National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/53850	Date: September 27, 2022
Circular Ref. No: 131/2022	

To All NSE Members,

Sub: **SEBI Order in the Matter of GDR issue of Vikash Metal & Power Limited**

This is with reference to NSE Circular No. NSE/INVG/49769 dated September 29, 2021, in respect of SEBI Order No. WTM/GM/IVD/ID4/13571/2021-22 dated September 29, 2021 and NSE Circular No. NSE/INVG/51254 dated February 04, 2022, in respect of SAT Order dated February 01, 2022.

SEBI now vide its Order No. WTM/ASB/IVD/ID4/19737/2022-23 dated September 27, 2022, has hereby restrained the below mentioned entities from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 4 years.

Further, the period of debarment already undergone by below entities by virtue of the SEBI Order dated September 29, 2021 shall be deducted from the period of debarment directed at para 7.1 of SEBI Order.

Sr. no.	Name of the entity	PAN
1	Akkash Patni	AIMPP5138N
2	Vimal Kumar Patni	AEVPP4117L
3	Vikash Patni	AKXPP4105E

The order comes into force with immediate effect.

The detailed order is available on SEBI website (http://www.sebi.gov.in).

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page under "Home-Regulation-Members-Action against Members-Regulatory Actions".

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to contact the following officials:

Mr. Apurv Garg (Extension: 24546), Mr. Anand Jangir (Extension: 22385)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of
National Stock Exchange of India Limited

Anand Jangir
Manager

National Stock Exchange of India

ANNEXURE: SEBI Order in the Matter of GDR issue of Vikash Metal & Power Limited

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11, 11 (4) and 11B of the Securities and Exchange Board of India Act, 1992.
In the Matter of GDR issue of Vikash Metal & Power Limited.
In respect of –

Noticee No.	**Noticee**	**PAN**
2.	Akkash Patni	AIMPP5138N
3.	Vimal Kumar Patni	AEVPP4117L
4.	Vikash Patni	AKXPP4105E

(In the present proceeding the number of Noticees involved are three. For the sake of convenience, the number assigned to each of the Noticees in the Show-cause Notice dated February 01, 2018 has been retained in the present Order. The aforesaid entities are hereinafter individually referred to by their respective names/Noticee nos. and collectively as "the present Noticees", unless the context signifies otherwise)

1. Background

1.1. The instant matter is before me pursuant to the Order dated February 01, 2022 of the Hon'ble Securities Appellate Tribunal ("**SAT**") passed in Appeal No. 746 of 2021 filed by the present Noticees.

1.2. The Hon'ble SAT by way of its above-mentioned Order quashed the SEBI Order bearing no. WTM/GM/IVD/ID4/13571/2021-22 dated September 29, 2021 *qua* the present

Noticees, and remitted the matter to WTM, SEBI. The Hon'ble SAT further directed the present Noticees to appear before the WTM on February 18, 2022, on which date the Show-cause Notice would be served on the Noticees, and thereafter the WTM was to proceed in the matter in accordance with law.

1.3. Before continuing further, it would be of relevance to narrate briefly the events in the matter prior to the Hon'ble SAT's Order of February 01, 2022 :

Table- 1

Sl. No	***Event***	***Date***
a.	Original Show-cause Notice in the present matter issued to thirteen (13) Noticees including Akkash Patni, Vimal Kumar Patni and Vikash Patni ("**SCN**").	February 01, 2018
b.	Supplementary Show-cause Notice was issued to Noticee No. 1 and a common Supplementary Show-cause Notice was issued to Noticee Nos. 5, 6, 9 and 10	June 18, 2018
c.	Inspection of documents was provided to the Noticee who had requested for the same.	April 17, 2018
d.	Personal hearings were granted to the Noticees who had requested to avail an opportunity of personal hearing.	October 20, 2020 and July 01, 2020.
e.	Order in the matter of GDR issue of Vikash Metal and Power Limited ("**Company/ VMPL**") passed by SEBI in respect of all the thirteen (13) Noticees.	September 29, 2021

2. The Show-cause Notice

2.1. Pursuant to the directions contained in the Hon'ble SAT's Order of February 01, 2022 , the present Noticees by way of letters dated February 10, 2022 were informed to be present on February 18, 2022 at the SEBI Head Office in Mumbai to collect the SCN. Further to the said intimation, Akkash Patni received the SCN on behalf of all three of the present Noticees, namely, 1) Akkash Patni, 2) Vimal Kumar Patni and 3) Vikash Patni. So, in compliance of the Hon'ble SAT's Order of February 01, 2022, the SCN was served on the present Noticees on February 18, 2022.

2.2. I note that the SCN arraigned the following entities, namely, 1. Vikash Metal & Power Ltd.; 2. Akkash Patni; 3.Vimal Kumar Patni; 4.Vikash Patni; 5.Arun Panchariya; 6.Vintage FZE ; 7.Mukesh Chauradiya; 8. Pan Asia Advisors Ltd.; 9. India Focus Cardinal Fund; 10. Highblue Sky Emerging Market Fund; 11. Cardinal Capital Partners; 12. European American Investment Bank AG; and 13. Golden Cliff. As may be seen, the entities named in the SCN also includes the present Noticees.

2.3. In this respect, the principal parts of the SCN are summarised below:-

The Scheme

A. VMPL came out with the issuance of 12,02,400 GDRs amounting to USD 11.99 million on April 12, 2011. A brief of the said GDR issue is tabulated hereunder:

Table-2

GDR issue date	No. of GDRs Issued (mn.)	Capital raised (USD mn.)	Price per GDR (USD)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
12-Apr-2011	1.20	11.99	(at USD 9.98 each GDR)	DBS Bank	3,60,72,000	The Bank of New York Mellon, USA	Pan Asia Advisors Ltd.	EURAM Bank, Austria	Luxembourg Stock Exchange

B. Vintage FZE ("**Vintage**"), also known as Alta Vista International FZE, was the only subscriber, and subscribed to the total GDR issue of VMPL.

C. The Lead Manager of the GDR issue (Pan Asia Advisors Limited), the Company and the European American Investment Bank AG ("**EURAM Bank**") entered into an Escrow Agreement dated March 23, 2011 to place the consideration of the GDR Issue in Escrow before all the conditions precedent could be satisfied, with EURAM Bank acting as the Escrow Agent. The Lead Manager deposited an amount of USD 11,999,952 in the Escrow Account and upon confirmation that the GDRs had been received by the subscriber i.e., Vintage, the said amount in the Escrow Account was transferred by the Escrow Agent to the designated bank account opened by VMPL with EURAM Bank bearing number 580037. Accordingly, a total of USD 11,999,952 was credited to this account. The amount credited to the GDR proceeds account is tabulated hereunder:

Table – 3

Date of credit of funds	**Credit amount (USD)**
11/04/2011	11,999,952
	11,999,952

D. To get funding for subscribing to the GDR issue of VMPL, Vintage entered into a loan agreement dated March 22, 2011 with EURAM Bank for a loan facility of USD 11,999,952 ("**Loan Agreement**").

