its behalf by or on behalf of the Bank by virtue of this Agreement shall be as good, valid and effective, to all intents and purposes whatsoever, as if the same had been duly and properly executed by Pentamedia itself and Pentamedia hereby undertakes to ratify and confirm all such deeds, instruments and documents lawfully executed by virtue of the authority and power hereby conferred.*
 - 9. It is further mentioned that each notice or other communication to be given under this agreement shall be given in writing in English. The address answerback and fax number of the Borrower and Bank are:*

Pentamedia:

1, First Main Road, United India Colony, Kodambakkam, Chennai - 600024

Attention: Mr S Ramasamy, Ph : +91.44.4830797

3.14. Account Charge Agreement - GDR TWO

An Account Charge Agreement dated November 07, 2002 was signed between PGL and Banco. Also, a document titled 'Mortgage Charge or Document' dated November 20, 2002 was created by Banco. The aforesaid Account Charge Agreement was signed by Mr. Ramesh Pillai of PGL. The following was *inter alia* mentioned in the Account Charge Agreement dated November 07, 2002:

1. *Loan agreement: Loan agreement means the Loan agreement signed between Gemgrove and Daylon (as borrowers) and the Bank dated on or around the date of this agreement by which the bank lent to Gemgrove and Daylon the maximum amount of US\$ 25,000,000.*
2. *Account Charge:*
Subject to the terms of this agreement, Pentamedia deposited in the Bank's account number 6014195 (hereinafter the Account) the amount of US\$ 25,000,000 as security for all the obligations of Gemgrove under the Loan Agreement A and as security for all obligations of Daylon under the Loan Agreement B (hereinafter the Secured Obligations) and with full title guarantee hereby assigns to and charges by way of first fixed charge in favour of the Bank all the rights, title, interest and benefit in and to the account as well as the all the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof. Such assignment and charge shall be a continuing security for the due and punctual payment and discharge of the secured obligations.
3. *Upon payment of all or part of the amounts due under the Loan Agreement, Pentamedia may withdraw from the Account the equivalent amount.*
4. *Upon payment and final discharge in full of all the Secured Obligations, this Agreement and the rights and obligations of the Parties shall automatically cease and terminate and the Bank shall, at the request of Pentamedia, release the deposit made in the Account.*
5. *Pentamedia covenants with the Bank that it will on demand pay and discharge the secured obligations when due to the Bank.*
6. *At any time after the bank shall have demanded payment of all or any of the Secured Obligations the Bank may without further notice apply all or any part of the Deposit against the Secured Obligations in such order as the bank in its discretion determines.*
7. *Pentamedia hereby irrevocably appoints by way of security the Bank as the attorney of Pentamedia with full power in the name and on behalf of Pentamedia to sign, seal and deliver any deed, assurance, instrument or act in order to perfect this charge and at any time after an event of default by Pentamedia to sign, seal and deliver any deed assurance, instrument or act which may be required for the purpose of exercising fully and effectively all or any of the powers hereby conferred to the Bank to take all necessary action whether in the nature of legal proceedings or otherwise to recover any moneys which may be held in the Account and to give valid receipts for payment of such moneys and also for the purpose of enforcement and realization of the security hereby created.*
8. *Pentamedia hereby warrants and declares that any and all such deeds, instruments and documents executed on its behalf by or on behalf of the Bank by virtue of this Agreement shall be as good, valid and effective, to all intents and purposes whatsoever, as if the same had been duly and properly executed by Pentamedia itself and Pentamedia hereby undertakes to ratify and confirm all such deeds, instruments and*

documents lawfully executed by virtue of the authority and power hereby conferred.

9. *It is further mentioned that each notice or other communication to be given under this agreement shall be given in writing in English. The address and answerback of Pentamedia are:*

Pentamedia:

1, First Main Road, United India Colony, Kodambakkam, Chennai -600024

Attention: The Company Secretary, Fax: 91.44.4830797

- 3.15. It was observed that Power of Attorney dated September 16, 2002 was executed by PGL. The above mentioned document *inter alia* states the following:

By this Power of Attorney executed at Chennai, this 16th day of September 2002 by M/s. Pentamedia Graphics Ltd., incorporated under the Companies Act and having its Registered office at No 1, Soft Towers, First Main Road, United India Colony,, Kodambakkam, Chennai – 600024, (hereinafter called the Company) and represented by its Chairman & CEO Dr. V Chandrasekaran, S/o. Venkataramanan, do hereby appoint, nominate and constitute Mr Ramesh Pillai, Business Manager, UK Operations, residing at Flat 59, Madison Heights, 17-27, High Street, Hounslow, London, TW3 ITA to be its true and lawful Attorney and in the name of the Company and on its behalf to do, perform, exercise and execute all or any of the following acts, deeds, matters, powers, authorities and things that is to say:

- 1. To sign all documents / bank account application / loan or any other documents as may be necessary for and on behalf of the company.*
- 2. To execute, file the GDR Listing Particulars / Prospectus of the company with Luxembourg Stock Exchange (LSE) and/or other Exchanges along with all changes and additions thereto.*
- 3. To take all necessary action and execute all necessary documents with reference to the aforesaid resolutions including, without limitation, to prepare and / or cause to be prepared, and to execute with the LSE, any certificates, letters, exhibits and documents in connection therewith.*
- 4. To execute and sign the relevant agreement as may be required to complete the GDR allotment*
- 5. To sign and deliver share certificates / Allotment advise to the concerned depository and to the concerned Stock Exchanges.*
- 6. To accept any modifications, suggestions / changes as may be suggested / required by the respective Attorneys and Authorities concerned to complete the GDR allotment.*

This Power of Attorney is valid upto 31st December 2002.

- 3.16. It was observed from the abovementioned Account Charge Agreements, that Mr.

S. Ramasamy (GDR ONE) and Mr. Ramesh Pillai (GDR TWO) signed these Account Charge Agreements with Banco (i.e. PGL provided security for loans availed by subscribers from Banco for subscription of GDRs of PGL). The Account Charge Agreement had a reference to the Credit Agreements entered into between subscribers (Teigh/Numero for GDR ONE and Daylon/Gemgrove for GDR TWO) and Banco by virtue of which Banco provided loan to them for the purpose of subscribing to the GDR of PGL. It was observed from the Account Charge Agreements that PGL shall deposit in its designated account with Banco an amount not exceeding loans availed by Teigh & Numero and Daylon & Gemgrove for subscription of GDRs of PGL as security for all the obligations of borrowers under the Credit Agreement. Further, the Account Charge Agreement contained a clause to the effect that all communications to be given under the Agreement were to be addressed to PGL.

- 3.17. PGL had pledged GDR proceeds to secure the rights of Banco against the loan given to Teigh and Numero for GDR ONE and to Daylon and Gemgrove for GDR TWO for subscription to GDR issue (as mentioned in Credit Agreement). It was observed from the examination of Credit agreements and Account Charge Agreements that Banco granted loans to Teigh/Numero and Daylon/Gemgrove specifically for subscription to GDRs of PGL. It was further observed that issuance and subscription of GDRs was done through loan availed by Teigh/Numero and Daylon/Gemgrove from Banco. It is also noted from the provisions of Account Charge Agreements that though the GDR proceeds were deposited in the bank account of PGL, the amount deposited in the account was not at its disposal, as the same was kept as collateral for the loans availed by Teigh/Numero and Daylon/Gemgrove even prior to issuance of GDRs.
- 3.18. In view of the above, it is alleged that the GDR issues would not have been subscribed fully had the company not given security towards the loans taken by Teigh/Numero and Daylon/Gemgrove through Account Charge Agreement and that the entire scheme of issuance of GDRs involving subscription of GDR issues by obtaining finance from Banco by pledging the GDR proceeds, and monetizing

the GDRs through the sale of underlying shares in the Indian Stock Exchange by converting the GDRs, is *prima facie*, fraudulent.

- 3.19. It was observed from the minutes of the Board meetings as provided by PGL that Board, in its meeting held on February 11, 2002 approved allotment of GDRs pertaining to GDR ONE and in its meeting held on November 25, 2002, approved allotment of GDRs pertaining to GDR TWO. The alleged fraudulent arrangement of Credit Agreements and Account Charge Agreements which resulted in subscription of GDR issues of PGL were not disclosed in a true and complete manner.
- 3.20. It is alleged that the entire scheme involving entering into Account Charge Agreement, passing of Board resolution regarding issuance of GDRs, making corporate announcement that the Board of directors allotted the GDRs on February 12, 2002 and November 26, 2002 without disclosing the arrangement of Account Charge Agreement to the investors resulted in publication of misleading news to the stock exchanges which contained information in distorted manner and which might have influenced the decision of the investors and possibly induced investors to deal in shares of PGL.
- 3.21. PGL received USD 13.30 million and 7 million for GDR ONE from Teigh and Numero. Also, for GDR TWO, it received subscription amount of USD 11,437,500 each from Daylon and Gemgrove.
- 3.22. Out of the total GDR proceeds of USD 20.33 million (including interest) for GDR ONE, PGL *inter alia* transferred USD 3.915 million to its bank account in India, USD 9.355 million to Teigh (one of the subscribers to GDR ONE) on net basis and USD 3.96 million to Numero (second subscriber to GDR ONE). Thus, all the GDRs under GDR-ONE were issued to Teigh and Numero on private placement basis subsequent to the approval of the Board of PGL and the Company had transferred significant GDR proceeds back to the subscribers which was not in line with the intended usage of GDR. Thus, it is alleged that GDRs and the underlying equity shares to the tune of USD13.315 million in turn were issued at free of cost to subscribers at the cost of other shareholders / investors. Therefore,

the Company (Noticee No.1) the subscribers i.e. Teigh (Noticee No.2) and Numero (Noticee No.3) and the directors of PGL who attended the Board meeting of February 11, 2002, namely Dr. V. Chandrasekaran (Noticee No.7), Dr. S Ramani (Noticee No.8), Mr. S. Ranganathan, Noticee No.9) and Mr. T. V. Krishnamurthy (Noticee No.10) who approved issuance of GDR ONE on private placement basis to Teigh/Numero after perusing the subscription document and also approved the Listing Particular document are alleged to have acted as parties to the fraudulent scheme

- 3.23. It was observed from PGL's Banco account statement related to GDR TWO that on November 26, 2002, the company received USD 22,875,000 from two bank accounts and on February 06, 2003, a similar amount was transferred back to the same bank accounts. It was further observed that that the two bank accounts to which the company had transferred USD 11,458,748 each on February 06, 2003 belonged to Gemgrove and Daylon i.e. the GDR TWO subscribers. It was further observed that on November 29, 2002, PGL instructed Banco to transfer USD302,749.40 to the accounts of Gemgrove and Daylon maintained with Banco. Accordingly, on November 29, 2002, as per statement of PGL account, it is noted that the said amount was transferred to two bank accounts 603094.10.1 and 6029618.10.2, respectively. From the above, it is observed that PGL raised USD 23.75 million through issue of GDR TWO wherein Gemgrove and Daylon provided subscription amount of USD 22,875,000 i.e. subscribed to more than 95% of GDRs. The company transferred USD 21.336 million (i.e. nearly 90% of GDR proceeds) on a net basis back to the two subscribers which is not in line with the usage of GDR proceeds as mentioned in the Listing Particular document. It is therefore alleged that GDRs and the underlying equity shares to the tune of USD 21.336 million (nearly 90% of total GDRs issued) in turn were issued at free of cost to the said two subscribers at the cost of other shareholders / investors. Therefore, the Company (Noticee No.1), the subscribers i.e Daylon (Noticee No.5) and Gemgrove (Noticee No.4) are alleged to have acted as parties to the fraudulent scheme of GDR issue.

