BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/MC/HP/2021-22/12020-12021]

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

In respect of –

1. **Winsome Yarns Ltd. (PAN: AAACW1911H)** having address at - SCO 191/192, Sector 34-A, Chandigarh - 160022

2. **Manish Bagrodia (PAN: ADLPB0308A)** having address at - H. No. 351, Sector 9-D, Chandigarh - 160009

In the matter of GDR issue of Winsome Yarns Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, the **'SEBI'**), initiated adjudication proceedings under Section 15HA of SEBI Act, 1992 (hereinafter be referred to as, the **'SEBI Act'**) and Section 23E of Securities Contracts (Regulation) Act, 1956 (hereinafter be referred to as, the **'SCRA'**) against Winsome Yarns Ltd. (**Noticee 1 / Winsome / Company**) and Manish Bagrodia **(Noticee 2**) in the matter of GDR issue of Winsome. Adjudication proceedings have been initiated against Noticee 1 for the alleged violations of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(f), (k), (r) of SEBI (Prohibition of Fraudulent and Unfair

Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter be referred to as, **'PFUTP Regulations'**) and Section 21 of SCRA read with Clauses 32, 36(7) and 50 of Listing Agreement. Adjudication proceedings have been initiated against Noticee 2 for the alleged violations of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations. The Noticees 1 and 2 are collectively referred to as **'Noticees/You'**

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI appointed the undersigned as Adjudicating Officer (hereinafter referred to as "**AO**") vide order dated March 14, 2019 to inquire into and adjudge under Section 15HA of the SEBI Act and Section 23E of SCRA, the aforesaid alleged violations against the Noticees. The appointment of the AO was communicated vide order dated March 28, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/DPS/23572/2019 dated September 11, 2019 (hereinafter be referred to as, the "**SCN**") was served upon the Noticees under Rule 4(1) of the SEBI (Procedure for holding Inquiry and Imposing Penalties) Rules, 1995 and Rule 4(1) of the Securities Contract (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as **'Adjudication Rules'**) to show cause as to why an inquiry should not be held and penalty be not imposed against Noticee 1 under Section 15HA of the SEBI Act and Section 23E of SCRA and against Noticee 2 under Section 15HA of the SEBI Act for the aforesaid alleged violations.

4. The allegations leveled against the Noticees in the SCN are summarized as below:

5. An investigation was carried out by SEBI in the matter of GDR issue by Winsome during the period March 01, 2011 to April 30, 2011 (hereinafter referred to as **'investigation period'**).

6. Winsome was incorporated in 1990 as public limited company and commenced its commercial production in April 1994. The company was promoted by Winsome Textile Industries Ltd. and Punjab State Industrial Development Corporation Ltd. The equity shares of the company have been listed on BSE since April 08, 1994 and on NSE since March 26, 2002. The company is claimed to be engaged in the manufacturing of cotton yarn and high quality garments. The company's registered office is located at SCO 191-192, Sector 34-A, Chandigarh-160022.

7. Winsome Yarns (Cyprus) Limited, a wholly owned subsidiary of Winsome was incorporated on November 08, 2006 in Cyprus.

8. Winsome Yarns FZE ('WINSOME FZE') was incorporated in U.A.E. on July 11, 2011 as a wholly owned subsidiary of Winsome Yarns (Cyprus) Limited, which was a wholly owned subsidiary of Winsome. WINSOME FZE was declared defunct with effect from April 01, 2014.

9. The board of directors ('Board/BOD') of Winsome as on the date of its GDR Issue i.e. March 29, 2011 was as follows:

Sl. No.	**Name of director**	**Designation**
1.	Satish Bagrodia	Chairman (Non-Executive)
2.	Manish Bagrodia (Noticee 2)	Managing Director
3.	Chandra Mohan	Independent Non Executive Director
4.	Brij Mohan Khanna	Independent Non Executive Director
5.	S. K. Singla (Nominee Director of PSIDC)	Independent Non Executive Director
6.	G. K. Sawhney (Nominee Director of PNB till March 16, 2011)	Independent Non Executive Director
7.	Yashpal Barar (Nominee director of PNB w.e.f. March 17, 2011)	Non-Executive, Independent Director
8.	Ashish Bagrodia	Non-Executive Director

10. **Shareholding Pattern:**

Particulars	QE Dec 2010		QE Mar 2011		QE Jun 2011	
	No. of shares	%	No. of shares	%	No. of shares	%
Promoter Holding	22,33,96,090	57.73	22,33,96,090	38.10	22,33,96,090	38.10
Non Promoter Holding	16,35,88,700	42.27	16,35,88,700	27.90	16,35,88,700	27.90
Shares held by custodian against GDRs	0	0	19,94,12,500	34.01	19,94,12,500	34.01
Total no. of issued shares	**38,69,84,790**	**100**	**58,63,97,290**	**100**	**58,63,97,290**	**100**

11. **Financial Results:**

(Rs. in cr.)

Description	Quarter Ended			Year ended	
	Dec-10	Mar-11	Jun-11	Mar-10	Mar-11
Operating Income	90.09	81.02	91.18	222.26	330.08
Other Income	0.18	0.72	0.38	1.23	3.63
Profit Before Tax	5.19	8.88	-11.67	-18.03	11.18
Profit after tax (‘PAT’)	5.19	3.74	-8.16	-12.17	6.04

From the above, it is observed that PAT has decreased for the quarters ended March 2011 and June 2011 as compared to quarter ended December 2010. The operating income and PAT has increased for Financial Year (‘FY’) ended March 2011 as compared to FY ended March 2010.

12. **Price Volume Data- BSE**:

Period	Dates	FV (Rs.1)	Opening Price & volume on first day of the period	Closing price & volume on last day of the period	Low price & volume during the period	High Price & volume during the period	Avg. no. of shares traded daily during the period
Before Investigation period	(01/01/2011-28/02/2011)	Price	Rs. 2.48	Rs.2.53	Rs.1.90 (11/02/2011)	Rs.2.82 (04/02/2011)	1,75,552.90
		Vol	49,557	5,052	302 (07/02/2011)	15,08,110 (14/01/2011)	
During Investigation period	(01/03/2011-30/04/2011)	Price	Rs. 2.33	Rs.3.95	Rs.2.10 (29/03/2011)	Rs.4.08 (29/04/2011)	1,97,385.52
		Vol	47,278	1,61,738	446 (17/03/2011)	11,84,813 (29/03/2011)	
After investigation period	(01/05/2011-30/06/2011)	Price	Rs.3.99	Rs.3.42	Rs.3.20 (29/06/2011)	Rs.5.11 (23/05/2011)	1,66,423.48
		Vol	1,88,346	1,44,704	5,216 (23/06/2011)	4,43,197.00 (12/05/2011)	

13. The total number of shares of Winsome for the quarter ended March 2011 increased by 19,94,12,500 shares as compared to quarter ended December 2010, due to issuance of 1.99 million GDRs on March 29, 2011.

14. Winsome issued 19,94,125 GDRs amounting to USD 13.24 million on March 29, 2011. Summary of the GDR issue is tabulated below:

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
29-Mar-11	1.99 (at USD 6.64 per GDR)	13.24	DBS Bank Ltd.	19,94,12,500	The Bank of New York Mellon	Pan Asia Advisors Ltd	EURAM Bank, Austria	Luxembourg Stock Exchange

15. Offering Circular (Listing Prospectus) of GDRs of WINSOME states as follows: *"The aggregate net proceeds (net of issue related expenses) received from this offering are anticipated to be US $12.71 million. The company plans to utilize the proceeds as follows:*

- *Capital expenditure for setting up a 10MT Dyeing Unit at Derabassi*
- *Strengthening of Net Working Capital*
- *Overseas Investments*
- *Other Corporate purposes*

16. Pan Asia Advisors Limited, a UK based entity was Lead Manager of GDR issue of Noticee 1.

17. Noticee 1, Pan Asia Advisors Ltd. and EURAM Bank entered into an Escrow Agreement dated March 22, 2011 which inter-alia stated as follows:

> *"..The Lead Manager has entered into a placing agreement dated on or about the date hereof (the "Placing Agreement") with the Company to procure investors (the "Placees") for the subscription of up to 1,994,125 global depository receipts …"*.

18. Pan Asia Advisors Ltd. vide letter dated February 25, 2016 provided details of its directorship and connection with Dubai based Non Resident Indian, Arun Panchariya (AP). It was observed that Pan Asia Advisors Ltd. was incorporated on April 24, 2006 and Arun Panchariya was director of Pan Asia Advisors Ltd. during the period August 30, 2006 to September 29, 2011.

19. Vide letter dated February 20, 2012 Pan Asia Advisors Ltd. submitted that Arun Panchariya held 100% shareholding in the company during the period July 2008 to January 2012. Therefore, it is observed that Pan Asia Advisors Ltd. is connected to Arun Panchariya.

20. The details of initial subscribers to GDRs as submitted by Noticee 1 to SEBI, vide its letter dated July 06, 2015 is tabulated as under:

Sl. No.	Name of the subscriber	No. of GDRs allotted	Amount in USD
1	ALTG Holdings Ltd	3,25,000	2,158,000
2	Arpico Finance Company Ltd	4,19,625	2,786,310
3	Chromestar Assets Ltd	2,49,500	1,656,680
4	Desert Rose Investments Inc.	3,50,000	2,324,000
5	Walker GMBH	4,00,000	2,656,000
6	Albarma Ltd	2,50,000	1,660,000
	TOTAL	19,94,125	13,240,990

21. It was observed that Vintage FZE (now known as Alta Vista International FZE), an entity controlled by Arun Panchariya, was the sole subscriber of GDR issue of Winsome. Vintage FZE (herein after referred to as **Vintage**) availed a loan of USD 13.24 million from EURAM Bank for payment of subscription amount for GDR issue of Winsome. Vintage signed a Loan Agreement dated March 22, 2011 with EURAM Bank. It was further observed that Winsome pledged the GDR proceeds as collateral against the loan availed by Vintage FZE. Winsome signed a Pledge Agreement dated March 22, 2011 with EURAM Bank (Noticee 2, Managing Director, signed the agreement).

Loan Agreement:

22. Vintage FZE ('Vintage') opened a loan account having number 540012-051-3 with EURAM Bank and Winsome opened a retail account having number 5800400101 with EURAM Bank. Examination of Loan Agreement, Pledge Agreement, loan account statement and Escrow account statement revealed that Vintage obtained loan of USD 13.24 million by entering into a Loan Agreement

dated March 22, 2011 with EURAM Bank to subscribe to GDRs of Winsome. Loan Agreement *inter-alia* states as follows:

> *"**2. Nature and purpose of facility:** "To provide funding enabling Vintage FZE to take down GDR issue of 1,994,125 Luxemburg public offering and may only be transferred to EURAM account nr. 580040, WINSOME Yarns Ltd.*"
>
> ***6. Security:** ….it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be demanded by the Bank:*
>
> *1) Pledge of certain securities held from time to time in the Borrower's a/c no. 540012 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*
>
> *2) Pledge of the account no. 580040 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."*

23. As per the Know Your Customer documents (signed on June 06, 2007) of Vintage available with EURAM Bank, Arun Pancharia was beneficial owner and Managing director of Vintage as on June 06, 2007. Documents received from EURAM Bank show that Alkarni Holding Limited was the sole shareholder of Vintage FZE and Arun Pancharia was the sole shareholder of Alkarni Holding Ltd. From the above, it is observed that Vintage FZE is connected to Arun Pancharia.

