BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/VV/PR/AK/2022-23/16649-16651

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 & UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT,1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of:

1. **M/s. Commex Technology Limited (PAN: AABCG0986D)**
2. **Mr. Adi Cooper (AAFPC0271N)**
3. **Mr. Kishore Hegde(AAFPH2481K)**

In the matter of Commex Technology Limited in respect of its GDR issue

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Background

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted an investigation into the Global Depository Receipts (hereinafter referred to as **"GDR"**) issued by M/s. Commex Technology Limited (hereinafter referred to as "**Commex/Noticee No.1**") for the period May 01, 2009 to June 30, 2009 (hereinafter referred to as "**investigation period**").

2. During the investigation, following was observed:
   a. Commex had issued 19,06,790 GDRs (raising USD 9.99 million) on May 25, 2009. Details of the GDR issue as provided by the Company is tabulated as follows:

Table No. 1

GDR issue date	No. of GDR issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDR	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDR listed on
May 25, 2009	1.91	9.99	Deutsche Bank AG	9,53,39,500 (50 Shares for each GDR)	Deutsche Bank Trust Company Americas	Pan Asia Advisors Ltd., London	EURAM Bank, Austria	Luxembourg Stock Exchange

a. Vide letter dated May 26, 2015, Commex was inter-alia advised to provide list of the subscribers to its GDR issue. Commex, vide letter dated June 22, 2015, provided list of subscribers to its GDRs to SEBI and details are as under:

Table No. 2

Sl. No.	Name of the subscriber	Number of GDRs	Face Value	Amount($)
1	Dynamic Holdings Investment	5,00,000	5.24	2,620,000.00
2	Flagstaff Investment Ltd.	4,00,000	5.24	2,096,000.00
3	Tradetec Corporation	5,00,000	5.24	2,620,000.00
4	Echelon India Investments Ltd	2,70,000	5.24	1,414,800.00
5	Knightbridge Management Inc.	2,36,790	5.24	1,240,779.60
Total		19,06,790	5.24	9,991,579.60

b. The entire 1.91 million GDR (amounting to USD 9.99 million) were subscribed by only one entity, *i.e*. Vintage FZE (hereinafter referred to as "**Vintage"**). The subscribers mentioned in above Table 2 were not the actual subscribers of GDRs and therefore, it was alleged that the Commex did not submit the correct list of the GDR subscribers.

c. European American Investment Bank AG (hereinafter referred to as **"EURAM Bank"**) granted loan to Vintage (Represented by Mr. Arun R. Panchariya in the capacity of the Managing Director) by way of a Loan Agreement (Number: K050509 - 003) dated May 5, 2009 (hereinafter referred to as the **"Loan Agreement"**) for payment of USD 9.99 million towards subscription of the GDRs of Commex, which is equivalent to the gross value of GDRs issued by Commex *i.e.,* USD 9.99 million.

d. Commex pledged its entire GDR proceeds, as a security for the loan availed by Vintage from EURAM Bank for subscribing to GDRs of Commex, by separately entering into a Pledge Agreement dated May 5, 2009 with EURAM Bank (hereinafter referred to as the **"Pledge Agreement"**). The aforesaid Pledge Agreement was made an integral part of the Loan Agreement entered into between Vintage and EURAM Bank and both the agreements were executed concurrently, before the issue of GDR. The information of Pledge Agreement to the extent of USD 9.99 million was not disclosed by Commex to its shareholders/investors. Commex did not inform the stock exchange with regard to Pledge Agreement entered with Euram Bank.

e. Vintage, after receiving the GDRs from Commex, had transferred a total of 6,92,516 GDRs to India Focus Cardinal Fund, Jermyn Capital Partner, London and Standard Bank of Mauritius. The GDRs were subsequently converted into equity shares and sold in the Indian Capital Market. It was also observed that after Vintage repaid its loan in instalments, an equal amount of money was transferred from Commex's EURAM Bank account to its (Commex's) UAE subsidiary A/c on the same or next day. Therefore, it was observed that the release of GDR proceeds from Commex's EURAM Bank account was dependent on the repayment of the loan by Vintage to EURAM.

f. As detailed above, it was observed that the Loan Agreement and Pledge Agreement, enabled Vintage to avail loan from EURAM Bank for subscribing to GDRs of Commex. The GDR issue would not have been subscribed, had Commex not given such security towards the loan taken by Vintage. The bank account in which GDR proceeds were held, was in the name of the Commex but the amount deposited in the account was not at the disposal of the Company as the same was pre-pledged as a security even prior to issuance of GDR against the loan availed by Vintage.

g. This entire arrangement of entering into the Pledge Agreement dated 5th May 2009, making corporate announcement on May 26, 2009 that the GDR were successfully subscribed and concealing the fact that a Pledge was created on the GDR proceeds and the fact that its GDR subscription was financed by a Loan arrangement with the backing of the issuing company (Commex) was not disclosed to the investors of the Company. Hence, suppression of true facts is alleged to have resulted in disclosing misleading news to the stock exchange, thereby causing a fraud on the investors.

h. It was further observed that the Board of Directors of Commex had passed a resolution dated January 30, 2008, authorizing EURAM Bank to use the GDR proceeds deposited with its EURAM Bank a/c as a security in connection with loan provided to Vintage for subscribing to its GDR issue, and on the basis of the same, the Company had entered into the aforesaid Pledge Agreement with EURAM Bank. The Company did not inform BSE about the outcome of the Board meeting held on January 30, 2008.

3. Accordingly, Adjudication proceedings were initiated with respect to the Noticees as provided below:
    a. For Noticee no.1, under section 15 HA of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") for violations of sections 12A(a),12A(b) and 12A(c) of **SEBI Act, 1992** read

with Regulations 3(a), 3(b), 3(c), 3(d) and Regulations 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003**") and under section 23E of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCRA,1956**") for violations of Section 21 of SCRA, 1956 read with clause 36(7) and clause 50 of the listing agreement.

b. For Noticee no. 2 & 3, under section 15HA of SEBI act for violations of Sections 12A(a),12A(b) and 12A(c) of SEBI Act read with Regulations 3(a), 3(b), 3(c), 3(d) and Regulation 4(1) of **PFUTP Regulations, 2003.**

Appointment of Adjudicating Officer

4. Ms. Rachna Anand was appointed as the Adjudicating Officer under section 15I of the SEBI Act,1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**SEBI Adjudication Rules**") and under section 23-I of SCRA, 1956 read with Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as **"SCRA Adjudication Rules"**) to inquire into and adjudge under section 15HA of the SEBI Act,1992 and under section 23E of SCRA, 1956 respectively, for the aforesaid violations alleged to have been committed by the Noticees. Thereafter, upon transfer of Ms. Rachna Anand, Mr. Jeevan Sonparote was appointed as the Adjudicating Officer. Thereafter, upon transfer of Mr. Jeevan Sonparote, Mr. Sahil Malik was appointed as the Adjudicating Officer. Subsequent to the transfer of Mr. Sahil Malik, undersigned has been appointed as the Adjudicating Officer in the present matter *vide* communication order dated August 09, 2019.

Show Cause Notice & Reply of Noticee

5. A common Show Cause Notice ref. SEBI/HO/EAD-8/JS/NS/OW/P/19269/2017 dated August 11, 2017 (hereinafter referred to as **"SCN"**) was issued to the Noticees under Rule 4(1) of the SEBI Adjudication Rules and Rule 4 (1) of the

SCRA Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under Section 15HA of the SEBI Act, 1992 and Section 23E of SCRA, 1956, as applicable, for the alleged violations specified in the SCN.

Service of SCN, Reply to SCN and Hearing-Noticee no.1

6. The aforesaid SCN was served upon the Noticee no. 1, vide email dated August 14, 2017 at info@commextechnology.com, and vide email dated November 22, 2017 at cs@commextechnology.com and kevinsheth01@gmail.com and vide email dated December 05, 2017 at jayantmitra@hotmail.com and at raj.kapadia@commextechnology.com. The aforesaid SCN was also served *via* Speed Post Acknowledgement Due ("**SPAD**"), which returned undelivered from the last known address of the Noticee No. 1 as available on record. Thereafter, the SCN was affixed at the last known address of the Noticee No. 1, as available on record on October 25, 2017, wherein, it was advised to collect the SCN within 15 days from the affixture and it was granted with an opportunity of a personal hearing on November 22, 2017. The SCN was also made available in public domain through SEBI website under the heading "**Enforcement –unserved summons/Notices**". However, no response was received from the Noticee no. 1 in this regard. Thereafter, another reminder dated November 23, 2017 was sent to it and another opportunity of personal hearing was granted on November 30, 2017, however, this time also, no reply was received from it. Thereafter, another hearing notice dated December 04, 2017 was sent to the Noticee No. 1 at the communication address provided by BSE, wherein, it was granted another opportunity of personal hearing on December 22, 2017. Then also no reply was received from the Noticee. Subsequently, newspaper publication dated January 09, 2018 was made wherein the Noticee was informed about the SCN and granted another opportunity of personal hearing on January 29, 2018.