4. The SCN called 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 which was transferred to the subscribers of GDR ONE and GDR TWO issues, amounting to USD 34.655 million, should not be issued against it on account of the alleged violations mentioned in this SCN. The SCN also called upon Noticee nos. 2 to 11 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 the alleged violations mentioned in this SCN.
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.	PGL letter dated June 16, 2015
2.	PGL Listing Particulars Document for GDR ONE
3.	Copy of credit agreements for GDR-ONE
4.	Copy of credit agreements for GDR-TWO
5.	Copy of Board resolution pertaining to Board meeting dated November 29, 2001
6.	Account Charge Agreement dated February 13, 2002 & Mortgage or Charge document dated Feb 20, 2002
7.	Client Information Sheet
8.	Account Charge Agreement dated November 07, 2002 & Mortgage or Charge document dated Nov 20, 2002
9.	Power of Attorney dated September 16, 2002
10.	Extract of the minutes of the Board meeting held on November 01, 2002
11.	Copy of Minutes of Board Meeting dated February 11, 2002
12.	Copy of Minutes of Board Meeting dated November 25, 2002
13.	Copies of relevant corporate announcements.
14.	Bank account statements of PGL

Inspection, reply, hearing and written submissions:

6. The SCN was served on all Noticees by Speed Post Acknowledgement Due except Noticee nos. 6, 10 and 11. The matter was placed before me via email dated July 04, 2020 for scheduling a hearing date and in compliance with the principles of natural justice an opportunity of hearing was granted to all Noticees on September 08, 2020. Meanwhile, Noticee no.1 sought an inspection of documents which was granted to it and carried out by the Authorized Representative (hereinafter referred to as “AR”) of the Noticee no. 1 on February 27, 2020. Subsequently, vide email dated March 02, 2020 the AR of the Noticee no.1 sought the following documents: a) copy of Investigation Report, ii) Copy of documents detailed out as Annexure 1 of SCN, iii) Extracts related to Annexure 2 of SCN, iv) Copy of any other documents that had not been annexed but relied upon by SEBI and v) Information whether the investigation was based on any complaint received by SEBI. Vide letter dated January 25, 2021 the Noticee was informed that the SCN contained the relevant portions of the Investigation Report and findings of investigation with respect to the charges levelled against it. Further, vide the same letter, requested documents related to Annexure 1 and 2 of the SCN were provided to the Noticee no.1, and it was informed that documents relied upon for the purpose of issue of SCN has already been provided to the Noticees as annexure to the SCN. On the scheduled hearing date on September 08, 2021, none of the Noticees appeared and considering the outbreak of Covid-19 another opportunity of hearing was granted on November 10, 2020. The hearing notice dated October 15, 2020 intimating the date of hearing for November 10, 2020 was issued to all Noticees except Noticee nos. 2 to 5 which had been dissolved/ struck off. An email dated November 03, 2020 was received from one Mr. V. Venkataraman, Whole Time Director of PGL stating that he is the AR of Noticee nos. 1, 6, 7, 9 and 10 and seeking an adjournment on account of Covid-19 pandemic. In view of the request, a further opportunity of hearing was granted to all Noticees on February 02, 2021. The hearing notice was issued to all Noticees except Noticee nos. 2 to 5, for reasons mentioned above. An email dated January 29, 2021 was received from Mr. V. Venkataraman, seeking an adjournment on health grounds. Mr. V. Venkataraman was advised to submit the letter of authority authorizing him to appear as AR of Noticee

nos. 1, 6, 7, 9 and 10. On February 02, 2021 none of the Noticees appeared for the hearing. Since sufficient opportunities had been granted to Noticee nos. 1, 6, 7, 9 and 10, hearing with respect to these Noticees were concluded and the same was communicated to Mr. V. Venkataraman, the purported AR of these Noticees. On February 02, 2021, it was brought to my notice that service of SCN to Noticee no. 11 was not yet complete since he had an overseas address. In view of the same, a further hearing date was granted to Noticee no. 11 on May 03, 2021. Noticee no. 11 appeared on May 03, 2021 and made submissions. Meanwhile, an email dated April 06, 2021 and April 08, 2021 were received from Mr. V. Venkataraman indicating that he was in the hospital for more than a month and enclosing medical records and requesting for another date of hearing. However, Mr. V. Venkataraman could only produce letters of authority from Noticee nos. 1 and 7 and therefore, a fresh date of hearing was granted to Noticee nos. 1 and 7 on August 02, 2021. On the said date the AR of Noticee nos. 1 and 7 appeared and made submissions. On August 18, 2021 it was brought to my notice that SCNs pertaining to Noticee nos. 6 and 10, could not be delivered and hearing notice pertaining to Noticee no. 9 could not be delivered. It was also brought to my notice that, subsequently, Mr. V. Venkataraman represented himself to be the AR of Noticee nos. 6, 9 and 10 also and accordingly SCN and hearing notices were delivered to him. However, as Mr. V. Venkataraman had failed to produce authorization behalf of Noticee nos. 6, 9 and 10, therefore delivery of SCN/ hearing notice to Noticee nos. 6, 9 and 10 through him could not be considered valid service and a fresh hearing date was sought. In view of the same, a fresh hearing date was granted on November 25, 2021 with the direction that service of SCN/ hearing notice be completed. The service of SCN to Noticee nos. 6 and 10 were completed through newspaper publication in the Times of India, Chennai edition on November 22, 2021, while service to Noticee nos. 9 was completed through SPAD. None of these Noticees replied to the SCN or appeared for the hearing scheduled on November 25, 2021 and the hearing *qua* these Noticees were concluded.

7. 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. Vide a reply dated February 23, 2021 and written submissions dated May 11, 2021, Noticee nos. 11 has made the following submissions:

- (a) *The Noticee has received the SCN in the context of his role as a General Manager of PGL, after a period of more than 18 years post his resignation (on November 12, 2003). Clearly, the impugned proceedings suffer from enormous laches. Admittedly, the alleged violation arising from the Global Depository Receipts ("GDR") issue by the Company pertain to the period April 2002. The present SCN has been issued on September 07, 2018 (i.e., after more than 16 years after the GDR issue). The aforesaid inordinate delay has severely prejudiced the Noticee. The said inordinate delay has not been explained by SEBI. On this ground alone the SCN proceedings needs to be and ought to be discontinued and SCN needs to be dropped qua me. Facts of the present case will amply demonstrate that the powers have not been exercised by SEBI within a reasonable period and therefore, in the facts and circumstances of the case, proceedings need to be discontinued and dropped and no penalty needs to be imposed. The said inordinate delay in issuance of SCN, has severely prejudiced the Noticee. At this distance of time, he has virtually no documents/records etc. pertaining to the Company and his ability to marshal documents (bank statements/salary statements) to establish my bonafide effectively, has also got severely constrained.*
- (b) *During the purported investigation conducted by SEBI, no information and/or explanations and/or clarifications were ever sought from the Noticee. Adverse inferences against him have been drawn behind his back, merely based on surmises and conjectures, which are completely contrary to the factual position. Fairness demanded that his version should have been sought and his statements should have been recorded etc., before alleging such serious charges of PFUTP and issuing Notice for the same.*
- (c) *The Noticee's role in the whole GDR issue was exceedingly peripheral and inconsequential. He had no knowledge or awareness about the alleged fraud in the GDR issue of the Company. In fact it is for the first time, through SCN he has become aware that the GDR issue of the Company was offshoot of fraud perpetrated by PGL/its directors/ management.*
- (d) *In the year 1999, he had joined Pentafour Communications Ltd in Sales Department, as a Business Manager for UK to start their Engineering Services division, 3CRC Technologies, in the UK. At the relevant time, he had joined Pentafour Communications Ltd first in India as a Sales employee at a salary of Rs. 35,000/- per month and was subsequently posted to the*

UK with a salary of UK £60,000 per annum. He was given a clear Sales target of £1.0Million for the year 2000. Since 3CRC Technology Services (UK) Ltd was a new company at that time and he was one of the only 2 employees locally in UK/Europe for that Company he was asked by the management to be responsible for Sales in the region. He was also given local UK bank authorisation to run day to day operations including maintaining the local bank account. This was subject to close oversight by the Pentafor Communication Ltd's Chennai Head Office and regular book keeping and audit by local Accountants, M/s Hanson Bumells Ltd. Sometime in the year 2001, given his success in signing up new clients Oike Autodesk Inc in Switzerland, University of Paisley, UK etc) for 3CRC Engineering services, I was promoted as General Manager and asked to take over the Sales responsibility for Pentafor Software UK Ltd (UK subsidiary of Pentasoft), in addition to the 3CRC division. As a General Manager his professional domain was limited to Sales in UK/Europe.