<u>Pledge Agreement:</u>

24. A Pledge Agreement dated March 22, 2011 was entered into between Noticee 1 (*as Pledgor*) and EURAM Bank (*as Bank*). The pledge Agreement was signed by

Noticee 6, Managing Director on behalf of Noticee 1. The preamble of the Pledge Agreement states:

> *"By Loan Agreement K210311-002 (hereinafter referred to as the "Loan Agreement") dated 22 March 2011, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates (the "Borrower") in the amount of USD 13,240,990- The pledger has received a copy of the Loan Agreement No. K210311-002 and acknowledges and agrees to its terms and conditions."*

25. The pledge created in the Pledge Agreement is stated below:

> *<u>"2. Pledge</u>*
>
> *2.1 In order to secure any and all obligations, present and future, whether conditional or unconditional of the Borrower towards the Bank under the Loan Agreement and any and all respective amendments thereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the Loan Agreement-including those limited as to condition or time or not yet due-irrespective of whether such claims have originated from the account relationship, from bill of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations") the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:*
>
> *2.1.1 all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount USD 13,240,990 existing from time to time at present or hereafter on the securities account(s) no. 580040 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. 580040 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and all amounts credited at any particular time therein….

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

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

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

6. Realisation of the Pledge

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

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

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

26. Noticee 1 opened a bank account (*A/c no. 580040*) with EURAM Bank to keep the GDR proceeds and pledged its GDR proceeds before issuance of GDRs to secure the rights of EURAM Bank against the loan given by EURAM Bank to Vintage for subscription of GDR issue of Noticee 1. It is observed from the pledge agreement that Noticee 1 was aware of the loan agreement and initial subscriber and the source of funding.

27. Escrow account statement shows that GDR subscription money of USD 13.24 million was received from only one entity i.e. Vintage. Further, Financial Market Authority (FMA) Austria *vide* email dated March 01, 2016 informed that EURAM Bank has submitted that Vintage was the sole subscriber to GDR issue of Winsome. Hence, GDR issue of Winsome (1.99 million GDRs amounting to USD 13.24 million) was subscribed by only one entity i.e. Vintage.

28. On perusal of the Pledge Agreement and Loan Agreement, it was observed that issuance and subscription of GDRs was done through loan of USD 13.24 million

availed by Vintage from EURAM Bank. Further, it was observed that bank account in which GDR proceeds were deposited was in the name of Winsome but the amount deposited in the account was not at the free disposal of Winsome as the same was kept as collateral prior to issuance of GDRs, for the loan availed by Vintage. On examination of Winsome, EURAM Bank retail account statement and Vintage's loan account statement it was seen that only after Vintage repaid loan installments, was remaining amount of money transferred from Winsome, EURAM Bank account to Winsome FZE's bank account and Winsome, India Bank account.

29. A copy of an extract of board resolution dated September 03, 2010 as provided by EURAM Bank on opening of Bank Account with EURAM Bank, Austria for GDR issue *inter-alia* states that-

"*RESOLVED THAT a bank account be opened with EURAM Bank ("the Bank"), AG, Palais Esterhazy, Wallnerstrasse 4, A-1010 Vienna, Austria or any branch of Euram Bank, including the Offshore Branch, outside India for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of the Company."*

RESOLVED FURTHER THAT Mr. Manish Bagrodia, Managing Director of the Company, be and is hereby authorised-
1) to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required, and countersigned by Mr. Manish Bagrodia, Managing Director and Mr. K.V. Singhal, General Manager (Legal) & Company Secretary or Mr. Vinod Jaria, Financial Controller of the Company

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

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

30. It is observed from the said board resolution that the Board of Directors of Noticee 1 authorized EURAM Bank to use GDR proceeds of Noticee 1 deposited with EURAM Bank, as security in connection with any loan and also authorized Noticee 2 to sign, execute any application, agreement etc. as and when required by the EURAM Bank. Subsequently, Noticee 2 signed a Pledge Agreement dated March 22, 2011 wherein Noticee 1 pledged its GDR subscription proceeds as collateral against loan availed by Vintage from EURAM Bank.

31. The company's authorization to EURAM Bank to use the funds so deposited in the said bank account as security in connection with loan, if any, depicts that the abovementioned board resolution was meant to provide security in connection with loan taken for subscription of GDRs of Winsome.

32. Corporate announcements made by Noticee 1 during the period February 2011-April 2011 were examined and it was observed that Noticee 1 did not inform stock exchange about Pledge Agreement/ collateral security. Pledge Agreement was integral part of Loan Agreement and vice versa and both were executed concurrently. It shows that Noticee 2, being the authorized signatory of Noticee 1, had complete knowledge about the subscriber to GDR issue, as well as source of the funding and had understanding with Vintage for subscription of its GDR issue but the same was not been informed to the shareholders/ investors of Noticee 1.

33. Winsome reported to the stock exchange (BSE) on March 29, 2011 that, *"the Board of Directors of the Company at its meeting held on March 29, 2011, has allotted 199412500 (Nineteen crores ninety four lacs twelve thousand five hundred) shares of Re. 1/- each in the name of Company's depositary, THE BANK OF NEW YORK MELLON against 1994125 GDRs.*", which might have made investors believe that the said GDR issue was genuinely subscribed.

34. Therefore, the entire scheme involving entering into Pledge Agreement, making corporate announcement that the GDRs were successfully subscribed without disclosing the arrangement to the investors. This resulted in publication of misleading news to the stock exchanges which contained information in distorted manner and which might have influenced the decision of the investors. Such announcements misled Indian retail investors and may have induced them to deal in the shares of Winsome. Further, the company has provided false list of initial subscribers to GDR Issue to SEBI. The details of initial subscribers to GDRs as submitted by Winsome to SEBI, vide its letter dated July 06, 2015 is as under:

Sl. No.	Name of the subscriber	No. of GDRs allotted	Amount in USD
1	ALTG Holdings Ltd	3,25,000	2,158,000
2	Arpico Finance Company Ltd	4,19,625	2,786,310
3	Chromestar Assets Ltd	2,49,500	1,656,680
4	Desert Rose Investments Inc.	3,50,000	2,324,000
5	Walker GMBH	4,00,000	2,656,000
6	Albarma Ltd	2,50,000	1,660,000
	TOTAL	**19,94,125**	**13,240,990**

35. In view of the above, it was alleged that the scheme of issuance of GDRs was fraudulent. Therefore, Noticee 1 was alleged to have violated the provisions of section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d), 4(1), 4(2)(f), (k), (r) of SEBI (PFUTP) Regulations, 2003.

36. Winsome *vide* email dated June 15, 2018 submitted that the circular resolution pertaining to 'opening of bank account with EURAM Bank at Austria' was circulated to 7 directors. 5 Directors, namely Satish Bagrodia, S.K. Singla, Ashish Bagrodia, Brij Mohan Khanna and Noticee 2 approved the aforesaid board resolution which was later ratified by the BOD at its meeting dated

September 22, 2010 where 6 of the directors, namely, Satish Bagrodia, S.K. Singla, Ashish Bagrodia, Chandra Mohan, G.K. Sawhney and Noticee 2 were present.

37. Therefore, it was alleged that Noticee 2, who approved the board resolution and was present in the Board Meeting wherein the board resolution was ratified and also had executed the Pledge Agreement acted as a party to the fraudulent scheme of GDR issuance and allegedly violated section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

38. Conversion of GDRs into equity shares is termed as cancellation of GDRs. The GDRs which were converted into equity shares were sold in the Indian Securities Market. Vide emails dated September 03, 2015 and May 04, 2018, Custodian (DBS Bank) has provided the details of cancellation of GDRs, copy of termination notice and a copy of sale of shares on termination of GDR program. Total of 1,199,125 GDRs were cancelled during February 14, 2014 and May 15, 2015 by two Sub-accounts namely Aspire Emerging Fund (Aspire) and High Blue Sky Emerging Market Fund (HBSF) which received 10,538,750 and 14,52,500 shares respectively upon cancellation.

39. Termination notice of GDR program was given by Depository Bank on March 16, 2015 indicating the termination date as June 15, 2015. On termination of GDR program, 79,50,000 shares were sold by Custodian (DBS bank) during July 13, 2015 to September 23, 2015. Out of the net sale proceeds of aforesaid shares, DBS Bank has remitted Rs. 894,347 to Overseas Depository Bank account and deposited Rs. 17,79,741.95 in an Escrow account.

40. Summary of the equity shares received post cancellation of GDRs is tabulated below:

Sl. No.	**Name of the entity**	**No. of GDR's converted**	**Quantity of equity shares received**
1	HBSF	1,45,250	14,52,500
2	ASPIRE	10,53,875	1,05,38,750

Sl. No.	Name of the entity	No. of GDR's converted	Quantity of equity shares received
TOTAL		**11,99,125**	**1,19,91,250**

41. Two sub-accounts (HBSF and Aspire) cancelled 11,99,125 GDRs and received 1,19,91,250 shares. They sold 56,35,847 of the converted shares. The sub-account wise summary is tabulated below:

S.no	Name of the entity	No of shares sold	Trade Value in INR	WINSOME'sShares held
1	HBSF	14,52,500	20,90,875.00	-
2	ASPIRE	41,83,347	48,30,161.50	63,55,403
TOTAL		**56,35,847**	**69,21,036.50**	**63,55,403**

42. From the above, it is observed that the two FII sub-accounts namely i.e., HBSF and ASPIRE sold shares for a value of Rs. 69.21 lakhs in the Indian Securities Market. While HBSF sold all the converted shares, ASPIRE continues to hold 63,55,403 shares.

43. Clause 36 of the Listing Agreement *inter-alia* reads as follows:

"…*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."

44. On perusal of the corporate announcement made by Noticee 1 to stock exchanges (BSE and NSE) during the period March 22, 2011 to March 31, 2011, it was observed that Noticee 1 did not inform stock exchanges with regard to entering into Pledge Agreement with EURAM Bank and pledging GDR proceeds against the loan availed by Vintage for subscription of GDRs of WINSOME.

45. It was observed from DBS Bank's (Custodian to the GDR Issue) email dated May 04, 2018 that GDR program was terminated on June 15, 2015. On perusal of the corporate announcements made by Noticee 1 during the period June 15, 2015 to June 30, 2015, it was observed that Noticee 1 did not inform stock exchange about the termination of GDR program. Further, Noticee 1 did not inform stock exchanges about the delisting of the GDRs.

46. These were price sensitive information and could have impacted the price of the scrip. Hence, it was alleged that Noticee 1 did not comply with clause 36(7) of Listing Agreement and violated section 21 of SCRA.