7. Pursuant to the newspaper publication, vide letter dated January 15, 2018, Noticee No.1 mentioned that the company has changed its office and the new

address is "*B-401, Unit No. 42, 4th flr, Vasudev chambers, Opp Wilson Pen company, Old Nagardas Road, Andheri (E), Mumbai-400069*". Further, it mentioned that it has received one more SCN on June 21, 2017 vide reference no. EFD/DRA-1/SM/14470/2/2017 with regard to the parallel 11B proceedings before the Learned Whole Time Member ("**WTM**") of SEBI and reply dated July 18, 2017 to the aforesaid SCN was enclosed by it along with the letter. However, the Noticee No. 1 had failed to file specific reply w.r.t. instant proceedings and also failed to appear before the Adjudicating Officer for personal hearing. I note that subsequent to the transfer of the matter to the undersigned, multiple opportunity of hearings vide letter dated August 26, 2019 and December 16, 2020 and email dated November 11, 2021 (info@commextechnology.com) were extended to Noticee No. 1, however, neither it has submitted any reply to the SCN, nor it has availed the opportunity of personal hearing.

Service of SCN, Reply to SCN and Hearing-Noticee no.2

8. The SCN was duly served upon Noticee no. 2, wherein, he made his reply vide letter dated August 31, 2017. Thereafter, he was granted an opportunity of personal hearing on November 22, 2017 under Rule 4(3) of the SEBI Adjudication Rules and he had availed the same and made submissions on the basis of his reply. Since substantial time had elapsed from last hearing, accordingly, another opportunity of hearing was granted to the Noticee No. 2, wherein, *vide* letter dated May 24, 2019 he requested for adjournment and his request was acceded to. When another opportunity of hearing was granted to him *vide* hearing notice dated August 26, 2019, vide letter dated September 03, 2019, he informed that an appeal has been filed by him before Hon'ble Securities and Appellate Tribunal ("**SAT**") against the order dated February 28, 2019 in the parallel 11B proceedings and therefore, he requested for another adjournment. Finally, he availed the opportunity of hearing on January 05, 2021. In view of the prevailing circumstances owing to COVID-19, the hearing was scheduled through video conferencing on WebEx platform. On the scheduled date of hearing, his

authorized representative ("**AR**") appeared through video conference and made oral submission on the lines of previous written submissions made *vide* letters dated August 17, 2017 and December 28, 2020. In the light of Hon'ble Supreme Court judgement dated September 21, 2021 wherein Hon'ble Supreme court upheld the order passed by WTM in the paraller 11B proceedings, another opportunity of making additional written submissions was given to the Noticee No. 2 vide email dated November 08, 2022, however, he had not availed the same. Therefore, in my view sufficient opportunity to represent has been extended to the Noticee No. 2 and he has availed the same on previous occasions.

9. The submissions made by Noticee No. 2, vide letter dated August 31, 2017 and December 28, 2020 are summarized below: -
    a. That the delay in issuing the SCN for the proposed penalty on account of the alleged violations after a gap of more than 8 to 9 years is long and inordinate and has rendered the present proceeding stale and as per Hon'ble Bombay High Court in Ramesh Thadani vs. Union of India, 1982 and in Universal Ceramics vs. Union of India, 1983 judgment, the present notice, which has been issued for imposition of penalty, after a long gap of 8 to 9 years is not sustainable.
    b. That the passing of board resolution dated January 30, 2008 and the signing of loan agreement and pledge dated May 05, 2009 are two independent incidences and there is no connection between the board resolution with the loan and pledge agreement.
    c. That there was no discussion of raising loans at the stage of passing the Board Resolution and therefore, the board carefully used the words "if any" in the resolution, so that if at a later stage, the company would raise a loan for which the proceeds of the GDR would be used as a security, the company would revert back with the details thereof to the board of Directors.

d. That the board resolution merely authorizes the company to raise loans, if any, for its own purpose and not loans by third parties. The board did not authorise Sheth or the company to permit a third party i.e. Vintage to raise loan against which, either the shares or the GDR proceeds would be used as security.
e. That the Noticee cannot be held liable for misuse of the authority conferred by Board Resolution after he has resigned for a violation that did not occur while he was the director until 10th October 2008.
f. That he had resigned well before the period of investigation, which is 1st May, 2009 to 30th June 2009, and is not liable for the alleged violation.
g. That the allegation is based on assumption and presumption. The GDR issue, the Loan Agreement between Vintage and the Bank and the Pledge Agreement by the Company, are all events which occurred almost 17 months after the Board Resolution dated 30th January, 2008.
h. That the Noticee did not make any gain or derived any advantage by the alleged acts of the Commex as a Director, he acted bona-fide and innocently and did not indulge in fraudulent and unfair trade practices relating to securities at all.
i. That Hon'ble SAT has adjudicated upon Noticee's appeal which was filed against the WTM order dated February 28, 2019 wherein the Noticee was inter-alia, restrained from accessing the securities market and further prohibited from buying, selling and otherwise dealing with the securities market directly or indirectly for a period of two years. Vide order dated November 05, 2019, Hon'ble SAT has completely absolved the Noticee from the allegations of violation of Section 12A of the Act and Regulations 3 and 4 of the PFUTP Regulations, 2003.
j. That in view of being absolved by Hon'ble SAT, the grounds for issuance of the present Show Cause Notice and conduct of inquiry, no longer exists and that the Noticee cannot be held liable for imposition of penalty under

section 15HA of the Act and the present proceedings cannot be sustained.

k. That in a similar case M/s MPS Infotecnics Ltd, Hon’ble SAT had set aside WTM order. The adjudicating officer disposed the proceedings in favour of the Noticee since the WTM order arose out of the same cause of action and was set aside by the Hon’ble SAT

Service of SCN, Reply to SCN and Hearing- Noticee no.3

10. SCN dated August 11, 2017 was duly served on the Noticee *via* SPAD, wherein vide email dated August 24, 2017, he sought extension of time to file reply to the aforesaid SCN. Pursuant to the same, he was granted time until September 06, 2017 to file his reply and he made his reply vide letter dated September 04, 2017. The Noticee was given an opportunity of personal hearing on November 22, 2017 and he availed the same, wherein, he made submissions on the basis of his reply dated September 04, 2017. Vide email dated November 24, 2017, he was advised to submit a certified copy of the attendance sheet of those board meetings of the Company, wherein, he has disputed attending the same, so that his submissions could be supported by the credible evidence. Vide letter dated December 05, 2017 provided the certified copies of the attendance sheets of the board meetings. Subsequent to the transfer of the case to the undersigned, another opportunity of personal hearing was given on September 16, 2019 vide letter dated August 26, 2019. The Noticee requested to defer the hearing as he had filed an appeal before Hon’ble SAT with respect to WTM order passed in the parallel 11B proceedings. After seeking several adjournments, Noticee No. 3 availed hearing on January 05, 2021 and made additional written submissions vide letter dated January 15, 2021. Vide email dated July 05, 2021, the Noticee No. 3 through his Authorized representatives (ARs), sought another opportunity of personal hearing wherein the he availed the hearing on November 23, 2021 and made additional submissions vide letter dated December 03, 2021.