- (e) Sometime in the year 2003, due to the inability of the Company, Pentafor Communications Ltd (which renamed itself as Pentasoft Technologies Ltd) to deliver services from Chennai, the Company lost its UK clients and he and his colleague were working with pay in arrears for close to a year.*
- (f) At no point of time, he ever held any shares of PGL or any of its related entities. Further, he also did not have any investment or any financial stake in the UK or international parent companies or subsidiaries or affiliates of the Company. Further, he was in no manner related to any of the promoters/directors/management of the Company, save and except as an employee. As a mid-level employee, based out of UK at the relevant time and handling matters relating to Sales etc, he had no involvement or any say/voice, whatsoever, in the decision of the Company to come out with GDR, the conception of GDR, the mechanics of GDR and the timing of GDR, the appointment of Investment Bankers/lawyers/consultants to be hired for the GDR, the place of listing of GDR, the selection of potential investors, the preparation/formulation of Offer documents to be filed for the GDR, the disclosures to be made in respect of GDRs in India to the stock exchanges etc. All the aforesaid decisions regarding GDR etc. were taken at Board/management level, in which he had no say or influence or control. Further, he had no knowledge /awareness of the alleged fraudulent scheme of issuance of GDR.*
- (g) With respect to him signing the Account Charge Agreement based on a Power of Attorney with Banco Efisa SA Lisbon and the issuance of Power of Attorney in his favour for signing the 'Account Charge Agreement' on behalf of the Company, at no point of time, his consent*

was sought for the same. In fact, after decision had been taken by the Board and the requisite resolutions were passed, he was just informed by the director Mr. Kannan regarding the same and was directed to follow the orders. It was like any other ministerial job assigned to me by the Company, since he was based in UK and the transactions were happening in UK. He was given to understand, that for the sake of operational convenience, since the directors/management officials were stationed in different geographical location, power of attorney was given in his favour so that documents etc. could be executed swiftly without impediments.

- (h) Just because, at the relevant time, he was an employee based in UK, he was chosen with regard to the 'Subscription Agreement' and signing the 'Account Charge Agreement'. Had he been working at any other place (other than UK), let's say India, he would not have been chosen. Here it may also be noted, as per the 'Account Charge Agreement' all notices etc. were to be served to the Company only at Chennai and marked to R Hariharan (Refer Clause 6-c). Effectively, beyond signing the agreement, there was nothing he was involved in. Everything, with regard to GDR issue including the 'Account Charge Agreement' was managed and controlled by the Chennai office of the Company (i.e. by its directors and management based out of Chennai).*
- (i) His case cannot be considered at par with the other directors of the Board and CEO/CFO of the Company, who were in charge of the affairs of the Company, were deeply involved with day-to-day management and affairs of the Company, were responsible to the Company and were fully aware of the activities pertaining to GDR through attending board meetings etc. Their knowledge/awareness about the GDR being fraudulent etc. cannot be equated with his knowledge/awareness.*
- (j) He cannot be alleged to have enabled the fraudulent scheme of issuance of GDRs by the Company. He has not made any gains or gained any unfair advantage*

B. *Vide letters dated January 10, 2020, February 03, 2020 and August 27, 2021 Noticee no. 1 has made the following submissions:*

- (a) There has been a gross and inordinate delay in filing the SCN by the Enforcement Department of SEBI and hence the entire proceeding has been prejudicial against it. The GDRs in question were issued on February 13, 2002 and November 25, 2002 respectively, and the SCN was issued only on December 16, 2019. There has been a thread of cases*

where the proceedings have been quashed as a result of there being an unexplained and inordinate delay.

- (b) SEBI has not provided a copy of the Investigation Report based on which the SCN was issued. It is pertinent to state that, pursuant to the SCN, one Ms. Ranjana G on behalf of Pentamedia Graphics Ltd. conducted an inspection of documents on February 27, 2020. During the said inspection, the Investigation Report was sought for, which was denied. Further, few other documents and queries were sought for, which was also refused. Justice would also demand that it will not just be the documents that the investigating officer has selectively chosen and mentioned in the SCN, but all documents which were available to the officer based on which he/she has arrived at their decision to issue a show cause notice. In the failure to provide the Noticee with such documents, its ability to mount a defense stands prejudiced and compromised . In Kanwar Singh vs Director of Enforcement and Another (2010) 13 SCC 255 when it was held that where a person is being investigated or charged, nothing should be used against him which has not been brought to his notice and that if relevant material is not disclosed to a party, there is prima facie unfairness irrespective of whether the material in question arose before, during or after the hearing and that if prejudicial allegations are to be made against a person, he must be given particulars of that before hearing so that he could prepare his defence.*
- (c) The SCN has also not shown with respect to either the Noticee or any of the directors that they have benefitted from any personal gains dealing in the securities of Pentamedia basis the purported fraudulent scheme or that they have made any inducements to any agent or any third party or that there has been any 'mens rea' on their part to undertake the purported fraudulent arrangement.*
- (d) Further the crux of the SCN's basis on which they have alleged fraud appears to be their allegation that with both GDR issuances, the proceeds were 'transferred back to the subscribers of the respective GDRs' and that this was not in line with the intended usage as per the Listing agreement. While the SCN has not gone into any detail on how they have arrived at this conclusion and while the Noticee may not be obliged to rebut an allegation that has not been explicitly set out, it is the Noticee's submission that the use of the GDR proceeds is entirely in line with the 'Use of Proceeds' clause as one of the stated purposes for which the funds were to be used was 'entering into strategic partnerships with parties who could provide us access to complementary technologies, products etc' and the proceeds*

from the GDR issues were used for this specific purpose with the entities in question assisting its business.

- (e) Further, in the annual reports for the concerned financial years when the GDR issue took place, the statutory auditors S. Viswanathan and co. made no adverse remarks in their auditor's report over the manner in which the GDR issue took place, money was raised.*
- (f) Further there is nothing even in the form of an allegation in the SCN to suggest that any of the entities involved in the GDR issue were intermediaries or related parties, and that the alleged act of the Company having indirectly funded the GDR issuance was in any way beneficial to either the Company or any of its directors. While the SCN has also observed that 81.4% of the GDR issuance had been converted as of June 2003, and that the concerned entities had sold the GDRs as shares in the Indian stock market, there is nothing to suggest any of this is fraudulent, or that the Company was somehow involved in how the entities who subscribed to the GDRs have chosen to use the same. In this regard, the Company has requested to be provided with any copies of any complaints from shareholders and none have been provided.*
- (g) Further, all that the SCN definitely shows is that there were loan agreements between the entities and Banco Efisa, S.F.E,S.A. ("Banco"), but no evidence to suggest drawdown and actual avilment of the loans. In the absence of such bank statement reflecting the alleged loan availed by these entities from Banco Bank, the allegations in the SCN the subscription amounts for the issuance of both GDR-1 and GDR-2 were paid by availing loan from Banco on the basis of alleged credit agreement and alleged Account Charge agreement are mere surmises without any reliable documentary corroboration whatsoever.*
- (h) Assuming in arguendo that there is a diversion of funds out of GDR proceeds, the Company would actually be the victim of fraud here, as the same constitutes a fraud perpetrated against the Company. Further, there was no cooperation from Banco to the Company's present management or with SEBI to ascertain whether there is any basis for any such assumption.*
- (i) One of the allegations in the SCN is that the Company had not disclosed the account charge agreements to the concerned stock exchanges and that it amounts to fraud. This is an allegation completely baseless in law as there is no requirement under any listing regulation, or guideline, or rule, that mandates any requirement from the Company to disclose every single transaction entered into with the concerned stock exchange - a principle vindicated by the fact that the SCN does not cite any law or regulation in support of this allegation. The*

Company had provided all material details of all relevant transactions in the ordinary course of its business that are to be revealed to the concerned authorities at every stage and there is no evidence to suggest otherwise.

- (j) Assuming but not conceding that the allegations stated in the SCN are true, it is submitted that even none of the directors of the Noticee company who were on the board during the time of the GDR issue are currently present on the Noticee's board and hence the Noticee cannot be held liable for their actions. It is also submitted that the alleged account charge agreements were executed unauthorisedly without the knowledge of the Noticee, especially the second account charge agreement relating to the second GDR issue which was signed by Mr. Ramesh Pillai, who was not authorized by the Noticee to act as a signatory on behalf of the Noticee.*
- (k) The issuing authority has not disclosed under which provision the Annexures enclosed in the SCN were received. Section 11(2) (ib) of PFUTP regulations does not empower an Authority to collect 'evidence' nor is the issuing authority empowered under Section II (2)(ib) to collect information as per the General Order of Delegation of Powers, and consequently it is only the Board itself which is empowered to collect any information u/s 11(2)(ib). Therefore as the issuing authority lacks jurisdiction to send SCN u/s 11B, the annexures enclosed with SCN are not evidence and do not pass the test of Standards of Evidence as they are unauthenticated by the authority who sent it.*
- (l) The SCN has been issued without proper application of mind and vague and nebulous in nature.*

CONSIDERATION OF SUBMISSIONS AND FINDINGS:

- 8. I have considered the SCN issued to the Noticees, along with its 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 and PFUTP Regulations, 1995 (since repealed) read with PFUTP Regulations, 2003, as alleged in the SCNs.
- 9. 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 extracts of provisions of PFUTP Regulations, 1995

“Prohibition of certain dealings in securities

3. No person shall buy, sell or otherwise deal in securities in a fraudulent manner.

.....

Prohibition of misleading statements to induce sale or purchase of securities

5. (1) No person shall make any statement, or disseminate any information which -

- (a) is misleading in a material particular; and
- (b) is likely to induce the sale or purchase of securities by any other person or is likely to have the effect of increasing or depressing the market price of securities, if when he makes the statement or disseminates the information-
 - (i) he does not care whether the statement or information is true or false; or
 - (ii) he knows, or ought reasonably to have known that the statement or information is misleading in any material particular.

Nothing in this sub-regulation shall apply to any general comments made in good faith in regard to

-

- (a) the economic policy of the Government,
- (b) the economic situation in the country,
- (c) trends in the securities markets, or
- (d) any other matter of a similar nature,

whether such comments be made in public or in private.

...