47. Section 21 of SCRA reads as follows:

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

48. Clause 50 of the Listing Agreement reads as follows:

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

49. Clause 32 of Listing Agreement *inter-alia* reads as follows:

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

50. Accounting Standard ('AS') 3 - Cash Flow Statements *inter-alia* reads as follows:

   *"**Cash** comprises cash on hand and demand deposits with bank.*

***Cash equivalents** are short term, highly liquid investments that are readily convertible into known amounts of cash and which are subject to an insignificant risk of changes in value.”*

51. Notice 1 in its Annual Report for FY 2010-11 and 2011-12 stated as follows in the notes forming part of the accounts:

    “*The Financial Statements are prepared as a going-concern under historical cost convention on an accrual basis except those with significant uncertainty and in accordance with the Companies Act, 1956. Accounting policies not stated explicitly otherwise are consistent with generally accepted accounting principles and mandatory accounting standards”*

52. Noticee 1 had pledged its GDR proceeds of USD 13.24 million with EURAM Bank against the loan availed by the Vintage for subscription of GDRs of Noticee 1. It was observed from the Annual Report for FY 2010-11 that Noticee 1 showed cash and cash equivalent (‘CCE’) as Rs. 67.89 crore as on March 31, 2011. It was also observed that Vintage has not repaid any part of the loan during the FY 2010-11 and therefore a loan amount of USD 13.24 million (i.e. Rs. 59.12 crore @Rs. 44.65 per USD on 31/03/2011) was outstanding against Vintage. Hence, Rs. 59.12 crore lying in Noticee 1 EURAM bank account was not CCE as per AS-3 as at March 31, 2011.

53. It was observed from the Annual Report for FY 2011-12 that Noticee 1 showed CCE as Rs. 38.87 crore as on March 31, 2012. It was also observed that Vintage had repaid loan to the extent of USD 7.19 million during the FY 2011-12 and therefore balance loan amount of USD 6.05 million (Rs. 30.93 crore @Rs. 51.1565 per USD on 30/03/2012) was outstanding as on March 31, 2012. Hence, Rs. 30.93 crore lying in Noticee 1 EURAM Bank account was not CCE as per AS-3 as at March 31, 2012.

54. In view of the above, it was alleged that Noticee 1 has not complied with AS-3.

55. AS 29 – 'Provisions, Contingent liabilities and Contingent Assets' *inter-alia* reads as follows:

> *"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."*

56. Vintage had not repaid any part of the loan during the FY 2010-11 and an amount of USD 7.19 million was paid by Vintage during the FY 2011-12. It was

observed that Noticee 1 could utilise its GDR proceeds only to the extent of amount of loan repaid by Vintage and therefore there was a possible obligation on Noticee 1 for an amount of USD 13.24 million (i.e. Rs. 59.12 crore @Rs. 44.65 per USD) and USD 6.05 million (Rs.30.93 crore @Rs.51.1565 per USD) as on March 31, 2011 and March 31, 2012 respectively. Therefore, a contingent liability to the extent of Rs.59.12 crore and Rs.30.93 crore was required to be disclosed by Noticee 1 in its financial statements for the FY2010-11 and 2011-12 respectively. On examination of the Annual Report of Noticee 1 for FY 2010-11 and 2011-12, it was observed that Noticee 1 did not disclose the aforementioned amounts (i.e. amount outstanding in Vintage's loan account with EURAM Bank) as contingent liabilities in its financial statements for the FY 2010-11 and 2011-12, and thereby Noticee 1 was alleged to have not complied with AS-29.

57. AS-1- **'**Disclosure of Accounting Policies' deals with the disclosure of significant accounting policies followed in preparing and presenting financial statements. AS -1 *inter-alia* states as follows:

> ***"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."

58. It is clear that AS-1 provides that an enterprise shall consider prudence, substance over form and materiality as major parameters while preparing its annual financial statements. It was observed that Noticee 1 (in its financial statement for the Annual Report 2010-11 and 2011-12) did not follow prudence since it did not disclose the contingent liability/ make provision for potential liability, did not follow substance over form as it presented its bank balance with EURAM Bank as free cash available with the company and also did not follow materiality as it did not disclose the fact of signing of Pledge Agreement and pledging of GDR proceeds, as the same are items, the knowledge of which might influence the decision of the user of the financial statements.

59. In view of the above, it was alleged that Noticee 1 did not comply with accounting standards – 1, 3 and 29, and hence alleged to have violated Section 21 of SCRA read with Clauses 32 and 50 of the Listing Agreement.

60. It was stated in the SCN that the aforesaid alleged violations, if established, would make the Noticees liable for monetary penalty under Section 15HA of the SEBI Act and Section 23E of SCRA as applicable.

61. SCN was served to the Noticees through Speed Post Acknowledgement (SPAD). Noticees submitted their reply vide letter dated November 26, 2020. An opportunity of hearing was provided to the Noticees on December 07, 2020 vide notice dated December 01, 2020. Hearing on December 07, 2020 was attended

by Authorised Representative of the Noticees (AR), Mr. Sandeep Parekh, Mr. Manal Shah and Mr. Raghuvamsi Meka. During the hearing, the AR reiterated the submissions made in their reply dated November 26, 2020. Noticees also filed his additional submissions vide letter dated December 11, 2020.

62. The key submissions of the Noticees are reproduced as below:

a) Winsome was incorporated in 1990 as a public limited company and commenced its commercial production on April 01, 1994. Winsome is one of the largest producers of Melange Yarn in India, it produces Melange Yarn for circular knitting, socks, weaving and knitwear. It also offers Gassed Mercerised Melange. Winsome Yarns is one of leading and ISO 9002 certified manufacturers and exporters of raw white, compact, melange and dyed yarn made of 100% cotton & cotton/ blends with viscose, polyester, modal, linen, wool, silk etc. The Company supplies yarn to many reputed companies in India. It also exports yarn to various countries all over the world. The Company also manufactures high quality garments and supplies them to top brands in the world.

b) The Company was promoted by Winsome Textile Industries Limited & Punjab State Industrial Development Corporation Ltd (PSIDC) to set up a 100% Export Oriented Unit (EOU) Spinning Unit with a capacity of 23,040 Spindles at Derabassi, near Chandigarh in Punjab. Winsome commenced commercial production in April 1994 with 23,040 Spindles. Due to quality of its yarn, which is of international standards and with an encouraging response from its customers, Winsome increased its spinning capacity by adding 25,824 spindles in the year 1998.

c) In the year 2004, in order to move up the value chain, Winsome set up a Knitwear manufacturing unit at Mohali, Punjab near Chandigarh with an installed capacity of 22 Knitting Machines. Thereafter, in the year 2006, the Company undertook an Expansion cum Diversification Project for expansion of the spinning unit at Derabassi by adding 60,000 Spindles in two phases, adding 180 Knitting Machines at the Knitwear unit at Mohali in three phases and five Mini Hydro Power Projects in District Ludhiana, Punjab, with total generation capacity of 3,900 KW. Further with a view to expand its knitwear business in European countries, the Company incorporated a wholly owned subsidiary in Cyprus namely Winsome Yarns (Cyprus) Limited in 2007.

d) The Company directly and indirectly employs more than 800 persons. It also has agents located throughout India and around the globe. The equity shares of the Company have been listed on BSE since April 08, 1994 and on NSE since March 26, 2002. Promoters of the Company hold 38.67% shares and balance 61.33% is held by the public.

e) Noticee 2 has been the Managing Director of Winsome since June 24, 1996. He has an experience of more than two decades in the apparel industry. Noticee 2 is presently the Chairman and Managing Director of Noticee 1. He has an impeccable record of personal integrity and professional conduct.

f) As part of the Company's expansion strategy, the company intended to increase its profit margin through increased production of value-added products such as mélange yarn, organic cotton yarn, and also increase the volume and business under the Retail Brands. In order to achieve these strategic goals, in FY 2010-11, the Company decided to set up a 10 Metric Ton Dyeing Unit within the existing premises of its Spinning Unit at Derabassi. In order to raise funds for the same, and to strengthen its working capital position, the Company decided to come out with an issue of GDRs in May 2010. The approval of shareholders in General Meeting was obtained for the GDR issue in June 2010 for a total of 19,94,125 GDRs with underlying 19,94,12,500 equity shares of Rs. 1/- each, with an intention to raise a total sum of USD 1,32,40,990.

g) The Board of the Company, in its meeting held on March 29, 2011 allotted 19,94,125 GDRs representing 1,32,40,990 underlying equity shares of Rs.1/- each (Offering at Rs.20/- each) at an offer price of USD 6.64 per GDR. The size of the above offering, the number of underlying shares and offer price were based on the buying rate for the US Dollar as on the relevant date as published by Reserve Bank of India and as per the SEBI Guidelines dated November 27, 2008 providing the minimum floor price requirement for GDR and FCCB issue under FDI Scheme.

h) As per the procedure set out in the offering circular and as per the Placing Agreement dated March 17, 2011, Pan Asia Advisors Limited, the Placing Agent, in its absolute discretion would have affected the placing of the GDRs and provided the Depository with a list of placements. Winsome was provided with the list of Placees/Beneficial Owners/Holders of the GDRs by the Lead Manager to the GDR issue and the same was submitted to BSE/NSE and the same is as below:

Name	**Address**	**e-mail id**	**No. of GDR issued**	**Amount in USD**
ALTG Holdings Ltd	19 Two International Finance Centre, 8 Finance Street, Central Hong Kong, China	Not available	3,25,000	21,58,000
Arpico Finance Company Ltd	8 Jiagomenbi, Dongcheng District, Beijing, China	Not available	4,19,625	27,86,310
Chromestar Assets Ltd	1/F, Airport World Trade Centre, 1, Sky Plaza Road, Hong Kong International Airport, Lantau, Hong Kong, China	Not available	2,49,500	16,56,680

Desert Rose Investments Inc.	60, Geylang East Avenue 1, Singapore	Not available	3,50,000	23,24,000
Walker GMBH	15, North Tower, One Raffles Quay, Singapore	Not available	4,00,000	26,56,000
Albarma Ltd	17, Prudential Tower, 30 Cecil Street, Singapore	Not available	2,50,000	16,60,000
	TOTAL		**19,94,125**	**1,32,40,990**

i) The Company received the GDR proceeds in the following manner in its bank account in India:

Sr. No	**Receipt Date**	**Bank Name**	**Account No.**	**Amount Remitted**	**Bank Charges**	**Amount (USD)**	**Amount (INR)**
1	September 12, 2011	Canara Bank	20425	230000.00	280.87	229719.13	10768084
2	September 15, 2011	Canara Bank	20425	690000.00	274.60	689725.40	32855069
3	October 17, 2011	Punjab National Bank	445100UD00001608	380000.00	292.16	379707.84	18442410
4	November 25, 2011	Canara Bank	1625201002865	295000.00	267.81	294732.19	15336390
5	December 20, 2011	Canara Bank	1625201002865	435000.00	260.60	434739.41	23023799

6	January 10, 2012	Canara Bank	1625201002865	1150000.00	255.00	1149745.00	61258424
7	January 11, 2012	Canara Bank	1625201002865	1720000.00	255.00	1719745.00	91749753
8	January 31, 2012	Canara Bank	1625201002865	130509.60		130509.60	6971823
9	February 01, 2012	Canara Bank	1625201002865	544490.39	262.80	544227.59	29333867
10	January 15, 2013	State bank of Patiala	5502396991	381925.00	71.00	381854.00	20833954
11	December 06, 2013	Canara Bank	1625201002865	1000000.00	190.00	999810.00	61531903
12	September 14, 2018	Indusind Bank	201000030206	210000	25	209975	15269382
			Total	**7166925**	**2434.84**	**7164490.16**	**387374858**

j) Out of the proceeds of GDR, a further sum of USD 13,14,929 was transferred by the Company to its step-down subsidiary Winsome Yarns FZE, Dubai for purchases, out of this amount, a sum of USD 3,81,925 was remitted to the account of Company being maintained with State Bank of Patiala since the same was not used by the subsidiary.

k) The sum of USD 71,66,925 includes the sum of USD 3,81.925 remitted by the subsidiary to the Company's bank accounts in India. Thus, a total of USD 80,99,929 (71,66,925 used by the Company and 9,33,004 utilised by the subsidiary) from the GDR proceeds was utilised. The proceeds of the GDR issue were utilised as under:

Sl. No.	Particulars	Amount (USD)	%
1	GDR Expenses	3,78,865	2.86
2	Brought to India and used for strengthening of Net Working Capital.	71,66,925	54,13
3	Used by subsidiary	9,33,004	7.05
4	Balance remaining invested with Aries Capital Fund Limited	47,62,125#	35.96
	Total	**1,32,40,990**	

#The Net Asset Value of the investment as on Dec 31, 2019 was USD 48,19,980 as evidenced by the statement of fund performance provided by Aries Capital Fund Limited

l) As can be seen from the above and from the bank statements, the Company has utilised more than 50% of the GDR proceeds in India, 7% in Dubai for purchase of yarn and invested the remaining 36% in funds that earn interest, pending utilisation (details of the reason for non-utilisation are set out hereunder).

m) The Company intended to set up a dyeing unit using the proceeds of the GDR issue as well as using bank finance. Although the GDR issue was carried out with the consent of the lenders, the complete financial closure could not take place for reasons of deteriorated financial position of the Company, caused by the global recession. The banks did not provide final sanctions for setting up the dyeing unit. Hence, the GDR proceeds could not be used for the purpose of setting up the dyeing unit and were invested in funds with a view to earn returns on idle funds pending the approval from the GDR holders for change of use of funds.

n) The Company's financial position further deteriorated in 2012 on account of a shift in government policy concerning export of cotton and cotton yarn. In March 2014, the banks attempted a reworking through Corporate

Debt Restructuring Scheme, which did not meet the approval of all lenders due to the worsening financial position of the Company. By June 2014, the net worth of the Company had eroded and the Company was referred to the Board for Industrial and Financial Reconstruction under Sick Industrial Companies (Special Provisions) Act, 1985, and is registered as a sick industrial company. Almost all textile mills across the country faced a similar situation and many mills closed down as a result.

o) During all this time, the Company was unable to bring the sum of approximately USD 50 lakhs which was deposited in Aries Capital Fund Limited, because this amount was to be used to set up the dyeing unit with matching funds from banks. The Company was advised to obtain the consent / permission from GDR holders for change in use of proceeds so that it could bring approximately USD 48 lakhs into India and use the same towards augmenting working capital requirements of the Company and for procurement of certain equipment in the spinning division of the Company.

p) Accordingly, in December 2014, the Company contacted Bank of New York, Mellon ('**BONY**') the Depository Bank, to take necessary steps to obtain the consent of all GDR holders. However, BONY, *vide* their email dated January 7, 2015, informed the Company that they had resigned as the Depositary Bank and stated that they could not contact the GDR holders or solicit votes for authorization and advised the Company to seek guidance from the Company's counsel. It is pertinent to note that the Depository Bank alone has all details of the GDR holders and therefore, the Company was unable to contact them directly. Due to the above circumstances, the Company has been unable to obtain the consent/permission of the GDR holders for change in use of GDR issue proceeds and as a result, has been unable to bring the amount of USD 48 Lakhs into India and use the same for reduction in debt and/or working capital requirements.

q) The Company has been advised that BONY has acted in an unreasonable manner and is liable on this account and the Company is taking measures to seek redressal of grievances on this account, including steps to ensure that the remaining sum of approximately USD 48 Lakhs is brought into India and used towards augmenting working capital requirements of the Company and for procurement of certain equipment for spinning division of the Company. Using these funds, the Company hopes to enhance its business, reduce costs, improve its portfolio of value-added products and improve profitability.

r) Noticees submitted that the events to which the SCN pertains to transpired in 2011. However, the present SCN was issued on September 11, 2019, after a delay of more than 8 years. There has been an inordinate delay in the initiation of adjudication proceedings against the Noticees. The Noticees are faced with extreme hardship in defending themselves against the allegations levied in the SCN on account of the considerable amount of time that has passed between the alleged date of purported violations and the date of the SCN. It is onerous at this stage to reconstruct the records and to find out details of a transaction that took place nine years ago.

s) Although there is no period of limitation prescribed in the SEBI Act or the rules or regulations made thereunder, the power of SEBI to initiate an action against the Noticees must be exercised within a reasonable period. A similar view was taken by the Hon'ble Supreme Court of India in the matter of *Government of India* vs. *Citedal Fine Pharmaceuticals Madras & Ors.,* wherein it was held that:

"[6]...In the absence of any period of limitation it is settled that ***every authority is to exercise the power within a reasonable period.*** *What would be reasonable period, would depend upon the facts of each case*..."

In *Ashok Shivlal Rupani & Anr. v. SEBI*, Securities Appellate Tribunal ('**SAT'**) relied on the above decision to hold that due to an inordinate delay of 8 years in the issuance of show cause notice, the order for imposition of penalty cannot be sustained. The relevant portion of the order is as follows:

"[8]...we are of the opinion that there has been an inordinate delay in the issuance of the show cause notice and for completion of the adjudication proceedings. Since the power to adjudicate has not been exercised within a reasonable period no penalty could have been imposed for the alleged violations.

[9] As a result, ***without going into the merits of the case, we are of the opinion that on account of inordinate delay in initiation of proceedings by issuance of the show cause notice which culminated into a penalty order cannot be sustained.****"*

Similarly, in *Rakesh Kathotia & Ors.* v. *SEBI*, SAT had observed that:

"[21]...In our view, ***<u>there has been an inordinate delay on the part of the respondent in initiating proceedings against the appellant for the alleged violation.</u>*** *In our opinion,* ***<u>much water has flown since then and, at this belated stage, the appellant cannot be penalized for the alleged violation</u>*** *which in any case was substantially complied with under Chapter III of the Regulations."*

t) These proceedings should be quashed since the SCN was issued after a delay of 8 years. The initiation or continuance of these proceedings by themselves would be prejudicial to the Noticees, and a gross violation of principles of natural justice as well as all canons of reasonableness, fairness and justness.

u) Prior to the issuance of this SCN, the Whole-Time Member of SEBI had issued a show cause notice ('**WTM SCN**') dated April 11, 2019, under Section 11(1), 11(4) and 11B of the SEBI Act, on the same cause of action and alleging the violation of same provisions of SEBI Act and PFUTP

Regulations by the Noticees. The proceedings under the WTM SCN are pending as on date.

v) Noticees submitted that the proceedings initiated pursuant to the present SCN should kept in abeyance till the conclusion of the proceedings initiated by the WTM SCN, as both the show cause notices arise from the same cause of action and have the same facts and allegations. While proceedings may be initiated by both the WTM and AO on the same cause of action under Section 11B and Section 15 of the SEBI Act respectively, continuing with concurrent proceedings, instead of consequent proceedings, will unfairly prejudice the other proceedings. Noticees submitted that an order in the present proceedings would prejudice the proceedings before the WTM. However, no prejudice will be caused to SEBI if these proceedings are kept after the proceedings under WTM SCN are concluded.

w) On September 14, 2020, the Noticees filed a settlement application under the SEBI (Settlement Proceedings) Regulations, 2018 ('**Settlement Regulations**') with an intention to settle the proceedings initiated by the WTM SCN and the present SCN. However, SEBI returned the Settlement Application on September 21, 2020 stating that the limitation period within which the Settlement Application is to be filed had expired. On November 04, 2020, the Noticees filed a Writ Petition before the High Court of Bombay challenging the return of settlement application.

x) Noticees submitted that SEBI has erroneously calculated the period of limitation of 180 days provided under Regulation 4 of the Settlement Regulations and that the period of limitation has not expired. Further, SEBI has not appreciated the various reasons for the delay and returned the Settlement Application on a mere technicality. Noticees have prayed the Hon'ble Court for directions to SEBI to condone the delay (if any) in filing the Settlement Application and consider the same on merits. The Writ Petition is currently pending before the Hon'ble Court. Regulation 8(1) of the Settlement Regulations provides that the passing of the final order in any proceedings is to be kept in abeyance till the Settlement Application filed with respect to such proceedings is disposed of. Given that the Hon'ble Court may allow the Writ Petition and issue directions to SEBI to condone the delay and consider the Settlement Application, continuing with the present SCN proceedings and passing an order by the AO will make the Writ Petition infructuous causing grave prejudice and irreparable injury to the Noticees. Noticees submitted that the proceedings should be kept in abeyance till the Hon'ble High Court has the opportunity to hear and dispose of the Writ Petition.

y) Noticees submitted that they have not been provided with the original documents and records relied upon by SEBI to make the allegations and charges in the said SCN. They have been provided scanned copies of documents as part of inspection of documents requested by them. However, Noticees have not been provided with an opportunity to inspect the originals of the documents relied upon or copies of all documents and records relied upon in order to arrive at the allegations in the said SCN.

z) Therefore, the present proceedings are contrary to the principles of natural justice since they have not been provided with copies of the documents and records relied upon, including but not limited to the investigation report and the sources of the documents, information and other documents.

aa) Noticees submitted that Winsome had never authorized EURAM Bank to create pledge over its GDR proceeds for the purpose of extending any loan by EURAM Bank to Vintage FZE. Noticee 1 has no connection to Vintage FZE. As stated in the SCN, Vintage FZE is an entity controlled by the director (Mr. Arun Panchariya) of Pan Asia Advisors Limited, the lead manager of the GDR issue, and Noticee 1 was not aware of Vintage FZE's involvement in the GDR issue until the receipt of the WTM SCN.

bb) Noticees submitted that on a plain reading of the Board Resolution, it is evident that it merely authorizes EURAM Bank to use the GDR proceeds deposited with them as security in connection with loans taken by Winsome, *if any*, as well as to enter into any escrow agreement or similar arrangements. The resolution was passed by Winsome nearly 7 months prior to the granting of loan to Vintage FZE by EURAM Bank, and hence it cannot be construed as authorizing Noticee 2 to create a pledge over proceeds of its GDR issue just for the purpose of the loan taken by Vintage FZE.

cc) Further, the Board Resolution did not specifically authorize Noticee 2, to create a pledge over proceeds of Winsome's GDR issue. At best, it authorized EURAM Bank to consider the deposit with them as collateral towards any loans that Winsome may avail from them. By no stretch of imagination can such authorization be read as authorizing EURAM Bank to collateralize Winsome's deposits against loan extended by it to Vintage FZE for subscription of Winsome's GDR issue.