11. The written submissions of the Noticee No. 3 made vide letter dated September 04, 2017 and January 15, 2021, January 19, 2021 and December 03, 2021 are summarized below:

  a. He was a non-executive and independent director in Commex and did not have any stake in the company at any time, financially or otherwise. An independent director shall be held liable only in respect of such acts and omission or commission by a company which had occurred with his knowledge, attributable through the board process and with his consent or connivance or where the independent director had not acted diligently and he had no knowledge nor did he give any consent to sign the pledge and the loan agreement. That the present proceedings are in contravention of the general circular no. 1/2020 dated March 02, 2020 issued by the ministry of the corporate affairs wherein it is mentioned that the mere fact of being an independent director shall not affix liability.
  b. He was not involved in the day to day operations of the company and was not regular in attending the board meetings of the company. Also that, he did not attend the board meeting dated January 30th, 2008 and April 30, 2008.
  c. The minutes of the board meetings of Commex are incorrect as it shows the Noticee as present for the meeting whereas the attendance register shows contrary to that.
  d. The Noticee was not informed by the company about the existence of documents such as the loan agreement and the pledge agreement.
  e. The aforesaid board resolution only authorized for creation of security and escrow arrangements in the normal course of business and not for entering into any security and escrow arrangements which are in contravention or violation of law.
  f. If the executive team acted unlawfully or exceeded the authority given by the board of directors, the Noticee should not be held liable for such excesses of the executive team.

g. The disclosures were being handled by the secretarial team of the company and all the omissions, non-disclosure and incorrect or false disclosure of facts were without the knowledge and approval of the board.
h. The Noticee would request a personal hearing before finalisation of the case
i. The findings on fact of Hon'ble SAT in appeal no. 124 of 2019 in the matter of M/s Adi cooper v. SEBI, that the relevant meeting cannot be construed as the starting point of fraud, are applicable in rem by its very nature and context and hence, is equally applicable to not just Mr Adi Cooper but to the Noticee as well.
j. The annual report cannot be relied upon to ascertain the presence at the board meetings since the said annual report of the company for 2009-10 omits the mention of the meeting dated April 04, 2009 which the company has referred to in its letter to SEBI dated June 22, 2015, and is not accurate to that extent. Moreover, another meeting dated September 09, 2009 has also been omitted in the annual report, which goes on to establish that more than 11 board meetings were held in 2009-10.
k. In the minutes of Board meeting held on May 25, 2009, the directors had approved the passing of the resolution for allotment of GDR, where the name of the allottee was mentioned as "Deutsche Bank Trust Company Americas". There was no mention of the list of subscribers nor any approval was sought for nor given by the board at that time to inform the stock exchange regarding successful placement of the GDR in that board meeting. That Mr Ketan Seth, the then CMD, thereby had acted in excess of the authority given to him.
l. As per the minutes of the Audit committee meeting it is clear that the audit committee was informed that the investments made out of the proceeds of the GDR were in line with the purpose of the GDR issue and particulars of the GDR subscription and investment/loan to subsidiaries from the proceeds of the GDR were mentioned but it was nowhere mentioned that

these GDRs were in fact pledged and that too against the loan taken by a different company.

m. The Noticee relied upon section 27 of the SEBI Act, Ministry of Corporate Affairs general circular no. 1/2020 dated March 02, 2020 and Hon'ble SAT order dated November 19, 2020 in the matter of Adesh Jain vs. SEBI in appeal no. 217/2020 regarding liability of independent directors.
n. That the present proceedings are per incuriam the settled position of law qua independent directors who have no role to play in the day to day functioning of the company. The Noticee relied on *inter-alia*, supreme court judgement in the matter of State of Haryana vs. Brij Lal Mittal (1998) 5 SCC 343 and in S.M.S Pharmaceuticals Ltd vs. Neeta Bhalla (2005) 8 SCC 89, National small scale industries Corporation ltd s. Harmeet singh paintal (2010) 3 SCC 330; EBI vs. Gaurav Varshney (2016) 14 SCC 430; chintalapati Srinivasa Raju vs. SEBI [CA no. 16805/2017], Pritha Bag vs. SEBI appeal no. 184/2016
o. The ARs quoted Adjudicating Officer order dated April 28, 2021 in the matter of BM Khanna, and Adjudicating Officer order dated January 18, 2021 in the matter of SN Sharma regarding the liability of independent director in similar matters.
p. The Hon'ble SAT vide order dated September 20, 2021 in the matter of I.S Sukhija vs. SEBI, held that "*merely because Mr I.S. Sukhija was the chairman of the Audit committee does not mean that he was party to the fraudulent scheme, if any. The observations made by the authorities in the impugned orders that he should have raised questions as to why the GDR proceeds was not brought into the Company's accounts or why the loan was given to the vintage from the GDR proceeds are not matters which comes under the purview of the audit committee*".

Issues for Consideration and Findings

12. I have considered the SCN dated August 11, 2017 along with all the Annexures referred to in the SCN, all the replies received from the Noticees so far in

response to the allegations and the oral submissions made by the Noticees during the hearing and all other relevant material available on record. The following issues are before me for consideration in this case:

<u>Issue No. I</u>: Whether Noticee no. 1 has violated Section 12A (a), (b), (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4(1), 4(2) (f), (k), (r) of PFUTP Regulations, 2003 and section 21 of SCRA read with clause 36(7) and 50 of the listing agreement.

<u>Issue No. II</u>: Whether Noticee no. 2 and 3 have violated section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulation 3 (a), (b), (c) and (d) and 4 (1) of SEBI PFUTP Regulations, 2003?

<u>Issue No. III:</u> If the answer to Issue No. I & II is in affirmative, whether the violation, on the part of the Noticees would attract monetary penalty under respective section 15HA of the SEBI Act and section 23E of SCRA, as applicable?

<u>Issue No. IV</u>: If the answer to Issue No. III is in affirmative, what would be the monetary penalty that should be imposed upon the Noticees taking into consideration the factors stipulated in section 15J of the SEBI Act with Rule 5 (2) of the SEBI Adjudication Rules and the factors stipulate in section 23J of the SCRA with Rule 5 (2) of the SCRA Adjudication Rules, as applicable?

13. Before moving forward, it is pertinent to refer to the relevant provision of law which are alleged to have been violated. The said provisions are reproduced hereunder-

<u>SEBI Act</u>

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;

PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

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

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

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

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

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

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

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

(a) ………

(b) ……….

…………….

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

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

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

<u>SCRA, 1956</u>

21. Conditions for listing. *Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange*.

Clause 36 of the listing agreement

…The company will also immediately inform the exchange of all the events, which will have bearing on the performance/operations of the company as well as price sensitive information. The material events may be events such as:

(1)…

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

…..the above information should be made public immediately.

Clause 50 of the listing agreement

The company will mandatorily comply with all the accounting standards issued by Institute of Chartered Accountants in India (ICAI) from time to time.

Accounting Standard (AS) 1-Disclosure of Accounting Policies

Considerations in the Selection of Accounting Policies

16. The primary consideration in the selection of accounting policies by an enterprise is that the financial statements prepared and presented on the basis of such accounting policies should represent a true and fair view of the state of affairs of the enterprise as at the balance sheet date and of the profit or loss for the period ended on that date.

17. For this purpose, the major considerations governing the selection and application of accounting policies are:—

a) Prudence

In view of the uncertainty attached to future events, profits are not anticipated but recognised only when realized though not necessarily in cash. Provision is made for all known liabilities and losses even though the amount cannot be determined with certainty and represents only a best estimate in the light of available information.

b) Substance over Form

The accounting treatment and presentation in financial statements of transactions and events should be governed by their substance and not merely by the legal form.

c) Materiality

Financial statements should disclose all "material" items, i.e. items the knowledge of which might influence the decisions of the user of the financial statements. "

AS 13 — Accounting for Investments

Disclosure

35. The following information should be disclosed in the financial *statements: ……. (d) significant restrictions on the right of ownership, realisability of investments or the remittance of income and proceeds of disposal;*

AS 29 — Provisions, Contingent liabilities and Contingent Assets

10.4 A contingent liability is:

a) *a possible obligation that arises from past events and the existence of which will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the enterprise; or*
b) *a present obligation that arises from past events but is not recognised because:*
   i. *it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation;*
   ii. *a reliable estimate of the amount of the obligation cannot be made.*

……….

27. A contingent liability is disclosed, as required by paragraph 68, unless the possibility of an outflow of resources embodying economic benefits is remote…..

68. Unless the possibility of any outflow in settlement is remote, an enterprise should disclose for each class of contingent liability at the balance sheet date a brief description of the nature of the contingent liability and, where practicable:

a) *an estimate of its financial effect, measured under paragraphs 35-45*
b) *an indication of the uncertainties relating to any outflow; and*
c) *the possibility of any reimbursement.*

71. Where any of the information required by paragraph 68 is not disclosed because it is not practicable to do so, that fact should be stated.