Prohibition on unfair trade practice relating to securities

6. No person shall -

(a) in the course of his business, knowingly engage in any act, or practice which would operate as a fraud upon any person in connection with the purchase or sale of, or any other dealing in, any securities;"

Relevant extracts of provisions of PFUTP Regulations, 2003

"Repeal and savings

(1) The Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 is hereby repealed.

Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, any violation of regulations 3, 4, 5 and 6 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 shall be investigated and proceeded against in accordance with the procedure laid down in these regulations.

(3) Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, any investigation pending, at the commencement of these regulations shall be continued and disposed of in accordance with the procedure laid down in these regulations."

10. 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 pertains to issuance of GDRs by the company in 2002, and the SCN was issued only in 2019 and the delay in the matter has adversely affected their ability to present an appropriate defense in the matter. The Noticees have relied upon the observations of the Hon'ble SAT in the numerous cases including Ashlesh Gunavantbhai Shah Vs. SEBI (Appeal No. 169 of 2019), 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), Morepen Laboratories Ltd. Vs, SEBI (Appeal No. 62 of 2020) 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 started investigation of 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 listed 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 had 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 and his connected entities were found to be involved. One of the connected entity of Mr. Arun Panchariya i.e. Pan Asia Advisors Ltd. 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 April, 2019. I note that after completion of the investigation, the SCN was issued to the Noticees on December 16, 2019. The SCNs could not be delivered to Noticee nos. 6, 10 and 11 and service to these Noticees could

be completed only in on November 22, 2021 through newspaper publication. Moreover, on the scheduled hearing dates on September 08, 2020, November 10, 2020 none of the Noticees appeared and further, repeated adjournments were sought by the AR of Noticee no.1 (who also claimed to represent 4 other Noticees) and thereafter, the purported AR failed to produce letters of authority on behalf of Noticee nos. 6, 9 and 10 and thus hearing opportunities had to be granted again to Noticee nos. 6, 9 and 10 on November 25, 2022 but they failed to appear for the said hearing. From the above facts and circumstances of the case, it cannot be said that there is 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 fact, Section 11C of the SEBI Act, 1992 expressly empowers SEBI to initiate investigation, "at any time", if SEBI has reasonable grounds to believe that the transaction of securities were being carried out in a manner detrimental to securities market or any intermediary or person associated with the securities market has violated any provision of SEBI Act, 1992 or rules or regulations framed thereunder. Thus, there is no period of limitation prescribed for initiation of investigation by SEBI and consequently no limitation will apply for initiation of quasi-judicial proceedings based on the said investigation. Moreover, 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....”

11. 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 aforesaid 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.....”

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. regarding the plea of prejudice caused to Noticee nos. 1 and 11 because of time taken in initiation of proceedings, I note that the Noticees have been provided with all relevant material on the basis of which allegations have been made in the SCN, as annexure to the SCN. The details of such annexure have been provided in para 5 above. I also note that Noticees have also been provided inspection of documents on February 27, 2020. in view of this, I find that the Noticees have been provided with all relevant material to enable them to effectively respond to allegations made in the SCN. I note that Noticees have filed detailed replies and also made elaborate submissions during the personal hearing granted to them. I note that the Noticees have not pointed out any particular

document / information which they could not access due to long passage of time because of which their ability to file effective reply or to put effective defense has been hampered. Therefore, I find that no prejudice is caused to the Noticees due to time taken in the proceedings.

12. Noticee no.1 has also submitted that complete documents including a copy of the Investigation Report has not been supplied to it. In this regard, I note that, Noticee no.1 has sought an inspection of documents which was granted and carried out by the Authorized Representative (hereinafter referred to as “**AR**”) of the Noticee on February 27, 2020. Subsequently, vide email dated March 02, 2020 the AR of the Noticee no.1 had sought the following documents: a) copy of Investigation Report, ii) Copy of documents detailed out as Annexure 1 of SCN, iii) Extracts related to Annexure 2 of SCN, iv) Copy of any other documents that had not been annexed but relied upon by SEBI and v) Information whether the investigation was based on any complaint received by SEBI. Vide letter dated January 25, 2021 the Noticee was informed that the SCN contained the relevant portions of the Investigation Report and findings of investigation with respect to the charges levelled against it. Moreover, vide the same letter, requested documents related to Annexure 1 and 2 of the SCN were provided to the Noticee no.1, and it was informed that documents relevant to the SCN has already been provided to the Noticees as annexure to the SCN. Therefore, I find that all relevant material has been furnished to Noticee no.1.
13. I note that the Noticee has referred to the decision of the Hon’ble Supreme Court in *Kanwar Natwar Singh vs Director of Enforcement and Another* (2010) 13 SCC 255 wherein it was held that where a person is being investigated or charged, nothing should be used against him which has not been brought to his notice and that if relevant material is not disclosed to a party, there is *prima facie* unfairness irrespective of whether the material in question arose before, during or after the hearing and that if prejudicial allegations are to be made against a person, he must be given particulars of that before hearing so that he could prepare his defense. I find that since all material

relevant to the case has been supplied to Noticee no.1, therefore there is no non-compliance with the law laid down in the Kanwar Singh matter (supra). The Noticee no.1 has also relied upon decision of the Hon'ble Supreme Court in *PWC Vs SEBI* (Civil Appeals No. 6003-6004 of 2012 & 6000-6001 of 2012) directing SEBI to provide all the documents collected during the course of investigation. In this regard, I note that similar contention, based on the aforesaid decision of the Hon'ble Supreme Court in the PWC matter, was raised before Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**Hon'ble SAT**") in the matter of *Shri B. Ramalinga Raju vs. SEBI* (SAT Appeal No. 286 of 2014) wherein Hon'ble SAT, in its order dated May 12, 2017, observed as follows:

"21.Apex Court in case of Price Waterhouse has specifically recorded that the directions given in that case are general directions given as and by way of clarifications without going into the merits of the case. Therefore, directions given in the facts of Price Waterhouse cannot be said to be the ratio laid down by the Apex Court applicable to all other cases. In these circumstances, appellants are not justified in contending that the directions given by the Apex Court in case of Price Waterhouse must be applied to the case of the appellants."

Therefore, the direction given by the Hon'ble Apex Court in PWC matter (supra) was specific to that case only and has no application in the present proceedings as laying down law for general application. In the present case, I find that the Noticee no. 1 has been provided with all the relevant documents as mentioned in above, which are sufficient for it to file an efficacious reply in the matter and the Noticee no. 1 has also subsequently filed a detailed reply to the SCN. Therefore, the contention of the Noticee no. 1 in this regard is untenable.

14. Noticee no. 1 has also raised an issue regarding non- disclosure of the provision under which the Annexures enclosed in the SCN were received. The Noticee has contended that Section 11(2) (ib) of SEBI Act, 1992 does not empower an Authority to collect 'evidence' nor is the issuing authority empowered under Section 11(2)(ib) to collect

information as per the General Order of Delegation of Powers, and consequently it is only the Board itself which is empowered to collect any information u/s 11(2)(ib) and therefore the SCN issuing authority lacks jurisdiction to send SCN and the annexures enclosed with SCN are not evidence and do not pass the test of Standards of Evidence as they are unauthenticated by the authority who sent it. In this regard, I note that in the present matter the Investigating Authority (hereinafter referred to as “IA”) was appointed on August 24, 2015 under Section 11C of the SEBI Act, 1992 by SEBI. Thereafter, the IA, after making preliminary enquiries, made a request to SEBI to collect certain information from certain overseas regulator(s), and SEBI collected the said information under Section 11(2) (ib) of the SEBI Act, 1992 and made the same available to the IA. In my view, there appears to be no fault in the procedure adopted for the collection of information from overseas regulators and therefore the submission of PGL to that extent is untenable.

15. Coming to the merits of the case, I note that in response to the allegations levelled in the SCN, Noticee no. 1 has brought forward certain distinctions which the present matter has vis-à-vis other GDR matters, as under:
 - i. The GDR issues took place in 2002, and for this reason PFUTP Regulations, 1995 has been invoked unlike other GDR issues where PFUTP Regulations, 2003 were invoked.
 - ii. There is no authorization in the board resolution passed by the board of directors of PGL authorizing any pledge of GDR proceeds lying in the GDR subscription accounts.
 - iii. The Board Resolution of PGL authorizing GDR ONE did not contain any specific authorization by PGL for signing the Account Charge Agreement and there is no resolution authorizing signing of the Account Charge Agreement for GDR TWO.
 - iv. In the present case, GDR proceeds received by the PGL in its subscription accounts were not pledged for securing the loan taken by the subscribers to the two GDR issues of PGL, from Banco though an amount equivalent to the

GDR proceeds was pledged through other bank accounts of PGL for securing the liability of the subscribers to the GDR issues, towards Banco for the loans taken by them for subscribing to the GDR issues of PGL.

- v. There is no material on record to show as to how the said two bank accounts through which the amounts approximately equivalent to GDR proceeds were pledged, was opened by or on behalf of PGL. Further, SCN is also silent about the source of the money which was deposited in the said two other bank accounts. Further, SCN does not allege that there was any default on the loan taken by the subscriber as a consequence of which Banco could have appropriated the money lying in the said other accounts.
- vi. Also, SCN alleges that the GDR proceeds lying in the subscription account of PGL were subsequently transferred back by the PGL to the subscribers to its GDR issues. SCN does not allege that subscribers repaid the loan to Banco out of these GDR proceeds transferred to them by PGL.
- vii. SCN is silent as to what happened to the loan taken by the subscribers whether it was repaid or not, whether Banco invoked the pledge on the said other accounts of PGL for setting of its loan.

16. I have noted the submission of the Noticee. Even though there are differences as brought out, however, it is observed that in the case under consideration the Noticees have followed the following *modus operandi*:

- a) The scheme of issuance of GDRs of PGL in both tranches involved the subscribers subscribing to the GDR issue by obtaining finance from Banco wherein security was provided by PGL through deposits in separate designated accounts for an amount approximately equivalent to GDR proceeds.
- b) PGL did not inform stock exchanges or its shareholders about this arrangement and about entering into the Account Charge Agreements dated February 13, 2002 and November 07, 2002 or the fact that it had provided security for loans taken by the subscribers by pledging an amount approximately equivalent to GDR proceeds.
- c) GDR proceeds amounting to USD 34.651 million were transferred back to the GDR

subscribers. Therefore, there was hardly any capital infusion in the Company in real sense since the Company had transferred the majority of the GR proceeds back to the subscribers. PGL concealed this information from the stock exchange and its shareholders.