E. Concurrent to the above-mentioned Loan Agreement, a pledge agreement dated March 22, 2011 was executed between VMPL and EURAM Bank whereby VMPL's designated bank account bearing no. 580037, for receipt of GDR proceeds maintained with EURAM Bank would be held in pledge by EURAM Bank to secure the obligations of Vintage under the Loan Agreement ("**Pledge Agreement**").

F. The aforesaid Pledge Agreement was an integral part of the Loan Agreement entered between Vintage and EURAM Bank and vice versa, and both were executed concurrently. The Pledge Agreement had the reference to the Loan Agreement entered between Vintage and EURAM Bank by virtue of which EURAM Bank provided the loan facility to Vintage for the purpose of subscribing to the GDRs of VMPL.

G. As already stated, the GDR proceeds to the tune of USD 11.99 million were deposited in the Company's designated account bearing no. 580037 maintained with EURAM Bank. Vintage repaid the loan amount to the extent of USD 550,485 in two installments on July 12, 2011 (USD 515,485) and November 09, 2011 (USD 35,000), and thereafter defaulted on the loan repayment.

H. Out of the total USD 11.99 million taken as loan by Vintage, it repaid only USD 550,485 of the total amount. Subsequently, it defaulted on the said loan, and the funds in the Company's designated account bearing no. 580037 were appropriated by EURAM Bank by invoking the Pledge Agreement for satisfaction of the amount owed by Vintage.

I. Out of the total USD 11.99 million received in the Company's designated account bearing no. 580037, the following amounts were transferred to various beneficiaries:

Table- 4

S N	Date	Amount (USD)	Beneficiary	Comments
1	28/07/2011	500,000	Vikash Metal and Power Ltd.	India Account
2	04/08/2011	25,000	Pan Asia Advisors Limited	Payment to Pan Asia Advisors Limited for Lead Manager fee
3	09/11/2011	83,000	Vikash Metal and Power Ltd.	India Account
	Total	608,000		

J. Even though consideration had not effectively passed from Vintage to VMPL, the GDRs issued were, however, allowed to be converted into equity shares, and these shares were sold in the Indian capital market.

The Fund Flow

K. Conversion of GDRs started from May 30, 2011. As on July 05, 2017, 8,92,824 GDRs (74.25% of total 12,02,400 GDRs issued) had been converted. 3,09,576 GDRs remained outstanding for conversion, as on July 05, 2017.

L. Post conversion of GDRs, FII-sub accounts namely 1) India Focus Cardinal Fund (Noticee No. 9); 2) Highblue Sky Emerging Market Fund (Noticee No. 10); 3) Stream Value Fund; 4) Davos International Fund; 5) Sparrow Asia Diversified Opportunities Fund; and 6) Leman Diversified Fund received a total of 2,67,84,720 equity shares on conversion of 8,92,824 GDRs.

M. India Focus Cardinal Fund (Noticee No.9), upon conversion of 2,05,700 GDRs, received 61,71,000 equity shares of VMPL. These were then sold by India Focus Cardinal Fund in the Indian capital market. Similarly, Highlue Sky Emerging Market Fund (Noticee No. 10) upon conversion of 2,59,074 GDRs got 77,72,220 equity shares of VMPL. Out of the said 77,72,220 equity shares, by March 03, 2017 a total of 43,61,915 was sold in the Indian capital market. Investigation found that the said sub- accounts, namely, India Focus Cardinal Fund and Highlue Sky Emerging Market Fund were related to Arun Panchariya, and as such, the GDRs were converted into equity shares and these shares were sold in the Indian Capital Market.

N. Further, India Focus Cardinal Fund was registered as sub account of FII, EURAM Bank and FII, Cardinal Capital Partners. India Focus Cardinal Fund was the only sub account to be registered with EURAM Bank. Also, as FIIs, both EURAM Bank and Cardinal Capital Partners did not make investment in India, except for the sale of shares in the Indian capital market, pursuant to the conversion of GDRs by India Focus Cardinal Fund. Similarly, Highblue Sky Emerging Market Fund was registered as a sub account of FII, Golden Cliff. Golden Cliff did not make any investments in India, except for the sale of shares in the Indian capital market, pursuant to the conversion of GDRs by Highblue Sky Emerging Market Fund.

The Allegations

O. Considering that Vintage was the only subscriber of the GDR issue, and the Company had in effect paid for Vintage owing to the default by it in servicing the loan and the same being satisfied from the Company's designated account bearing no. 580037 , it was concluded that the GDRs, and the underlying equity shares in turn, to the tune of USD 11.99 million, were issued by VMPL to Vintage without adequate consideration, at the cost of shareholders / investors of VMPL. This was the fraudulent scheme that had been conceived.

P. The Pledge Agreement was not disclosed to the stock exchanges, which made the investors believe that the said GDR issue was genuinely subscribed by foreign investors. Noticee No. 2, Akkash Patni, who was a Director in VMPL, signed the Pledge Agreement with EURAM Bank, whereby the designated bank account bearing no. 580037 for receipt of GDR proceeds was given as security for the loan availed by Vintage from EURAM Bank for subscribing to the GDRs of VMPL. Noticee No. 3, Vimal Kumar Patni and Noticee No. 4, Vikash Patni were Directors on the Board of VMPL, and in the board meeting dated October 27, 2010 authorisation had been provided for signing the Pledge Agreement allowing EURAM Bank to use the Company's designated bank account bearing no. 580037 as security for the loan availed by Vintage.

Q. Noticee No. 9, India Focus Cardinal Fund was a sub-account of FII EURAM Bank and FII Cardinal Capital Partners. Arun Panchariya was the beneficial owner of Noticee No.9. Noticee No. 10, Highblue Sky Emerging Market Fund was registered as a sub-account of FII-Golden Cliff (also known as Vaibhav Investment Ltd.). Arun Panchariya connected entities were beneficial owners and directors of Highblue Sky Emerging Market Fund. FII sub-accounts, India Focus Cardinal Fund and Highblue Sky Emerging Market Fund received GDRs, converted them and sold the converted equity shares of VMPL in the Indian stock exchanges. Noticee No. 9 and Noticee No. 10 acted as conduits for Arun Panchariya and his connected entities, and sold the converted equity shares of VMPL, which had been acquired by Vintage, free of cost to the extent of USD 11.46 million, through the fraudulent scheme.

R. Noticee No. 11, Cardinal Capital Partners; Noticee No.12, EURAM Bank; and Noticee No. 13, Golden Cliff did not make any investment in India except investments made by their sub-accounts, namely India Focus Cardinal Fund and Highblue Sky Emerging Market Fund. So, the FIIs namely, EURAM Bank, Cardinal Capital Partners and Golden Cliff acted as conduits for Arun Panchariya and facilitated India Focus Cardinal Fund and Highblue Sky Emerging Market Fund to sell the underlying shares of the GDRs in the Indian stock exchanges.