dd) The Pledge Agreement also does not record any authorization given by Winsome to Noticee 2, nor is a copy of such authorization annexed to the Pledge Agreement. Thus, the assertion in the SCN that by way of the Board Resolution, Winsome had authorized the creation of pledge over its GDR proceeds deposited with EURAM Bank for loan extended by EURAM Bank to Vintage FZE is patently erroneous. Further, the Noticee 2 could not have and did not execute the Pledge Agreement.

ee) Noticees submitted that until the receipt of the WTM SCN, Noticees were unaware of any loan availed by Vintage FZE from EURAM Bank, or the Pledge Agreement that apparently provided a collateral for such loan taken by Vintage FZE. Further, the Board of Directors of Winsome never considered or approved the creation of a pledge over the GDR proceeds in favour of Vintage FZE or any other person. Winsome never consented to nor did it authorize the creation of any pledge in favour of EURAM Bank.

ff) Further, Noticee 2 has not signed the Pledge Agreement and had no knowledge of the same until the receipt of WTM SCN. Thus, in the absence of any authorization by the Board of Directors or information to them or to the Company, and in the light of denial by the alleged signatory of the Pledge Agreement, an unattested photocopy of the Pledge Agreement cannot be the basis to make an allegation that the Company entered into a Pledge agreement with EURAM Bank.

gg) Without prejudice to the above and without admitting to the Pledge Agreement, it is submitted that even the copy of the Pledge Agreement provided by SEBI in Annexures to the SCN does not inspire confidence regarding its credibility for two reasons. *Firstly,* the Pledge Agreement was verified on March 21, 2011, a day before the document was purported to have been executed i.e. March 22, 2011. *Secondly,* the Pledge Agreement does not disclose the place of execution and neither SEBI's investigation nor the SCN have brought on record any document to show the place of execution of the Pledge Agreement and/or to show that Noticee 2 was present at the place of execution. Merely on the basis of the erroneous assertion that Noticee 2 signed the Pledge Agreement, the SCN alleges that the Noticees were aware of the existence of the Pledge Agreement and failed to disclose the same to the stock exchange.

hh) Thus, Winsome never consented to the execution of the Pledge Agreement and that Noticee 2, in his capacity as a Managing Director, never executed the Pledge Agreement. Even if it is assumed that Noticee 2 executed the Pledge Agreement, the same has been executed without authority and therefore, it does not bind Noticee 1.

ii) The SCN has alleged that the Noticees committed fraud in collusion with EURAM Bank. However, EURAM Bank has not been made party to the SCN. It is a settled law for the concerned authority to have all concerned persons/ parties to the fraud to be before it where the allegation of fraud is to be adjudicated. Deciding the issue of fraud in the absence of all parties allegedly involved in the fraud would be in breach of the principles of natural justice. Moreover, if separate proceedings are initiated against the persons allegedly involved in the fraud, there is a likelihood that different conclusions may be drawn and it is possible that there may be conflicting decisions as to the alleged commission of fraud. It is imperative that concerned entities are made parties to the SCN. When the SCN relies on documents allegedly executed between the Company and EURAM Bank, it is all the more pertinent that EURAM Bank be made party to this SCN. Therefore, failure to make EURAM Bank, a party to this SCN vitiates natural justice principles and is accordingly untenable.

jj) Noticees submitted that they were unaware of the allegedly fraudulent scheme perpetrated by Mr. Arun Panchariya, EURAM Bank and the lead manager of the GDR issue, and the Noticees are in no way associated with Mr. Arun Panchariya or Vintage FZE. Noticees were advised by certain market players to approach and appoint Pan Asia Advisors Ltd. as the lead manager for the GDR issue. As stated by SEBI in Annexure 7 to the SCN, Pan Asia was Financial Conduct Authority registered entity. The Noticees were new to GDR issuances and did not possess the requisite domain knowledge and the relevant protocol pertaining to GDR issuances, and thereby entirely relied upon the guidance and advice of the appropriately regulated lead manager. It is natural in all public issues, whether domestic or GDR, that issuers by and large go by the advice of their lead manager. Only upon receipt of the WTM SCN, did the Noticees become fully aware of the extent of the alleged fraud perpetrated by the lead manager in association with certain other entities.

kk) From SEBI's investigation, it is apparent that the entire allegedly fraudulent scheme was executed by Mr. Arun Panchariya and his connected entities, Vintage FZE and Pan Asia Advisors Ltd. On the basis of various orders issued by SEBI and SAT, it appears that Mr. Arun Panchariya had been engaged in similar fraudulent GDR transactions with respect to other listed companies. With respect to Mr. Arun Panchariya's involvement in the alleged fraud, the present SCN itself states as follows:

"Arun Panchariya was the key person in structuring the GDR issue of Noticee 1 who devised and structured the GDR issue in connivance with Noticee 1. Arun Panchariya connected entities are involved at all stages of GDR issue. Arun Panchariya connected Pan Asia Advisors Ltd. was Lead Manager to GDR issue. Arun Panchariya controlled Vintage subscribed to GDR issue by entering into Loan Agreement with EURAM Bank for which Noticee 1 pledged its GDR proceeds as security. Vintage subsequently defaulted on repayment of balance loan amount of USD 6.05 million. Therefore, GDRs to the extent of USD 6.05 million were issued at free of cost to Vintage. Arun Panchariya connected FII sub-accounts namely HBSF and ASPIRE received and converted GDRs and sold converted equity shares of WINSOME in Indian securities market. Arun Panchariya connected FII namely Golden Cliff facilitated HBSF and ASPIRE in conversion of GDRs and sale of converted equity shares. Thus, Arun Panchariya devised GDR scheme along with Noticee 1"

ll) The Noticees neither had any malafide intention nor any fraudulent inclination, but were rather victims of exploitation by Vintage FZE, Pan Asia Advisors Ltd. and Mr. Arun Panchariya. It is suspected that the Pledge Agreement referred to in the SCN is also fraudulently executed by these entities in the name of Noticee 1. Thus, the Noticees cannot be said to have committed fraud or violated any provision of law. On the contrary, Noticees have themselves been victims of the allegedly fraudulent scheme perpetrated by Mr. Arun Panchariya and his connected entities.

mm) Noticees were not aware of the alleged Pledge Agreement. They are not in any manner associated or connected to Vintage FZE. Further, they had no knowledge about Vintage FZE being the sole subscriber to GDR issue until the receipt of the WTM SCN. The allotment of GDRs was done by Pan Asia Advisors Limited and the Depository Bank, i.e. BONY. As is a common practice in public issues, Winsome was provided with the list of subscribers by the lead manager, i.e. Pan Asia Advisors Limited. The Noticees relied upon said list provided by the lead manager and were under a *bona fide* belief that the names of the subscribers to the GDR issue are the same. Accordingly, the same was disclosed to the BSE and NSE and provided to SEBI vide Winsome's letter dated July 6, 2015.

nn) Further, the Noticees could not have apprehended that Vintage FZE was the sole subscriber to Winsome's issue. An escrow account for the GDR issue was opened with EURAM Bank, which also acted as the escrow agent and EURAM Bank alone was aware of the details of payments received therein. The Noticees had no malafide or fraudulent intention to conceal and did not conceal any detail pertaining to its GDR issue. Noticees had thus given all disclosures warranted under the Listing Agreement.

oo) Noticee 1 has not executed the Pledge Agreement, and was not even aware of it till the issuance of WTM SCN. Therefore, allegation that the Noticee 1 failed to inform the stock exchanges of the execution of the Pledge Agreement is not based on established facts. With regard to non-disclosure about the termination of the GDR program in 2015, Noticees submitted that termination of the GDR program 4 years after the issue is not a material event that would impact the performance of the company. Therefore, Winsome was not required to inform the stock exchanges regarding the same immediately, in terms of Clause 36(7) of the Listing Agreement. In this regard, it is pertinent to note that Winsome disclosed the termination of its GDR program as part of its quarterly results from August 24, 2015 onwards and the same is also mentioned in its annual reports from the financial year 2015-16 onwards. The SCN has provided no reason/proof to consider the termination of GDR program to be a material event, apart from the mere bald assertion that it is a price sensitive event. The information regarding the termination of the GDR program was not price sensitive information and SEBI is put to strict proof regarding the same. Thus, Noticee 1 has not violated the provisions of Clause 36(7) of the Listing Agreement as alleged in the SCN.

pp) With respect to allegation of violation of clause 32 and 50 of listing agreement Noticees submitted that the annual reports in consideration pertains to FY 2010-11 and FY 2011-12. However, the SCN has been issued in 2019, after 8 years from finalization of the said annual reports. Issuance of SCN for an alleged violation after 8 years from the event is prejudicial to Noticee 1. It is difficult for the Noticee 1 to access records after so many years and contact the relevant statutory auditors to adequately prepare a response to these allegations. In this regard, as submitted above, and relying on Supreme Court decision in Government of India v. Citadel Fine Pharmaceuticals Madras & Ors., read with orders of the SAT in the matters of Ashok Shivlal Rupani & Anr. v. SEBI and Rakesh Kathotia & Ors. v. SEBI, the Noticee 1 submitted that at this belated stage, Noticee 1 cannot be penalized for the alleged violation.

qq) Noticees submitted that Winsome did not authorize the creation of any pledge over the GDR proceeds and was not aware of the same. There is no correspondence from EURAM Bank or Vintage FZE or any other source that has informed Winsome of the said alleged loan and Pledge agreements. Therefore, Winsome correctly and justifiably did not discount its CCE and disclosed the same as such in its annual reports for financial year 2010-11 and 2011-12. In view of the above, the allegation that Winsome did not comply with the requirements of AS-3 while calculating the CCE available with it is erroneous, false and unsustainable. Since, Winsome did not authorize the creation of any pledge over the GDR proceeds and was not aware of the same, and since there is no correspondence from EURAM Bank or Vintage FZE or any other source that has informed it of the said alleged loan and Pledge agreements, Winsome could not have considered a loan about which they were unaware of as a contingent liability and disclose the same in its financial statements for the financial years 2010-11 and 2011-12. Hence, it is erroneous to allege that Noticee 1 did not comply with the requirements of AS-29 or AS-1. Thus, Noticee 1 has not violated the provisions of Clauses 32 and 50 of the Listing Agreement as alleged in the SCN.

rr) The SCN makes a bald allegation that the Noticees were involved in a fraudulent scheme with respect to the GDR issue. However, SCN fails to take into account the role played by the Noticees, or the benefit accrued to the Noticees by way of such fraudulent scheme. Noticees have not made any gains by virtue of the fraudulent scheme. It has not been alleged in the SCN that the Noticee 2 has made any purchase or sale of shares of Winsome in an attempt to benefit from the alleged market manipulation caused by the fraudulent scheme. Further, there has been no allegation that Winsome or any person connected with Winsome have made any unlawful gains or have derived any undue benefit from trading in the scrip of Winsome pursuant to the alleged fraudulent scheme.