In view of the above, I note that despite the distinctions sought to be made by the Noticees, as enumerated in previous para, it has to be examined as to whether the allegations levelled against the Noticees in the SCN sustain.

17. In this regard, it is also necessary to understand the fundamental conspectus of this case, vis-à-vis the other GDR issues investigated by SEBI during that period. In all GDR matters investigated by SEBI the gravamen of the allegation is that a listed company issued GDR to a few or one subscriber(s) and the subscribers would take a loan from a particular bank to pay for the said GDRs and this loan would be secured by pledging the GDR proceeds, and the company would disclose to the stock exchange that the GDR issue was a success, but would conceal the scheme wherein the proceeds of GDRs had been pledged for securing the loan taken by the subscriber. The investigation carried out by SEBI in most of these GDR matters has termed this whole scheme to be fraudulent under the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations, 2003"**). However, the violation of provisions of PFUTP Regulations, 1995 pertaining to fraud, have been charged in the present SCN, since the violation took place in 2002. In this case, during hearing Noticee no. 1 has contended that the allegations made in the SCN does not satisfy the ingredient of the definition of 'fraud' under the PFUTP Regulations, 1995 which was a narrow definition of fraud.
18. In this regard, reference may also be made to the observations made by the Hon'ble Supreme Court in the matter of *Kanaiyalal Baldevbhai Patel*, (2017) 15 SCC 1, wherein, it was observed that:

"27. On a comparative analysis of the definition of "fraud" as existing in the 1995

regulation and the subsequent amendments in the 2003 regulations, it can be seen that the original definition of "fraud" under the FUTP regulation, 1995 adopts the definition of "fraud" from the Indian Contract Act, 1872 whereas the subsequent definition in the 2003 regulation is a variation of the same and does not adopt the strict definition of "fraud" as present under the Indian Contract Act. It includes many situations which may not be a "fraud" under the Contract Act or the 1995 regulation, but nevertheless amounts to a "fraud" under the 2003 regulation."

Further, in the aforesaid judgment Hon'ble Supreme Court observed the comparison of relevant provisions of PFURP Regulations, 1995 and PFUTP Regulations, 2003, as follows:

Quote

FUTP 1995		FUTP 2003 (APPLICABLE REGULATION)		Amendme nt of 2013
Reg 2(c) Definitions	<i>"Fraud" includes any of the following acts committed by a party to ac contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:-</i> <i>(1.) The suggestion, as to a fact, of that which is not true, by one who does not believe it to be true;</i> <i>(2.)The active concealment of a fact by one having knowledge or belief of the fact;</i> <i>(3.) A promise made without any intention of performing it;</i> <i>(4.) Any other act fitted to deceive;</i> <i>(5.) Any such act or omission as the law specially declares to be fraudulent;</i> <i>(6.) And "fraudulent" shall be construed accordingly</i>	Reg 2(c) Definitions	<i>"fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include-</i> <i>(1) A knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;</i> <i>(2) A suggestion as to a fact which is not true by one who does not believe it to be true;</i> <i>(3) An active concealment of a fact by a person having knowledge or belief of the fact;</i> <i>(4) A promise made without any intention of performing it;</i> <i>(5) A representation made in a reckless and careless manner whether it be true or false;</i> <i>(6) Any such act or omission as any other law specifically declares to be fraudulent,</i> <i>(7) Deceptive behavior by a person depriving another or informed consent or full participation,</i> <i>(8) A false statement made without reasonable ground for believing it to be true.</i> <i>(9) The act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they</i>	

			did not rely on the statement itself or anything derived from it other than the market price.	
Reg 3 (Prohibition of certain dealings in securities)	No person shall buy, sell or otherwise deal in securities in a fraudulent manner.	Reg 3 (Prohibition of certain dealings in securities)	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.	
Reg 4 (Prohibition against Market Manipulation)	No person shall- (a) Effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person; (b) Indulge in any act, which is calculated to create a false or misleading appearance of trading on securities market; (c) Indulge in any act which in reflection of prices of securities based on transactions that are not genuine trade transactions; (d) Enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate,	Reg 4 (Prohibition against 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.) Indulging in a act which creates false or misleading appearance of trading in the securities market; (b.) Dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss; ... (e.) Any act or omission amounting to manipulation of the price of a security; ... (q.) An intermediary buying or	Explanation.- For the purposes of this subregulation, for the removal of doubt, it is clarified that the acts or omissions listed in this subregulation are not exhaustive and that an act or omission is prohibited if it falls within the purview of regulation 3 notwithstanding that it is not included in this sub-regulation or is described

	depress, or cause fluctuations in the market price of securities; (e) Pay, offer or agree to pay or offer, directly or indirectly, to any person any money or money's worth for inducing another person to purchase or sell any security with the sole objection of inflating, depressing, or causing fluctuations in the market price of securities.		selling securities in advance of a substantial client order or whereby a futures or option position is taken about an impending transaction in the same or related futures or options contract.	as being committed only by a certain category or persons in this sub- regulation'
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Unquote

19. Thus, as held by the Hon'ble Supreme Court in the Kanaiyalal matter (supra), allegation of 'fraud' or 'unfair trade practices' under the PFUTP Regulations, 1995 had a limited scope as compared to PFUTP Regulations, 2003. I note that, based on the actions of the Noticees, the SCN has alleged that Noticees have also violated Sections 12A(a), (b), (c) of SEBI Act, 1992, and Regulations 3 and 6(a) of PFUTP Regulations, 1995 read with Regulation 13 of PFUTP Regulations, 2003. As can be noted from the relevant extract of provisions of Regulations 3 and 6(a) of PFUTP Regulations, 1995 and Section 12A (a), (b) & (c) of SEBI Act, 1992, as quoted above, all these violations contemplate either 'manipulative or deceptive device', a form of the fraud or 'fraud' itself. Therefore, for attracting the violation of these provisions, there must be fraud committed by the Noticees. I note that 'fraud' was defined under Regulation 2(c) of PFUTP Regulations, 1995. Subsequently, PFUTP Regulations, 1995 were repealed and PFUTP Regulations, 2003 came into force, on July 17, 2003. Since, in the present case, the violations alleged pertain to period prior to July 17, 2003, therefore, the definition of 'fraud' as given under the PFUTP Regulations, 1995 shall apply in the present case to determine the violations alleged.

20. A perusal of said definition of 'fraud' as provided under Regulation 2(c) of PFUTP Regulations, 1995, states as follows:

2(c) "fraud" includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:-

- (1) the suggestion, as to a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent; and "fraudulent" shall be construed accordingly.

21. Definition of 'fraud' as given under Section 17 of the Indian Contract Act, 1872 which is *pari materia* to the definition of 'fraud' as provided under PFUTP Regulations, 1995, provides as under:

"17. "Fraud" defined. — "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract:—

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

Explanation. — Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech."

22. As mentioned above, in the present case, allegation is that PGL had provided security against the loan taken by the subscribers to the GDR issue in order to make the GDR issue a success and thereafter transferred majority of the GDR proceeds back to the subscribers and had failed to disclose this arrangement to its shareholders and stock exchanges. I find that the above mentioned definition of 'fraud' under Regulation 2(c) of PFUTP Regulations, 1995 as mentioned in para 20 include acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party to the contract or his agent, or to induce him to enter into the contract. With respect to ingredients of 'fraud' under PFUTP Regulations, 1995, the facts as contained in the SCN does not show details such as whether the arrangement entered into by the Company to provide security for the loans taken by the subscribers to the GDR was with intention to deceive the other party to the contract, i.e the subscribers. In this case, the subscribers were Noticee nos. 2 to 5 who received allotment of GDRs

and there is no material available on record to show that they were wrongfully induced to subscribe to the GDRs of PGL. Therefore, I find that the ingredients of 'fraud' as given under Regulation 2(c) of PFUTP Regulations, 1995 or Indian Contract Act, 1872, as referred to above, are not satisfied in the present case.

23. I note that in the present case, Regulation 13 of PFUTP Regulations, 2003 which deals with repeal and saving has also been invoked along with provisions of PFUTP Regulations, 1995 pertaining to fraud. The said regulation read as under:

“Repeal and savings

(1) The Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 is hereby repealed.

Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, any violation of regulations 3, 4, 5 and 6 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 shall be investigated and proceeded against in accordance with the procedure laid down in these regulations.

(3) Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, any investigation pending, at the commencement of these regulations shall be continued and disposed of in accordance with the procedure laid down in these regulations.”

A reading of the aforesaid regulation shows that irrespective of repeal, anything done or any action taken under the PFUTP Regulations, 1995 can be pursued under the corresponding regulation in PFUTP Regulations, 2003. In such a case, if the corresponding definition of 'fraud' under PFUTP Regulations, 2003 is adopted it would amount to giving retrospective effect to the definition for those acts which were not earlier covered by the definition of 'fraud' under PFUTP Regulations, 1995. It is a trite law that any legal provisions creating any obligations or liability has to be understood to have prospective effect only. Moreover, as held by the Hon'ble Supreme Court in SEBI Vs. Alliance Finstock Ltd. & Ors. (2015) 16 SCC 731, a statutory authority cannot make regulations having retrospective effect unless specifically empowered in this behalf by the parent statute and SEBI Act, 1992 does not provide for making of regulations with retrospective effect. In view of this, the corresponding provision of

fraud under PFUTP Regulations, 2003 cannot be invoked against the Noticees by resorting to Regulation 13 of PFUTP Regulations, 2003 and the matter has to be adjudged in light of the definition of 'fraud' as given under PFUTP Regulations, 1995. Since the facts and allegations in the present case do not constitute 'fraud' under PFUTP Regulations, 1995, therefore, allegation of violation of provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 and Regulations 3 and 6(a) of PFUTP Regulations, 1995 read with regulation 13 of PFUTP Regulations, 2003 are not made out against the PGL.