S. These FIIs, namely, Cardinal Capital Partners (Noticee No. 11), EURAM Bank (Noticee No. 12), and Golden Cliff (Noticee No. 13) facilitated the sale of the equity shares, received by way of fraudulent issue of GDRs.

T. The SCN has alleged that Noticee Nos. 2 to 13 have violated the following provisions of the SEBI Act, 1992 and SEBI PFUTP Regulations, 2003: Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) & 4(1) of SEBI (PFUTP) Regulations, 2003. In addition to the above provisions, the Company (Noticee No. 1) has been alleged to have also violated Regulation 4(2) (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003.

2.4. Consequent to the issuance of the SCN, a Supplementary Show-cause Notice dated June 18, 2018 bearing number EFD/DRA-1/SM/RK/VMPL/17416/2018 was issued to Noticee No. 1 inter alia calling upon the Noticee to show cause as to why suitable directions, including bringing the money back should not be passed against it. Further, a common Supplementary Show-cause Notice dated June 18, 2018 bearing number EFD/DRA-1/SM/RK/VMPL/17417/2018 was issued to Noticee Nos. 5, 6, 9 and 10 inter alia calling upon them to show cause as to why suitable directions, including disgorgement should not be passed against them.

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

3.1. As already stated above, the SCN was served on the present Noticees on February 18, 2022. Pursuant to the service of the SCN, the present Noticees also sought inspection of the documents. Based upon the request of the present Noticees, an opportunity of inspection of the records/ documents was provided to them. Details with respect to the same are provided hereunder:

Table - 5

Noticee No.	Noticee	Details of Documents Inspected	Date of Inspection of Documents	Inspection Conducted By
2	Akkash Patni	▪ Inspection of Investigation Report along with all annexures (1 to 58). ▪ Inspection of the SCN dated February 01, 2018 along with all the annexures (1 to 31).	June 13, 2022	▪ Shri. Akkash Patni ▪ Dr. S.K. Jain
3	Vimal Kumar Patni			
4	Vikash Patni			

3.2. I also note from the record that in addition to the documents mentioned above, by way of email dated June 16, 2022, SEBI provided documents namely, Form No. 2 (Return of Allotment) along with List of allottees; Board resolution for allotment of GDR and underlying equity shares; Form No. 23 (Registration of Resolution and Agreement); and the Balance Sheet as on March 31, 2011, which had been received by SEBI from the Office of the Official Liquidator, High Court of Calcutta.

3.3. Post the inspection/disclosure of investigative material, an opportunity of personal hearing was granted to the present Noticees. The details of the personal hearings in the matter are tabulated below:

Table- 6

Noticee No.	Name of the Noticee	Date of Hearing	Represented by
2	Akkash Patni	August 04, 2022	Dr. S.K. Jain and Mr. Kunal Chheda
3	Vimal Kumar Patni		
4	Vikash Patni		

3.4. The present Noticees have filed a reply dated May 23, 2022 in response to the allegations made in the SCN. Additionally, the present Noticees have also filed post-hearing submissions dated September 08, 2022 in the matter. A summary of the replies as submitted by the present Noticees is provided hereunder:

A. The total proceeds from the GDR issue was about USD 12 Million, and the net proceeds after deduction of fees and expenses was around USD 11.52 Million. The GDR issue was to be used for the following activities: further expansion;

diversification of projects; satisfying the working capital needs of the Company; and foreign acquisition and establishment of overseas subsidiaries to explore and cater to the needs of the international market.

B. In the later part of calendar year 2011, the Company faced labour unrest which led to the day to day production in the factory being suspended. On March 08, 2012, about 25 people had attempted robbery of the plant and machineries, but were thwarted by the security guards deployed in the factory. The said incident was intimated to the Sub-Divisional Officer by a representation dated 10th March, 2012. Subsequently, several incidents of theft, robbery and encroachment happened on March 30, 2012, April 02, 2012, April 03, 2012 and April 04, 2012.

C. The Company as a result became sick, and its entire net worth got eroded, which resulted in the loan account of the Company turning NPA. The Company was referred as a Sick Industrial Company by BIFR. Later on, the Company faced enormous issues and its survival was at stake. The Company was now under liquidation by Orders of the Hon'ble High Court of Calcutta.

D. The present Noticees did not have any records or documents of the Company in their possession, as the Company was under Liquidation and all the records and documents of the said Company were in possession of the Official Liquidator.

E. Copy of the Board Resolution dated March 23, 2011 of the SCN and Minutes of the Board Meetings held on October 27, 2010 and March 23, 2011 had not been provided to the present Noticees by SEBI.

F. The copy of the Minutes of the Board Meeting held on October 27, 2010 had not been annexed to the SCN and merely the resolution purportedly passed in the said Board Meeting had been reproduced in the SCN. It was not clear as to whether the resolution reproduced at page nos. 5 and 6 of the SCN was the complete resolution. From paragraph no. 10 of the SCN at page nos. 5 and 6 of the SCN it appeared that there were three separate resolutions. So, it was not clear as to whether, in the said Board Meeting held on October 27, 2010, three separate resolutions were passed or one resolution was passed.

G. The conclusion arrived at, as recorded in paragraph no. 11 of the SCN, that at least the present Noticees had attended the Company's Board Meeting on October 27, 2010 and had authorised EURAM Bank (Noticee No. 12) to use the GDR proceeds in connection with the loan, if any, was totally based on hypothetical assumption, surmises and conjecture.

H. In the absence of the above-documents and the fact that the same had not been provided by SEBI, the allegations made in the SCN should to be dropped in respect of the present Noticees.

I. The statement in paragraph no. 11 of the SCN that the Board of Directors had authorised Akkash Patni to sign the agreements in respect of the GDR issue was self-contradictory as in paragraph no. 30(IV) at page no. 23 of the SCN it was mentioned that in the Board Meeting held on October 27, 2010, the Board had authorised Vimal Kumar Patni (Noticee No. 3), Vikash Patni (Noticee No.4) and Akaksh Patni (Noticee No. 2) to sign, execute any application, agreement etc. on behalf of VMPL, as may be required by the EURAM Bank.

J. A delay of eleven (11) years has been made in serving the SCN to the Noticees herein, and owing to such delay the SCN in respect of the present Noticees should be dropped.

K. The present Noticees were currently passing through extreme financial hardship to the extent that they were unable to meet their daily needs. The present Noticees did not have any assets left with them as the same had been sold by the banks after the bank loan turned NPA and the Company went into liquidation.

L. Vimal Kumar Patni (father of Noticee Nos. 2 and 4) was a senior citizen of 73 years age and was suffering from Herpes and High Diabetes, and, as such, no penalty be imposed on the present Noticees.