ss) With respect to allegation of violation of PFUTP Regulations Noticees submitted that allegations have been made in complete disregard of their role in the GDR issue. The allegation that Noticees were involved in a fraudulent scheme related to Winsome's GDR issue is based on the presumption that the Noticees knowingly executed the Pledge Agreement. The assertion in the SCN that the relevant Board Resolution for the opening of escrow account with EURAM bank authorized or empowered the Noticee 1 to enter into the Pledge Agreement has been made without analysing the specific nature of the Board Resolution dated September 03, 2010. The said resolution only authorised EURAM Bank to use the GDR proceeds deposited with them as security if any loans are taken by the Noticee 1. It never authorised the GDR proceeds to be used as a collateral for the loan taken by Vintage FZE. Moreover, it has been wrongly presumed in the SCN that the Noticee 2 was authorized and executed purported Pledge Agreement and connived in a fraudulent scheme involving purported Pledge agreement, which the Noticees were never aware of. The allegation of fraud is a grave charge and a fraudulent act cannot be imputed merely based on surmises, probabilities, conjectures and refutable evidence. Charges of fraud against market participants are serious violations and should not be made casually by the regulatory agencies. Various judicial pronouncements have unequivocally stated that fraud is a serious offence and therefore the standard of proof must be of a higher degree and mere conjectures and surmises will not be sufficient to hold a person liable for fraud. In this regard, Noticees relied on the observation of SAT in KSL & Industries v. Chairman, SEBI, wherein it was stated that:

*"[15] A wild allegation of market manipulation in particular the charge of fraudulent action unsupported with convincing evidence is not to be sustained… **<u>allegation of 'fraud' cannot survive on mere conjecture and surmises</u>**..."*

Similarly, in SEBI and Ors. v. Kanhaiyalal Baldevbhai Patel and Ors., the Hon'ble Supreme Court held that *"… **the charges under the FUTP 2003 needs to be established as per the applicable standards rather than on mere conjectures and surmises**."*

tt) Noticees submitted that Winsome never authorized Noticee 2 to enter into the Pledge Agreement and that Noticee 2 never executed the Pledge Agreement. However, SEBI has not only proceeded on the assumption that the Noticees were part of a fraudulent scheme with regards to GDR issue, but it has wrongly interpreted the Board Resolution to imply that an authority was granted to any director on the board to execute a Pledge Agreement. Such assumptions in the SCN cannot be accepted as sufficient to prove a case of fraud against the Noticee 1.

In Hansraj Gupta v. Dehra Dun Mussoorie Electric Tramway Ltd., the Privy Council held that:

"[6]…the party alleging fraud is bound to establish it by cogent evidence and ***suspicion cannot be accepted as proof****…Unless therefore* ***the proved circumstances are incompatible with the hypothesis of the person charged with fraud having acted in good faith, they cannot be accepted as affording sufficient proof*** *of fraud. "*

Further, in Union of India v. Chaturbhai M. Patel & Co., the Hon'ble Supreme Court has referred to the decision in A.L.N. Narayanan Chettyar v. Official Assignee, wherein it was held that

"*[7]…However suspicious may be the circumstances, however strange the coincidences, and however grave the doubts, suspicion alone can never take the place of proof*…"

uu) Noticees submitted that the SCN does not provide any cogent evidence to show that the Noticee 2 has signed the Pledge Agreement and that he was a knowing participant of the alleged fraudulent scheme with regards to the GDR issue of Winsome. At the time of issue of GDR, Noticees had complied with all the statutory and regulatory provisions applicable at the relevant time, both in letter and spirit. Even SCN has pointed out only a few lapses pertaining to alleged non-disclosure/dissemination of information to stock exchanges, which again originate from the execution of the Pledge Agreement. The SCN fails to provide any further evidence of fraud allegedly committed by the Noticees. Considering this, it is amply clear that the Noticees had not resorted to any manipulative or deceptive device or contrivance or contraventions of the provisions of the Act or rules or regulations made thereunder. Thus, there is no violation of Regulation 3(b) and (c) of the PFUTP Regulations.

vv) Noticees had not in any way engaged in any act, practice, course of business which operated as fraud or resulted in deceit of any person in connection in its dealings related to GDR issue and underlying listed shares. All statutory compliances were thoroughly made and there were no contravention of any provisions of the SEBI Act or rules and regulations made thereunder. Thus, there is no violation of Regulation 3(d) of PFUTP Regulations.

ww) With respect to the alleged violation of Regulation 4(2)(f), (k) and (r) of the PFUTP Regulations Noticees submitted that Winsome had not knowingly published or caused to be published or caused to be reported by any person dealing in securities any information which is not true or which it did not believe to be true prior to or in the course of dealing in securities. Winsome had not executed any Pledge Agreement, and thus the assertion that the non-disclosure of the same cannot be considered to be reporting of untrue/misleading information. Further, Winsome has not disseminated any information that it knew is false or misleading. Thus, except for the abovementioned allegations, which are solely based on a mistaken presumption that the Noticees are aware of the Pledge Agreement, the SCN does not provide any evidence for the existence of any fraud by the Noticees in relation to the GDR issue of Winsome. Thus, in the absence of any cogent evidence, the Noticees cannot be held liable for the alleged violation of alleged PFUTP Regulations.

xx) The Noticees are not the perpetrators of fraud, but on the contrary, are the victims of fraud perpetrated by Pan Asia Advisors Limited, the lead manager, upon the Noticees as well as the investors of Winsome. The SCN fails to appreciate that Pan Asia Advisors Limited had been found to have executed similar fraudulent GDR issuances of various other companies, which leads to the indubitable presumption that Pan Asia Advisors Limited was solely responsible for the fraudulent transactions pertaining to the GDR issuance.

yy) Noticees have not engaged in any fraudulent or unfair trade practices. It is submitted that Regulations 3(a), (b), (c) and (d) of PFUTP Regulations and Section 12A(a), (b) and (c) of SEBI Act deal with commission of fraud in connection with dealing or issue of securities. In absence of any concrete evidence supporting the finding that Noticees were actively involved in the alleged fraudulent scheme, the Noticees cannot be held liable for the alleged violation of aforementioned provisions.

63. **Additional Submissions of Noticees**:

a) With respect to interpretation of Board Resolution, Noticees submitted that in Adi Cooper v. SEBI (Appeal No. 124 of 2019, decided on November 05, 2019), SAT had the opportunity to interpret a board resolution in a matter concerning GDR issue, which is squarely similar to the Board Resolution in concern here. The appellant in that matter had contended that the said resolution was not by itself violative of SEBI laws. SAT held that such resolution did not stipulate that the proceeds of GDR issue could be used as security in connection with a loan taken by another entity. It also held that this resolution cannot be used to arrive at a conclusion that the resolution was the first step or starting point of a fraudulent arrangement through which the company could facilitate financing of GDR subscription by another entity. The SAT observed as follows:

"*[8]. The finding of the WTM against the appellant Adi Cooper is wholly misconceived, farfetched and cannot be accepted to come to a conclusion that the said appellant was party to a resolution which had an intention to manipulate the market or defeat its mechanism.* ***Admittedly, the appellant Adi Cooper was party to a resolution of the Board of Directors dated January 30, 2008 which only resolved the company to open an account with the EURAM bank for the purpose of deposit of the GDR proceeds****. There solution further authorized the bank to use the proceeds as security in connection with a loan.* ***The resolution did not stipulate that the proceeds would be used as security in connection with a loan taken by another entity****. The resolution could also mean that* *the proceeds would be utilized by the bank's security in connection with a loan taken by the company itself.* ***Thus, from the resolution dated January 30, 2008 one cannot arrive at a conclusion that this was the first step or the starting point of a fraudulent arrangement through which the company could facilitate the financing of the GDR subscription by Vintage****. It may be noted here that when the resolution of January 30, 2008 was passed Vintage was nowhere in the picture...*" (emphasis supplied)

b) This view was further upheld by SAT in another matter concerning GDR issuance, Adesh Jain v. SEBI (Appeal No. 217 of 2020, decided on November 19, 2020), wherein once again SAT had the opportunity to interpret a board resolution similar to the Board Resolution in concern here. The appellant in this case had urged that the board resolution only allowed for opening of a bank account for purpose of receiving subscription money in respect of the GDR. It was contended that the board resolution related only to the loans taken by the company and that it could not be stretched for the purpose of giving GDR proceeds as a loan to a third party. SAT relied on its order in Adi Cooper v. SEBI to hold that the scope of such board resolution cannot be understood to encompass utilising the subscription amount to give loans to a third party. In this order, the SAT held as follows:

"[12]. Having heard the learned counsel for the parties and having given our thoughtful consideration in the matter, we are of the opinion, that the controversy involved in the present appeal is squarely covered by a decision of this Tribunal in Adi Cooper (supra) matter. In Adi Cooper (supra) the Tribunal interpreted the relevant words of the resolution "to use the fund so deposited in the aforesaid bank account as security in connection with loans if any". ***The Tribunal held that the loans could be taken by the Company and GDR subscription to be used as security. It was never fathomed that the subscription amount would be used***

<u>for giving loans to a third party, namely, Clifford in the instant case</u>."(emphasis supplied)

c) Noticees submitted that these decisions squarely apply to the present case. The Board Resolution forming basis of allegations against the Noticees does not envisage the usage of GDR proceeds lying with EURAM Bank as collateral for a third party loan, and that the Noticees cannot be said to have engaged in any fraudulent scheme involving the Noticee 1's GDR issue on the basis of such Board Resolution.

d) Pledge Agreement is alleged to have been entered into between Noticee 1 and EURAM Bank after the passing of the Board Resolution which allegedly authorised the creation of such a pledge. This Pledge Agreement is an integral part of the fraudulent scheme, as alleged by the SCN. Thus, as the very basis on which the Pledge Agreement was allegedly validly executed is conclusively dismissed, the alleged Pledge Agreement could not have been validly entered into. As a corollary, Noticee 1 has no connection to the fraudulent scheme of which the alleged Pledge Agreement is an integral part.

e) Noticees submitted that the Pledge Agreement was not executed by Noticee 2. During the personal hearing before the adjudication officer, held on December 07, 2020, the veracity and sanctity of the purported Pledge Agreement was challenged by Noticee 2. Noticee 2, *inter alia,* challenged the signature affixed on the purported Pledge Agreement. In this regard, to further such claim Noticees submitted the copy of Noticee 2's specimen signature.

64. I now proceed to decide the case on the basis of SCN issued, replies made by the Noticees and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

65. The issues that arise for consideration in the instant matter are:

Issue No. I	Whether the Noticee 1 is in violation of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(f), (k), (r) of PFUTP Regulations and Section 21 of SCRA read with Clauses 32, 36(7) and 50 of Listing Agreement and whether the Noticee 2 is in violation of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations?
Issue No. II	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. III	If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act and Section 23J of SCRA read with Rule 5(2) of the Adjudication Rules?

Issue No. I **Whether the Noticee 1 is in violation of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(f), (k), (r) of PFUTP Regulations and Section 21 of SCRA read with Clauses 32, 36(7) and 50 of Listing Agreement and whether the Noticee 2 is in violation of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations?**

66. Before going into the merits of the case, I note the contention of the Noticees that the events to which the SCN pertains to transpired in year 2011; however, the present SCN was issued on September 11, 2019, after a delay of more than 8 years. The Noticees also submitted that they have faced extreme hardship in

defending themselves against the allegations levied in the SCN on account of the considerable amount of time that has passed between the alleged date of purported violations and the date of the SCN. In this regard, I note that no limitation is prescribed in SEBI Act or Regulations for issuance of SCN or for completion of the Adjudication proceedings. I further note that the GDRs of Winsome issued in March 2011. However, the instant matter involves GDR Issues listed in foreign exchange. It also involved examination of entities registered under foreign authorities. As per records, it was decided to initiate investigation in April 2015. In this regard, Hon'ble SAT in its order dated February 05, 2020 in the matter of Jindal Cotex Ltd. vs. SEBI stated 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."

67. I note that the investigation was completed in January 2019, subsequent to which the SCN was issued on September 11, 2019. In view of the foregoing, I do not find merit in the contention of the Noticees regarding delay in proceedings.

68. Noticees have further stated that they have not been provided with inspection of original documents and records relied upon by SEBI to make the allegations and charges in the said SCN. In this regard, I note that the allegations against the Noticees are clearly brought out in the SCN and all the relevant documents that have been relied upon in the SCN have been provided to the Noticees as Annexures to the SCN. Further, scanned copies of all the relevant documents also been provided to the Noticees. Hence, I note that the Noticees have been provided with all information considered relevant for the purpose of the allegations leveled against them in the SCN which is sufficient for filing

comprehensive reply in the matter and principle of natural justice have been complied with.

69. Noticees also stated that the proceedings initiated pursuant to the present SCN should kept in abeyance till the conclusion of the proceedings initiated by the WTM SCN, as both the show cause notices arise from the same cause of action and have the same facts and allegations. Noticees further stated that the proceedings should be kept in abeyance till the Hon'ble High Court has the opportunity to hear and dispose of the Writ Petition filed by the Noticees challenging the return of settlement application. In this regard, I note that the proceedings before AO and WTM are independent proceedings and can proceed in a parallel manner. There is no legal requirement that the WTM proceedings conclude prior to the current proceedings. With regard to the Writ Petition filed by the Noticees challenging the rejection of their Settlement Application, I note that no stay has been granted by the court on the present proceedings. I note that the Writ Petition was filed by the Noticees on November 04, 2020 and till date, Noticees have not communicated any information regarding status of their petition. In the absence of any stay by the Hon'ble High Court, the present proceedings cannot be kept in abeyance.

70. Noticee has also contended that SCN relies on documents allegedly executed between the Company and EURAM Bank, which is vehemently denied by the Noticees. Therefore, SEBI's failure to make EURAM Bank, a party to this SCN vitiates natural justice principles. In this regard, no violations are alleged against EURAM Bank and hence, merely because documents were obtained from EURAM Bank, it is not required to be made party to the SCN.

71. I now proceed to deal with the case on merit.

72. I note from the SCN that Winsome issued 1.99 million GDRs on March 29, 2011 amounting to USD 13.24 million. Pan Asia Advisors Ltd. was the Lead Manager

of GDR issue of Winsome. The allegation against the Noticees is based upon the Pledge Agreement signed by Noticee 2 on behalf of Noticee 1 with EURAM Bank whereby GDR proceeds were pledged against the loan availed by Vintage for subscription of GDRs of Noticee 1. It is also alleged that Noticees made misleading corporate announcements relating to the GDR issue.

73. In his reply, Noticee 2 has denied that he executed the Pledge Agreement by stating that (1) the Pledge Agreement was verified on March 21, 2011, a day before the document was purported to have been executed i.e. March 22, 2011; and (2) the Pledge Agreement does not disclose the place of execution and neither SEBI's investigation nor the SCN have brought on record any document to show the place of execution of the Pledge Agreement and/or to show that Noticee 2 was present at the place of execution. Noticee 2 also challenged the signature affixed on the purported Pledge Agreement, and he has submitted the copy of his specimen signature. In this regard, I note that Noticee 2's signature appears at multiple places on the Pledge Agreement as well as Escrow Agreement which was signed between Winsome and Pan Asia (lead manager of the GDR issue) and Euram Bank (which was the escrow agent). This agreement was also signed on March 22, 2011 where place of signing of agreement is not mentioned. It is outside the remit of these proceedings to decide on authenticity of signature of Noticee appearing on these agreements and schedules thereof. *Prima facie*, signatures on passport of Noticee attached to Pledge Agreement and the aforesaid documents appear similar. I further note that Noticee 2 has admittedly dealt with Pan Asia for the GDR issue, with whom the Escrow Agreement was signed. Noticee has not questioned the Escrow Agreement authenticity which was signed on the same day as the Pledge Agreement. In view of this, I find that submission of the Noticee 2 denying that he signed the Pledge Agreement cannot be accepted.

74. Noticee 1 has contended that it never consented to the execution of the Pledge Agreement and that Noticee 2, in his capacity as a Managing Director, never

executed the Pledge Agreement. Further, even if it is assumed that Noticee 2 executed the Pledge Agreement, the same has been executed without authority and therefore, it does not bind Noticee 1. In this regard, I note that Noticee 1, being a company, is represented by its Board of Directors and the persons who are authorized to act on its behalf by the Board of Directors. Noticee 2 was authorized by the Board of Directors to open a bank account with Euram Bank. Hence, Noticee 2 was acting on behalf of Noticee 1. Noticee 1 can therefore not plead ignorance of the actions taken on its behalf by Noticee 2, who was also its Managing Director.

75. Noticees also contended that the Board of Directors of Winsome never considered or approved the creation of a pledge over the GDR proceeds in favour of Vintage or any other person. The Board Resolution did not specifically authorize the Managing Director, to create a pledge over proceeds of Winsome's GDR issue. At best, it authorized EURAM Bank to consider the deposit with them as collateral towards any loans that Winsome may avail from them. Therefore, the Board Resolution cannot in any way be considered to permit the pledging of proceeds from GDR issue of Winsome to grant loan to Vintage FZE.

76. In this regard, I note that the Board Resolution dated September 03, 2010 which was approved by circulation authorized EURAM Bank to use Winsome GDR proceeds deposited with EURAM Bank, as security in connection with loans, if any, and also authorized Noticee 1 to sign, execute any application, agreement etc. as and when required by the EURAM Bank. Here I make reference to order dated April 28, 2021 passed in respect of B.M Khanna in the same matter. It is held in this order that the circular resolution was signed by only 5 of 7 directors and that B. M. Khanna was not present in the Board Meeting when the circular resolution was taken note of. Hence, the complete Board was not present when the circular resolution was taken note of in the Board Meeting held on September 22, 2010. It is further held in the said order that the process for authorizing the company to provide loan, guarantee or security as required

under Section 372A(2) of Companies Act, 1956 was incomplete. Thus, I note that while the Board authorized Noticee 2 to open a Bank Account with Euram Bank in terms of the said Board Resolution, the process for authorization of providing loan, guarantee or security was not complete, even though the resolution permitted use of funds with Euram Bank as security in connection with loans, if any. In this context, the fact that the Noticees 1 and 2 proceeded with the arrangement of Pledge Agreement based on the September 03, 2010 board resolution implicates them squarely for proceeding with the scheme for GDR subscription based on approvals obtained without fully complying with requirements of Section 372A(2) of Companies Act.

77. The said board resolution, is reproduced below for reference.

Board Resolution

"*RESOLVED THAT a bank account be opened with EURAM Bank ("the Bank"), AG, Palais Esterhazy, Wallnerstrasse 4, A-1010 Vienna, Austria or any branch of Euram Bank, including the Offshore Branch, outside India for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of the Company."*

RESOLVED FURTHER THAT Mr. Manish Bagrodia, Managing Director of the Company, be and is hereby authorised-
1) to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required, and countersigned by Mr. Manish Bagrodia, Managing Director and Mr. K.V. Singhal, General Manager (Legal) & Company Secretary or Mr. Vinod Jaria, Financial Controller of the Company

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

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

78. On perusal of the Loan and Pledge Agreement, I note that in both these agreements, account No. 580040 was mentioned as pledge account to keep the GDR proceeds of Winsome as collateral with Euram Bank against loan taken by Vintage from Euram Bank for subscription of GDR Issue of Winsome. Pledge agreement clearly states that the pledger (Noticee 1) has received a copy of the Loan Agreement No. K210311-002 and acknowledges and agrees to its terms and conditions. I note that GDR proceeds were kept in the same pledge account. However, Noticees never objected to the same and never questioned EURAM Bank for keeping the proceeds in pledge account. Noticees in their own submissions accepted that GDR proceeds were not transferred to Winsome's account in India immediately after GDRs were subscribed, but it received the GDR proceeds in tranches over 7 years.

79. Winsome reported it wrongly to the stock exchange (BSE) on March 29, 2011 by stating that, *"The GDRs issue of the Company of 1994125 GDRs priced at USD 6.64 per GDR has been fully subscribed pursuant to which the Company has raised an amount of USD 13240990*". Further, from the offering circular of GDR issue, it is noted that issuance of GDRs was for specific purpose and

shareholders approved the same considering that Winsome will utilize the GDR proceeds in the same manner and immediately after successful subscription of GDRs. The offering circular (Listing Prospectus) of GDRs of Winsome states that, *"The aggregate net proceeds (net of issue related expenses) received from this offering are anticipated to be US $12.71 million. The company plans to utilize the proceeds as follows: Capital expenditure for setting up a 10MT Dyeing Unit at Derabassi, Strengthening of Net Working Capital, Overseas Investments, Other Corporate purposes."* Also, Noticees in their submissions stated that "*As part of the Company's expansion strategy, the company intended to increase its profit margin through increased production of value-added products such as mélange yarn, organic cotton yarn, and also increase the volume and business under the Retail Brands. In order to achieve these strategic goals, in FY 2010-11, the Company decided to set up a 10 Metric Ton Dyeing Unit within the existing premises of its Spinning Unit at Derabassi. In order to raise funds for the same, and to strengthen its working capital position, the Company decided to come out with an issue of GDRs in May 2010. The approval of shareholders in General Meeting was obtained for the GDR issue in June 2010 for a total of 19,94,125 GDRs with underlying 19,94,12,500 equity shares of Rs. 1/- each, with an intention to raise a total sum of USD 1,32,40,990."*

80. I note that Winsome received GDR proceeds in tranches during September 12, 2011 to September 14, 2018 and not immediately after subscription of GDRs. The total GDR issue size was around Rs.60 crore, which was more than 50% of market capitalization of the company prior to GDR Issue. Noticees were aware that GDR proceeds were not available for immediate disposal of Winsome. By its own submission, Winsome received only Rs. 38.73 crore of the proceeds of GDR issue in tranches over 7 years in its bank accounts in India. I note that even though huge share capital of Winsome was on stake and Noticees knew that inability to use proceeds of GDR would have larger impact on company's financials and overall performance of the company, Noticees did not act in any way to receive entire GDR proceeds immediately in the accounts of Winsome in

India, so that the proceeds can be utilized as per the purpose mentioned in offering circular or to the shareholders of Winsome. On the contrary, when the auditors raised the query with respect to non receipt of GRD proceeds, the reason for non receipt of GDR proceeds was stated in the Annual Report of 2010-11 as *"Pending certain compliance, the issue proceeds of the GDRs of Rs.5914.75 lacs (including security premium of Rs.3920.62 lacs) is parked in the Bank "Escrow" Account outside India and accordingly these issue proceeds is pending to be utilized".* Similar query has been raised by auditors in 2011-12 and similar statement was made in Annual Report of 2011-12 also. The statements in the Annual Reports establish that the Noticees were aware of the escrow arrangement and by extension, the reasons for retention of funds in the escrow account i.e. the funds were bound as collateral against a loan and were not free for use by Noticee 1.

81. In view of the above, I do not find any merit in contention of the Noticees that they were not aware of any loan or pledge agreement and Noticee 2 has not signed Pledge Agreement with EURAM Bank on behalf of Noticee 1. I also do not accept the contention of the Noticees that they are not the perpetrators of fraud, but are the victims of fraud perpetrated by others. I note that inaction of the Noticees as mentioned in above paragraphs demonstrates their involvement in this GDR scheme, which was designed to create an impression of receiving funds through GDR subscription. This wrong impression was aided by Winsome when it gave misleading disclosures about the subscribers to the issue and suppressed information regarding the Pledge conditions.

82. I note that Vintage FZE, an entity controlled by Arun Panchariya, was the sole subscriber of GDR issue of Winsome. Vintage availed a loan of USD 13.24 million from EURAM Bank for payment of subscription amount for GDR issue of Winsome. Prior to the issuance of GDRs, Vintage signed a Loan Agreement dated March 22, 2011 with EURAM Bank for obtaining loan to subscribe the said GDR Issue of Winsome. On the same day i.e. on March 22, 2011, Noticee 2

signed a Pledge Agreement (on behalf of Winsome) with EURAM Bank for pledging GDR proceeds against aforesaid loan of Vintage. Accordingly, Winsome pledged the GDR proceeds as collateral against the loan availed by Vintage. Arun Panchariya being a key person in this whole GDR scam devised a scheme along with Winsome wherein Winsome misled the Indian investors by concealing the information of entering into Pledge Agreement and informing GDR related news in a distorted manner to stock exchanges which made investors believe that GDRs were genuinely subscribed. GDR subscription was structured in a manner whereby the Arun Panchariya controlled subscriber, Vintage, acquired the GDRs without spending a penny, through pledge of the GDRs and GDR proceeds against the loan used for subscription. Thus, no funds actually flowed to the Company, until Vintage repaid the loans.

83. In the order passed in the instant matter on October 29, 2020 in respect of Arun Panchariya, it was established that Vintage defaulted on repayment of balance loan amount of USD 6.05 million. Upon default, in terms of the Loan Agreement and Pledge Agreement, an amount of USD 6.05 million, which was part of the GDR proceeds lying in the Winsome account under Pledge Account number 580040 with Euram Bank was realized by Euram Bank in order to repay part of the outstanding loan of Vintage. Remaining GDRs after realization of loan amount of USD 6.05 million by Euram bank, were released to Vintage upon payment of funds. Winsome Yarns became the pledgee of 391154 GDRs owned by Vintage pursuant to repayment of loan of USD 6.05 million to Euram Bank. The fact that Winsome became a pledgee of 391154 GDRs and Vintage became the pledger shows that Vintage owed funds to Winsome. At the issue price of USD 6.64 per GDR, this amounts to around USD 2.6 million. Thus, GDRs to the extent of USD 6.05 million were acquired by Vintage at no cost to Vintage.

84. Noticee 1 and 2 enabled Arun Panchariya to carry out a fraudulent scheme for GDR subscription as described in preceding paragraphs and were an integral part of the scheme. In view of the above, it is established that Noticee 1 violated

Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(f), (k), (r) of PFUTP Regulations and Noticee 2 violated Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

85. The Noticees contended that the allegation of fraud is a grave charge and a fraudulent act cannot be imputed merely based on surmises, probabilities, conjectures and refutable evidence. For thus Noticees relied upon several judgments. In this regard, I note that the facts of the case are clearly brought out and establish the role played by the Noticees in devising and executing the entire scheme, as well as the extent of gains made by perpetrators and commensurate loss caused to shareholders of Winsome.

86. I note that the Noticees contended that Winsome was provided with the list of subscribers by the lead manager, i.e. Pan Asia Advisors Limited, and they relied upon said list provided by the lead manager and were under a *bona fide* belief that the names of the subscribers to the GDR issue are the same. In this regard, I note that Noticee 2 had signed the pledge agreement and the same was integral part of the loan agreement between Vintage and Euram Bank wherein it was clearly mentioned that the loan was being given to Vintage only to subscribe to the GDR issue of Winsome. Therefore, I am of the view that the Noticees were aware of the fact that Vintage was the only initial subscriber of the GDR issue. In any case, it is a fact that the Noticees gave factually incorrect and misleading information regarding subscribers to the GDR issue. Therefore, I do not find merit in the aforesaid contention of the Noticees.

87. With respect to non-disclosure about the termination of the GDR program and delisting of GDRs in 2015, Noticees submitted that termination of the GDR program 4 years after the issue is not a material event that would impact the performance of the company. Therefore, Winsome was not required to inform the stock exchanges regarding the same immediately, in terms of Clause 36(7)

of the Listing Agreement. I note that Clause 36(7) of the listing Agreement requires that,

"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."

88. In this regard, I note that as per Clause 36(7) of the Listing Agreement, the company was required to immediately inform the stock exchanges of all events which will have a bearing on the performance/operations of the company as well as price sensitive information. I note from the material available on record that GDR program was terminated on June 15, 2015 and GDRs were delisted. The delisting of GDRs is price sensitive information from the point of view of the Indian investors/shareholders of the company, as it may lead to conversion of GDRs in the equity shares of the company by holders of GDRs and possible increase in demand/supply of the equity shares of the company. In the instant matter, after delisting of GDRs FII-sub-accounts namely HBSF and ASPIRE converted the GDRs and sold 56.36 lakh converted equity shares in the Indian securities market. Thus, I find that the information of GDR termination was price-sensitive and should have been disclosed by Noticee 1. By failing to disclose the same, Noticee 1 violated clause 36(7) of Listing Agreement and violated section 21 of SCRA.

89. With respect to allegation of violation of clause 32 and 50 of the listing agreement, Noticees submitted that the annual reports in consideration pertain to FY 2010-11 and FY 2011-12, it is difficult for the Noticee 1 to access records after so many years and contact the relevant statutory auditors to adequately

prepare a response to these allegations. Noticees also contended that Winsome did not authorize the creation of any pledge over the GDR proceeds and was not aware of the same. There is no correspondence from EURAM Bank or Vintage FZE or any other source that has informed Winsome of the said alleged loan and Pledge agreements. Therefore, Winsome correctly and justifiably did not discount its CCE and disclosed the same as such in its annual reports for financial year 2010-11 and 2011-12. Noticees further submitted that Winsome could not have considered a loan about which they were unaware of as a contingent liability and disclose the same in its financial statements for the financial years 2010-11 and 2011-12. It is already established that Noticee 2 had signed the pledge agreement and the same was integral part of the loan agreement between Vintage and Euram Bank wherein it was clearly mentioned that the loan was being given to Vintage to subscribe to the GDR issue of Winsome. It is also established that Noticees were well aware that GDR proceeds were kept in pledge account as collateral against loan given to Vintage for subscription of GDRs of Winsome.

90. Therefore, I find that Noticee 1 failed to prepare its financial statements in accordance with accounting standards –3, 29 and 1 by improperly showing cash and cash equivalents, not correctly reflecting contingent liabilities thereby no following prudence in application of accounting policies. By failing to comply with accounting standards – 1, 3 and 29, Noticee violated Section 21 of SCRA read with Clauses 32 and 50 of the Listing Agreement.

91. Therefore, it is established that Noticee 1 has violated Section 21 of SCRA read with Clauses 32, 36(7) and 50 of Listing Agreement.

Issue No. II **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?**
and

Issue No. III **If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act and Section 23J of SCRA read with Rule 5(2) of the Adjudication Rules?**

92. It has been established that Noticee 1 has violated Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(f), (k), (r) of PFUTP Regulations and Section 21 of SCRA read with Clauses 32, 36(7) and 50 of Listing Agreement and Noticee 2 has violated Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations. Therefore, Noticee 1 is liable for monetary penalty under Section 15HA of SEBI Act and Section 23E of SCRA and Noticee 2 is liable for monetary penalty under Section 15HA of SEBI Act.

93. The text of Section 15HA of SEBI Act and Section 23E of SCRA is as below:

<u>SEBI Act</u>

Penalty for fraudulent and unfair trade practices.

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

<u>SCRA</u>

<u>Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.</u>

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

94. While determining the quantum of penalty under Section 15HA of the SEBI Act and Section 23E of SCRA the following factors stipulated in Section 15J of the SEBI Act and Section 23J of SCRA have to be given due regard:

Factors to be taken into account by the adjudicating officer

15J. *While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Factors to be taken into account by the Adjudicating Officer.

23J. *While adjudging the quantum of penalty under section 23-I, the adjudicating officer shall have due regard to the following factors, namely:—*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

95. Noticees have submitted that there has been no allegation that they have made any unlawful gains or have derived any undue benefit from trading in the scrip of Winsome pursuant to the alleged fraudulent scheme. I note from the material on record that no disproportionate gain is attributed to the Noticees. However, the GDR scheme enabled Arun Panchariya controlled Vintage to acquire GDRs worth USD 6.05 million/ Rs.27 crores free of cost, and caused equivalent loss of value to Winsome. As a result, out of total GDR issue size of around Rs.60

crores, Notice 1 received GDR funds to the extent of only Rs.37.21 crores on account of the fraudulent scheme and arrangement for subscription of its GDRs, i.e. a shortfall of around Rs.23 crores. I note that penalty of Rs.25 crores has been levied on Arun Panchariya as the person responsible for the fraudulent scheme. I further note that Noticee 1 and 2 were part of the said scheme and enabled it to be executed.

96. In view of the above, taking into consideration size of the GDR issue, loss caused to Winsome and its investors as a result of non-receipt of funds raised and penalty already imposed on Arun Panchariya, I find that a penalty of Rs. 10,00,00,000/- (Rupees Ten Crore only) under Section 15HA of SEBI Act and Rs.1,00,00,000/- (Rupees One Crore only) under Section 23E of SCRA on Noticee 1 and a penalty of Rs.1,00,00,000/- (Rupees One Crore only) under Section 15HA of SEBI Act on Noticee 2 will be commensurate with the violations committed by the Noticee 1 and Noticee 2.

ORDER

97. After taking into consideration all the facts and circumstances of the case, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act and Section 23-I of SCRA read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs.11,00,00,000 (Rupees Eleven Crore only) on the Noticee 1 viz. Winsome Yarns Ltd. under Section 15HA of SEBI Act and Section 23E of SCRA and a penalty of Rs.1,00,00,000 (Rupees One Crore only) on the Noticee 2 viz. Manish Bagrodia under Section 15HA of SEBI Act.

98. The 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 SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

ENFORCEMENT → Orders → Orders of AO → PAY NOW

99. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticees shall provide the following details while forwarding DD/ payment information:

    a) Name and PAN of the entity (Noticee)
    b) Name of the case / matter
    c) Purpose of Payment – Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

100. Copy of this Adjudication Order is being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: May 28, 2021
PLACE: MUMBAI

MANINDER CHEEMA
ADJUDICATING OFFICER