24. Coming to the other allegations levelled against PGL in the SCN, the SCN has observed that PGL had issued GDRs in two tranches in the year 2002. The first tranche (GDR ONE) pertained to issuance of 14.50 million GDRs (amounting to USD 20.30 million) which were issued on February 13, 2002 and the second tranche (GDR TWO) pertained to issuance of 62.50 million GDRs (amounting to USD 23.75 million) which were issued on November 25, 2002. The SCN states that the subscribers to GDR ONE were Teigh and Numero and that subscribers to GDR TWO were entities called Gemgrove and Daylon. Summary of other aspects relating to the GDRs issued in two tranches, as mentioned in the SCN, is tabulated below:

GDR ONE

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USD mn.)	Local custodian	Underlying shares per GDR	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
13-Feb-2002	14.50 (at USD 1.40 per GDR)	20.30	ICICI Limited	1	Bankers Trust Company, UK.	Private Placement.	Banco Efisa	Luxembourg Stock Exchange (Lux)

GDR TWO

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USD mn.)	Local custodian	Underlying shares per GDR	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
25-Nov-2002	62.50 (at USD 0.38 each GDR)	23.75	ICICI Limited	1	Bankers Trust Company, UK.	Credo Corporate Finance.	Banco Efisa	Luxembourg Stock Exchange

								e (Lux)
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25. In order to examine the allegation against PGL levelled in the SCN and its reply to the same, the various documents related to the two GDR issues of PGL were perused. From the examination of the Credit Agreements dated February 13, 2002 and November 07, 2002, I find that it was clearly mentioned in the Credit Agreements that the subscribers to the GDR issues of PGL had availed of loan facility from Banco to subscribe to the GDRs of PGL and thus, Banco granted loan for subscription of GDRs of PGL. I also note that Teigh and Numero had availed loan facility to the extent of USD 20.3 million to subscribe to the GDR ONE of PGL and Daylon and Gemgrove had availed loan amount of upto USD 25 million from Banco to subscribe to GDR TWO of PGL. I also find that the signed drawdown notice dated February 13, 2002 from the authorized signatory of Teigh and Numero is available on record and thus it is clear that the credit facility was availed, negating the submission of PGL that there is no proof that the loans were actually availed. Further, I note that though Credit Agreements were signed between Banco and the subscribers to GDR ONE and GDR TWO, however the execution of such agreement is being questioned by a third party, i.e. PGL, which shows the complicity of PGL in the scheme. Finally, I also note that the Noticee nos. 2 to 5 had availed the loan specifically in order to pay the subscription amount for the GDRs to PGL, as mentioned in the Credit Agreements. From a perusal of the account statement of the subscription account of PGL I find that the subscription amount had been deposited therein by Noticee nos. 2 to 5 and these Noticees had been allotted GDRS in the two issues. Therefore, it can be reasonably inferred from circumstantial evidence that Noticee nos. 2 to 5 availed the loan facility in order to subscribe to the GDRs of PGL.
26. I also find that the Account Charge Agreements were dated February 13, 2002 and November 07, 2002, i.e. the same dates on which the Credit Agreements were entered into between the subscribers and Banco. I also find that the Account Charge Agreements had reference to the Credit Agreements entered into between subscribers

(Teigh/Numero for GDR ONE and Daylon/Gemgrove for GDR TWO) and Banco by virtue of which Banco provided credit to them specifically for the purpose of subscribing to the GDR of PGL. I also note that the Account Charge Agreement dated February 13, 2002, which was signed on the same date on which GDR ONE was issued, specifically mentioned that PGL will, in its designated account no. 6014195.10.1 with Banco deposit an amount of USD 20.3 million as security for all the obligations of borrowers under the Credit Agreement which corresponded to the Credit Agreement which provided credit facility of USD 20.3 million to Teigh & Numero for subscription of GDRs of PGL. I also note that the Account Charge Agreement dated November 07, 2002, specifically mentioned that PGL will in its designated account no. 6014195 with Banco will deposit an amount of USD 25 million as security for all the obligations of borrowers under the Credit Agreement which corresponded to the Credit Agreement which provided credit facility of USD 25 million to Gemgrove and Daylon for subscription of GDRs of PGL. I also note that the account numbers mentioned in the Account Charge Agreements are different than those in which PGL received its GDR proceeds. Be that as it may, I find that PGL had provided security for the loans taken by the subscribers to its GDR ONE and GDR TWO issues for the specific purpose of subscribing to these issues by pledging the amount equivalent to the proceeds of these two GDR issues. This arrangement was not disclosed by PGL to the stock exchanges and its shareholders, which is discussed in detail in later paras, whereas by only disclosing the news of making of GDR issues without disclosing about pledging the amount equivalent to the proceeds of these two GDR issues, for the loan taken by the subscribers to these GDR issues PGL had created an impression to the investing public that it had made a successful GDR issue.

27. Noticee no.1 has contended that the Account Charge Agreements, as detailed above, were entered into without any authorization. I note that, the SCN observes that prior to the execution of the Account Charge agreement with respect to GDR ONE, the Board of Directors of PGL had passed a resolution in its Board meeting dated November 29, 2001. I note that the Board Resolution of PGL dated November 29, 2001 *inter alia*

resolved that a subscription account be opened with Banco and Banco be instructed “to act on any instructions so given relating to the account whether the same be overdrawn or not or relating to the transactions of the Company by any of the following signatories individually without any limit’ and Mr. S. Ramaswamy was named as one such signatory. Further, on a perusal of the Board Resolution of PGL dated February 11, 2002 which records that the Subscription Agreements entered into between the Company and the subscribers were placed before the Board of Directors and the Company recorded the allotment of GDRs to the subscribers, also states as follows:

“Resolved further that Mr. V. Chandrasekaran, Chairman and CEO or Mr. S. Chandrasekaran, Chief Financial Officer or Mr. S. Ramaswamy, Company Secretary and GM- Corporate Finance of the Company be and are hereby severally authorized to execute and sign the relevant agreements as may be required to complete the allotment.”

I note that, the Account Charge Agreement pertaining to GDR ONE was entered into thereafter on February 13, 2002. I find that, the above-mentioned resolution is broadly worded and it can be said that such a resolution provided Mr. S. Ramaswamy the general authority to sign any agreement related to the GDR issue. The Company, apart from a general denial that the Agreements were entered into without any authorization, has not produced any material to doubt the veracity of the Resolution dated November 29, 2001.

28. With respect to GDR TWO, I note that, Mr. Ramesh Pillai has submitted that he signed the Account Charge Agreement dated November 07, 2002 on behalf of PGL based on a Power of Attorney (hereinafter referred to as “**PoA**”) dated September 16, 2002. Moreover, for GDR TWO, certain (unsigned) extract of the minutes of the Board meeting of PGL held on November 01, 2002 has been placed on record by Mr. Ramesh Pillai which states as follows:

TRUE EXTRACT OF MINUTES OF BOARD MEETING HELD ON NOVEMBER 01, 2002

Business of the meeting

....

It was reported that the Depository is to issue 64,800.000 global depository shares representing shares (the GDSs) and that the application had been made on behalf of

the Company for the listing of the GDSs on the Luxembourg Stock exchange.

It was further reported that the Company is proposing to allot GDRs to Banco Efisa S.A. (the Bank) , Daylon Limited and Gemgrove Corp. In order to finance such subscription, Daylon and Gemgrove are proposing to enter into a loan with the Bank to enable the funds to be used to subscribe for the GDRs of Pentamedia. The Bank requires certain security for the facilities including a charge granted by the Company over a cash deposit with the bank.

2 Charge

A copy of the draft charge (the Charge) was produced to the Directors for their consideration, It was noted that the deposited monies would be released to the Company on repayment or prepayment of the facilities...

3 Resolutions

IT WAS RESOLVED that

The Charge be approved as being in the best interests of the Company in the form produced to the Meeting, subject to any amendments as may be approved by any one director of the Company, such approval to be deemed by the execution of the Charge on behalf of the Company.

In this regard, I note that the findings of investigation notes that PGL has submitted that the Board of PGL had not passed any resolution regarding creating charge over the Banco account (subscription accounts). Further, the findings of investigation have also noted that the Company vide email dated March 27, 2018 intimated to SEBI that no resolution was passed by the Board of PGL authorizing Mr. V Chandrasekaran to provide PoA to Mr. Ramesh Pillai and that, as per the copy of minutes of Board meeting provided by PGL, no Board meeting of the Company was held on November 01, 2002. In view of the same, I cannot accept the purported extracts of the Board Meeting dated November 01, 2002 as produced by Noticee no. 11. However, I find that the allotment of GDRs in GDR TWO was approved in the Board meeting of PGL on November 25, 2002 and the minutes of the said board meeting also contains a resolution stating that Dr. V. Chandrasekaran, Chairman and CEO, Mr. S. Chandrasekaran, Chief Financial Officer, Mrs. Viji Kannan, GM- Coordination or Mr. Ramesh Pillai- Business Manager, UK, Operations of the Company were authorized to execute and sign the relevant agreements as may be required to complete the allotment. Since the Account Charge Agreement was signed by Mr. Ramesh Pillai on November 07, 2002, i.e. before the passing of the Resolution dated November 25, 2002, therefore, there appears to be a lack of authority on behalf of Mr. Ramesh Pilli on the date when he entered into the Account Charge Agreement, he was given such authority only in November 25, 2002. It also cannot be determined based on the material available on record whether Mr.

Ramesh Pillai, being a middle level employee of the Company, was aware that Mr. V. Chandrasekaran, being the Chairman and CEO did not have authority to grant him PoA. Be that as it may, the Account Charge Agreement clearly laid down that all communications related to the agreement would be sent to the registered office of the Company. Based on this fact, as well as based on the fact that the Board of Directors had granted Mr. Ramesh Pillai authority to enter into any agreements related to the GDR issue, albeit at a later date, I am inclined to believe that PGL was aware of the Account Charge Agreement dated November 07, 2002.