M. The present Noticees have in their replies relied on the following case laws:

i. Ashok Shivpal Rupani and Others V. SEBI (Appeal Nos. 417 and 440 of 2018), Securities Appellate Tribunal, Order dated August 22, 2019; Rakesh Kathotia and Others V. SEBI (Appeal No. 07 of 2016), Securities Appellate Tribunal, May 27, 2019; and Yatin Pandya HUF V. SEBI (Appeal No. 719 of 2021), Securities Appellate Tribunal, Order dated March 24, 2022 to contend that the proceeding should be dropped on account of delay.

ii. T Takano V. SEBI, Supreme Court of India, Judgment dated February 18, 2022, *AIR 2022 SC 1153*; Dhirajbhai V. Sanghvi HUF V. SEBI (Appeal No. 414 of 2018), Securities Appellate Tribunal, Order dated February 19, 2020; H.R. Mehta V. Assistant Commissioner of Income Tax, Mumbai, High Court of Bombay, Order dated June 30, 2016; Securities and Exchange Board of India V. Price Waterhouse (Civil Appeal No. 6003-6004/12), Supreme Court of India ; Capricon Shopping Complex V. ITO, High Court of Kerala, *(1996) 218 ITR 721 (Ker.)*; and Yatin Pandya HUF V. SEBI (Appeal No. 719 of 2021), Securities Appellate Tribunal, Order dated March 24, 2022 to contend that they be provided with the documents sought for.

4. Issue

4.1. In the SEBI Order dated September 29, 2021, the allegations made in the SCN/Supplementary SCN were deliberated upon by the WTM, including the role of the directors in perpetrating the fraudulent scheme of the Company.

4.2. However, consequent to the quashing of the SEBI Order dated September 29, 2021 qua Noticee nos. 2, 3 and 4, the findings in the SEBI Order in respect of the above-mentioned Noticees no longer stands, and as such the present proceeding has a limited remit of adjudging the liability of the directors for the fraudulent scheme.

4.3. It is, nonetheless, a matter of record that the findings of the WTM in the SEBI Order dated September 29, 2021 in respect of all the other Noticees barring Noticee nos. 2,3 and 4 continue to be in vogue and shall be relied upon wherever necessary.

4.4. In view of the above, the issue for consideration in the present matter is:

I. Whether the Directors of VMPL, namely, Akkash Patni (Noticee No.2), Vimal Kumar Patni (Noticee No. 3) and Vikash Patni (Noticee No. 4) acted as parties to the fraudulent scheme of issuing GDRs to Vintage without adequate consideration?

5. Consideration and findings

5.1. As already stated, the present proceeding is limited to the consideration of the liability of the directors of the Company, namely, Akkash Patni (Noticee No.2), Vimal Kumar Patni (Noticee No. 3) and Vikash Patni (Noticee No. 4).

5.2. However, before proceeding further a brief on the nature of GDRs would be appropriate. A GDR commonly refers to an instrument issued by a depositary bank in the international markets which evidences the ownership of shares in a company, incorporated in a market distinct from the market where the GDR has been issued. Each GDR represents a specified number of underlying shares in the company, which are held by a custodian in the home market of the company. In this regard, reference is made to the judgment of the Hon'ble Supreme Court in the case of *Securities and Exchange Board of India V. Pan Asia Advisors Ltd. and Anr. (Civil Appeal No. 10560 of 2013)* which has elaborated upon the process of issuance of GDRs and their trading in the context of Indian Companies. In the said judgment, the Hon'ble Supreme Court, considering that issuance of GDRs are always based on the underlying Indian shares deposited with the Domestic Custodian Bank, has held that all GDRs in respect of Indian Companies would be 'security' as defined under Section 2(h) of Securities Contract Regulation Act, 1956.

5.3. Considering the above nature of GDRs, the Hon'ble Supreme Court in the above-mentioned case clarified the jurisdiction of SEBI by holding that SEBI could exercise jurisdiction over the transactions relating to GDRs as, firstly, the GDRs had already been converted into equity shares and had been traded in the Indian securities markets, and secondly, the activities of manipulating, deceiving, defrauding, and indulging in unfair trade practice of the entities connected with the GDR issue had impacted and influenced investors in the securities market situated in the Indian territory. The facts in the present matter are identical to the facts as adjudicated upon by the Supreme Court in the case cited above.

5.4. Now moving to the consideration of the liability of the directors of the Company, I find it relevant to, first, deal with certain preliminary issues that have been raised by the present Noticees.

Disclosure/Inspection of Documents and Investigative Material

5.5. It has been submitted by the present Noticees that several documents including copies of the Minutes of Board Meetings held on October 27, 2010 and March 23, 2011 have not been provided by SEBI. Also, it has been submitted that copy of Board Resolution dated March 23, 2011 has not been provided by SEBI. In this regard, it has been claimed by the present Noticees that due to the lack of these documents they have been constrained in replying to the allegations made in the SCN, and ,as such, the present proceeding be dropped.

5.6. In this regard, reference is made to the judgement of the Hon'ble Supreme Court's Order in T. Takano v. SEBI, SLP (C) No. 13287-88 of 2020, wherein the Hon'ble Supreme

Court has examined the duty of SEBI to disclose investigative material. The SC while considering the same has crystallised as such:

" *(i) A quasi-judicial authority has a duty to disclose the material that has been relied upon at the stage of adjudication; and*

(ii) An ipse dixit of the authority that it has not relied on certain material would not exempt it of its liability to disclose such material if it is relevant to and has a nexus to the action that is taken by the authority. In all reasonable probability, such material would have influenced the decision reached by the authority.

Thus, the actual test is whether the material that is required to be disclosed is relevant for purpose of adjudication. If it is, then the principles of natural justice require its due disclosure."

5.7. I note that the duty of disclosure of investigative material cast by way of the above-mentioned judgement includes the disclosure of documents relied upon and documents/material that are relevant and have a nexus to the action that is taken by the authority, i.e. such material which would have influenced the decision reached by the authority.

5.8. It has been elaborated in Table-5 of this order that inspection of the SCN with all the annexed documents which have been relied upon for supporting the allegations made in the SCN were provided to the present Noticees. Also, the Investigation Report with all the annexures were provided to the present Noticees for inspection. Further, in addition to the documents mentioned above, SEBI has also provided documents namely, Form No. 2 (Return of Allotment) along with List of allottees; Board resolution for allotment of GDR and underlying equity shares; Form No. 23 (Registration of Resolution and Agreement); and the Balance Sheet as on March 31, 2011.

5.9. The demand of the present Noticess to be provided with several documents including the copies of Minutes of the Board Meetings held on October 27, 2010 and March 31, 2011 as well as a copy of the Board Resolution dated March 31, 2011 is not sustainable as the duty to disclose investigative material cast upon SEBI is only with respect to such material/document that is relevant and has a nexus with the action taken by the authority, which in all reasonable probability influenced the decision reached by the authority. SEBI by way of an email dated June 16, 2022 has submitted that the said documents were not available with it. A document or material not in the possession of SEBI cannot be considered as relevant as it cannot be considered as having any nexus with the action taken by the authority and would not have, because of its absence, influenced the decision reached by the authority. Thus, the duty of disclosure of investigative material has been fulfilled in full in the present proceeding.