Findings

14. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticees, I record my findings hereunder:

Issue No. I: Whether Noticee no. 1 has violated Section 12A (a), (b), (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4(1), 4(2) (f), (k), (r) of PFUTP Regulations, 2003 and section 21 of SCRA read with clause 36(7) and 50 of the listing agreement?

15. In this case, the Company after being duly authorized by the Board, had issued 1.91 million GDR on May 25, 2009 for raising 9.99 million USD. From a perusal of Table 1, I note that the number of underlying shares issued by the Company under the GDR issue was 9,53,39,500 shares.

16. In this regard the Board of Commex had passed a resolution in its meeting on January 30, 2008, inter-alia, authorizing EURAM Bank to use the GDR proceeds as security against loan, if any. Relevant extracts of the Board Resolution are as under:

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

> *RESOLVED FURTHER THAT Shri Ketan Sheth, Chairman & Managing Director of the Company, be and is hereby authorized to sign, execute, any application, agreement, escrow agreement, documents, 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* ***(emphasis supplied)*** *as well as to enter into any Escrow Agreement or similar arrangements if and when so required."*

17. On perusal of the above Board Resolution, I find that the aforesaid Board Resolution was approved for opening a bank account with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue of the Company. Further, Shri Ketan Seth, Chairman and Managing Director of the Company was authorized to sign, execute any application, agreement etc., as may be required by the Bank. It was further resolved by the Board to authorize the Bank to use the funds so deposited in the bank account as a security in connection with the loans, if any. From the resolution as stated above, I find that the Company and the Board of Directors had already decided as back as on January 30, 2008 to go for a GDR issue and had even decided at that very stage to open a bank account with EURAM for receiving the GDR proceeds. Also in the same Board resolution it had already been contemplated that the GDR proceeds may be used as a security for loans although the nature and purpose of the proposed loans to be availed was not specified in the said resolution. However, no information with regard to such intentions of the Board was disclosed to the shareholders and rather the Company misled the investors by concealing such an important disclosure from them.

18. As noted earlier, Vintage had signed a Loan Agreement No. K050509 -003 dated May 5, 2009 with EURAM Bank for a loan of 9.99 million USD to pay for the subscription amount of US$9.99 million for the GDR issue of Commex. Vintage had opened an exclusive loan account (a/c no. 540012-017-3 titled as Loan J09050001 IT People K050509-003) with EURAM Bank for receiving the loan and making subscription to GDR of Commex. The following stipulations, inter-alia, in the Loan agreement are notable:

"

2. <u>Nature and purpose of facility:</u>

To provide funding enabling Vintage FZE to take down GDR issue of IT People (India) Limited Luxembourg public offering and may only be transferred to Euram account no. 540 025, IT People (India) Limited.

3. *Draw down:*

The Bank makes the Facility available to the Borrower subject to the fulfilment of the conditions precedent as set out in section 9 of this Loan Agreement and solely for the purpose as set forth above……….

…………………………

6. *Security:*

In order to secure all and any of the Bank's claims and entitlements against the Borrower, arising now or in the future out of or in connection with the Loan or any other obligation or liability of the Borrower to the Bank, including without limitation other loans granted in the future, it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be demanded by the Bank:

- *Pledge of certain securities held from time to time in the Borrower's a/c no. 540 025 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. 540 025 of the Borrower 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………. "*

19. On a perusal of clause 2 and 3 of the Loan Agreement, I find that the said loan was availed exclusively by Vintage for the purpose of subscribing to the GDR issue of Commex and the loan amount could only be transferred to EURAM Account No. 540025 of Commex. I further note that in terms of clause 6 of the said Loan Agreement, the EURAM Bank A/C no. 540025 of Commex will be pledged as security for the loan taken by Vintage from EURAM as set out in detail

in the Pledge Agreement. The said Loan Agreement with EURAM Bank was signed by Mr Arun Panchariya (M.D. of Vintage), and a Pledge Agreement was signed by the Late Shri Ketan Sheth (MD of Commex) on the same day. The execution of Loan Agreement dated May 5, 2009 prior to the GDR issue on May 25, 2009 shows that Vintage was already pre-decided by Commex to be the sole subscriber to the GDR issue. It was also pre-decided that Vintage will subscribe to the GDR by taking a loan equivalent to the total amount of the whole of GDR issue of Commex. This clearly indicates that Company was aware much before the issuance of GDR that the proceeds to be realized against the issuance of GDR would be held as security towards the loan amount sanctioned by EURAM Bank to Vintage to enable it to pay the subscription amount. Due to this arrangement, Commex was restrained from using the proceeds of the issuance of GDR for a considerable period for the stated purpose for which the fund was raised through issue of GDR. Prima facie, this does not appear to be a normal loan transaction between EURAM Bank and Vintage, rather, it appears to be a peculiar transaction wherein under the garb of loan agreement, the amount is merely rotated on paper from the Bank to the borrower and from the borrower to the Company's a/c in the same bank where it is kept as a security against the said loan availed by the borrower. The net result is that the Company is not really able to utilize the proceeds of GDR, as the same is pledged as security against the loan taken by the borrower to pay for the GDR subscription. Thus the money/fund only rotates on paper from one a/c to another but remains in the Bank in an encumbered state.

20. As pointed out earlier, on the basis of authorization given by the Board, Mr Ketan Sheth had signed a Pledge Agreement with EURAM Bank dated May 05, 2009 under which he had pledged the GDR proceeds as security against loan availed by Vintage from EURAM Bank for subscribing to GDR of Commex. The preamble of the Pledge Agreement states as under:

"By Loan Agreement K050509-003 (hereinafter referred to as the "Loan Agreement") dated May 5, 2009, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates (the "Borrower") in the amount of USD 9,991,579.60. The pledgor has received a copy of the Loan Agreement no. K050509-003 and acknowledges and agrees to its terms and conditions."

21. The pledge created in the Pledge Account stated as under:

"*2. Pledge*

2.1 *In order to secure any and all obligations, present and future, whether conditional or unconditional of the Borrower towards the Bank under the Loan Agreement and any and all respective amendments thereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the Loan Agreement-including those limited as to condition or time or not yet due-irrespective of whether such claims have originated from the account relationship, from bill of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations")the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:*

2.1.1 *all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount US$ 9,991,579.60 existing from time to time at present or hereafter on the securities account(s) no. 540025 held with the Bank (hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein.*

2.1.2 all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 540025 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and all amounts credited at any particular time therein….

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

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

22. Further, following condition has been put in the Pledge Agreement for realization of the pledge.

"6. *<u>Realisation of the Pledge</u>*

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

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

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

23. On a perusal of the Pledge Agreement between the Company and EURAM Bank, one would clearly find that the said agreement was executed only to secure the obligations of the borrower, Vintage, on the basis of which it was granted a loan for 9.99 million USD from EURAM Bank. However, the Pledge Agreement also mentions that the Pledgor received copy of the Loan Agreement and acknowledges the terms of the Loan Agreement. This cross reference of Loan Agreement in Pledge Agreement and vice-versa indicates that Commex had, much before the actual issuance of GDR pre-decided on the future subscriber and the entire modus operandi through which GDR were issued by facilitating financing the subscriber and there was no intention to immediately bring the GDR proceeds to India to utilize for the stated needs of the Company. One interesting aspect of the entire matter is the timing of execution of Loan Agreement between EURAM Bank and the borrower i.e. Vintage and execution of Pledge Agreement between the said bank and the issuer company i.e. Commex. Both these agreements were dated 5th May, 2009. Since the Pledge Agreement has been incorporated in the Loan Agreement and made part of it as an annexure in terms of sequence of events, it appears that Pledge Agreement must have been signed first by Commex and handed over to Vintage to offer it to the Bank to enable it to sanction the loan. Accordingly, the bank has made the Pledge Agreement as a part of the Loan Agreement with Vintage.

24. The above observation is evident from the Pledge Agreement which states that the Pledgor (Commex) pledges to EURAM Bank, all the rights, title and interest in the securities deposited and balance of funds up to 9.99 million USD in the A/C

no. 540025 with EURAM Bank (hereinafter referred to as “as Pledge Accounts”). I note that account no. 540025 was the escrow account where the GDR proceeds of Commex were deposited. This shows that Commex had pre-pledged to the EURAM Bank, its entire GDR proceeds as security for the loan to be disbursed to a third party i.e. Vintage, for making subscription to GDR of Commex on May 5, 2009, much before the actual GDR issue that took place on May 25, 2009. Thus, evidently Commex already knew in advance who would be subscribing to its entire GDR issue, for which Commex drew up a premeditated plan to facilitate its GDR issue in the manner as described above much before the actual GDR issue, with the prior approval of the Board of Directors of Commex which had passed necessary resolution to this effect enabling the CMD to execute the plan.

25. Further, from the clause 6 of the Pledge Agreement (pertaining to Realization of the Pledge), also extracted in preceding pages, I note that Commex had given consent to the Bank to apply the funds in the Pledged Accounts in case of default of repayment by the Borrower, Vintage for settling their obligations. As a consequence, even after the GDR issue, Commex did not have the GDR proceeds at its disposal until repayment of the loan made by Vintage. Further, on examination of the Bank A/C statement of Commex no. 540025 and Vintage’s Loan A/C no. 540012, I find that Vintage repaid the loan to EURAM Bank in several instalments from June 8, 2009 to September 23, 2010 and each time, only after repayment of a loan instalment by Vintage, on almost the same day of repayment, an equal amount of money was transferred from Commex’s EURAM Bank A/c to its UAE subsidiary’s A/c. Thus the Company did not actually receive the GDR issue proceeds till repayment of loan by Vintage. Therefore, in essence, the money equivalent to the GDR issue amount rotated within the EURAM Bank, firstly, as a loan in the name of Vintage and then it travelled as GDR proceeds to the account of Commex but there was actually no transfer of money to the Company against the GDR issue as on May 25, 2009 for the purpose of utilization. Details of receipt of GDR proceeds in the Commex 's bank a/c as well

as details of transfer of funds by Commex from its EURAM Bank Retail account to its UAE subsidiary and a summary of repayment of loan by Vintage are tabulated below:

Table no. 3

Date of credit of funds (GDR issue)	**Credit amount (USD) In Pledge Account**
May 22, 2009	9,991,579.60

Table no. 4

Date	**Amount (USD) repaid by Vintage**	**Date**	**Amount (USD) of money transferred from Commex's a/c to its UAE subsidiary's a/c**	**Other transaction**
08-Jun-09	200,000	09-Jun-09	200,000	
03-Aug-09	600,000	04-Aug-09	600,000	
20-Jan-10	223,000	21-Jan-10	220,000	
04-Feb-10	1,000,000	04-Feb-10	1,000,000	
08-Feb-10	1,000,000	08-Feb-10	1,000,000	
12-Feb-10	1,000,000	15-Feb-10	1,000,000	
09-Mar-10	1,000,000	09-Mar-10	1,000,000	
23-Mar-10	1,000,000	23-Mar-10	1,000,000	
30-Mar-10	105,000	30-Mar-10		-105,000*
15-Sep-10	1,000,000	15-Sep-10	1,000,000	
16-Sep-10	1,300,100	16-Sep-10	1,300,000	
		23-Sep-10		+423,542
23-Sep-10	1,563,480	23-Sep-10	1,987,022#	
Total	9,991,580		10,307,022	+318,542

26. On a perusal of corporate announcements made by Commex to BSE, it was observed that on May 26, 2009, the Company informed BSE that it had successfully completed placement of GDR and the Board, at its meeting held on May 25, 2009, approved & allotted equity shares of Rs. 2 each represented in the said GDR. Given the way GDR were issued to one subscriber in a pre-planned manner as discussed above, I find that the Company, by making a disclosure on May 26, 2009 that GDR have been successfully subscribed, tried to give a

misleading impression to the investors and to the market at large, about the potential of the Company, without disclosing the actual arrangement undertaken to ensure successful subscription to its GDR. The above disclosures are fraught with fraudulent intentions and is an example of an unfair trade practice which was inflicted by the Company on the shareholders and investors at large. The Company had successfully misled the investors to believe that the shares of the Company have a good market abroad and have been very well received by foreign investors hence, its shares may be of great value in India as well as abroad.

27. Hon'ble Supreme Court in their judgment dated July 6, 2015 in **SEBI v. PAN Asia Advisors Ltd & anr**. (Civil Appeal No. 10560/2013, AIR 2015 SC 2782), while dealing with issue of GDR by way of a similar arrangement of Loan and Pledge Agreement, observed that:-

"the most relevant fact which is to be borne in mind is that the existence of GDRs is always dependent upon the extent of underlying ordinary shares lying with the Domestic Custodian Bank……………..
….that for creation of GDRs which can be traded only at the global level, the issuing company should have developed a reputation at a level where the marketability of its investment creation potential will have a demand at the hands of the foreign investors. Simultaneously, having regard to the development of the issuing company in the market and the confidence built up with the investors both internally as well as at global level, the issuing company's desire to raise foreign funds by creating GDRs should have the appreciation of investors for them to develop a keen interest to invest in such GDRs. Mere desire to raise foreign investments without any scope for the issuing company to develop a market demand for its GDRs by increasing the share capital for that purpose is not the underlying basis for creation of GDRs……….

To put it differently, by artificial creation of global level investment operation, either the issuing company on its own or with the aid of its lead Manager cannot attempt to make it appear as though there is scope for trading GDRs at the global level while in reality there is none…."

28. I find that despite having granted several opportunities to make submissions, the Company has not furnished any explanation on merit and has not rebutted the allegations levelled against it in the SCN. Vide letter dated January 15, 2018, the company mentioned that the company has changed its address to *B-401, Unit No. 42, 4th flr, Vasudev chambers, Opp Wilson Pen company, Old Nagardas Road, Andheri (E), Mumbai-400069* and that the SCN was served at previous address. However, I note that the SCN were also served to the aforesaid new address previously as well vide letter dated November 23, 2017 even then there was no response from the company. The Company has merely expressed its helplessness in submitting any information because of the sudden demise of Mr Ketan Sheth.

29. As the record suggests, though the Company had long back decided in its board meeting held on January 30, 2008 to raise money by way of issuance of GDR and had also authorized the EURAM Bank to use the GDR proceeds as security in connection with loan that may be availed in connection with the subscription of the GDR, the Company never thought it important enough to disclose these facts to the exchange for dissemination to its shareholders and public at large. Interestingly, the Company has furnished a list of GDR subscribers to SEBI vide letter dated June 22, 2015, whereas actually the entire 1.91 million GDR (amounting to USD9.99 million) was subscribed by only one entity, i.e. Vintage. Thus, Commex had submitted a blatantly false list of the subscribers. As discussed above in detail, the GDR issue would not have been subscribed by Vintage had Commex not given the required security towards the loan taken by Vintage from the EURAM Bank. However, the Company, through its misleading

disclosures to BSE and at the same time by suppressing the facts from the public view about its arrangement with EURAM Bank to facilitate financing of the GDR subscription by Vintage, has created a misleading and overrated impression about the potential of the Company in the market.

30. I find that the entire arrangement of issuance of its GDR by way of loan and pledge agreements, non-disclosure of the resolution passed by the Company in its meeting held on January 30, 2008, non-disclosure of the entering into pledge agreement with EURAM bank, making corporate announcement on May 26, 2009 about successful subscription of the GDR and not disclosing the pledge and loan arrangement to the investors, and has resulted in disclosure of misleading and distorted information to the stock exchanges. Therefore, the entire scheme of issuance of GDR was fraudulent.

31. In this respect, I note that the Hon'ble Supreme Court in the case of **SEBI v. PAN Asia Advisors Ltd & anr.(Supra)** has held that:

" any Act which caused any infringement in such trading of those underlying shares by virtue of any malfeasance or misfeasance or misdeeds committed by any person under the Act which worked against the interests of the investors in securities and the securities market, the SEBI was entitled to proceed against such persons who are involved in any of those allegations"

32. Further, Hon'ble Securities Appellate Tribunal in its order dated October 25, 2016 in the case of **PAN Asia Advisors Ltd. & anr. v. SEBI**, observed the following:

"The expression 'fraud' is defined under the PFUTP Regulations, 2013……

…..from the aforesaid definition it is absolutely clear that if a person by his act either directly or indirectly causes the investors in the securities market in India to believe in something which is not true and thereby induces the investors in India to deal in securities, then that person is said to have committed fraud on the investors in India. In such a case, action can be taken under the PFUTP Regulations, 2003 against the person committing the fraud,

irrespective of the fact any investor has actually become a victim of such fraud or not……..

…….Thus, the investors in India were made to believe that in the global market the issuer companies have acquired high reputation in terms of investment potential and hence the foreign investors have fully subscribed to the GDRs, when in fact, the GDRs were subscribed by AP through Vintage which was fully owned by AP. In other words, PAN Asia as a Lead Manager and AP as Managing Director of PAN Asia attempted to mislead the investors in India that the GDRs have been subscribed by foreign investors when in fact the GDRs were subscribed by AP through Vintage. Any attempt to mislead the investors in India constitutes fraud on the investors under the PFUTP Regulations, 2003"

33. In view of the above, I hold that the acts of the company to finance the subscription of its own GDR by pledging its securities against loan availed by Vintage to subscribe to the GDRs issued by Commex, subsequently making corporate announcement regarding successful subscription of its GDR, concealing and suppressing of material facts about the fraudulent arrangements made through the Pledge and Loan Agreement with EURAM bank by not informing the stock exchanges regarding the board meeting dated January 30, 2008 and about entering into pledge agreement with EURAM bank and not disclosing the potential liability of the pledged GDR proceeds, restrictions on realisation of investments etc. as per the accounting standards are nothing but fraud committed upon the innocent investors of the securities market and therefore such acts of company are in violation of provisions of Sections 12A(a),(b),(c) of the SEBI Act r/w Regulations 3(a),(b),(c),(d), 4(1),4(2)(f),(k),(r) of PFUTP Regulations, 2003 and for violation of section 21 of SCRA, 1956 r/w clause 36(7) and Clause 50 of the listing agreement, as have been alleged in the SCN.

34. However, with reference to the violations of section 23E of SCRA I note that the Hon'ble SAT in the matter of ***Suzlon Energy Ltd. and Anr. vs. SEBI*** (Appeal No. 201 of 2018) dated May 03, 2021 has held the following:

> *"Section 23E provides that where a Company fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof then penalty would be a minimum of Rs. 5 lakh upto maximum of Rs. 25 crore. The words "fails to comply with the listing conditions" cannot mean failure to comply with the conditions in the Listing Agreement. One of the requirements in the Listing Agreement which is required to be complied with is Clause 36 whereas Section 23E refers to the conditions which are imposed upon a Company when it is applying for its shares to be listed on the stock exchange platform. Section 23E has to be read along with Rule 19 of the Securities Contracts (Regulation) Rules, 1957 ('SCRR' for short). Rule 19 of the SCRR provides certain requirements with respect to a listing of securities on a recognized stock exchange. Rule 19A provides that a Company has to continuously maintain listing requirements. Rule 21 provides conditions for delisting of securities. Failure to comply with the listing conditions which are stated in Rule 19 would entail a penalty as provided under Section 23E. Thus, in our view violation of Clause 36 of the Listing Agreement will attract Section 23A(a) of the SCRA and will not attract Section 23E….." (emphasis supplied)*

35. Further, I note that an appeal has been filed before the Hon'ble Supreme Court against the aforesaid order *vide* civil appeal no. 4741 of 2021. Also, a stay application has been filed before the Hon'ble Supreme Court by SEBI with respect to the findings of Hon'ble SAT in paragraphs 19 of the aforesaid order. In the view of the above, I note that the aforesaid stay application and the appeal is pending. It is important to highlight that *vide* orders in the matter of ***M/s NDTV vs. SEBI*** (Appeal no. 358 of 2015) dated August 07, 2019, and ***Oasis Securities***

Ltd. & Ors. Vs. SEBI (Appeal no. 316 of 2018), dated March 17, 2020, the Hon'ble SAT has upheld the imposition of penalty under section 23E of SCRA on the appellant companies therein for the violation of clauses of the listing agreement. The limited purpose of going into the issue of violation of listing agreement by the Company is to determine if the Company has violated the provisions of the listing agreement, and if yes, to impose penalty, however, the enforcement of penalty with respect to the violation under section 23E of SCRA shall be subject to the outcome of the aforesaid appeal before the Hon'ble Supreme Court.

Issue No. II: Whether the Noticee No. 2 and 3 have violated section 12A(a) , (b), (c) of SEBI Act, 1992 read with Regulation 3 (a), (b), (c) and (d) and 4 (1) of SEBI PFUTP Regulations, 2003?

36. I note from the minutes of the Commex's Board Meeting dated January 30, 2008 that the directors of Commex namely Mr Ketan Sheth (who, as per the information provided by the Company, passed away on October 09, 2016) Mr Adi Cooper (Noticee No.2), Mr Hemant Sonawala and Mr Kishore Hegde (Noticee No.3) had attended the said Board Meeting and authorized the EURAM Bank to use the Commex's GDR proceeds deposited with EURAM Bank as security in connection with any loan. The relevant extracts of the resolution passed in the said Board meeting is as under:-

   "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 (emphasis supplied) as well as to enter into any Escrow Agreement or similar arrangements if and when so required."

37. I would now deal with the replies and submissions made by the Mr Adi Cooper (Noticee no. 2) with respect to the alleged violations. Mr Adi cooper has contended that there is a delay of 8-9 years in issuance of SCN which renders the present proceedings as unsustainable. In this regard, I note that during

October 2010, SEBI started examination of several Indian companies (45 companies) that had issued GDR in overseas market with the intention of defrauding Indian investors. Pursuant to completion of examination in December 2014, the instant matter was forwarded for detailed investigation. Meanwhile, vide WTM order dated June 16, 2016, SEBI issued a direction under Section 11B to depositories and local custodians to freeze the beneficiary account of the respective entities who had issued GDRs in a fraudulent manner. Thereafter, on carrying out detailed investigation of the GDR issue, the investigation in the instant matter was completed in March, 2017 and action with respect to the entities for the alleged violations were approved. Subsequently, Adjudicating Officer was appointed on March, 2017 and thereafter, erstwhile Adjudicating Officer had issued a show cause notice in August, 2017. In this regard I further note that the GDR matters are complex and time taking which involves investigation of various entities registered under foreign jurisdiction. The same, inter-alia, required collaboration with foreign regulators and collection of information/evidences therein. Therefore, considering the above explained complexity of the matter, I opine that there is no unreasonable delay in the matter as contended by the Noticee. In this regard, I place my reliance on Hon'ble SAT order dated February 05, 2020 in the matter of **Jindal Cotex Ltd v. SEBI**, wherein, it was held that:

> *"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."*

38. I note that, on completion of investigation in the present matter and approval of initiation of Adjudication proceedings with respect to the Noticees, subsequently Mr Adi Cooper was intimated about the appointment of Adjudicating Officer vide letter dated August 10, 2017 and SCN dated August 11, 2017 was served upon

him. Further, the Noticee was granted various opportunities of hearing and submission of replies as discussed. I would like to rely upon the judgement of Hon'ble SAT in the case of **M/s. Adamina Traders Private Limited vs SEBI** (Appeal No. 331 and 366 of 2020) dated December 15, 2021 held that "*We do not find any evidence to hold that there was an inordinate delay in the issuance of the show cause notice. This contention is accordingly rejected. Further, nothing has been shown as to how this delay has prejudiced the appellant. In the absence of any prejudice the delay, if any, cannot be set aside*." Further, Hon'ble SAT in the matter of **Hemant Sheth and Ors. vs. SEBI**, (Appeal No. 521 of 2021), decided on January 07, 2022 held that *"9. Insofar as the delay is concerned we find that after the observation made by the WTM in its order of May 10, 2013 SEBI took action and appointed the AO dated July 4, 2013. No doubt the show cause notice was issued in January 2016 but the delay in the issuance of the show cause notice in the instant case will not vitiate the proceedings initiated against the appellants in the peculiar facts and circumstances of the case. Consequently, we are not inclined to quash the proceedings only on the ground of inordinate delay as asserted by the learned counsel for the appellant."*

39. I would also like to rely on the order passed by Hon'ble SAT in the case of **Metex Marketing Pvt. Ltd. vs. SEBI** (order dated June 4, 2019) wherein Hon'ble SAT held that: *"This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation".*

40. Thus, in view of the above, I note that there is no inordinate delay in the present adjudication proceedings and the time taken for issuance of SCN on completion of a complex investigation and passing of orders is justified and that the present proceedings can be proceeded with for imposition of penalty pursuant to establishment of violations.

41. Mr Adi Cooper has contended that there was no connection between what was authorized by the Board on January 30, 2008 and the pledge and loan agreement. He also contended that there was no discussion of raising loan at the meeting stage and the board did not authorize Mr Sheth or the company to permit a third party i.e., Vintage, to raise loan against which the GDR proceeds would be used as security. In this regard, I note that Mr Adi Cooper admittedly attended the Board Meeting dated January 30, 2008. Mr. Cooper has stated that the GDR were issued on May 25, 2009 and on the said date he had ceased to be a director of the Company. Prior to that the Company had passed another resolution on March 13, 2009 and on that date too he was not a director hence, the alleged acts of nondisclosures and misleading disclosures by the Company etc. occurred after he ceased to be a director about which he has no knowledge. In this regard, I note that Mr. Cooper is shown as the Whole-Time director as per the MCA record submitted by Mr. Cooper as enclosure to his reply and on perusal of the same, it is observed that Mr. Cooper has indeed ceased to be a Whole-Time director of Commex w.e.f. October 10, 2008. However, the fact remains that as a Whole-Time director, he has attended the meeting of the Board held on January 30, 2008 and in the said Board meeting the GDR proceeds were authorized to be placed as security for loan. As discussed earlier the authorization given by the Board to use the GDR proceeds as security for loan was the starting point of the fraudulent arrangement through which the Company facilitated the financing of GDR subscription by Vintage. It is further noted that, the resolution passed by the Board on January 30, 2008, authorizing such an arrangement was not disclosed to the shareholders of the Company or the investors of the securities market through BSE. Mr Cooper was a part of the Board, which authorized such a fraudulent arrangement (*as discussed above*), Mr. Cooper is liable to be held for the fraudulent act of the Company of pledging of the GDR proceeds as collateral for loan taken by Vintage for making subscription to the GDR.

42. Mr. Cooper's another contention is that the resolution merely authorized the Company to use funds deposited in the bank as a security in connection with loan, which must necessarily be read as a loan, if any, to be taken by the Company in accordance with law and that by passing the said resolution the Board did not authorize to use the GDR proceeds as security for loan to be given by EURAM to Vintage. However, in my view this explanation offers no sound reason, as to why any company or its directors would at all decide at the time of planning to raise funds through an issue of GDR and to keep the GDR as a security for any loan, when even thought of availing any loan against the future GDR proceeds was not in anybody's mind. By passing such a resolution, the Board has explicitly indicated that the GDR proceeds were not meant to be brought in India but to be kept as a security against a loan and the details of such arrangement was not meant to be disclosed to anyone at that point of time. Considering the same, Mr. Cooper cannot absolve himself fully from the burden of adverse consequences of the said resolution, even though he was not present in the Company at the time of GDR issue and execution of the Loan and Pledge Agreement.

43. In this regard, I refer to the order of Hon'ble SAT in case of **Ketan Parekh v. SEBI (Appeal no. 2/2004) (decided on July 14, 2006)**, wherein Hon'ble SAT had categorically held that in order to find out whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism, will depend upon the intention of the parties which could be inferred from the attending circumstances of the cases, because direct evidence in such cases may not be available. I also find it pertinent to make reference to judgment of Hon'ble Supreme Court in **SEBI v. Kishore Ajmera** (Civil Appeal No. 2818 of 2008; dated February 23, 2016) in this regard: *"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a*

more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion…"

44. Considering that Mr. Adi Cooper was the Whole Time Director of the Company and has admittedly participated in the Board meeting dated January 30, 2008, prior to passing the said resolution, it was his duty to ask the management a pertinent question as to why GDR proceeds should be kept as security for any loan, when the same was being raised to meet the stated objectives of the Company; and if it is to be kept as security, how would the GDR proceeds be used to meet the stated objectives of the issue. His subsequent resignation does not absolve him completely from his acts discharged during his tenure as a director of the Company, as being a director of the Company, he was obligated with a responsibility to act diligently, in the interest of the Company and the shareholders. Needless to point out here that the phrase '*acting diligently*' embodies in itself the duty not be careless and casual in approach while taking decisions.

45. The Hon'ble Supreme Court in **Official Liquidator vs P.A. Tendolkar** (1973) 1 SCC 602 has observed that: *"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".*

46. Mr Adi Cooper subsequently contended that in the appeal filed by him against the Ld. WTM order, dated February 28, 2019, passed in parallel 11B proceedings on the identical facts, Hon'ble SAT vide its order dated November 05, 2019, has

absolved him from the allegations of the aforesaid violations and has set aside the said aforementioned WTM order. In this regard, I note that SEBI has filed an appeal (C.A. no. 380 of 2020) against the findings of the Hon'ble SAT (*order dated November 05, 2019*) before the Hon'ble Supreme Court. Vide order dated September 21, 2021, Hon'ble Supreme Court has set aside the aforesaid order of Hon'ble SAT and held as follows:

> *"SEBI had rightly noted that such resolution facilitated the transaction with vintage and was a fraudulent transaction considering the fact that neither the arrangement nor the resolution was ever disclosed to the shareholders of the company or the investors of the securities market through BSE. This aspect has not been reckoned by the Appellate Tribunal…….we have no hesitation in taking the view that the Appellate Tribunal was unduly impressed by only one fact; but ought to have construed the resolution in the manner done by SEBI and in particular the inaction of the Board of not disclosing the arrangement to the shareholders or the investors of the securities market through BSE.* ***<u>As a result, we set aside the impugned judgment and order and instead uphold the view taken by the SEBI vide its decision dated 28.02.2019</u>****". (emphasis implied)*

47. Thus, in view of the aforesaid judgement of Hon'ble Supreme Court, I found the contentions of the Mr. Cooper not tenable, and thus, I found him liable for the violations charged in the SCN.

48. I would now deal with the replies and submissions made by the Mr Kishore Hegde (Noticee no. 3) with respect to the alleged violations. Mr. Kishore Hegde has contended that, he is an independent director of the Company and was not involved in the day to day operations of the company. He has cited section 149(12) of the Companies Act, 2013, section 27 of the SEBI Act, Ministry of Corporate Affairs general circular no. 1/2020 dated March 02, 2020 and Hon'ble SAT order dated November 19, 2020 in the matter of **Adesh Jain vs. SEBI** in appeal no. 217/2020 regarding liability of independent directors. Additionally, he

has contented his presence in the aforesaid board meetings and has submitted that he did not attend the aforesaid board meetings and was not aware of the loan and pledge agreement.

49. In this regard, I note that Mr Kishore Hegde has not disputed his directorship in the Company during the period of issuance of GDR but has submitted that he had not attended the Board Meeting dated January 30, 2008 during which the aforesaid resolution pertaining to GDR was passed. He has enclosed a certified copy of the attendance register of the said Board meeting to support his claim of absence. However, from the copy of minutes of the aforesaid Board meeting as made available by the Company during investigation and which was provided to Mr. Hegde along with the SCN, have the name of Mr. Hedge as one of the directors, who has attended the said Board meeting on January 30, 2008. I note that, with respect to aforesaid evidence supplied to Mr. Hegde, he failed to explain, how his name appears in the minutes of the said Board meeting. I also note that the document i.e attendance register produced by Mr Hedge to prove his absence in the above Board Meeting is titled as "*Attendance of the Directors at the Board Meeting of IT People (India) Limited held on 30th January, 2008*." The document furnished by Mr. Hegde is hand written and as per its title, it is supposed to capture the name of only those, who were present and attended the meeting of the Board held on 30th January, 2008. Therefore, I see no reason as to why the attendance sheet would mention the names of even those who were absent, or would list out the names of all the directors including the absentee directors. Had it been the case, the title of the attendance register would have been probably "*Directors of the Company*." The documents submitted by Mr. Hedge raises serious suspicion on its credibility, when confronted with the minutes of the Board meeting held on 30th January 2008, which bears his name as a director who was present in the meeting. It is difficult to understand as to how the minutes of the Board meetings of the Company could show Mr. Kishore Hegde to be present on two consecutive meetings on January 30, 2008 and April 30, 2008, while according to the attendance register of the Company produced

by Mr. Kishore Hegde, it shows otherwise. It is also not clear why the Mr. Kishore Hegde did not take any objection to the same till date and lodge a complaint with the management or Company Secretary of the Company for false reporting about his attendance in Board Meetings. Considering such facts, documents and peculiar circumstances, I am of the view that, Mr. Hegde argument regarding his absence from said Board meeting and being unaware of the arrangements of the Company w.r.t. GDR issue cannot be accepted. Therefore, I find that Mr Kishore Hegde has attended the said board meeting and other relevant meetings w.r.t. impugned GDR issue and the arrangements of the Company in this regard.