29. I also find it surprising that even after PGL became aware of the Account Charge Agreements (when SEBI initiated its investigation and sent communication related to the same to PGL) PGL had never at that time alleged that Noticee no. 6 and 11 have fraudulently entered into the Account Charge Agreement on its behalf or taken any steps against Noticee no. 6 and 11 for such purported fraud. Therefore, I am of the view that the Company was aware of the Account Charge Agreements entered into by Noticee no. 6 and 11 on its behalf. I find that there is nothing on record to show that Noticee no.1 has approached any appropriate forum to declare the Account Charge Agreements as fraudulent/ null. If there is any document which is claimed to be wrongly executed the law applicable provides appropriate remedy for rectification of such document in order to declare the same *non est* before the appropriate forum at the earliest. If PGL 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 lack of authority of the signatories to the Account Charge Agreements pleaded by PGL is an afterthought and PGL was aware of the existence of these agreements since their inception.
30. I note that the Account Charge Agreements clearly states that the money deposited in the designated accounts by PGL would act as security for the loans taken by the subscribers. From the same, it is observed that the Company was securing the loans

taken by the subscribers in order to subscribe to the GDRs of PGL. Moreover, as detailed in the Account Charge Agreements, the security was in the form of cash deposit amounting to approximately equivalent amount as the GDR proceeds. From the cross reference between the Credit Agreements and the Account Charge Agreements and their dates I find that the Credit Agreements were integral part of Account Charge Agreements and vice versa and both were executed concurrently. I also find that the PGL was aware of the Account Charge Agreements and Credit Agreements. I also note that in case of GDR ONE both the Credit Agreement and Account Charge Agreements were executed on the same day as the date of issue while for GDR TWO they were executed on the same date which was before the date of issue. From the timing, it is evident that PGL was aware of the Credit Agreements entered into between the subscribers and Banco for subscription of GDRs of PGL. From the above discussion, I find that the scheme of issuance of GDRs of PGL in both tranches involved the subscribers subscribing to the GDR issue by obtaining finance from Banco wherein security was provided by PGL through deposits in designated accounts for an amount approximately equivalent to GDR proceeds. I note that the purpose of GDR issue is to raise further capital from overseas market for the company. If such subscription is made with the support of loans taken by subscribers which are in turn secured by pledging equivalent amounts by the Company then it can be inferred that while on one hand, the Company is proposing to infuse capital by issuing GDRs, on the other hand the Company is creating liability of an amount similar to GDR proceeds, thereby encumbering the proceeds to be received. Therefore, I find that this was an artificial arrangement for the issuance and subscription of the GDR issue of PGL and was not for the benefit of the shareholders of PGL and PGL did not disclose this artificial arrangement to its shareholders or the stock exchanges.

31. I observe from the minutes of the Board meetings as provided by PGL to SEBI, that the Board of Directors of PGL, in its meeting held on February 11, 2002 approved allotment of GDRs pertaining to GDR ONE and in its meeting held on November 25, 2002, approved allotment of GDRs pertaining to GDR TWO. I note that the Company

reported the following to the stock exchanges on February 12, 2002:

"..The Board of Pentamedia Graphics Ltd has allotted 14,500,000 (14.50 million) GDRs (each GDR representing one underlying equity share of Rs 10 each) to Investors for cash at the rate of US\$1.40 per GDR at the Board Meeting held on February 11, 2002.... "

I further note that on November 26, 2002 PGL informed the following to the stock exchanges:

"Pentamedia Graphics Ltd has informed BSE that the Board of Directors at its meeting held on November 25, 2002 have approved the allotment of 64,800,000 (64.80 million) GDRs underlying equity shares having par value of Rs 10/- per share to the Company's depository "Deutsche Bank Trust Company Americas" (formerly Bankers Trust Company), for the purpose of said GDRs to be issued and allotted to investors."

32. From the examination of corporate announcements made by PGL to stock exchanges from the time of board of directors' approval for raising money through GDRs till issuance of GDRs and the Annual Reports of PGL pertaining to the FY 2001-2002 and 2002-2003, I note that PGL did not inform stock exchanges or its shareholders about entering into the Account Charge Agreements dated February 13, 2002 and November 07, 2002 or the fact that it had provided security for loans taken by the subscribers by pledging an amount approximately equivalent to the GDR proceeds. I find that the arrangement of Credit Agreements and Account Charge Agreements, which was made in order to make GDR issues of the Company successful, were not disclosed to the stock exchange or the shareholders in a true and complete manner. From the Annual Reports pertaining to 2001-2002 and 2002-2003 I note that PGL had suppressed the arrangement between PGL and Banco, to provide security for the loan taken by Noticee nos. 2 to 5 in order to subscribe to the GDRs of PGL. I note that the shareholders and prospective shareholders of the Company had been informed about the GDR issue, which implies capital inflow but the information relating to encumbrance of a similar amount of capital in order to secure the GDR issue was concealed from them.
33. I note that the SCN has not mentioned the provision under which the arrangement for

GDR issue should have been disclosed by PGL. In this regard, Clause 36 of the erstwhile Equity Listing Agreement provided that:

“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....”

34. I note that the events enumerated under Clause 36 is an indicative and not exhaustive one. I find that the information related to the Account Charge Agreements entered into between the Company and Banco were critical information in order to enable the shareholders and the public to appraise the position of the Company and thus, in my view would be under the ambit of Clause 36. I, thus, find that the corporate announcements made by PGL on February 12, 2002 and November 26, 2002 regarding allotment of GDR issues without disclosing the actual scheme of GDR issue as well as the failure to disclose the same in the Annual Reports of PGL had the potential to mislead the investors and/ or created a false impression in the minds of the investors that the GDR issue was leading to capital inflow in the Company whereas the PGL had created liability amounting to approximately equivalent amount to GDR proceeds. I note that Regulation 5 (1) of the PFUTP Regulations, 1995 prohibited any person from making any statement, or disseminate any information which is misleading in any material particular and is likely to induce the sale or purchase of securities by any other person or is likely to have the effect of increasing or depressing the market price of securities. In view of the same, I find that PGL has violated Regulation 5(1) of the PFUTP Regulations, 1995.
35. Regarding the GDR proceeds, I note that, GDR proceeds for GDR ONE & TWO were deposited in PGL's Banco accounts having number 6014195.10.002 and 6014195.10.004, respectively. Details of receipt of GDR proceeds of GDR ONE and GDR TWO in PGL's Banco accounts are given below:

Issue	Date of credit of funds	Credit amount (US\$)
I	14-02-2002	13,300,000
I	14-02-2002	7,000,000
II	26-11-2002	11,437,500
II	26-11-2002	11,437,500
II	26-11-2002	875,000

It is observed from the above that PGL received USD 13.30 million and 7 million for GDR ONE from Teigh and Numero. Also, for GDR TWO, it received subscription amount of USD 11,437,500 each from Daylon and Gemgrove. However, the details of subscriber who transferred USD 875,000 to Banco account of PGL as mentioned above, could not be ascertained.

36. The SCN notes from PGL's Banco account statement that for GDR ONE, after receipt of GDR proceeds, the following amount was transferred to various beneficiaries:

S. No.	Instruction Date as per Banco	Transfer date as per Banco	Amount (US\$)	Beneficiary
1	NA	12-Mar-02	215,000	Teigh
2	08-Mar-02	12-Mar-02	150,000	PGL
3	08-Mar-02	12-Mar-02	370,000	PGL
4	08-Mar-02	12-Mar-02	260,000	Animasia International Pte Ltd (subsidiary)
5	19-Mar-02	22-Mar-02	120,000	PGL
6	19-Mar-02	22-Mar-02	75,000	PGL
7	20-Mar-02	21-Mar-02	310,000	Numero
8	20-Mar-02	22-Mar-02	500,000	PGL
9	22-Mar-02	22-Mar-02	10,000	Teigh
10	22-Mar-02	26-Mar-02	990,000	Animasia (subsidiary)
11	26-Mar-02	28-Mar-02	500,000	PGL
12	27-Mar-02	01-Apr-02	150,000	Numero
13	28-Mar-02	29-Mar-02	850,000	PGL
14	28-Mar-02	29-Mar-02	420,000	PGL
15	01-Apr-02	08-Apr-02	500,000	Animasia (subsidiary)
16	05-Apr-02	08-Apr-02	10,800,000	Teigh
17	05-Apr-02	08-Apr-02	3,500,000	Numero

18	08-Apr-02	09-Apr-02	579,000	Animasia (subsidiary)
19	NA	09-Apr-02	-350,000	Received from Teigh
20	08-Apr-02	11-Apr-02	350,000	Animasia (subsidiary)
21	NA	24-Apr-02	-680,000	Received from Teigh
22	24-Apr-02	26-Apr-02	80,000	PGL
23	24-Apr-02	26-Apr-02	500,000	PGL
24	24-Apr-02	26-Apr-02	100,000	Dallah Albaraka (Ireland)
25	02-May-02	08-May-02	350,000	PGL
26	NA	06-May-02	-340,000	Received from Teigh
27	NA	08-May-02	-300,000	Received from Teigh
28	08-May-02	13-May-02	324,000	Num TV (subsidiary)
Total			20,333,000	

I note from the above that of the total GDR proceeds of USD 20.33 million (including interest) in GDR ONE , PGL transferred USD 3.915 million to its bank account in India, USD 9.355 million to Teigh (one of the subscribers to GDR ONE) on net basis and USD 3.96 million to Numero (second subscriber to GDR ONE).

37. The SCN also notes from PGL's Banco account statement that subsequent to receipt of fund pursuant to GDR TWO, following amounts were transferred to various beneficiaries:

Date	From	To	Amount	Comments
26/11/2002	From A/C No. 6029618.10.2	PGL - A/C No. 6014195.10.0 04	11,437,500	Money received in PGL Banco A/C
26/11/2002	From A/C No. 6030394.10.1	PGL - A/C No. 6014195.10.0 04	11,437,500	
26/11/2002	NA*	PGL - A/C No. 6014195.10.0 04	875,000	
29/11/2002	PGL - A/C No. 6014195.10.004	PGL - A/C No. 6014195.10.0 03	22,875,000	Money transferred to another PGL Banco A/C
06/02/2003	PGL - A/C No. 6014195.10.003	From A/C No. 6029618.10.2	11,458,748	Money transferred to entities from whom money had been originally received
06/02/2003	PGL - A/C No. 6014195.10.003	From A/C No. 6030394.10.1	11,458,748	

*the details of account/entry could not be ascertained on the basis of available information

38. I also note that the findings of investigation also make the following observation:

“In view of the above, on the basis information received from CMVM, it is inferred that the company spent around US\$ 268,000 on GDR issue expenses, received US\$570,000 in the bank account maintained in India, transferred US\$1.988 mn to its subsidiary, transferred US\$ 21.336 million (on net basis) to the two subscribers of the GDR and transferred US\$ 441,452 to unknown entities (Dallah Albaraka & an account with Amas Bank). (The total utilization mentioned above is US\$24.60 million against GDR proceeds of US\$23.75 million. This is presumably on account of US\$ 1,000,000 received from another Banco account of PGL on January 23, 2003).”

39. I note that the Company has not produced any documents to show that the said transfer of GDR proceeds back to the subscribers in both GDR ONE and GDR TWO were in accordance with the ‘Use of Proceeds’ as laid down in PGL’s Listing Particular Documents for both GDR issues. I note that PGL has contended that the use of the GDR proceeds is entirely in line with the ‘Use of Proceeds’ clause as one of the stated purposes for which the funds were to be used was ‘entering into strategic partnerships with parties who could provide us access to complementary technologies, products etc.’ and the proceeds from the GDR issues were used for this specific purpose with the entities in question assisting its business. However, I find that no supporting documents or information has been submitted by the Company regarding the technology or products which Noticee nos. 2 to 5 were supplying to it and the cost thereof. In view of the same, I am unable to accept the submission of PGL to that extent. Considering the fact that all the GDRs under GDR ONE were issued to Teigh and Numero on private placement basis subsequent to the approval of the Board of PGL and the Company had transferred significant GDR proceeds (USD 13.315) back to the subscribers which was not in line with the intended usage of GDR proceeds as mentioned in the Listing Particular document approved by the Board of PGL, I find that GDRs and the underlying equity shares to the tune of USD13.315 million in turn were issued at free of cost to subscribers at the cost of other shareholders / investors of PGL

in GDR ONE issue. I also find that PGL raised USD 23.75 million through issue of GDR TWO wherein Gemgrove and Daylon provided subscription amount of USD 22.875 million i.e. subscribed to more than 95% of GDRs and the Company transferred USD 21.336 million (i.e. nearly 90% of GDR proceeds) to the two subscribers which is not in line with the usage of GDR proceeds as mentioned in the Listing Particular document. Therefore, I find that GDRs and the underlying equity shares to the tune of USD 21.336 million (nearly 90% of total GDRs issued) in GDR TWO were issued at free of cost to Gemgrove and Daylon at the cost of other shareholders / investors.

40. I find that the transfer of a major share of the GDR proceeds by the Company back to the subscribers, as detailed above, were also critical information which should have been disclosed by the Company under Clause 36 of the Listing Agreement which the Company failed to do. I also note that the Company has also not been able to show that the creation of such a liability and transfer of GDR proceeds were disclosed in the financials of the Company for the relevant period. I further note that when a company issues GDRs it is understood that there will be capital infusion to the company. In this case, the GDR proceeds amounting to USD 34.651 million were transferred back to the GDR subscribers. Therefore, there was hardly any capital infusion in the Company. PGL concealed this information from the stock exchange and its shareholders. This information, in my view was a price sensitive information which could have an impact on the price of the shares of the Company. Therefore, I find that by concealing the fact that GDR proceeds were majorly transferred back to the subscribers, PGL had mislead the investor thus violating Regulation 5(1) of the PFUTP Regulations, 1995.
41. The allegation against Noticee nos. 7 to 10 is that because they were directors of PGL during the relevant time, and were part of the Board resolution dated November 29, 2001 which *inter alia* resolved that a subscription account be opened with Banco for the GDR issue and were also part of the Board resolution dated on February 11, 2002 which recorded the Subscription Agreements entered into between the Company and the subscribers and the approved allotment of GDRs pertaining to GDR ONE and

Board Resolution dated November 25, 2002 which approved allotment of GDRs pertaining to GDR TWO, they were part of the fraud, having violated Regulation 3 and 6 (a) of PFUTP Regulations, 1995 and Section 12A (a), (b) & (c) of SEBI Act, 1992. I note that the Board resolution dated November 29, 2001 *inter alia* resolved that a subscription account be opened with Banco for the GDR issue and unlike other GDR issues, there was no authorization in this resolution for pledging the proceeds lying in that account as security for loan taken by the subscribers of the GDR issue of PGL. Further, the subscription account was in fact opened with Banco and the GDR proceeds of both the GDR issues were credited to these subscription accounts. Therefore, on the basis of this resolution, no wrong can be attributed to directors of PGL who attended the Board meeting and signed the resolution. As noted above, the allegation in the SCN is that PGL pledged the amount equivalent to the GDR proceeds lying in two other bank accounts with Banco for securing the loan taken by the subscriber to its GDR ONE and GDR TWO issues. A perusal of information available on record shows that subscription accounts (Account no. 6014195.10.002 and 6014195.10.004, respectively, for GDR ONE and GDR TWO) and accounts through which the security for loans were created were different accounts (Account no. 6014195.10. and 16014195, respectively, for GDR ONE and GDR TWO). However, the SCN does not mention any board resolutions by which those other accounts were opened or who was authorized to open such accounts or whether Noticee nos. 6 and 11 were authorized to enter into Account Charge Agreements related to those accounts. Further, regarding the Board resolutions dated February 11, 2002 and November 25, 2002, it is noted that these resolutions only authorized issue of GDR ONE and GDR TWO so nothing sinister can be attributed to the Board of directors based on the said resolutions. I note that the SCN further alleges that subscription money which was received by PGL in its subscription account were subsequently transferred back to the subscribers. However, as discussed above, this act did not constitute 'fraud' as defined under PFUTP Regulations, 1995 as there was no intention to deceive the subscribers of GDR by the Company. In such a scenario the Board resolution authorizing the issue of GDRs cannot be termed 'fraudulent' and

consequently the directors who attended the Board meeting in which such resolution was passed cannot be held to have participated in 'fraud' or having violated Regulation 3 and 6 (a) of PFUTP Regulations, 1995 and Section 12A (a), (b) & (c) of SEBI Act, 1992.

42. I note that the SCN alleges that Noticee nos. 6 and 11 signed the Account Charge Agreements dated February 13, 2002 and November 07, 2002 respectively, by which the Company pledged an amount equivalent to the GDR subscription amount as security for the loan taken by the subscribers to the GDRs of PGL and that their act of signing the Account Charge Agreements were part of the larger fraudulent scheme alleged in the SCN. As discussed above, allegation of violation of PFUTP Regulations, 1995 and Section 12A (a), (b) & (c) of SEBI Act, 1992 involving 'fraud' is not sustained in the present matter. In such a scenario the act of signing the Account Charge Agreements cannot be faulted with and consequently no wrong can be attributed to Noticee nos. 6 and 11.
43. As discussed above, PGL has been found to have violated Regulation 5(1) of PFUTP Regulations, 1995. I note that no allegation of violation of Regulation 5(1) of PFUTP Regulations, 1995 was levelled against any of the other Noticees in the SCN. Further, regarding applicability of the Section 27 of the SEBI Act, 1992, for violation of Regulation 5(1) of PFUTP Regulations, 1995, I note that during the relevant period (i.e. 2002-03), Section 27 provided for the vicarious liability of certain persons who were in charge of and was responsible to the company where an offence is committed by a company. Section 27 at that time did not provide for the vicarious liability in respect of the civil liability of the company arising out of the violations committed by such company. However, after amendments made to Section 27 with effect from March 08, 2019, by the Finance Act, 2018, vicarious liability for civil liability of the company has been introduced by replacing the word 'offence' with the word 'contravention' in Section 27 of the SEBI Act, 1992. Therefore, Section 27 of the SEBI Act, 1992, at the relevant time, did not create any vicarious liability of these Noticees for the violations committed

by PGL, with reference to Regulation 5(1) of PFUTP Regulations, 1995 for which proceedings under Section 11, 11(4) and 11B has been proposed, which are civil in nature. In view of the above, violations as alleged in the SCN are not made out against Noticee nos. 7 to 10.

44. In view of the violation of Regulation 5(1) of PFUTP Regulations, 1995 committed by PGL, I find that directions under Sections 11(1), 11(4), and 11B of the SEBI Act, 1992 needs to be issued against Noticee no. 1. I also find that although no violation of Regulation 3 and 6 (a) of PFUTP Regulations, 1995 has been established against Noticee no.1, however the facts of the case show that GDR proceeds amounting to USD 34.651 million have been transferred back by the Company to the subscribers of GDR ONE and GDR TWO. 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 utilization of GDR proceeds by PGL or may look into the justification of the transfer of GDR proceeds by the Company to the subscriber of the GDRs and may also see whether this amount needs to be called back by the Company and may also advise the Company to undertake the measures to bring back the outstanding amount of GDR proceeds of GDR ONE and GDR TWO if any, as may be arrived at by the Audit Committee of PGL. I also note that, it has been brought on record that Noticee nos. 2 to 5 have been dissolved/ struck off and do not exist anymore. Keeping the same in mind, for all practical purposes, if any directions to return the money to PGL are issued against them the same would be infructuous.

Directions:

45. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992, hereby direct that:
- a. Pentamedia Graphics 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 1 year from the date of this order.

- b. Pentamedia Graphics Ltd. (Noticee no. 1) is hereby directed, to undertake the measures to bring back or recover the outstanding amount of proceeds GDR ONE and GDR TWO if so determined by the Audit Committee of PGL within a period of one year from such identification by the Audit Committee of PGL. The present directors of Noticee No. 1, shall take appropriate steps for the compliance of this direction by Noticee No. 1 and Audit Committee of Noticee no.1 shall report the progress of the same to the Board of Directors of Noticee no.1.
- c. Proceedings against Noticee nos. 2 to 11 are disposed of for reasons stated in para 41 to 43 of this order.

- 46. During the period of restraint, the existing holding of securities including units of mutual funds of the Noticees shall also remain frozen. However, the obligations of the Noticee, 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 Noticee, 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).
- 47. This Order comes into force with immediate effect.

48. 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.
49. 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: March 24, 2022

ANANTA BARUA

**WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**