Proceedings not maintainable owing to delay

5.10. It has been claimed by the present Noticees that there has been considerable delay in the present proceeding and the SCN should be dropped qua the present Noticees on that ground itself.

5.11. The present proceeding can be broadly divided into three time periods: (i) investigation; (ii) issuance of SCN and passing of the SEBI Order dated Sepetmber 29, 2021; and (iii) the remand of the matter and the present consideration.

5.12. It is seen from records that documents inter-alia in the captioned matter were obtained from the Financial Market Authority, Austria on January 22, 2016 and Financial Services Commission, Mauritius on September 15, 2016. Consequent to the receipt of documents as above, investigation was initiated into the GDR issue of VMPL and the said investigation was completed in the year 2017. After the completion of investigation in the matter, a Show-Cause Notice dated February 01, 2018 was issued to the Noticees. Further, Supplementary Show-Cause Notices dated June 18, 2018 were issued to Noticee Nos. 1, 5, 6, 9 and 10. As many of the Noticees were based outside India the service of the said Show-Cause Notices involved processes which required more time. Once the said Show-Cause Notices were served on all the Noticees, personal hearings were granted to the Noticees who had sought for the same.

5.13. The Hon'ble SAT in its *Order dated February 05, 2020 in Appeal No. 376 of 2019, Jindal Cotex Limited and Ors Vs. SEBI,* while dealing with the question of delay, held that arguments on delay in investigation and consequently affecting natural justice were devoid of any merit. In the aforesaid matter, the Hon'ble Tribunal, while dismissing the ground of delay acknowledged the complexity involved in the investigation of the manipulative GDR issue and the time taken by SEBI to gain information relating to the various entities from multiple jurisdictions.

5.14. Similarly, in the matter of *G. V. Films Ltd. Vs. SEBI.* (Order dated February 15, 2021 in Appeal No. 168 of2020, Securities Appellate Tribunal) the Hon'ble SAT opined on the issue of delay in a similar matter pertaining to issue of GDRs as follows: "*Having heard the learned counsel for the parties on this issue, we find that there is no doubt that there has been a delay in the issuance of the show cause notice after 10 years from the date of the GDRs issue. However, on this ground of delay, the proceedings cannot be quashed for the reasons that we find that an investigation was required to be done beyond the borders of India which took time.*"

5.15. In view of the above, I do not accept the contention of the Noticees that the proceeding is not maintainable due to delay.

I. Whether the Directors of VMPL, namely, Akkash Patni (Noticee No.2), Vimal Kumar Patni (Noticee No. 3) and Vikash Patni (Noticee No. 4) acted as parties to the fraudulent scheme of issuing GDRs to Vintage without adequate consideration?

5.16. A sketch of the events associated with the GDR issue would provide the appropriate backdrop for a consideration of the liability of the directors in the present case. In this regard, a chronology of the events leading up to the GDR issue is provided hereunder:

A. **October 27, 2010** –The Board of Directors of VMPL passed a resolution whereby it resolved to open an account with EURAM Bank for the purpose of receiving subscription money in respect of the Company's GDR issue. The excerpts from the said Board Resolution are reproduced hereunder:

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

RESOLVED FURTHER THAT Shri Vimal Kumar Patni, Shri Vikash Patni, Shri Akkash Patni, Authorised Signatory of the Company, be and are hereby severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, *declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.*

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

B. **March 22, 2011 –** Vintage entered into a Loan Agreement with EURAM Bank for availing a loan facility of USD 11,999,952 with respect to the subscription of GDRs issued by VMPL.

C. **March 22, 2011 –** VMPL entered into a Pledge Agreement with EURAM Bank, whereby the GDR proceeds received by the Company from Vintage was pledged as collateral for the loan availed by Vintage from EURAM Bank. The GDR proceeds became the security for all the obligations of Vintage under the loan agreement.

D. **April 11, 2011 –** In the designated account bearing no. 580037 maintained by VMPL with EURAM Bank to receive the proceeds of the GDR issue, a deposit of USD 11,999,952 was made. The said amount was deposited by Vintage for the subscription of the entire amount of GDR issue.

E. **November 14, 2012 –** A letter was issued by VMPL to EURAM Bank with respect to the deposit account maintained by it. By way of the said letter, VMPL confirmed that EURAM Bank had the right to set off the pledged cash deposit with the outstanding loan of Vintage amounting to USD 11,449,467. By way of the said letter, it was further instructed by VMPL that upon exercising its right to set off, all the remaining GDRs held in Deposit No. 5400121E of Vintage should be transferred to Account No. 20311-333-196205 in Habib Bank AG Zurich.

F. **January 03, 2013 –** A letter was issued by EURAM Bank informing VMPL that pursuant to the Pledge Agreement, USD 11,463, 211.63 had been used from the account of VMPL towards the realisation of loan due from Vintage. It was further informed by EURAM Bank that " *Pursuant to the realisation of the pledged cash accounts of Vikash Metal & Power Ltd. and Section 1358 of the Austrian Civil Code ("ABGB") Vikash Metal & Power Ltd. automatically takes EURAM Bank's position as pledgee regarding 974426*

GDRs of Vikash Metal & Power Ltd. (ISIN US92675V1026) owned by Alta Vista FZE. Please be aware that from now on Vikash Metal & Power Ltd. is the pledgee of the GDRs. According to your instructions we have transferred 974426 GDRs Vikash Metal & Power Ltd. (ISIN US92675V1026) with trade date 03 January 2013 and value date 04 January 2013 to Habib Bank AG Zurich for further credit to account no 20311-333-196205 Alta Vista International FZE."

5.17. The above chronology brings out that there was a clear understanding between VMPL and Vintage (which later became Alta Vista International FZE) to bring about this fraudulent scheme. In this regard, specific mention is made of the Loan Agreement entered into by Vintage with EURAM Bank for availing a loan facility of USD 11,999,952 on March 22, 2011. It is pertinent to note that the loan as per the said Loan Agreement was granted to Vintage on the pledge of the following assets : *"Pledge of certain securities held from time to time in the Borrower's account no 540012 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement. Pledge of the account no 580037 held with the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement."* It is stated that the separate pledge agreement as mentioned above, which formed an integral part of the Loan Agreement, was the Pledge Agreement entered between VMPL and EURAM Bank. The Pledge Agreement provided that the purpose of the pledge was *"...to secure any and all obligations, present and future, whether conditional or unconditional of the Borrower towards the Bank under the Loan Agreement and any and all respective amendments thereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the Loan Agreement..."* So, the purpose of the Pledge Agreement is to secure the obligations of the Borrower i.e., Vintage under the Loan Agreement. Further, the Pledge Agreement provided the circumstances in which EURAM Bank would invoke the Pledge. The said circumstances were: " *In the case that the Borrower fails to make payment on any due amount,, or defaults in accordance with the Loan Agreement, the Pledgor herewith grants its express consent and the Bank is entitled to apply the funds in the Pledged Accounts to settle the Obligations. In such case the Bank shall transfer the funds in the Pledged Accounts, even repeatedly, to an account specified by the Bank. Notwithstanding the foregoing, in the case that the Borrower fails to make payment of any due amount, or defaults in providing or increasing security, the Pledgor herewith grants its express consent and the Bank is entitled to realize the Pledged Securities (i) at a public auction for those items of Pledged*