50. Further, Mr Hegde has contended that in the audit committee meetings, it was nowhere mentioned that these GDRs were in fact pledged and that too against the loan taken by a different company. In this regard, I note that Mr. Hedge was the Chairman of the Audit Committee of the Company during the relevant time. Therefore, it is difficult to appreciate that as the Chairman of the Audit Committee he had taken all possible and expected steps to clarify himself about all the aspects of the proposed GDR issue by asking the management all pertinent questions. When the relevant board resolutions were placed before the audit committee, why he did not ask pertinent questions, such as – a) to whom the GDR were allotted; b) why the GDR proceeds did not reach the Company; c) how were the proceeds utilize; d) whether the proceeds were used as security against any loan; etc. I note that, as per the offer document for GDR of Commex, one of the objects was to utilize the funds for payment for current acquisition and investment and loan to subsidiary. However, no records have been submitted/ produced by the Company to prove the utilization of funds in terms of the aforesaid objects of the issue; and nor the directors have ever caused to verify the utilization of such proceeds from the management. By remaining mute and not raising any query at any point during his tenure as a chairperson of the Audit Committee and as an independent director, Mr. Hegde has failed to do justice with the duty casted upon him by statute and with his role of independent director in the Company, wherein, he was supposed to act as check and balance and

raise his voice with regard to the practices and fraudulent act of the Company, which has jeopardised the interests of shareholders and stakeholders of the Company and investors in the securities market.

51. I would like to place my reliance on Hon'ble SAT order dated November 05, 2019 wherein Hon'ble SAT has upheld WTM order dated February 28, 2019 and made following observations with respect to role of Mr. Kishore Hegde –

"his(Mr Kishore hegde) involvement in day to day affairs of the company cannot be ruled out. The contention of this appellant that he was not involved in the day to day running of the company cannot be accepted as he was found to be part of the resolution process of the company and his involvement in the issuance of the GDR proceeds. Apart from the above, we also find that the appellant was also the Chairman of the audit committee of the company. The WTM found that being the Chairman of the audit committee, he did not place any objection as to why the GDR proceeds did not reach the company and how the proceeds were utilized. We are thus, of the opinion that in the light of the findings given by the WTM, the appellant Kishore Hegde was part of the scheme through which issue of GDR by the company was effected through a fraudulent arrangement of loan agreement and pledge agreement. We are also of the opinion that the conduct of the appellant Kishore Hegde was inimical to the interest of the company, to the investors, as well as to the shareholders and, the action of the appellant Kishore Hegde was in violation of Section 12A of the SEBI Act read with Regulations 3 and 4 of the PFUTP Regulations. The order of the WTM debarring the appellant Kishore Hegde from accessing the securities market, etc. for a period of two years does not suffer from any error of law.

52. In view of the above, I find that Mr Kishore Hegde is liable for the violations as alleged in the SCN.

Issue No. III: If yes, whether the violation, on the part of the Noticees would attract monetary penalty under section 15HA of the SEBI Act and section 23E of SCRA, as applicable?

&

Issue No. IV: If the answer to Issue No. II is in affirmative, what would be the monetary penalty that should be imposed upon the Noticees taking into consideration the factors stipulated in section 15J of the SEBI Act with rule 5 (2) of the SEBI Adjudication Rules?

53. I am of the view that both of the above issues III & IV can be taken together. I note that it has already been established from the pre-paragraphs that Noticee no. 1 has violated the provisions of sections 12A(a),12A(b) and 12A(c) of SEBI Act, 1992 read with Regulations 3(a), 3(b), 3(c), 3(d) and Regulations 4(1), 4(2)(f), 4(2)(k), 4(2)(r) of the PFUTP Regulations, 2003 and Section 21 of SCRA, 1956 read with clause 36(7) and clause 50 of the listing agreement. Therefore, I am of the view that Noticees no. 1 is liable for penalty under section 15HA of SEBI Act and section 23E of SCRA, 1956. It is also established from the pre-paragraphs that Noticee no. 2 & Noticee no. 3 have violated the provisions of Sections 12A(a),12A(b) and 12A(c) of SEBI Act read with Regulations 3(a), 3(b), 3(c), 3(d) and Regulation 4(1) of the PFUTP Regulations, 2003**.** Therefore, I am of the view that, Noticees no 2 & 3 are liable for penalty under section 15HA of SEBI Act. For this purpose, reliance is placed on **SEBI vs. Shriram Mutual Fund** (2006) 5 SCC 361, wherein it was held that *penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and therefore, the intention of the parties committing such violation becomes immaterial*. The aforesaid provisions of the SEBI Act and SCRA are as follows:

SEBI Act

Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.*

SCRA

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

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

54. Having regard to the factors listed in section 15J of SEBI Act and in the light of Supreme Court judgement in the matter of SEBI vs Bhavesh Pabari (2019) 18 SCC 246, I note that Commex along and its directors (Noticees) have misled the Indian investors by concealing the information of entering into Pledge and loan Agreement to facilitate and finance the issue of its own GDRs and not informing the same to the Stock Exchanges. Moreover, Commex made false announcement that its GDRs were genuinely subscribed thus causing a fraud on the innocent investors. Commex and its directors, through their fraudulent scheme of issue of GDR, mislead the investors to believe that Commex has an international market. In light of the above, although the amount of unfair gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the fraudulent scheme of issuance of GDR is not quantified in the investigation report, I note that the fraud is to the extent of the amount of issue of GDR i.e. USD 9.99 million and thus adequate penalty should be levied so that it serves as a deterrent for any such acts.

Order

55. After taking into consideration all the facts and circumstances, replies of the Noticees, material /facts available on record and also the factors mentioned in the preceding paragraphs, I, in the exercise of the powers conferred upon me under section 15-I of SEBI Act read with Rule 5 of SEBI Adjudication Rule and in the exercise of powers conferred upon me under section 23-I of SCRA,1956 read

5 of the SCRA Adjudication Rules, hereby impose the following penalty on the Noticees for the aforementioned violations, as discussed in this order:

S.NO	Noticee	Provisions	Penalty(Indian Rupees)
1	Commex Technology Ltd	Section 15HA of SEBI Act	Rs 10,00,00,000/-(Ten Crore Only)
		Section 23E of SCRA	Rs 25,00,000/-(twenty-five lakh only)****
2	Mr Adi Cooper	Section 15HA of SEBI Act	5,00,000/-(five lakh only)
3	Mr Kishor Hegde	Section 15HA of SEBI Act	5,00,000/-(five lakh only)

****** *As noted above, in light of the fact that an appeal has been before the Hon'ble Supreme Court in the Suzlon Energy (supra) matter, the monetary penalty imposed on the Company under section 23E of the SCRA shall be payable depending upon the outcome of the aforesaid appeal before the Hon'ble Supreme Court.*

56. I am of the view that the above penalty is commensurate with the violations committed by the Noticees in this case.

57. The aforesaid Noticees shall remit/pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI-Penalties Remittable to Government of India", payable at Mumbai, or, through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

58. The Noticee may also forward the said Demand Draft or the details/confirmation of penalty so paid to "The Division Chief (Enforcement Department-DRA1), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C-4, "G" Block, Bandra Krula Complex, Bandra (E), Mumbai-400051.". The Noticees shall also provide the following details while forwarding the Demand Draft/ payment information:

q. Name and PAN of the Noticee
r. Name of the case/matter

s. Purpose of payment- payment of penalty under AO proceedings
t. Bank Name and Account Number
u. Transaction Number

59. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter-alia, by attachment and sale of movable and immovable properties.

60. In terms of the provisions of Rule 6 of the SEBI Adjudication Rules and Rule 6 of the SCRA Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Place: Mumbai **VIJAYANT KUMAR VERMA**
Date: May 31, 2022 **ADJUDICATING OFFICER**