Securities for which no market price is quoted or which are not listed on a recognized stock exchange or (ii) in a private sale pursuant to the provisions of Section 376 Austrian Commercial Code unless the Bank decides to exercise its rights through court proceedings. The Pledgor and the Bank agree to realize those items of the Pledged Securities for which a market price is quoted or which are listed on a stock exchange through sale by a broker public authorized for such transactions, selected by the Bank. The Bank may realize the pledge rather than accepting payments from the Borrower after maturity of the claim if the Bank has reason to believe that the Borrower's payments may be contestable." Thus, from a conjoint reading of the above-mentioned terms of the Loan Agreement and the Pledge Agreement, it is quite clear that the pledging of the proceeds of the GDR issue by way of a Pledge Agreement to allow the Company's designated bank account bearing no. 580037 to be used as security for all the obligations of Vintage under the Loan Agreement, was a pre-condition for the grant of the loan to Vintage. The simultaneous execution of both the Loan Agreement and the Pledge Agreement indicates that VMPL was itself financing the subscription of its GDR issue. Once the loan facility was activated, an amount of USD 11,999,952 was received from Vintage on April 11, 2011 in the designated bank account maintained by VMPL in EURAM Bank for the GDR proceeds.

5.18. Consequently, on November 14, 2012, a letter was issued by VMPL to EURAM Bank confirming to EURAM Bank that it had the right to set off the pledged cash deposit with the outstanding loan of Vintage amounting to USD 11,449,467. Further, by way of the said letter, VMPL requested EURAM Bank that upon exercising its right to set off, all the remaining GDRs held in Deposit No. 540012 1E of Vintage, which would have otherwise reverted to VMPL, were to be transferred to Account No. 20311-333-196205 of Vintage in Habib Bank AG Zurich. This effectively establishes that a substantial part of the consideration received from Vintage, for the GDRs subscribed by it, was returned to Vintage, and as such, Vintage came to possess the GDRs without paying any consideration.

5.19. Thus, it is quite apparent that VMPL in connivance with Vintage devised a fraudulent scheme whereby Vintage received GDRs without paying any consideration for a substantial portion of the GDRs, at the cost of shareholders / investors of VMPL.

5.20. It is note-worthy that the Loan Agreement had reference to the Pledge Agreement entered into between VMPL and EURAM Bank by virtue of which EURAM Bank provided a credit facility to Vintage for the purpose of subscribing to the GDRs of VMPL. So, the GDR issue would not have been subscribed in its entirety had the Company not given security towards the loan taken by Vintage through the Loan Agreement. These should have been reported to the Stock Exchanges. However, the Company reported to the stock exchange (NSE) on April 12, 2011 that *"... the Board of Directors of the Company at its meeting held on April 12, 2011 has, inter alia, considered and approved the following matters: (1) The Board has approved the offering circularfiled at Luxembourg Stock Exchange. (2) The Board has approved Deposit Agreement in respect of the GDR issue. (3) The Board has approved the allotment of 36,072,000 equity shares of Rs.10/- each underlying 1,202,400 GDR's issued in the name of Depository (The Bank of New York Mellon) and issuance of share certificate thereof."*

5.21. The Company making a corporate announcement that the Company had approved the allotment of 36,072,000 equity shares of Rs.10 each underlying 1,202,400 GDRs, without disclosing the pledge/loan arrangement that it had with regard to the subscription of its GDR issue, could have made the investors believe that the said GDR issue was genuinely subscribed. Further, as already stated above, VMPL by way of a letter dated November 14, 2012 confirmed the right of EURAM Bank to set off the cash lying in VMPL's account with the outstanding loan of Vintage amounting to USD 11,449,467 and EURAM Bank by way of letter dated January 03, 2013 informed that it had utilised the cash amounting to USD 11,463,211.63 lying in VMPL's account for realisation of the outstanding loan of Vintage. However, curiously the corporate announcements made by VMPL during the period did not mention the above two events. Therefore, such publication/disclosure of information, as seen above, was misleading and contained distorted information which induced investors to deal in the shares of VMPL.

5.22. The Annual Report of the Company for the financial year 2010-11 states that during the said period Vimal Kumar Patni, Vikash Patni and Akkash Patni were part of the Board of Directors. The details regarding their attendance in the board meetings of the Company are provided hereunder :

Table- 7

Name of Directors	**Category of Directors**	**No. of Board Meetings attended during 2010-11**	**Attended last AGM held on 22nd September, 2010**	**Directorships held in other Public Limited Companies incorporated in India**
Mr. Vimal Kumar Patni - Chairman	Non-Executive, Promoter	19	Yes	7
Mr. Vikash Patni - Managing Director	Executive, Promoter	19	Yes	8
Mr. Akkash Patni	Non-Executive, Promoter	19	Yes	7

5.23. It is further seen from the Annual Report that during the said financial year, a total of nineteen board meetings were held. The said board meetings were held on: 8 April, 2010; 29 May, 2010; 11 June, 2010; 9 July, 2010; 21 July, 2010; 14 August, 2010; 27 August, 2010; 2 September, 2010; 8 September, 2010; 16 September, 2010; 25 October, 2010; 27 October, 2010; 13 November, 2010; 11th December 2010; 10 January, 2011; 11 February, 2011; 16 March, 2011; 23 March, 2011; and 28 March 2011.

5.24. As seen from the above table, Vimal Kumar Patni, a Non-executive director, was the Chairman of the Company; Vikash Patni, an Executive director, was the Managing

Director of the Company and Akkash Patni was a Non-executive director. The above-named Directors were categorised as Promoters of the Company.

5.25. During the investigation period, as seen from the Annual Report, Vimal Kumar Patni was the Chairman of the Company and Vikash Patni was the Managing Director. By way of the Board Resolution dated October 27, 2010, Vimal Kumar Patni, Vikash Patni and Akkash Patni were authorised to sign and execute any application, agreement, escrow agreement, document, undertaking etc. as may be required by the Bank, i.e. EURAM Bank. By way of the said Board Resolution, the above-named directors were also authorised to draw cheques and generally to take all such steps and do all such things as may be required from time to time on behalf of the Company.

5.26. In this respect, it has been claimed by the present Noticees that the foundation of the allegations made against them stems from the Minutes of the Board Meeting dated 27th October, 2010 and Resolution passed in the said Meeting and other crucial documents which are neither available with SEBI nor made available at the time of Inspection nor provided to the present Noticees. Copies of Board Resolution and Minutes of the Board Meetings held on March 23, 2011 had not been provided to the present Noticees by SEBI. It has been submitted by the present Noticees that in the absence of the copies of the minutes of the board meeting held on October 27, 2010 and March 23, 2011 it could not be ascertained who were the Directors present in the said Meeting and who were the Directors who had given their assent/ dissent to the purported Board Resolution. Also the attendance sheet of the Board Meeting held on October 27, 2010 had not been made available or provided to the present Noticees. It has been submitted that in the absence of crucial and vital documents the allegation made in the SCN as against the present Noticees herein cannot be sustained.

5.27. In this regard, it is clarified that a copy of the Board Resolution passed at the meeting held on October 27, 2010 is part of the annexures of the Inspection Report as well as the SCN and as such the same has been provided to the present Noticees. The claim that the Board Resolution dated October 27, 2010 was not provided is not true. Further, the assertion of the present Noticees that the Minutes of the Board Meeting held on October 27, 2010 would demonstrate who were the Directors present in the said Meeting and who were the Directors who had given their assent/ dissent is superfluous, as the subsequent events have established. It is a matter of record that the Company did in fact come out with a GDR issue. Also, in its filing with BSE, the Company had disclosed to the stock exchange on October 27, 2010 that at the meeting of its Board of Directors held on October 27, 2010, it had been decided by the Company to raise resources from the international markets in the form of GDRs or otherwise. Thus, what is of relevance is that the Company did decide to raise resources from the international markets; the internal discussions, if any, prior to the adoption of the said resolution are of no consequence to this proceeding. Also, the present Noticees have called into question the number of resolutions passed at the said Board Meeting held on October 27, 2010. The number of Board Resolutions passed, again is of little relevance to the present consideration. A Board Resolution of the Board meeting held on October 27, 2010 is an annexure in the SCN and the Investigation Report. The same has also been reproduced in paragraph 5.16 (A) of this Order. From the said resolution it is gathered that the present Noticees had been authorised by way of a board resolution passed at the board meeting held on October 27, 2010 to sign, execute any application, agreement etc. on behalf of the Company as may be required by the Bank, i..e, EURAM Bank, and as has already been brought out before, exercising this authority Akkash Patni signed the Pledge Agreement, pledging the GDR proceeds received in the designated bank account of the Company.

5.28. Also, the present Noticees have called into question their attendance in the Board meeting held on October 27, 2010 on the ground that the attendance sheet had not been provided. I find the argument quite strange. This is because the attendance of the present Noticees is attested by the Annual Report for 2010-11, which states that there were a total of nineteen (19) board meetings in the said financial year and the present Noticees attended all the nineteen (19) board meetings. If one were to extend the argument proffered by the present Noticees that they did not attend the meeting dated October 27, 2010 then it shall mean that the information provided in the Annual Report of 20101-11 was false. It requires no reiteration that an Annual Report is a document prepared by a company and the same is signed by the directors of such company attesting to the truthfulness of the information contained therein. Considering that the Annual Report is a contemporaneous record of the events accompanying the GDR issue, and the fact that the same was published prior to the initiation of proceedings by SEBI, I have no reason to doubt the information contained therein. The defence of the present Noticees that since the attendance sheet was not provided to them it cannot be considered that they attended the meeting is misplaced. The attendance sheet is not the only document that can be used to assert the attendance of the present Noticees in the meeting of the October 27, 2010 and the same has already been gathered from the Annual Report of 2010-11.

5.29. Coming to the Minutes of the Board Meeting held on March 23, 2011 and board resolutions thereof, it was informed by SEBI that the same were not available with it. However, it is a matter of record that the Company in its disclosure dated March 23, 2011 to BSE had stated that at its Meeting of its Board of Directors on March 23, 2011 decided to: a) issue proposed GDRs up to an aggregate of USD 12 Million; b) open the GDR issue tentatively in the last week in the last week of March; and c) the 'fixed minimum price' of the proposed GDR was INR 15. Copies of the disclosures made by the Company to BSE have been provided to the present Noticees.

5.30. Thus, the claim of the present Noticees that in the absence of the Minutes of the Board Meetings held on October 27, 2010 and March 23, 2011 their role and liability cannot be established is specious and without merit. As has been demonstrated in the preceding paragraphs there are alternate contemporaneous documents which lay out the various decisions of the Board of Directors of the Company in respect of the GDR issue, and, as such record the roles played by the present Noticees.

5.31. Furthermore, it has been claimed by the present Noticees that there are contradictions in the SCN. In this respect it has been claimed by them that –

" Para 11 at Page No. 6 of the SCN and contents of Para 30 (IV) at Page No. 23 of the SCN are materially different in as much as in Para 11 it is stated '…*Therefore, it was concluded that at least the aforesaid three directors had attended the VMPL's Board Meeting dated October 27, 2010 and authorised EURAM bank (Noticee No. 12) to use the GDR proceeds in connection with loan if any* <u>**and authorised Mr. Akkash Patni (Noticee No. 2)**</u> *to sign the agreement related to GDR issue of the VMPL (Noticee No. 1)'* whereas in Para 30 (IV) at Page No. 23 of the SCN it is stated as '*Directors of VMPL (Noticee No. 1) in Board Meeting held on October 27, 2010 authorised the EURAM Bank (Noticee No. 12) to use the VMPL's GDR proceeds deposited with EURAM Bank as security in connection with loan* <u>**and authorised Shri Vimal Kumar Patni**</u>

(Noticee No. 3), Shri Vikash Patni (Noticee No. 4), Shri Akkash Patni (Noticee No. 2), *Authorised Signatory of the VMPL to sign, execute any application, agreement etc. as may be required by the EURAM Bank*'.

5.32. It has already been brought out in the previous part of this Order that the present Noticees had been authorised by way of a board resolution passed at the board meeting held on October 27, 2010 to sign, execute any application, agreement etc. on behalf of the Company as may be required by the Bank. So, Para 30 (IV) at Page No. 23 of the SCN is a reiteration of the same. Coming to Para 11, the SCN states that the present Noticees attended the Company's Board Meeting dated October 27, 2010 and authorised EURAM Bank to use the GDR proceeds in connection with the loan if any, and authorised Akkash Patni to sign the agreement related to GDR issue of the VMPL. It must be appreciated that while the board resolution passed at the board meeting held on October 27, 2010 authorised all three of the present Noticees to sign, execute any application, agreement etc. on behalf of the Company as may be required by the Bank, the Pledge Agreement was in fact signed by Akkash Patni. It is in this context that paragraph 11 of the SCN is to be read as it attempts to provide a background to paragraph 13 of the SCN which follows paragraph 11. Paragraph 13 reads, " *A Pledge Agreement dated March 22, 2011 was entered into between VMPL (as Pledgor) and EURAM Bank (as Bank) wherein VMPL (Noticee No.1) pledged GDR proceeds as collateral against loan availed by Vintage from EURAM Bank (Noticee No. 12). The Pledge Agreement was signed by Mr. Akkash Patni (Non-executive Director of VMPL) on behalf of VMPL.*" So, it cannot be said that the two paragraphs are materially different, and only reflect the specific contexts in which they are placed in the narrative of the SCN. Accordingly, I find that the so-called contradiction brought out by the present Noticees is contrived and imagined.

5.33. As already brought out, the Pledge Agreement entered into by VMPL with EURAM Bank, whereby the Company's designated bank account bearing no. 580037 maintained with EURAM Bank having the GDR proceeds was given as security for all the obligations of Vintage under the Loan Agreement, had been signed by Akkash Patni. Also, the letter from VMPL confirming that EURAM Bank had the right to set off the pledged cash deposit with the outstanding loan of Vintage amounting to USD 11,449,467 had also been signed by Akkash Patni. It is to be noted that by way of the said letter, EURAM Bank was instructed by Akkash Patni that upon exercising its right to set off the GDRs pledged by Vintage with EURAM Bank, which would have otherwise come to VMPL, should be transferred to Vintage's account in Habib Bank AG Zurich.

5.34. Further, the Escrow Agreement dated March 23, 2011 entered into among the Company, Pan Asia Advisors Limited (the Lead Manager of the GDR issue) and EURAM Bank in Schedule 1 listed Vimal Kumar Patni, Vikash Patni and Akkash Patni, along with their respective signatures, as the authorised signatories of the Company.

5.35. It is stated that the Noticees have not denied that the signatures contained in the said documents were theirs. In this regard, reliance is placed on *The Municipal Corporation of Greater Bombay Vs. P.S. Malvenkar and Ors. [AIR 1978 SC 1380]*. The Hon'ble Supreme Court quoting the Black's Law Dictionary (1951 Edition) has stated that " *generally when a person attaches his signature to a written document he does so in token of knowledge, approval or acceptance."* Accordingly, the present Noticees cannot claim ignorance of the fraudulent scheme that had been perpetrated by the Company, as their signatures in the material documents that gave effect to the GDR issue and the larger fraudulent scheme around it implies knowledge and approval of the contents of the signed document.

5.36. Also, considering the positions of Vimal Kumar Patni (the Chairman of the Company at that time) and Vikash Patni (the Managing Director of the Company) it is accepted that they would have been aware of the role and responsibilities of directors in a company.

5.37. In this respect, reliance is placed on the decision of the Hon'ble Supreme Court in the matter of *Official Liquidator v. P.A. Tendolkar, [(1973) 1 SCC 602]*, referred to in the case of *N. Narayanan Vs. Adjudicating Officer, SEBI, [AIR 2013 SC 3191]*, wherein the Hon'ble Supreme Court held, " *It is certainly a question of fact, to be determined upon the evidence in each case, whether a Director, alleged to be liable for misfeasance, had acted reasonably as well as honestly and with due diligence, so that he could not be held liable for conniving at fraud and misappropriation which takes place. A Director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially. If he does so he could be held liable for dereliction of duties*

<u>undertaken by him</u> and compelled to make good the losses incurred by the Company due to his neglect even if he is not shown to be guilty of participating in the commission of fraud. It is enough if his negligence is of such a character as to enable frauds to be committed and losses thereby incurred by the Company." (emphasis supplied)

5.38. Vimal Kumar Patni was the Chairman of the Company and Vikash Patni was the Managing Director. The very nature of the above positions would have required knowledge and involvement in the functioning of the Company. In such circumstance, they cannot feign ignorance and claim lack of knowledge. Also, all three of the present Noticees, namely, Vimal Kumar Patni, Vikash Patni and Akkash Patni were promoters of the Company, and, as such, had substantial holdings in the Company.

5.39. So, on the basis of the information brought out above and documents available on record, I find that there is overwhelming evidence establishing that Vimal Kumar Patni, Vikash Patni and Akkash Patni were actively involved in the day-to-day activities of the Company, and had full knowledge of the activities of the Company during the process of issuance of GDRs. In this regard, reference is drawn from Section 12A (a), (b) and (c) SEBI Act and Regulation 3(a),(b),(c),(d) and 4 (1) of the PFUTP Regulations. The above provisions prohibit deceptive and misleading practices in the securities market. The facts demonstrate that the present Noticees acted in a manner detrimental to the shareholders of Company/investors by pledging the designated bank account of the Company for the loan availed by Vintage and giving away the GDRs to Vintage that accrued to the Company consequent to the default of the loan by Vintage. The present Noticees who were involved in the day-to-day activities of the Company also acted to the detriment of the shareholders of Company/investors by not making adequate disclosures to the stock exchanges, especially the arrangement entered into by them with Vintage, which might have induced the investors in investing in the Company. Accordingly, I find that the present Noticees, namely, Vimal Kumar Patni, Vikash Patni and Akkash Patni have violated the provisions of Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

6. Conclusion

6.1. Thus, from the above, I conclude that VMPL in connivance with Vintage devised a fraudulent scheme whereby Vintage received GDRs without paying any consideration for a substantial portion of the GDRs, at the cost of the shareholders / investors of VMPL. Further, the directors, Akkash Patni, Vimal Kumar Patni and Vikash Patni, are liable for the above mentioned fraudulent scheme as they were fully involved in the day-to-day activities of the Company, and had complete knowledge of the activities of the Company during the process of issuance of GDRs. The sole subscriber of the GDR issue, Vintage FZE (Noticee No.6) who was part of the fraudulent scheme, as a consequence of which it received a large number of GDRs without payment of consideration. The subscriber was actively facilitated by the present Noticees, namely, Akkash Patni, Vimal Kumar Patni and Vikash Patni who were involved in the day-to-day activities of the Company, and had full knowledge of the activities of Company during the process of issuance of GDRs, which were patently illegal.

7. Directions

7.1. I, in exercise of the powers conferred upon me under sections 11(1), 11 (4) and 11B the Securities and Exchange Board of India Act, 1992 hereby direct that Noticee No. 2 (**Akkash Patni**), Noticee No.3 (**Vimal Kumar Patni**), and Noticee No.4 (**Vikash Patni**) shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 4 years.

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

7.3. The period of debarment already undergone by Noticee No. 2 (Akkash Patni), Noticee No.3 (Vimal Kumar Patni), and Noticee No.4 (Vikash Patni) by virtue of the SEBI Order dated September 29, 2021 shall be deducted from the period of debarment directed at 7.1 above.

7.4. These directions are without prejudice to any other action against Noticee No. 2 (Akkash Patni), Noticee No.3 (Vimal Kumar Patni), and Noticee No.4 (Vikash Patni) which may be initiated by SEBI.

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

7.6. A copy of this order be also sent to the Official Liquidator of the Calcutta High Court for information.

Place: Mumbai **ASHWANI BHATIA**

Date: September 27, 2022 **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA