BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/VV/NK/2022-23/17383-17389]

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

In respect of:

1. M/s. Texmo Pipes and Products Ltd. PAN: AACCT9780D	**2. Mr. Sanjay Agrawal PAN: ADAPA0132C**
3. Mr. Vijay Prasad Pappu PAN: ASRPP0392H	**4. Mr. Shanti Lal Badera PAN: ABLPB5820D**
5. Mr. Rishabh Kumar Jain PAN: AHYPJ1203B	**6. Mr. Arun Panchariya PAN: AEVPP6125N**
7. Mr. Mukesh Chauradiya Passport No. : Z2034007	

In the matter of:

Texmo Pipes and Products Ltd. in respect of its GDR issue

Background

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted an investigation into the Global Depository Receipts (hereinafter referred to as **"GDR"**) issue of M/s Texmo Pipes and Products Ltd. ('**Noticee no. 1**'/ '**Texmo**'/'**Company**') which issued 6,27,500 GDRs (amounting to USD 9.99 million) on April 11, 2011 for the period March 01, 2011 to April 30, 2011 (hereinafter referred

to as '**Investigation Period**'/'**IP**').Pursuant to investigation, Adjudication Proceedings were initiated:

a) Against Texmo under section 15HA of of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") for the violation of Section 12A (a), (b), (c) of SEBI Act, 1992 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 referred to as "**PFUTP Regulations, 2003**") SEBI (PFUTP) Regulations. 2003 and Under section 23E of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCRA,1956**") for the violation of section 21 of SCRA read with Clause 36(7) and 50 of the Equity Listing Agreement.

b) Against Directors of Texmo namely Mr. Sanjay Agarwal ("Noticee no. 2"), Mr. Vijay Prasad Pappu ("Noticee no. 3") and Mr. Shanti Lal Badera ("Noticee no. 4") and the then Company Secretary, Mr. Rishabh Kumar Jain ("Noticee no. 5") under section 15HA of SEBI Act, 1992 for the violation of provisions of section 12A (a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

c) Against Shri Arun Panchariya ('Noticee no. 6'/ 'AP') and Shri Mukesh Chauradiya ('Noticee no. 7/ MC)' under section 15HA of SEBI Act, 1992 for the violation of provisions of section 12A (a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

Appointment of Adjudicating Officer

2.Mr. K Sarvanan was appointed as the Adjudicating Officer (**erstwhile AO**) under section 15I of the SEBI Act,1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**SEBI Adjudication Rules**") and under section 23-I (1) of SCRA, 1956 read with Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing

Penalties) Rules, 2005 (hereinafter referred to as **"SCRA Adjudication Rules"**) to inquire into and adjudge under section 15HA of the SEBI Act,1992 and under section 23E of SCRA, 1956 (Noticee no. 1) respectively, for the aforesaid violations alleged to have been committed by the Noticees vide communication order dated February 27, 2019. Thereafter, upon transfer of Mr. K Sarvanan, Mr. Parag Basu was appointed as the Adjudicating Officer. Thereafter, upon transfer of Mr. Parag Basu, undersigned has been appointed as the Adjudicating Officer in the present matter *vide* communication order dated March 10, 2022.

Show Cause Notice & Reply of Noticees

3. A common Show Cause Notice ref. SEBI/HO/EAD-8/KS/VC/17934/2019 dated July 16, 2019 and ref. SEBI/HO/EAD-8/KS/VC/19233/2019 dated July 29, 2019 (hereinafter referred to as **"SCNs"**) was issued by erstwhile AO to the Noticee no. 1 to 5 and Noticee no. 7 & 8 respectively under Rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty not to be imposed under Section 15HA of the SEBI Act, 1992 and Section 23E of SCRA, 1956, as applicable, for the alleged violations specified in the SCNs.

4. The allegations levelled against the Noticee no. 1 to 7 in the SCNs are summarized as below:

1. *It is observed that Texmo was formed as a Partnership Firm by the name of M/s Shree Mohit Industries on May 13, 1999 and subsequently converted and incorporated as a Public limited Company on July 03, 2008 under the name "Texmo Pipes and Products Ltd." The Company got listed on Bombay Stock Exchange (**BSE**) and National Stock Exchange (**NSE**) on March 10, 2010. The company is engaged in business of manufacturing of plastic products viz; PVC and HDPE pipes. Tapti Pipes and Products Ltd. (hereinafter referred to as '**Tapti**'), a wholly owned subsidiary of Texmo was incorporated in UAE on March 13, 2011. It is also observed that the below mentioned persons were the directors of the Company during the IP:*

S. No.	***Name of director***	***Designation***
1.	*Mr. Sanjay Agrawal (**Noticee 2**)*	*Chairman and Managing Director*
2.	*Mr. Vijay Prasad Pappu (**Noticee 3**)*	*Whole Time Director*

3.	*Mr. Shanti Lal Badera (**Noticee 4**)*	*Non-Executive, independent Director*
4.	*Mr. Sunil Kumar Maheshwari*	*Non-Executive, Independent Director*
5.	*Mr. Chakradhar Bharat Chhya*	*Non-Executive, Independent Director*

*Other than these, it is also noted that Mr. Rishabh Kumar Jain (hereinafter referred to as '**Noticee 5**') was the Company Secretary of Noticee 1.*

2. *It is observed from the Shareholding pattern submitted by the Company to BSE that the company had issued a total of 1,12,70,000 shares as on quarter ending March 2011. Thereafter, the Company issued 6,27,500 Global Depository Receipts (hereinafter referred to as '**GDRs**') on April 11, 2011 to raise a total of $ 9.99 million i.e. approximately Rs. 44.18 crore at RBI exchange rate of Rs. 44.20 per USD as on April 11, 2011 with each GDR valuing equal to 20 underlying equity shares. This issue of GDRs of Texmo was managed by PAN Asia Advisors Ltd. (now known as Global Finance & Capital Limited and hereinafter referred to as '**Pan Asia**') and the GDRs were listed on Luxumberg Stock Exchange. The proceeds of the GDRs were deposited in European American Investment Bank AG (hereinafter referred to as '**Euram Bank**'). A summary of the GDR issues as provided by Texmo vide its letter dated June 18, 2015 (**Annexure 2**) is tabulated below:*

Table 1

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 were deposited***	***GDRs Listed on***
11-04-2011	*6,27,500 (at $ 15.93 each GDR)*	*9.99*	*DBS Bank Ltd.*	*1,25,50,000*	*The Bank of New York Mellon, USA*	*Pan Asia Advisors Ltd*	*Euram Bank, Austria*	*Luxembourg Stock Exchange*

3. *It is noted from the Corporate announcements made by the Company that Board of Directors of the Company in its meeting held on October 04, 2010 had decided to issue GDRs and the shareholders of the Company in the Extra Ordinary General Meeting held on October 28, 2010 had approved the issuance of GDRs.*

4. *Upon perusal of the Offering Circular (i.e. Listing Prospectus) of GDRs of Texmo (copy of the page no. 54 of Offering Circular, showing use of proceeds is placed at **Annexure 3**), it is observed that the Company had mentioned the following regarding the use of GDR proceeds:*

   "The total proceeds from this offering are estimated to be about USD 10 Million and the net proceeds after deduction of fees and expenses associated with this offering are anticipated to be USD 9.6 million. The proceeds so raised will be utilized for the following activities:

   1. The modernization of machinery, equipment and technology and expansion of existing product range;

   2. The establishment of overseas subsidiaries to explore and cater to the needs of the international market;

   3. The repayment of debts;

   4. The investment in, amalgamation with and takeover of other entities;

   5. Trading activities of non-recurring nature;

   6. As working capital for the existing and future expansion/ Diversification projects of the Company;

   7. Setting up of power project for electricity generation through biogas up to 3MW."

   From the above, it is observed that Offering Circular did not earmark the amount for each objective individually.

5. *It is observed that Texmo, Pan Asia and Euram Bank had entered into an Escrow Agreement dated March 01, 2011 for the purpose of the aforesaid GDR issue. The Escrow Agreement inter-alia states that "...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 6,27,500 global depository receipts.. .". Copy of the Escrow Agreement is placed at **Annexure 4**.*

6. *It is observed that SEBI received a copy of letter dated February 25, 2016 (**Annexure 5**) through Financial Conduct Authority, United Kingdom (FCA UK). Vide the said letter, Pan Asia provided details of its directorship and connection with one Mr. Arun Panchariya (hereinafter referred to as '**AP**'). On perusal of the documents submitted by Pan Asia, along with the said letter, it was observed that Pan Asia was incorporated on April 24, 2006 and AP was director of Pan Asia Advisors Ltd. during the period August 30, 2006 to September 29, 2011. Further, vide letter dated February 20, 2012 (**Annexure 6**), Pan Asia submitted that AP held 100% shareholding in the company during the period July 01, 2008 to January 20, 2012. In view of this, it is observed that Pan Asia is connected to AP and AP was director and 100% shareholder of Pan Asia during the issuance of GDR issue of Texmo.*

7. *Vide letter dated June 18, 2015 (**Annexure 2**), Texmo also provided the list of the GDR allottees. According to the said list, the following were the investors who had subscribed to the GDRs issue of Texmo:*

Table 2

Sl. No.	Name of Subscriber	Address	GDRs Subscribed	No. of Shares underlying
1	Axinite Capital Inc	Level 19, Monarch office Tower, One Sheikh Zayed Road, P.O. Box 333840, Dubai, UAE	2,00,000	40,00,000
2	Beluga Corporation	33, Australia Square, 264, George Street, Sydney, NSW 2000. Australia	1,50,000	30,00,000
3	Calculus Capital Ltd.	Suite 901, The Hongkong Club Building, 3A Chapter Road, Central Hongkong, China	1,27,500	25,50,000
4	Smart Money Ltd.	2016,20, Peddar Street, Hong Kong	1,50,000	30,00,000
TOTAL			**6,27,500**	**1,25,50,000**

8. *However, upon further examination of statement of Escrow account opened by Texmo with Euram Bank, it is observed that the subscription money for GDRs issue was received in the Escrow account from only one entity named Vintage FZE (now known as Alta Vista International FZE and hereinafter referred to as '**Vintage**'). Further, vide email dated March 01, 2016 (**Annexure 7**), Financial Market Authority, Austria (hereinafter referred to as '**FMA**') informed SEBI that Euram Bank has submitted that the whole GDR issue of Texmo was subscribed by only one entity i.e. Vintage.*

9. *It is further observed that Vintage had signed a Loan Agreement bearing No. K280211-006 dated March 01, 2011 **(Annexure 8)** with Euram Bank to provide it funding and, thereby, enabling Vintage to subscribe to the GDR issue of 6,27,500 Luxembourg public offering for an amount of $ 99,96,075. The loan agreement was signed by one Mr. Mukesh Chauradiya on behalf of the borrower i.e. Vintage, in the capacity of its Managing Director.*

10. *Pursuant to this, Vintage opened a loan account having number 540012-01-01 with Euram Bank to avail the above mentioned loan facility. At the same time, Texmo also opened a retail account having number 580038 with Euram Bank. The Loan Agreement states "Nature and purpose of facility" is "To provide funding enabling Vintage FZE to take down GDR issue of 6,27,500 Luxembourg public offering and may only be transferred to EURAM account nr. 580038, Texmo*

Pipes and Products Ltd." In this regard, it is noted that this was the same account where Texmo deposited its GDR proceeds.

11. *With regard to security for the loan, Loan Agreement states that "...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. 580038 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."*
12. *From the examination of the above Loan Agreement, it is observed that Vintage had availed of loan facility to the extent of $ 9.99 million from Euram Bank to subscribe to GDRs of Texmo.*
13. *Further, upon perusal of copy of Know Your Customer documents (signed on June 06, 2007) of Vintage available with Euram Bank, it was observed that AP was beneficial owner and Managing director of Vintage as on June 06, 2007. The Documents received from Euram bank also showed that Alkarni Holding Ltd. was the sole shareholder of Vintage and AP was the sole shareholder of Alkarni Holding Ltd. Copy of the KYC documents and shareholding details of Vintage are placed at* ***Annexure 9****. In view of this, it is alleged that AP was sole beneficiary of Vintage.*
14. *It is further noted that Texmo had entered into a Pledge Agreement with Euram Bank (****Annexure 10****) on March 01, 2011 i.e. on the same day Vintage entered in the Loan Agreement with Euram Bank. The pledge agreement was signed by Noticee 2 in his capacity of Chairman & Managing Director of Texmo. The preamble of the Pledge Agreement states:*

    "By Loan Agreement K280211-006 (hereinafter referred to as the "Loan Agreement") dated 01 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 9,996,075. The pledger has received a copy of the Loan Agreement No K280211-006 and acknowledges and agrees to its terms and conditions."
15. *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 bills of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations") the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:*

2.1.1 all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount USD 9,996,075 existing from time to time at present or hereafter on the securities account(s) no. 580038 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. 580038 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."

16. *Further, following conditions were put in the Pledge Agreement for realization of the pledge.*

*"**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 Accounts to settle the Obligations. In such case the Bank shall transfer the funds on the Pledged Accounts, even repeatedly, to an account specified by the Bank.

6.2 Notwithstanding the foregoing, in the case that the Borrower fails to make payment on any due amount, or defaults in providing or increasing security, the 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."

17. *In view of the above Loan agreement between Euram Bank & Vintage, on the one side, and pledge agreement between Euram Bank and Texmo, on the other side, it is alleged that the account no. 580038 of Texmo, maintained with Euram Bank, was opened to keep the GDR proceeds and, at the same time, the said GDR proceeds, to be raised, were pledged by Texmo even before the issuance of GDRs to secure the rights of Euram Bank against the loan given by it to Vintage for subscription of GDRs issue of Texmo.*

18. *On perusal of the Pledge Agreement and Loan Agreement, it was observed that issuance and subscription of GDRs was done through loan availed by Vintage from Euram Bank. Further, it is alleged that bank account in which GDR proceeds were deposited, was in name of Texmo but the amount deposited in the account was not at the free disposal of Texmo as the same was kept as collateral even before the issuance of GDRs for the loan availed by Vintage. Further, upon comparison of Texmo's Euram Bank retail account statement (**Annexure 11**) and Vintage's loan account statement (**Annexure 12**), it is observed that, only after Vintage repaid loan instalments, equivalent amount of money was allowed to be withdrawn from Texmo's bank Account. It is further observed that the said money was transferred from Texmo's Euram Bank account to its subsidiary Tapti's Standard Chartered Bank account in UAE. In this regard, a copy of Texmo's Euram Bank retail account statement is attached at **Annexure 11**.*

19. *It is noted that SEBI is in receipt of copy of certified copy of Texmo's Board Resolution dated October 28, 2010, submitted at the time of opening of Bank Account with Euram and the same was made available by FMA vide email dated October 08, 2018 (**Annexure 13**). The said Board resolution pertains to opening of Bank Account with Euram Bank for GDR issue and states that:*

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

"RESOLVED FURTHER THAT Shri Sanjay Agrawal, Managing Director, Shri Vijay Prasad Pappu, Whole Time Director and Shri Rishabh Kumar Jain, Company Secretary of the Company, be and are hereby severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required,

RESOLVED FURTHER THAT Shri Sanjay Agrawal, Managing Director of the Company, of the Company, be and are hereby severally authorized 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."

20. *It was observed from the above Board Resolution that Euram Bank was authorized to use the GDR proceeds deposited with it as security in connection with loan, if any, and Noticee 2, Noticee 3 and Noticee 5 were authorized to sign any agreement related to GDR issue of Texmo.*

21. *However, it is observed that no information/document with regard to the said meeting of Board of Directors of Texmo dated October 28, 2010 was mentioned in its Annual Report for FY 2010-11 and also no information/document with regard to minutes of the said board meeting was received from Texmo. Thereafter, the Company, vide its email dated November 17, 2018 (**Annexure 14**), forwarded a copy of its letter dated November 16, 2018 informing SEBI that no such Board of Director's meeting was held on October 28, 2010. The Company, however, informed that an Extra Ordinary General Meeting (**EGM**) was held on October 28, 2010 and provided copy of minutes and the resolutions passed in the aforesaid EGM. Accordingly, as per the information provided by the Company, it is observed that no such resolution authorizing the use of funds deposited with Euram as security in connection with any loan was passed.*

22. *In light of this, it is alleged that the directors of Texmo namely Noticee 2, Noticee 3 and Noticee 4, who fraudulently approved the board resolution, and Noticee 5, who fraudulently certified the board resolution, and Noticee 2, who acted on the above said fraudulent board resolution and executed the Pledge Agreement, enabled the fraudulent scheme of issuance of GDRs and acted as party to the fraudulent scheme.*

23. *It is noted that, subsequently, Noticee 2 signed a Pledge Agreement dated March 01, 2011 wherein the GDR proceeds to be received by Texmo was pledged as collateral against loan availed by Vintage from Euram Bank. Further, 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 to provide security in connection with loan.*

24. *In view of the above, it is alleged that the Directors of Texmo namely Noticee 2, Noticee 3 and Noticee 4 and Company Secretary (Noticee 5) have violated the provisions of section 12A (a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.*

25. *It is further alleged that Texmo was involved in the entire fraudulent scheme of GDR issue on account of signing of Pledge Agreement by Noticee 2 in his capacity as the Chairman and Managing Director of Texmo with Euram Bank for loan availed by Vintage from Euram Bank for*

entire subscription of GDRs of Texmo. In this regard, it is noted that the Loan Agreement was integral part of Pledge Agreement and vice versa and both were executed concurrently. Therefore, it is alleged that these agreements enabled Vintage to avail the loan from Euram Bank for subscribing GDRs of Texmo and the GDR issue would not have been subscribed, had Texmo not given any such security towards the loan taken by Vintage.

26. *In this regard, it is alleged that the Loan Agreement was integral part of Pledge Agreement and vice versa and both were executed concurrently. In view of this, it is alleged that Noticee 2, Chairman and Managing Director of the Company had complete knowledge about the subscriber to GDR issue, source of the funding for subscription of GDR issue, Pledge Agreement and the Loan Agreement and had understanding with Vintage but the same was not disclosed to the shareholders/ investors of Texmo. Further, in light of the manner in which the funds were transferred/ withdrawn from Texmo's Euram Bank account and the fact that the transfer of funds was dependent on the loan repayment by Vintage, it is further alleged that Texmo was aware of the Pledge Agreement. it is also alleged that these agreements enabled Vintage to avail the loan from Euram Bank for subscribing GDRs of Texmo and the GDR issue would not have been subscribed, had no such security was given by Texmo towards the loan taken by Vintage.*

27. *Further, during the course of Investigation, all the Corporate Announcements made by Texmo during the period October 2010 - May 2011 were examined by SEBI and it was observed that Texmo did not inform stock exchange about Pledge Agreement/ collateral security.*

28. *It is observed that the Company reported to NSE on April 11, 2011 that "the Board of Directors of the Company at its meeting held on April 11, 2011, inter alia, has considered and approved the following:*

    1. *Adopt the Escrow Agreement entered into between the Company, the Lead Manager - Pan Asia Advisors Ltd., and the Escrow Agent- European American Investment Bank AG (EURAM Bank).*
    2. *Adopt the Deposit Agreement entered into between the Company and the depository,*
    3. *Adopt the Placing Agreement entered into between the Company and the Lead Manager - Pan Asia Advisors Ltd.*
    4. *The Company has allotted 627500 Global Depository Receipts (GDR) at USD 15.93 each underlying 1,25,50,000 equity shares of Rs. 10 (Rupees ten only) each at Rs. 36/- (Rupees Thirty Six only) each to "The Bank of New York Mellon" in its capacity as a depository.*
    5. *Approve the Deed Poll.*
    6. *The listing of the 627500 GDR will be made on Luxembourg Stock Exchange on April 12, 2011"*

    In light of the above, it is alleged that the said corporate announcement had made investors believe that the said GDR issue was genuinely subscribed. Therefore, it is further alleged *that the entire scheme involving entering into Pledge Agreement, making corporate announcement that the GDRs were successfully subscribed without disclosing the arrangement to the investors resulted in publication of misleading news to the stock exchanges which contained information in distorted manner and which might have influenced the decision of the investors. Such announcements allegedly misled Indian retail investors and induced investors to deal in shares of Texmo in Indian Capital Market. Therefore, it is further alleged that the whole scheme of issuance of GDRs was fraudulent. Further, it is also alleged that Texmo had furnished wrong information to SEBI by providing false list of GDR subscribers.*

In view of the allegations above, it is alleged that Texmo has 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 PFUTP Regulations.

29. *After that, the Company's ensuing announcement to NSE on April 11, 2011 regarding successful issuance of its GDR issue and subsequent adjustment effectuated from Texmo's Euram Bank a/c for the amount of USD 3.49 million against the loan of Vintage on account of the loan default by Vintage indicate Texmo's awareness and involvement in the fraudulent scheme of its GDR issue. The entire scheme involving entering into Pledge Agreement, making corporate announcement that the GDRs were successfully subscribed without disclosing the arrangement to the investors resulted in publication of misleading news to the stock exchanges which contained information in distorted manner and which might have influenced the decision of the investors. Such announcements mislead Indian retail investors and induced investors to deal in shares of Texmo in Indian capital market as such the scheme of issuance of GDRs was employed to defraud Indian retail investors. Therefore it is alleged that the directors of Texmo namely Noticee 2 to 4 and Company Secretary (Noticee 5) have violated section 12A (a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.*

30. *It is noted that, under Clause 50 of Equity Listing Agreement, the listed companies are mandatorily required to comply with the Accounting Standards issued by Institute of Chartered Accountants of India (ICAI). In this regard, Accounting Standard ('AS') -13 - Accounting for Investments* ***- inter-alia reads as follows:***

"..35. The following information should be disclosed in the financial statements:

... (d) significant restrictions on the right of ownership, realisability of investments orthe remittance of income and proceeds of disposal;"

31. *It is observed from the Annual Report of Texmo for FY 2011-12 (copy of page no. 37 and 45 of Annual Report for FY 2011-12 placed at* ***Annexure 15****) that Texmo showed current investment i.e. investment in money market as Rs. 17.88 crore. Vide email dated September 17, 2018 (***Annexure 16****), Texmo had submitted to SEBI the following breakup of GDR proceeds wherein*

Rs. 17.88 crore of the GDR proceeds was shown as investment in money market through Euram Bank:

(Amount in Rs. Lakhs)

Particulars	***31/03/2013***	***31/03/2012***
Investment in Equity Share Capital of Tapti	*4.34*	*4.34*
Loans and Advances to Tapti	*4972.33*	*3131.39*
Investment in Money market through Euram Bank	*-*	*1788.59*

32. *However, upon perusal of Vintage's loan account statement (**Annexure 12**) along with Texmo's retail bank account statement with Euram Bank (**Annexure 11**) and Pledge Agreement (**Annexure 10**), it was observed that Texmo had pledged its GDR proceeds of $ 9.99 million with Euram Bank against the loan availed by the Vintage and as on March 31, 2012, Vintage repaid loan amounting to only $6.50 million. Therefore, loan of $3.50 million (approximately Rs. 17.90 crore, at RBI exchange rate of Rs. 51.1565 per USD on 30/03/2012) was outstanding. In view of the above, it is observed that there was significant restriction on the right of ownership & readability and proceeds of disposal of Rs. 17.88 crore as on 30/03/2012 (i.e. amount pledged with Euram Bank) presented as Texmo's current investment in money market through Euram Bank, considering that the GDR proceeds were pledged by Texmo against the loan availed by Vintage. Since such significant restriction on its current investment was not disclosed by Texmo in its annual report for FY 2011-12, it is alleged that Texmo has not complied with AS-13.*

33. *Further, AS 29 which deals with 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."

34. *As mentioned earlier, Texmo had pledged its GDR proceeds of $ 9.99 million against the loan availed by Vintage for subscription of GDRs. As on March 31, 2012, Vintage has repaid loan to the extent of $ 6.50 million during the FY 2011-12 and an amount USD 3.50 million was outstanding as on March 31, 2012 (approximately Rs. 17.90 crore at RBI exchange rate of Rs. 51.1565 per USD on 30/03/2012). In the Instant matter, it is observed that Texmo could utilize its GDR proceeds only to the extent of amount repaid by Vintage and there was a possible obligation on Texmo for an amounts $ 3.50 million (approximately Rs. 17.90 crore) as on March 31, 2012 in the event of default by Vintage which is a contingent liability in nature.*

35. *Subsequently, it is observed that Vintage had defaulted in the repayment of loan amount of $ 3.50 million. Therefore, a contingent liability to the extent of Rs. 17.90 crore was required to be disclosed by Texmo in its financial statements for the 2011-12. From the examination of the Annual Report of Texmo for FY 2011-12 (copy of the relevant pages of Annual Reports of FY 2011-12 evidencing above is placed at* ***Annexure 17****), it is observed that Texmo 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 2011-12. In view of this, it is alleged that Noticee 1 has failed to comply with the provision of clause 50 of Equity Listing Agreement read with .*

36. *Similarly, the Accounting Standard (AS)-1 deals with the disclosure of significant accounting policies followed in preparing and presenting financial statements. AS -1 inter-alia states the following:*

"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."

37. *From the above, it is clear under AS-1 Texmo is required to consider prudence, substance over form and materiality as major parameters while preparing its annual financial statements. It is alleged that Texmo (in its financial statement for the Annual Report 2011-12) did not follow prudence since it did not disclose the contingent liability/make provision for potential liability 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 users of the financial statements. Therefore, it is alleged that Noticee 1 failed to comply with AS-1.*

38. *In view of the above paragraphs, it is alleged that Texmo did not comply with accounting standards -1, 13 and 29 which is in violation of section 21 of SCRA read with clause 50 of the Equity Listing Agreement.*

39. *Further, upon perusal of the corporate announcements made by Texmo on stock exchanges (BSE and NSE) during the period October 2010- May 2011, it is observed that Texmo did not inform stock exchanges with regard to entering into Pledge Agreement with Euram Bank and pledging of GDR proceeds against the loan availed by Vintage for subscription of its GDRs. In this regard, it is alleged that the same was price sensitive information and could have impacted the price of the scrip. Therefore, it is alleged that Texmo failed to comply with clause 36(7) of the Equity Listing Agreement and therefore violated Section 21 of SCRA read with Clause 36(7) of Listing Agreement.*

<u>Realization of GDR proceeds by Texmo:</u>

40. *As alleged above, the GDR proceeds of Texmo was pledged against the loan taken by Vintage for subscription of GDRs of Texmo. It is observed that Vintage repaid the loan amount to the extent of $ 6.50 million in 10 instalments by March 02, 2012 and thereafter defaulted on the repayment of balance loan amount. Details of repayment of loan by Vintage as observed from information provided by Euram Bank are tabulated below:*

Table 3

Date of Loan Amount repaid by Vintage	*Loan amount repaid by*	*Date of Transfer of funds from Texmo's bank*	*Amount transferred to Tapti*	*Cumulative Loan Amount repaid by*	*Cumulative Transfer of funds from Texmo's Bank*

	Vintage (USD)	*account to Tapti*		*Vintage (USD)*	*account to Tapti*
03/08/2011	*1,00,000*	*04/08/2011*	*1,00,000*	*1,00,000*	*1,00,000*
09/08/2011	*5,00,000*	*10/08/2011*	*5,00,000*	*6,00,000*	*6.00,000*
24/08/2011	*7,00,000*	*24/08/2011*	*7,28,000*	*13,00,000*	*13,28,000*
26/08/2011	*12,00,000*	*26/08/2011*	*12,00,000*	*25,00,000*	*25,28,000*
21/09/2011	*10,00,000*	*21/09/2011*	*10,00,000*	*35,00,000*	*35,28,000*
27/10/2011	*3,00,000*	*27/10/2011*	*3,00,000*	*38.00.000*	*38,28,000*
07/11/2011	*10,00,000*	*07/11/2011*	*10,15,000*	*48,00,000*	*4B,43,000*
23/02/2012	*4,00,000*	*23/02/2012*	*4,05.000*	*52,00,000*	*52,48,000*
01/03/2012	*8,00,000*	*01/03/2012*	*8,00,000*	*60,00,000*	*60,48,000*
02/03/2012	*5,00,000*	*02/03/2012*	*5,00,000*	*65,00,000*	*65,48,000*

41. *The GDR proceeds amounting to $ 99,96,075 were deposited in Texmo's Euram Bank account no. 580038 on April 08, 2011. Out of the GDR proceeds of $ 9.99 million (along with the interest earned on money market instruments), an amount of $65,48,000 was transferred by Texmo to the account of Tapti on the dates given in the table above immediately after the corresponding amount was paid by Vintage.*

42. *It is also observed from the above table that Vintage had repaid loan amount of $ 6.50 million and thereafter defaulted on the repayment of balance loan amount of $35,00,628.98 (including interest on loan amount). It is observed from Euram Bank's letter dated September 05, 2012 to Texmo (**Annexure 18**) that an amount of $35,00,628.98 ($34,96,075- Principal + $4,55,398- Interest) was due from Vintage. Against the said amount, an amount of $34,98,579.85 (equivalent to Rs. 19.43 crore, at RBI exchange rate of Rs. 55.536 per USD on September 04,2012) was adjusted by Euram Bank on September 04, 2012 and an amount of USD 2049.13 was due from Vintage. In view of this, it is alleged that GDRs to the tune of $3.49 million were issued by Texmo to Vintage free of cost.*

43. *During the course of investigation, it was observed by SEBI that, vide letter dated July 09, 2012 signed by Noticee 2 (Copy of the letter is placed at **Annexure 19**), Texmo submitted to Euram Bank that-*

"., We Texmo Pipes and Products Ltd., were informed by Alta Vista international FZE of your letters dated 10th April. 2012 and 24th April 2012 that the loan in the amount of USD 3,496,075 is due and the loan has to be repaid within 10 days, otherwise the pledged cash deposit will be setoff with the outstanding loan amount plus any outstanding interest.

We hereby confirm that the pledge agreement entered into by and between Texmo Pipes and Products Ltd. and European American investment Bank AG is valid was duly signed by Texmo Pipes and Products Ltd.

Further, we confirm that the right of European American Investment Bank AG to set off the pledged cash deposit with the outstanding loan amount 3,496,075 USD.

As soon as European American investment Bank AG has exerted its right to set off, all remaining GDR's regarding Texmo Pipes and Products Ltd. (ISIN: US8830251083) held in deposit no: 540012 1 E ofAlta Vista International FZE with European American Investment Bank AG shall be transferred by European American Investment Bank AG to the following deposit account:

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

The custodian of Habib Bank AG Zurich is credit Suisse AG Zurich.

Their details are as follows:

BIC: CRESCHZZ80A

Euroclear account number: 94285

For further credit to Habib Bank AG Zurich, Safe keeping account number 0835-09099935-15-4.

Please contact Mr. Zeeshan Mirza at Habib Bank AG Zurich and agree Trade and settlement Date. His details are as follows:

Mr. Zeeshan Mirza

Habib Bank AG Zurich

Tel-+41 (0) 44-269-45-44

Email: z.mirza@habibbank.com

....After such transfer has been effected, you shall close all of Texmo Pipes and Products Ltd.'s accounts held with European American Investment Bank AG..."

44. *It is observed from examination of Texmo's Annual Report for FY 2012-13 that Texmo did not mention about the loan default by Vintage. Further, corporate announcements made by Texmo to stock Exchanges (BSE and NSE) during the period April 01, 2012 to March 31, 2013 were also examined and it was observed that Texmo did not inform the stock exchanges about the adjustment of GDR proceeds to the extent of $ 3.49 million (equivalent to Rs. 19.43 crore, at RBI exchange rate of Rs. 55.536 per USD on September 04,2012) by Euram Bank. In view of the above, it is alleged that Texmo did not inform stock exchanges regarding loan default by Vintage and adjustment of GDR proceeds to the extent of $ 3.49 million against the loan default by Vintage.*

45. *It is noted that Tapti was incorporated in UAE on March 13, 2011. Out of the GDR proceeds of $ 9.99 million, an amount of $ 6.54 million (includes the interest earned on money market instruments) was transferred to Tapti.*

46. *Vintage repaid the loan amount to the extent of USD 6.50 million and thereafter defaulted in repayment of balance loan amount. On account of the loan default by Vintage, Euram Bank adjusted outstanding loan amount of USD 3.49 million from Texmo's GDR proceeds. Hence, it is alleged that GDRs to the tune of $ 3.49 million were issued by Texmo to Vintage at free of cost.*

47. *In view of the above, it is alleged that Texmo was aware of the loan default by Vintage and it did not take any step to safeguard the interests of the company or its shareholders. Moreover, it is further observed that Texmo had instructed Euram Bank to transfer the remaining GDRs to Vintage's account with Habib Bank. Therefore, it is alleged that Texmo was hand in glove with AP and his connected entities and caused the loss to its shareholders to the tune of $ 3.49 million by acting as party to the whole fraudulent scheme and violated the provisions of Sections 12A (a), (b), (c) read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.*

Cancellation of GDRs (conversion into equity shares):

48. *Conversion of GDRs into equity shares is termed as cancellation of GDRs. It is observed that the GDRs of Texmo were eventually converted into equity shares and these shares were sold in the Indian Securities Market i.e. on BSE and NSE. Custodian of the GDRs, DBS Bank Ltd. informed SEBI that cancellation of GDRs started from August 03, 2011 and as on July 15, 2014, all the 6,27,500 issued GDRs were cancelled and converted into equity shares of Texmo.*

49. *Vide email dated July 09, 2016 (**Annexure 14**), Global Depository i.e. The Bank of New York Mellon also provided the date of termination of several GDR programs to SEBI. It was observed that Texmo's GDR program was terminated on September 26, 2014 and all the GDRs of Texmo were cancelled before its GDR termination program.*

50. *Further, post cancellation of GDRs, certain Foreign Institutional Investors' sub-accounts namely 1) India Focus Cardinal Fund ('**IFCF**'), 2) Leman Diversified Fund ('**Leman**'), 3) Sparrow Asia Diversified Opportunities Fund ('**Sparrow**') and 4) HighBlueSky Emerging Market Fund ('**HBS**') received total 1,25,50,000 shares of Texmo on conversion of 6,27,500 GDRs. A summary of schedule of Cancellation of GDRs and respective allotment of shares is as below:*

Table 4

Date of conversion of GDRs	*No. of GDRs converted*	*No. of equity shares Issued on conversion of GDRs*	*No. of remaining GDRs*	*Entity becoming holder of equity shares post conversion of GDRs*
			6,27,500	
3-Aug-11	*13,800*	*276,000*	*613,700*	*IFCF*
4-Aug-11	*28,750*	*575,000*	*584,950*	*IFCF*
31-Jan-12	*25,000*	*500,000*	*559,950*	*Leman*
3-Feb-12	*26.109*	*522,180*	*533.841*	*Sparrow*

5-Mar-12	*45,000*	*900,000*	*488,841*	*Leman*
5-Mar-12	*23,458*	*469,160*	*465,383*	*Sparrow*
9-Mar-12	*48,500*	*970,000*	*416,883*	*HBS*
2-May-12	*24,096*	*481,920*	*392,787*	*HBS*
9-May-12	*19,875*	*397,500*	*372,912*	*HBS*
30-May-12	*13,193*	*263,860*	*359,719*	*HBS*
9-Jul-12	*20,000*	*400,000*	*339,719*	*HBS*
17-Jul-12	*19,597*	*391,940*	*320,122*	*HBS*
18-Feb-13	*4B,729*	*974,580*	*271,393*	*HBS*
25-Feb-13	*20,000*	*400,000*	*251,393*	*HBS*
19-Mar-13	*20,000*	*400,000*	*231,393*	*HBS*
10-Apr-13	*35,000*	*700,000*	*196,393*	*HBS*
15-May-13	*40,000*	*800,000*	*156,393*	*HBS*
22-May-13	*50,000*	*1,000,000*	*106,393*	*HBS*
6-Jun-13	*30,000*	*600,000*	*76,393*	*HBS*
11-Jul-13	*30,000*	*600,000*	*46,393*	*HBS*
13-Aug-13	*12,943*	*258,860*	*33,450*	*HBS*
15-Jul-14	*33,450*	*669,000*	*0*	*HBS*
TOTAL	*6,27,500*	*1,25,50,000*	*0*	

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

Table 5

(Source: custodian DBS Bank)

SI. No.	*Name of the entity*	*No, of GDR's converted*	*Quantity of converted equity shares*
1	*IFCF*	*42,550*	*8,51,000*
2	*Leman*	*70,000*	*14,00,000*
3	*Sparrow*	*49,567*	*9,91,340*
4	*HBS*	*4,65,383*	*93,07,660*
TOTAL		*6,27,500*	*1,25,50,000*

Sale of converted equity shares:

51. *Vide email dated September 11, 2018 (**Annexure 15**), NSDL has provided the transaction statements of IFCF, Leman, Sparrow and HBS to SEBI. Vide email dated September 18, 2018 (**Annexure 16**), custodian ICICl Bank provided transaction details of IFCF and HBS which sold converted equity shares of Texmo's GDRs. Vide email dated September 17, 2018 (**Annexure 17**), custodian Deutsche Bank AG provided transaction details of Sparrow which sold converted equity shares of Texmo's GDRs. Vide email dated September 11, 2018 (**Annexure 18**), custodian*

HSBC Securities Services provided transaction details of Leman which sold converted equity shares of Texmo's GDRs.

52. *It is observed from the details of GDR trades (**Annexure 19**), as received from Euram Bank, that IFCF had received GDRs from Vintage. Further, from the transaction details of IFCI, as received from NSDL and custodian of IFCF i.e. ICICl Bank, it is observed that IFCF converted the 42,550 GDRs of Texmo into 8,51,000 equity shares of Texmo and sold all the shares during the period from August 2011 to June 2014. A summary of sale trades of IFCF, as received from ICICI bank is as below:*

Table 6

Date	***No. of shares sold***
02/08/2012	*40000*
26/05/2014	*100000*
27/05/2014	*4395*
28/05/2014	*100000*
29/05/2014	*190000*
03/06/2014	*100000*
04/06/2014	*200000*
05/06/2014	*100000*
06/06/2014	*16605*
Grand Total	***8,51,000***

53. *Further, vide email dated October 15, 2018 (**Annexure 20**), Leman submitted to SEBI that it had received GDRs from Euram Bank. In this regard, from the transaction details of Leman, as received from NSDL and custodian of Leman i.e. HSBC Securities Services, it is observed that Leman converted the 70,000 GDRs of Texmo into 14,00,000 equity shares of Texmo and sold all the shares during the period from February 2012 to April 2012. Summary of sale trades of Leman, as received from HSBC Securities Services, is tabulated below:*

Table 7

Date	***No. of shares sold***
02/02/2012	*53000*
03/02/2012	*190000*
23/02/2012	*125000*
28/02/2012	*120000*
29/02/2012	*12000*
06/03/2012	*120000*
07/03/2012	*150000*

12/03/2012	*100000*
03/04/2012	*125000*
10/04/2012	*100000*
12/04/2012	*100000*
18/04/2012	*150000*
20/04/2012	*55000*
Grand Total	***14,00,000***

54. *Vide emails dated October 15, 2018 & October 17, 2018 (**Annexure 21**), Sparrow submitted to SEBI that it purchased the GDRs by placing an order into the Euroclear system and these were eventually settled into its custodian's Euroclear account. Sparrow replied that seller's Euroclear No. was 22821. On lookup of Euroclear Bank participants list available on London Stock Exchange Group website (https://www.lseg.com/sites/default/files/content/documents/euroclearbank%20participant%20list.pdf) (**Annexure 22**), it is observed that seller with Euroclear No. 22821 was Euram Bank.*

55. *Further, from the transaction details received from NSDL and custodian of Sparrow i.e. Deutsche Bank AG, it is observed that Sparrow converted the 49,567 GDRs of Texmo into 9,91,340 equity shares of Texmo and sold all the shares during the period from February 2012 to April 2012. A summary of sale trades of Sparrow, as received from Deutsche Bank AG, is as below:*

Table 8

Date	***No. of shares sold***
16/02/2012	*75000*
21/02/2012	*110000*
24/02/2012	*150000*
27/02/2012	*150000*
28/02/2012	*30000*
29/02/2012	*7180*
04/04/2012	*100000*
11/04/2012	*125000*
17/04/2012	*100000*
19/04/2012	*100000*
20/04/2012	*44160*
Grand Total	***9,91,340***

56. *Vide email dated September 28, 2018 (**Annexure 23**), HBS submitted to SEBI that it had received GDRs from Euram Bank, SMB Securities Ltd. (Port Louis), Julius Bear (Singapore) and MCB Bank (Port Louis). Further, from the transaction details of HBS, as received from NSDL and*

custodian of HBS i.e. ICICI Bank, it is observed that HBS converted the 4,65,383 GDRs of Texmo into 93,07,660 equity shares of Texmo and sold all the shares during the period from March 2012 to July 2012.*

57. *The details of sale of shares by these entities in Indian Securities Market are as below:*

Table 9

Name of entity	No. of shares sold		Total no. of shares sold	Trade value (Rs.)		Total trade value (Rs.)
	BSE	NSE		BSE	NSE	
IFCF	2,41,151	6.09.849	8.51,000	22,29,625	57,47,403	79,77,028
Leman	6,40,000	7,60,000	14,00,000	1,40,13,586	1,66,82,453	3,06,96,039
Sparrow	4,71,340	5,20,000	9,91,340	1,03,43,188	1,14.48,321	2,17,91,509
HBS	37,85,952	55,21,708	93,07,660	3.27,70,717	5,49.77:510	8,77,48,227
Total	51,38,443	74,11,557	1,25,50,000	5,93,57,116	8,88,55,687	14,82,12,803

From the above table, it can be seen that a total of 1,25,00,000 shares of Texmo, on conversion of GDRs, were sold in the market for a consideration of Rs. 14.82 Crore.

58. *As per information submitted by FII sub-accounts and custodians and avialble with SEBI, it is observed that the details of registration of IFCF, Leman, Sparrow and HBS is as below:*

Table 10

si. No.	Name of sub a/c	Period of registration	Name of FII under which sub a/c is registered	Period of registration with FII
1	IFCF	12/12/2008 to 19/07/2011	Euram Bank	21/11/2008 to 20/11/2011
		20/07/2011 to 19/06/2017	CCP	20/06/2011 to 19/06/2017
2	HBS (previously known as KBC Aldini Capital (Mauritius) Ltd.)	18/06/2010 to 21/10/2012	KBC Aldini Capital Ltd.	22/03/2010 to 21/03/2016
		22/10/2012 to 28/02/2017	Golden Cliff (previously known as Vaibhav Investments Ltd.	01/03/2011 to 28/02/2017
3	Leman	17/05/2012 to 03/01/2017	Arcstone Capital Ltd.	17/05/2012 to NA
4	Sparrow	10/08/2009 to 27/07/2014	Sparrow Investment Managers Ltd.	10/08/2009 to NA

59. *It is observed that IFCF was incorporated on August 22, 2008 in Mauritius and was registered as sub-account of FII-Euram Bank from December 12, 2008 to July 19, 2011. Thereafter, IFCF was granted transfer from Euram Bank to CCP on July 20, 2011 and was registered as sub-account*

of CCP from July 20, 2011 to June 19, 2017. It is observed that both IFCF and CCP were incorporated on the same day i.e. August 22, 2008 in Mauritius. In this regard, Copies of certificates of Incorporation of IFCF and CCP are placed at ***Annexure 49****.*

60. *It is also observed that from the Email dated November 30, 2015 (****Annexure 50****) from the Concerned Department of SEBI which deals with FIIs, other than IFCF, no sub-account was registered with Euram Bank. Further, as observed from Emails dated December 01, 2015 and March 16, 2016 from ICICI Bank Ltd. (****Annexure 51****), both Euram Bank and CCP did not make investment in India as FIIs except their sub-account IFCF which sold shares of Texmo in the market.*

61. *HBS was registered as sub-account under Fll KBC Aldini Capital Ltd. and Fll Golden Cliff. However, it is observed from Emails dated December 01, 2015 and March 16, 2016 from ICICI Bank Ltd. (****Annexure 51****) that both KBC Aldini Capital Ltd. and Golden Cliff did not make investment in India as FIIs except their sub-account HBS which sold shares of Texmo in the Indian market.*

62. *According to an Administrative Fine Statement available on Dubai Financial Services Authority (DFSA) website (****Annexure 24****), AP held positions with inter-alia Pan Asia, Vintage and IFCF. In this regard, it is alleged that AP had the following connections with the various entities involved in the present matter:*

Table 11

SI. No.	*Name of entity*	*Connection/association of AP with entity*
1	*Pan Asia*	*AP was director (August 30, 2006 to September 29, 2011) and 100% shareholder (from July 01, 2008 to January 20, 2012) and 90% shareholder as on January 2016 (****Annexure 25****).*
2	*Vintage*	*AP was beneficial owner (as on June 06, 2007) and Managing Director (as on June 06, 2007 and May 12, 2010). Alkarni Holdings Ltd. was sole shareholder of Vintage as on December 28, 2010 and AP was sole director of Alkarni as on April 21, 2014. (****Annexure 7 & 26****)*
3	*IFCF*	*AP was director from August 22, 2008 to October 28, 2010, Investment Manager (as on July 12. 2010) and 100% shareholder (January 01, 2009 to May 31, 2010) and beneficial owner since August 22, 2008. (****Annexure 27*** *and* ***Annexure 28****)*
4	*Cardinal Capital Partners (****CCP****)*	*AP was 100% shareholder and Chief Investment Officer (as on July 12, 2010). CCP held 100% shares of IFCF. (****Annexure 28****)*

5	*Euram Bank*	*AP connected Pan Asia had joint venture with Euram Bank namely Euram Bank Asia Ltd. (incorporated on August 23, 2009, dissolved in December 30, 2013). (**Annexure 29**)*
6	*Euram Bank Asia Ltd. (**EBAL**)*	*AP was director and president. AP resigned as president and member of board of the EBAL on September 22, 2011. (**Annexure 29**)*
7	*Mr. Mukesh Chauradiya*	*AP was beneficial owner of Vintage in which MC served as Managing Director, Authorized Signatory and director (**Annexure 11**).* *In Ramsai Investment Holdings Pvt. Ltd., Vintage was holding around 99.98% shares through its director AP (for the period 2009-2013). AP was director of Ramsai Investment Holdings Pvt. Ltd. for the period from February 04, 2008 to August 18, 2010. MC was director of Ramsai Investment Holdings Pvt. Ltd. (first appointment from February 04, 2008 and latest appointment from August 17, 2010 till March 17, 2016). (**Annexure 30**)* *AP was one of the promoters of Alka India Ltd. from the quarter ended December 2005 to March 2018 (as observed from shareholding pattern of Alka India Ltd. available on BSE website) (**Annexure 31**). AP's brother Mr. Satish Ramswaroop Panchariya is director (first appointment on February 01, 2000 and latest appointment as Managing Director since May 11, 2018 till date). AP's brother Mr. Ashok Ramswaroop Panchariya is director in Alka India Ltd. since April 29, 2005 till date. (**Annexure 30**). Mr. Mukesh Chauradiya was director of Alka India Ltd. from January 31, 2006 to June 01, 2010. (**Annexure 30**)*
8	*Mr. Anant Kailash Chandra Sharma (‘**AKS**’)*	*AP and AKS were directors in Sai Sant Advisory (India) Pvt. Ltd.* *AP-August 31, 2007 to October 20, 2010* *AKS-December 01, 2009 till March 18, 2016. (**Annexure 30** & **32**)* *AP was one of the promoters of Alka India Ltd. from the quarter ended December 2005 to March 2018 (as observed from shareholding pattern of Alka India Ltd. available on BSE website) (**Annexure 31**). AKS was additional director in Alka India Ltd. since December 01, 2009 till April 26, 2018. AP's brother Mr. Satish Ramswaroop Panchariya is director (first appointment on February 01, 2000 and latest appointment as Managing Director since May 11, 2018 till date). AP's brother Mr. Ashok Ramswaroop Panchariya is director in Alka India Ltd. since April 29, 2005 till date. (**Annexure 32**)*

		*AKS has worked with Vintage (**Annexure 33**).*
9	*Highblue Sky Emerging Market Fund ('**HBS**')*	*AKS is director (since August 11, 2014 till date) and 100% beneficial owner of HBS (since September 09. 2014 till date by virtue of being beneficial owner of Golden Cliff from September 09, 2014 till date which in turn is beneficial owner of HBS since April 21, 2014). AKS is connected to AP. (**Annexure 30, 31 and 33**)* *Ms. Reema Narayan Shetty was beneficial owner of HBS from April 21, 2014 to September 09, 2014 (by virtue of being beneficial owner of Golden Cliff from September 12, 2013 till September 09, 2014 which in turn is beneficial owner of HBS since April 21, 2014). Ms. Reema Narayan Shetty is connected to AP as she was authorized signatory for the bank account of AP connected entity IFCF which was maintained with Euram Bank Austria. (**Annexures 33 and 28**)*
10	*Golden Cliff (previously known as Vaibhav Investments Ltd.)*	*AKS is director (since July 15, 2014 till date) and 100% beneficial owner (since September 09, 2014 till date) of Golden Cliff. AKS is connected to AP. (**Annexure 30, 31 and 33**)* *Reema Narayan Shetty was director (from May 16, 2013 till August 01,2014) and 100% beneficial owner (from September 12. 2013 till September 09, 2014) of Golden Ciiff. She is connected to AP as she was authorized signatory for the bank account of AP connected entity IFCF which was maintained with Euran Bank Austria. (**Annexure 33, 28 and 34**)*
11	*KBC Aldini Capita! Ltd.*	*Mr. Daniel Baumslag is director of KBC Aldini Capital Ltd. (since Oct 25, 2009 till September 27. 2011 and since August 03, 2015 till date) and HBS (from March 05, 2010 to May 16, 2011). Mr. Daniel Baumslag was 100% shareholder of HBS (from March 05, 2010 to June 14, 2011). AKS is connected to AP and is beneficial owner and director of HBS. (**Annexure 33, 30, 35, 31**)*
12	*Aspire Emerging Fund (Aspire)*	*100% Shares held by Image Securities Ltd. in which Mr. Ashish Nanda was a Managing Director (**Annexure 36**). Also: Mr. Ashish Nanda was a director of 1 Aspire along with Mr. Aslam Kanowah who was also a director of HBS. . (**Annexure 37**)*
13	*Sparrow Asia Diversified*	*Common authorized signatory for Leman Diversified Fund and Sparrow is Mr. Nayan Agarwal (**Annexure 38**). Investors of Leman Diversified includes: Image Securities Ltd. (**Annexure 39**) whose Managing*

	Opportunities Fund ('Sparrow')	*Director is Mr. Ashish I Nanda (**Annexure 36**) who was also a director of Aspire (**Annexure 37**)*
14	*Leman Diversified Fund ('**Leman**')*	*Investors include Al Jalore and Image Securities Ltd. (**Annexure 39**) and Mr. Ashish Nanda is Managing Director (MD) of Image Securities Ltd. (**Annexure 36**)*

63. *It is further observed that Cardinal Capital Partners (**CCP**) held 100% shares of IFCF during the period January 2009 to May 31, 2010. At the same time, AP was holding 100% shares of CCP. In view of this, it is observed that AP was 100% shareholder of India Focus Cardinal Fund (IFCF). AP also served as Chief Investment Officer of CCP in the year 2010. (Copy of IFCF's letter dated April 02, 2012 and AP's email dated July 12, 2010 evidencing same is placed at **Annexure 28**).*
64. *It is observed from the information received from Euram bank through FMA, vide Emails dated March 03, 2016, March 01, 2016, February 15, 2016 (**Annexure 40**), that Pan Asia had a joint venture with the Euram Bank namely "Euram Bank Asia Ltd." (**EBAL**), which was incorporated on August 23, 2009 and dissolved in December 30, 2013, in which AP was director and president. AP resigned as president and member of board of the EBAL on September 22, 2011. The same was also corroborated with the information available on the website of Dubai International Financial Centre (**Annexure 41**).*
65. *SEBI also examined the securities trade account of Vintage, held with Euram Bank (**Annexure 42**). From the said trade account, it was observed that, for several GDR issues which are under investigations with SEBI, IFCF received GDRs from Vintage, which was sole subscriber of these issues and sold these shares on BSE/ NSE after converting them from GDRs. In view of this and the alleged connections of IFCF with AP, it is alleged that IFCF was acting as conduit to AP in selling converted shares of GDR issuer companies.*
66. *During the course of investigation, SEBI obtained the KYC documents of HBS from custodian ICICI Bank Ltd (**Annexure 43**). From the KYC documents received by SEBI, it was observed that HBS had mentioned its registered address as '<u>C/o Auriss International Ltd., 2nd Floor, Wing A, Cybertower 1, Ebene, Cybercity Ebene, Mauritius</u>'. Further, the E-mail address mentioned in KYC documents is '<u>fundadmin@aurisse.com</u>' and contact no. is mentioned as +2304640077. However, in the records of SEBI, while applying for registration, HBS had mentioned its e-mail id as '<u>saleem@aurisse.com</u>'. SEBI conducted a Google search regarding Aurisse International Ltd. and it was observed that it is a company based out of Mauritius and it was earlier known as Al Jabha (Mauritius) Ltd. wherein MC was a director and CFO in 2011. SEBI conducted further examination of the website of Aurisse International Ltd. and found out that it shares common address and contact number with HBS (**Annexure 44**).*

67. *Thereafter, vide emails dated March 02, 2016 and April 29, 2016 (**Annexure 34**), HBS provided shareholding and directorship details of HBS and Golden Cliff. From the details provided by HBS, it is observed that Golden Cliff is 100% shareholder of HBS since April 21, 2014. Further AKS is connected to Golden Cliff and HBS in the manner mentioned below:*

Table 12

Connection with HBS		*Connection with Golden Cliff*	
1.	*Director since August 11,2014 till date*	*1.*	*Director since July 16,2014*
2.	*Beneficial owner (100% shareholder) since September 09,2014 till date (by virtue of being beneficial owner of Golden Cliff since September 09,2014 till date which in turn is beneficial owner of HBS since April 21,2014)*	*2.*	*Beneficial owner (100% shareholder) since September 09, 2014 till date*

*It is further noted that AKS, in his email dated August 04, 2017 and September 28, 2018 (**Annexure 33**), submitted that he has worked with Vintage FZE in Dubai and was directly reporting to MC.*

68. *Further, it is observed that AP was one of the promoters of Alka India Ltd. from quarter ended December 2005 to quarter ended March 2018. At the same time, AKS served as Additional Director of Alka India Ltd. (from December 01, 2009 till date) and MC served as director of Alka India Ltd. from January 31, 2006 till June 01, 2010. Further, in Ramsai Investment Holdings Pvt. Ltd., MC and AKS served as directors during a common period. Vintage FZE was shareholder in Ramsai Investment Holdings Pvt. Ltd. through its director AP (**Annexure 30**). At the same time, AKS had also served as a Director along with AP in Sai Sant Advisory (India) Pvt. Ltd. during a common period (**Annexure 30**).Details of alleged connections among AP, MC and AKS are tabulated in the table 11 above.*

69. *It is further observed that one Ms. Reema Narayan Shetty was also connected to HBS and Golden Cliff in the following manner:*

Table 13

Connection with Golden Cliff		*Connection with HBS*	
1.	*Director from May 16,2013 to August 01, 2014.*	*1.*	*Beneficial owner (100% shareholder) from April 21, 2014 to September 09,2014 (by virtue of being beneficial owner of Golden Cliff from September 12,2013 till September 09, 2014 which in turn is beneficial owner of HBS since April 21,2014)*
2.	*Beneficial owner of Golden Cliff from September 12,2013 till September 09, 2014*		

70. *It is observed from the conversion details of GDR issues of several Indian companies, which are investigated/ under investigation by SEBI, that HBS received shares in its account post conversion of GDRs for several GDR issues under investigations, for which AP connected Pan*

Asia/Prospect Capital Ltd. were Lead Managers and Vintage was sole subscriber to GDRs. Copy of the conversion details evidencing above is placed at ***Annexure 45****.*

71. *In view of the above, it is observed that AKS (who worked with AP) and Reema Narayan Shetty (who worked with AP connected entity i.e. IFCF), are associated with HBS as beneficial owners (****Annexure 34****). Further, from the facts/details mentioned above and from the analysis of sale of converted shares of Texmo on BSE/ NSE by HBS, it is alleged that HBS acted as conduit to AP for sale of shares of Texmo.*

72. *SEBI also sought the details i.e. directorship, beneficial owner and KYC details of FII sub-accounts from the custodians/ FII sub-accounts. Summary of the connections among FII sub-accounts is tabulated below:*

Table 14

Sr. No.	*Name of the entity*	*Basis of connection among entities at S. N. 1 & 2*
1	*Leman Diversified Fund*	*Common director - Mr. Deva Marianen, Mr. Mohammad Rehaz Cotobally, Zaheerah Banu Jhummun, Aziza Housna Banon Moraby* *Common authorized signatory - Mr. Nayan Agarwal*
2	*Sparrow Asia Diversified Opportunities Fund*	

73. *SEBI had sought details of investors in Leman Diversified Fund from its custodian i.e. Deutsche Bank. Deutsche Bank, in its Email dated September 12, 2016 (****Annexure 39****), submitted the details of investors in Leman. As per those details, it is observed that investors of Leman Diversified Fund inter-alia are Al Jalore and Image Securities Ltd. In this regard, it is observed that Mr. Ashish Nanda is Managing Director (MD) of Image Securities Ltd. and is also director of Aspire Emerging Fund (****Annexures 36*** *&* ***37****).*

74. *It is further observed that one Mr. Aslam Kanowah is also a director of Aspire Emerging Fund (****Annexure 37****). At the same time, from the information received from HBS, vide its Email dated April 29, 2016 (****Annexure 46****), it is observed that Aslam Kanowah was director of HBS. As already alleged in the pre-paragraphs, HBS is a connected entity of AKS who himself is allegedly connected to AP and MC on account of his employment at Sai Sant Advisory (India) Pvt. Ltd. and Vintage in Dubai and was directly reporting to MC.*

75. *In view of the above, it is observed that two FII sub-accounts namely Leman Diversified Fund and Sparrow Asia Diversified Opportunities Fund are connected to one another on the basis of common authorized signatory Mr. Nayan Agarwal and common directors. Further, it is alleged that these two FII-sub-accounts are connected to AP by virtue of their connection with HBS.*

76. *In light of the above, it is alleged that Pan Asia, IFCF, HBS, Sparrow, Leman, Euram Bank, CCP, Golden Cliff, Vintage and MC, are connected to AP and, in collusion with these entities and*

Texmo, AP devised the GDR issue in fraudulent manner and subsequent sale of shares in Indian market.

77. *It is alleged that MC had long association with AP. In this regard, it is observed that MC has worked as director in Ramsai Investment Holdings Pvt. Ltd. wherein AP was director and also holding 99.98% shares through Vintage (**Annexure 30**). It is also observed that Euram Bank had sent a copy of letter dated September 05, 2012 (**Annexure 47**), by which it had intimated Vintage about realization of Pledge, by email to MC at his email ID (mukesh.c@vintagegroupfze.com). It is also observed that MC had also signed the Loan Agreement dated March 01, 2011 between Euram Bank and Vintage for subscription of Texmo's GDR issue (**Annexure 7**) and signed redemption requests of loan account in his capacity of Managing Director as well as authorised signatory of Vintage. In this regard, it is observed that Vintage's default on loan repayment for GDR issue of Texmo, affected Texmo to the tune of $ 3.49 million.*

78. *From the above, it is observed that MC was holding key position in Vintage (was Managing Director and authorized signatory of Vintage) at the relevant time and had signed the Loan Agreements and Vintage's redemption of loan amount requests for repayment of Vintage's loan. In view of this, it is alleged that MC was in knowledge of the AP's scheme of subscribing to GDR issues through Loan Agreement and defaulting on repayment of loan in several GDR issues. It is further alleged that MC had acted as aid to AP and facilitated AP's scheme by executing the Loan Agreement for the GDR subscription of Texmo in capacity of the Managing Director of Vintage.*

79. *Therefore, it is alleged that MC had acted as party to the whole fraudulent scheme and by his role, help and assistance in executing the abovementioned fraudulent scheme, has violated section 12A (a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.*

80. *Further, it is alleged that AP was the beneficial owner and was controlling Pan Asia, which was Lead Manager for about 14 GDR issues during the years 2006-11 including Texmo. In this regard, the list of GDR issues is placed at **Annexure 48**. As the Lead Manager, Pan Asia managed the GDR issue and procured the subscriber for GDR issue. However, Vintage was the sole subscriber to the GDR issue of Texmo as well as 22 other GDR issues. It is observed in this regard that AP was beneficial owner and Managing Director of Vintage. It is alleged that, in all these 23 GDR issues, subscriptions were made by only Vintage, by obtaining loans from Euram Bank and security towards the loans were given by the GDR issuer Indian companies by way of separate pledge agreements.*

81. *In the similar manner, it is alleged that Vintage was sole subscriber of GDR issue of Texmo and subscription was arranged through a loan availed from Euram Bank to the extent of $ 9.99 million for which security was provided by Texmo by pledging its GDR proceeds even before the amount*

was raised. It is further observed that Vintage had repaid loan to the tune of $6.50 million as per the details given in table 3 and defaulted in repayment of outstanding loan, thereby GDR proceeds to that extent of $ 3.49 million were adjusted by Euram Bank. In view of this it is alleged that Vintage had acquired GDRs of Texmo to the tune of $ 3.49 million at free of cost.

82. *It is also alleged that the four FII-sub-accounts (IFCF, HBS, Sparrow and Leman), which had converted GDRs into equity shares of Texmo, were entities connected to AP by various connections mentioned in Table 7 above. It is observed that these four sub-accounts sold the converted equity shares to the tune of Rs. 14.82 crore on Indian stock exchanges (BSE and NSE).*

83. *In view of the details mentioned above, it is alleged that the fraudulent GDR scheme, which can be summarized as - AP arranged loan for the subscription to GDRs, subscribed to GDRs, and sold the GDRs to Fll-Sub-accounts which, in turn, sold the converted equity shares in the Indian securities market, was completely devised by AP along with Texmo wherein Texmo misled the Indian investors by concealing the information of entering into Pledge Agreement which made investors believe that GDRs were genuinely subscribed and loan default caused loss to the shareholders of Texmo to the tune of $ 3.49 million. It is further alleged that the existing shareholders and prospective investors of Texmo were informed of the positive news that Texmo had received foreign capital through GDRs but they were completely uninformed of the activities of AP and his connected entities, in such GDR issue.*

84. *It is further alleged that the fact that GDRs were issued pursuant to a well thought out plan devised by AP involving Vintage, Pan Asia, Euram Bank and Texmo and executed with the help of all above entities, was not in the public domain. As a result, investors in India were lulled into thinking that stocks of the issuer company have been highly valued by foreign investors. In view of this, it is also alleged that the issuance of GDRs, subsequent transfer and sale of shares of Texmo in Indian market was a fraudulent scheme.*

85. *In view of this, it is alleged that AP was the key person in structuring the GDR issue of Texmo who devised and structured the GDR issue in connivance with Texmo. Further, it is also alleged that the entities having connections with AP were involved at all stages of the GDR issue since AP controlled Vintage subscribed to GDR issue by entering into Loan Agreement with AP connected Euram Bank for which Texmo pledged its GDR proceeds as security. AP connected Pan Asia was Lead Manager to GDR issue. It is further alleged that AP connected Flls namely Euram Bank and CCP made AP controlled IFCF their sub-account to facilitate it in selling converted equity shares of Texmo. Further, it is also alleged that AP connected Fll namely Golden Cliff made AP connected entity HBS its sub-account to facilitate it in selling converted equity shares of Texmo. It is further alleged that, by involving in the abovementioned scheme, AP connected Fll sub-accounts IFCF, HBS, Sparrow and Leman cancelled GDRs and sold converted*

equity shares. In this regard, it is observed that AP controlled Vintage defaulted on loan payment of $ 3.49 million and same amount was adjusted by Euram Bank from the GDR proceeds of Texmo as Texmo had pledged GDR proceeds against this loan.

86. *Thus, it is alleged that AP devised GDR scheme along with Texmo wherein Texmo misled the Indian investors by concealing the information of entering into Pledge Agreement and by informing GDR related news in a distorted manner to stock exchanges which made investors believe that GDRs were genuinely subscribed and caused loss to the shareholders to the tune of $ 3.49 million.*

87. *Therefore, in view of all the details mentioned above, it is alleged that AP has violated sections 12A (a), (b), (c) of the SEBI Act read with regulation 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.*

88. *It is also observed that, vide ad interim ex-parte order dated September 21, 2011, SEBI had restrained IFCF from dealing in securities or instrument with indian securities as underlying, in any manner whatsoever, until further order. The aforesaid directions were confirmed vide order dated December 30, 2011. Thereafter, vide final order dated September 05,2017 IFCF was prohibited from accessing the capital market directly or indirectly, and dealing in securities or instruments with Indian securities as underlying in any manner whatsoever, for a period of six years.*

89. *It is further observed that, vide ad Interim ex-parte order dated September 24,2014, Vintage was restrained from accessing the securities market and further prohibited from buying, selling or dealing in securities or any Instrument exchangeable or convertible into securities, directly or indirectly, in any manner whatsoever, till further directions. The aforesaid directions were confirmed vide order dated March 23, 2015. Thereafter, vide final order dated September 05. 2017, Vintage was prohibited from accessing the capital market directly or indirectly, and dealing in securities or instrument with Indian securities as underlying in any manner whatsoever, for a period of ten years.*

90. *It is further observed that, vide ad interim ex-parte order dated September 24, 2014, MC was restrained from accessing the securities market and further prohibited from buying, selling or dealing in securities or any instrument exchangeable or convertible Into securities, directly or indirectly, in any manner whatsoever, till further directions. The aforesaid directions were confirmed vide order dated March 23, 2015.*

91. *The text of the provisions of law allegedly violated by the Noticees is being reproduced below:*

- ***SEBI Act***

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

12A. *No person shall directly or indirectly—*

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

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

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

- ***PFUTP Regulations***

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

……

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

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

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

securities.

- ***SCRA***

Conditions for listing.

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

- ***Equity Listing Agreement***

Clause 50 of 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."

Clause 36 of the Listing Agreement

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

(1)….

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

…The above information should be made public immediately."

92. *The aforesaid alleged violations of SEBI Act, PFUTP Regulations and SCRA read with Equity Listed Agreement by Noticee, if proved, make it liable for monetary penalty under the provisions of Section 15HA of the SEBI Act as well as Section 23E of SCRA. The texts of the provisions of law are being reproduced below:*

SEBI Act

Penalty for fraudulent and unfair trade practices.

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

SCRA

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

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

93. *In view of the above, the Noticee is called upon to show cause as to why an inquiry should not be held against it in terms of Rule 4 of Adjudication Rules, 1995 read with Section 15-I of the SEBI Act and Rule 4 of the Adjudication Rules, 2005 read with Section 23-I of SCRA and why*

penalty, if any, should not be imposed on the Noticee under the provisions of Section 15HA of the SEBI Act and under section 23E of the SCRA."

Service of SCN, Reply to SCN and Hearing-Notices

Noticee no. 1 to 5

5. The SCN was duly served upon Noticee no. 1,2,3,4 via Speed Post Acknowledgement Due ("**SPAD**"). Noticee vide letter dated August 27, 2019 requested for time till October 31, 2019 for submission of detailed reply. Pursuant to the same, vide letter dated September 11, 2019, Noticee no. 1,2,3,4 were granted final opportunity to submit detailed reply to SCN on or before September 20, 2019. Noticee no. 1,2,3,4 vide letter dated September 17, 2019 again requested for time for submission of detailed reply. Vide letter dated September 24, 2019, Noticee no. 1,2,3,4 were again granted final opportunity to submit detailed reply to SCN on or before October 15, 2019.

6. The SCN was duly served upon Noticee no. 5 via SPAD. Vide email dated august 07,2019, Noticee no. 5 sought extension of time to file reply to the aforesaid SCN by August 31, 2019. Pursuant to the same, vide letter dated August 09, 2019, Noticee was granted final opportunity to submit detailed reply to SCN on or before August 31, 2019. Noticee vide letter dated August 28, 2019 again requested for time till October 31, 2019 for submission of detailed reply. Vide letter dated September 11, 2019, Noticee was granted final opportunity to submit detailed reply to SCN on or before September 20, 2019. Noticee vide letter dated September 17, 2019 again requested for time for submission of detailed reply. Vide letter dated September 24, 2019, Noticee was again granted final opportunity to submit detailed reply to SCN on or before October 15, 2019.

7. Thereafter, Noticee no. 1 to 5 vide letter dated October 10, 2019 requested for grant of inspection of documents through their authorized representative (AR). Thus, inspection of documents was carried out by AR of Noticee no. 1 to 5 on March 04,

2020. Noticee no. 1 to 5 vide letter dated March 13, 2020 requested for another opportunity of inspection citing discrepancies in documents offered for inspection.

8. I note that Noticee no. 1 to 5 has made their detailed replies to SCN vide letters dated March 08, 2021.

9. Pursuant to my appointment as Adjudicating Officer in the matter, Noticees were provided opportunity of personal hearing on May 13, 2022 through WebEx platform due to Covid-19 Pandemic in the interest of natural justice and in terms of Rule 4 (3) of Adjudicating Rules. Noticees requested for short adjournment of hearing. Thus, Hearing was conducted on May 18, 2022 and On the scheduled date of hearing, authorized representative ("AR") of Noticees appeared through video conference and made oral submission on the lines of previous written submissions made vide letters dated March 08,2021. post hearing, Noticees also submitted the brief profile of Noticee no. 1, Texmo Pipes and Products Ltd. and copy of comparative chart on penalties imposed in Adjudicating proceedings in GDR issues, which has been taken into consideration by me.

<u>Noticee no. 6</u>

10. SCN was served *via* digitally signed email dated June 07, 2022 to Noticee no. 6, wherein, he was advised to collect the annexures of SCN by June 10, 2022 and was granted with an opportunity of a personal hearing on June 27, 2022. However, no response was received from the Noticee no. 6 in this regard. I note that despite the service of SCN and HN in the matter, Noticees no.6 neither filed any replies to the SCN nor attended the scheduled hearing. In view of the above, I am compelled to proceed on the basis of material available on record in the matter against Noticee no 6. In this regard, it is worth mentioning here that it is well settled position of law that if the facts/details of charges are not disputed by the person to whom show cause notice is issued, then, it is presumed that the same are admitted by him. The Hon'ble

Securities Appellate Tribunal (SAT) in the matter *of Classic Credit Ltd. v/s SEBI [2007] 76 SCL 51 (SAT - MUM*), inter-alia, held that:

"......the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them".

<u>Noticee no. 7</u>

11. The SCN was duly served upon Noticee no. 7 via SPAD. Noticee vide letter dated September 11, 2019 submitted the detailed reply to SCN dated July 29, 2019. Pursuant to my appointment as Adjudicating Officer in the matter, Noticee was provided opportunity of personal hearing on May 13, 2022 through WebEx platform due to Covid-19 Pandemic in the interest of natural justice and in terms of Rule 4 (3) of Adjudicating Rules. vide email dated May 16, 2022, Mr. Devendra Dhanesha forwarded emails dated May 9,12 and 13, 2022 addressed to me.in this regard, vide email date May 17, 2022, Noticee was communicated that,

    "undersigned has not received the emails dated May 09,12 and 13, 2022 from Mr. Mukesh Choradiya.

    Adjudicating officer has rescheduled hearing to May 18, 2022 at 12:30 PM ."

12. Thus, Hearing was conducted on May 18, 2022 and On the scheduled date of hearing, Noticee appeared through video conference and made oral submission on the lines of written submissions made vide letter dated September 11, 2019.

<u>BRIEF SUBMISSIONS OF NOTICEE 1,2,3,4,5 and 7:</u>

a) <u>Summary of common reply submitted by Noticee Nos. 1,2,4 and 5 vide their letter dated March 08,2021</u>

There is a delay in filing of reply, post inspection of documents, on account of time taken to gather necessary information and seek legal advice The matter dates back to year 2011 and the records are old. There was further delay on account of ongoing pandemic. It is humbly prayed that same be condoned.

TEXMO and SHANTI LAL:

Vide the said SCN we have been called upon to show cause as to why an inquiry should not be held against us in terms of Rule 4 of Adjudication Rules, 1995 read with Section 15-I of the SEBI Act and Rule 4 of the Adjudication Rules, 2005 read with Section 23-I of SCRA and why penalty, if any, should not be imposed on us under the provisions of Section 15HA of the SEBI Act and under section 23E of the SCRA for alleged violation of –

TEXMO:

Regulation 12A(a), (b), (c) of SEBI Act, 1992 read with Regulation 3(a), (b), (c), (d) and 4(1), 4(2)(f), (k) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations") and Section 21 of SCRA read with clauses 36(7) and 50 of Equity Listing Agreement in respect of issuance of Global Depository Receipts (hereinafter referred to as "GDR").

SHANTI LAL and RISHABKUMAR:

*Regulation 12A(a), (b), (c) of SEBI Act, 1992 read with Regulation 3(a), (b), (c), (d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**") in respect of issuance of Global Depository Receipts (hereinafter referred to as "**GDR**").*

SANJAY AGRAWAL:

As observed in the SCN, SEBI had conducted an investigation into the GDR issue of Texmo Pipes and Products Ltd. ("Texmo") for the period from 01.03.2011 to 30.04.2011.

It is contended that the entire scheme involving entering into Pledge Agreement, making corporate announcement that the GDRs were successfully subscribed without disclosing the arrangement to the investors resulted in publication of misleading news to the stock exchanges which contained information in distorted manner and which might have influenced the decision of the investors. Accordingly, it alleged that I being the Director of Texmo during the investigation period have violated section 12A (a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

In furtherance thereto I have been called upon to show cause as to why an inquiry should not be held against me in terms of Rule 4 of the Adjudication Rules, 1995 read with section 15I of the SEBI Act and Rule 4 of Adjudication Rules, 2005 read with section 23-I of the SCRA and why penalty, if any, should not be imposed on me under the provisions of section 15HA of the SEBI Act and under section 23E of the SCRA in the matter of GDR issue of Texmo.

At the outset, I deny that I have violated any provisions of the SEBI Act, 1992 and PFUTP Regulations, 2003 as wrongly alleged in the SCN. I hereby place on record my written submissions to the contentions/observations/findings and allegations as against me. I state that nothing be deemed to have been admitted or accepted by me, by reason of non traverse or otherwise, unless specifically admitted herein.

As Chairman and Managing Director of Texmo during the investigation period, I place on record the true and correct facts as under:

Background:

As observed in the SCN, the Securities and Exchange Board of India (hereinafter referred to as "SEBI") had conducted an investigation into the GDR issue of Texmo for the period from 01.03.2011 to 30.04.2011 (hereinafter referred to as "Investigation period"). The shares of the Company are listed on the National Stock Exchange (NSE) and Bombay Stock Exchange Ltd. (BSE).

SHANTIL LAL and RISHABKUMAR:

I state that the issue relates to an issue of GDRs made by Texmo in the year 2010, i.e, approximately more than 8 years ago. Notably, the SCN issued only on 16.07.2019, i.e. after an inordinate delay of 8 years.

At the outset, I deny that I have violated any provisions of the SEBI Act, 1992 and PFUTP Regulations, 2003 as alleged in the SCN and nothing be deemed to be admitted or accepted by me, unless specifically admitted herein.

SHANTI LAL:

Inspection of original documents:

*I state that I was the Non Executive Independent Director (hereinafter referred to as **"NEID")** of Texmo. It is submitted that upon receipt of the Show cause notice issued under section 11B read with 11(1) and 11(4) of the SEBI Act, 1992 on 11.04.2019 I had filed an application on 06.06.2019 for the purpose of seeking inspection of records from SEBI and the same should not be in any manner treated as a reply on merits to the SCN. Pursuant thereto, I had sought inspection of all original documents including all relevant records which were instrumental in arriving at a finding (both for and against me) and necessary to substantiate the findings be made available to me at the time of inspection.*

RISHABKUMAR:

I state that I have resigned as Company Secretary of the Company on 15.05.2011 and I am not in position to gather necessary information and records and therefore not in position to represent my case effectively, more so when inspection of original documents is denied. Also, no satisfactory reasons or even a whisper is recorded in the SCN to explain or justify such a long delay in issuing the SCN.

I crave leave to rely on order dated 07.09.2012 passed in the matter of Khandwala Securities Ltd by the Hon'ble SAT [Annexure 1] wherein it is observed as under:

This Tribunal has held in several cases including Subhkam Securities Private Limited. vs. Securities and Exchange Board of India decided on July 25, 2012 Appeal no.73 of 2012, AditiDalal vs. Securities and Exchange Board of India decided on November 28, 2011 Appeal no.143 of 2011 that proceedings under the Securities and Exchange Board of India Act require finalization within a reasonable period of time. Delay defeats justice and the very purpose for which proceedings are initiated. In the present case, the suspension of certificate of registration after a period of 12 years from the commission of the violation cannot be regarded as reasonable or justified.

I further crave leave to rely on order dated 07.09.2012 passed in the matter of HB Stockholdings Ltd passed by the Hon'ble SAT [Annexure 2] wherein it is observed that proceedings before SEBI require finalisation within reasonable time.

Further, the unnatural delay of almost 9 years in the matter is also against the principles of natural justice. Reliance is placed on Appeal No. 37 of 2008 in the matter of Libord Finance Ltd [Annexure3] in which it was held by SAT that 'no proper reply could be filed in a particular matter by any party after a lapse of (8) eight years from the occurrence of the incident and that grave injustice would be caused to the delinquent in such cases in complete violation of the principles of natural justice.'

I further place reliance on the order of the Hon'ble Supreme Court of India in Mansaram vs S. P. Pathak and Others (Civil appeal No 1262 (N) of 1978) [Annexure 4], wherein D.A. Desai J.has made the following pertinent observations: "Where the power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and the reasonable exercise of power inheres- its exercise within a reasonable time".

It is submitted that the same principle was upheld by Gujarat High Court in Ramalabhai Jahalabhai Ganava v. State of Gujarat on October 23, 2001 [Annexure 5] in following words "Exercise of power has to be justified on the facts of each case and if on the facts of a given case, it is found that exercise of power after lapse of sufficiently long period between the impugned transaction and the date of exercise of that power would be arbitrary and unreasonable due to the fact that in the meanwhile parties had changed their position irretrievably obvious of any possibility of future action by the authorities functioning under the act on account of prolonged inaction on the part of these authorities and any attempt to put back the clock would result in irreparable injury to the concerned parties, then such exercise has to be treated to be unjust and illegal."

In that view of the matter, as seen above, the exercise of issuance of the SCN against me is unreasonable. I therefore pray that for this reason alone the present proceedings are therefore liable to be quashed and the SCN needs to be withdrawn qua me.
At the outset, I deny that I have violated any provisions of the SEBI Act, 1992 and PFUTP Regulations, 2003 as alleged in the SCN and nothing be deemed to be admitted or accepted by me, unless specifically admitted herein.

I state that I was the Company Secretary (hereinafter referred to as "CS") of Texmo during the relevant time. I state that I had filed an application on 06.06.2019 for the purpose of seeking inspection of records from SEBI and the same should not be in any manner treated as a reply on merits to the SCN. I had sought inspection of all original documents including all relevant records which were instrumental in arriving at a finding (both for and against me) and necessary to substantiate the findings be made available to me at the time of inspection.

TEXMO:
Investigation revealed that Texmo had issued 6,27,500 GDRs amounting to USD 9.99 million on April 11, 2011, equivalent to 1,25,50,000 equity shares of Rs. 10 each, and the said issue was subscribed by one entity viz. Vintage FZE (now known as Alta Vista International FZE).
The subscription amount was paid by Vintage FZE by obtaining loan from European American Investment Bank AG (EURAM Bank) by entering into Loan Agreement dated 01.03.2011 with EURAM Bank.
It was further observed that Texmo provided security towards the loan obtained by Vintage FZE, through Pledge Agreement and that the aforesaid Pledge Agreement was an integral part of Loan Agreement entered into between Vintage FZE and EURAM Bank, and these agreements enabled Vintage FZE to avail the loan from EURAM Bank for subscribing GDRs of Texmo. It was alleged that the GDR issue would not have been subscribed had Texmo not given such security towards the loan taken by Vintage.
Investigations observed that the Company had made corporate announcements/ reported to BSE that the GDR issue of our Company has been successfully subscribed which made investors believe that the said GDR issue was genuinely subscribed. Investigations also observed that the aforesaid arrangement (viz. Loan Agreement and Pledge Agreement) was not disclosed to the public, and the Company allegedly reported misleading news to the stock exchange which contained information in a distorted manner and may have influenced decision of investors. It has been alleged that such announcements mislead Indian retail investors and induced investors to deal in shares of Texmo in Indian capital market as such the scheme of issuance of GDRs was employed to defraud Indian retail investors.

SANJAY AGRAWAL:
Further it was observed that the entire scheme of GDR involving subscription of GDR issue by obtaining finance from EURAM Bank by pledging the GDR proceeds, non repayment of complete loan availed by Vintage, monetizing the GDRs through the sale of the underlying shares in Indian Stock Exchanges by converting GDRs was found to be fraudulent.

We deny the aforesaid allegations and most humbly submit as under:
Company Profile:
It is submitted that the company was incorporated in the year 2008 and the shares of the company are listed at BSE and NSE. The shares have been quoting at around Rs. 31/- on the Exchanges.
The paid up capital of the company is Rs. 29,19,50,000/-. It may be appreciated that post the GDR issue of the company has made 3 preferential allotments, namely for Rs. 2,64,00,000/- in the year 2017, for Rs. 3,01,60,000/-in the year 2019 and for Rs. 3,99,62,500/- in the year 2020 recently. Needless to say that the shares under 3 preferential allotments have been listed and quoted on the Exchanges.

It is submitted that there are around 19000 shareholders of the company and the company has around 850 employees, both permanent and on contract basis.

The turnover of the company for the year ended 31.03.2020 was Rs. 383.84 crores and the company has paid Income Tax of Rs. 1.83 crores for the AY 2020 2021 and Goods and Service Tax of Rs. 56.95 Crores for the AY 2020 2021.

TEXMO:

At the outset, we deny that we have violated any provisions of the SEBI Act, 1992 and PFUTP Regulations, 2003 as alleged in the SCN and nothing be deemed to be admitted or accepted by us, unless specifically admitted herein.

SANJAY:

At the outset, in my capacity as Chairman and Managing Director of Texmo during the time of investigation period I deny that I have violated any provisions of the SEBI Act, 1992 and PFUTP Regulations, 2003 as alleged in the SCN and nothing be deemed to be admitted or accepted by me, unless specifically admitted herein.

Latches:

It is submitted that the matter relates to an issue of GDRs made by the company in the year 2010, i.e., approximately years ago. Notably, the SCN issued only on 16.07.2019, i.e. after an inordinate delay of 8 years.

TEXMO, SANJAY and SHANTI LAL:

Inspection of original documents:

It is submitted that upon receipt of the Show cause notice issued under section 11B read with 11(1) and 11(4) of the SEBI Act, 1992 on 11.04.2019 we had sought inspection of all original documents including all relevant records which were instrumental in arriving at a finding (both for and against us) and necessary to substantiate the findings be made available to us at the time of inspection.

We state that we were granted an opportunity for inspection of documents on 11.06.2019. Post inspection, our Advocates, Juris Matrix Partners LLP had addressed a letter dated 12.06.2019 to the Enforcement Departmentof SEBI, placing on record certain concerns, reproduced here under:
Date12.06.2019
To,
Mr. Ravinder Kumar,
Assistant Manager,
Enforcement Department - DRA1,
SEBI, Plot no. C4-A, G Block,
BKC, Mumbai - 400051.
Re: Show Cause Notice dated dated 11.04.2019 bearing Reference No. EFD- 1/DRA-1/SM/RK/TEXMO/9461/2019/1 (SCN) issued under Section 11B read with 11(1) and 11(4) of the SEBI Act, 1992 in the matter of disclosures by Texmo Pipes and Products Ltd (Texmo) in respect of its Global Depository Receipts (GDR) issue.
Dear Sir,
We are concerned for our clients, namely:
1.Texmo Pipes and Products Limited
2.Mr. Sanjay Agrawal
3.Mr. Vijay Prasad Pappu
4.Mr. Shanti Lal Badera
5.Mr. Rishabh Kumar Jain
We thank you for granting us an opportunity of inspecting the case file on 11.06.2019 in the captioned matter in connection with the proceedings pursuant to the SCN.
However, this is to bring to your knowledge that the case file, of which inspection was allowed to us, was restricted to the SCN and the documents annexed thereto.
You would appreciate that per applicable law, inspection of the record involves, as also stated by us in our request, inspection of the full records in the matter, including of those records that are relevant to

arrive at a finding in the matter, and those that may be relevant to substantiate the charges contained in the SCN and also that may be relevant to undermine the charges contained in the SCN.

We were only given inspection of the photocopies of all records except record at Annexure 1, being the letter dated 18.06.2015 of our client, Texmo Pipes and Products Limited, thereby rendering the inspection exercise perfunctory, futile and incomplete.

On a perusal of the SCN, it is evident that this Hon'ble Authority has in its possession records beyond the correspondence exchanged between our clients and this Hon'ble Authority and beyond the documents enclosed and/or referred to in the SCN. Purely by way of example, the same is evident from the fact that the SCN refers to documents/information which were not submitted by our clients, for instance the following documents:

Pledge agreement executed between Vintage FZE and European American Investment Bank AG (EURAM);

Copy of Administrative Fine Statement available on Dubai Financial Services Authority;Vintage FZE's Loan account statement.

The above makes it evident that the Authority has in its possession various types of information and documents from third parties too. In this regard, the records of SEBI would indeed comprise its notices and letters to third parties, responses and statements recorded, documents/information received by it from third parties.

It is pertinent to note that inspection is to be provided of the record not of whether relied on in the SCN to press charges, but also of any other record relevant to arrival at a judicial determination of issues involved. The complete set of documents ought to have been provided to us during the inspection.

You would appreciate that it is a settled principle of law that an entity sought to be proceeded against should not only be made aware of the case that is sought to be made against it but also should be made aware of the material available with the concerned authority (either in favour or against the said entity).

In the absence of such material our clients will not be able to appropriately defend themselves before this Hon'ble Authority. This well-settled and long-standing principle of law is even more valid when a notice issued about facts that relate to more than 8 years ago, which, in it, is violative of natural justice. Without prejudice to that submission, which would be appropriately taken up in the replies, it is pertinent note that such delays and latches make the inspection process all the more sacrosanct.

In view of the above, we request you to kindly provide our clients with proper inspection of the complete case file. Please escalate this matter to the Learned Whole Time Member if you do not wish to agree with our submissions above so that we can explain the position in law and in fact appropriately.

Thanking you,
Yours faithfully,
Juris Matrix Partners LLP
Advocates Solicitors
CC:
Ms. Soma Majumdar
General Manager,
Enforcement Department,
SEBI, Plot no. C4-A, G Block,
BKC, Mumbai - 400051.

Thereafter, our Advocates, Juris Matrix Partners LLP had addressed another letter dated 21.06.2019 to the Enforcement Department of SEBI, placing on record certain other concerns, which are also reproduced as under:

Date: 21.06.2019
To,
Mr. Ravinder Kumar,
Assistant Manager,
Enforcement Department - DRA1,
SEBI, Plot no. C4-A, G Block,
BKC, Mumbai - 400051.
Sir,

Sub: Show Cause Notice dated dated 11.04.2019 bearing Reference No. EFD- 1/DRA-1/SM/RK/TEXMO/9461/2019/1 (SCN) issued under Section 11B read with 11(1) and 11(4) of the SEBI Act, 1992 in the matter of disclosures by Texmo Pipes and Products Ltd (Texmo) in respect of its Global Depository Receipts (GDR) issue.
Ref: Our letter dated 12.06.2019
We are concerned for our clients, namely:
1.Texmo Pipes and Products Limited
2.Mr. Sanjay Agrawal
3.Mr. Vijay Prasad Pappu
4.Mr. Shanti Lal Badera
5.Mr. Rishabh Kumar Jain
In continuation of our letter dated 12.06.2019, we reiterate that during the inspection on 11.06.2019 in the captioned matter, we were only given inspection of the photocopies of all records except record at Annexure 1, being the letter dated 18.06.2015 of our client, Texmo Pipes and Products Limited, thereby rendering the inspection exercise perfunctory, futile and incomplete.
We further submit that it is evident that the Authority has in its possession, various types of information and documents from third parties too. It is pertinent to note that inspection is to be provided of the record not of whether relied on in the SCN to press charges, but also of any other record relevant to arrival at a judicial determination of issues involved. The complete set of documents ought to have been provided to us during the inspection.
In view of the above, we would request you to kindly provide our clients with proper inspection of all original documents of the complete case file. Pursuant to such an inspection of original documents, our client seeks 4 weeks time to place on record their written submissions.
Thanking you,
Yours faithfully,
Juris Matrix Partners LLP
Advocates Solicitors
CC:
Ms. Soma Majumdar
General Manager,
Enforcement Department,
SEBI, Plot no. C4-A, G Block,
BKC, Mumbai - 400051.
It is submitted that the inspection of all original records including all relevant records were instrumental in arriving at a finding (both for and against the company) and necessary to substantiate the findings be made available to us at the time of inspection. We state that in the absence of an opportunity to grant inspection of the complete set of documents/full records collected during investigation, the entire proceedings stand vitiated on account of violation of principles of natural justice.

TEXMO AND SANJAY:

Even so, we are proceeding to offer our reply to the SCN hereinbelow subject to the fact of unavailability of the original records provided to us at the time of inspection.

SHANTILAL and RISHABKUMAR:

Even so, I am proceeding to offer my reply to the SCN hereinbelow, insofar as it pertains to me, and insofar as I recollect the same in view of the matter being related to issues which are over more than 8 years ago and unavailability of the original records provided to me at the time of inspection.
I state that I was not in a position to recollect from my memory the execution/signing of any such documents which are relied upon SEBI in the SCN and I was not in a position to comment on the genuineness and veracity of such documents and their respective contents.

I state that I have limited my submissions to such paragraphs in the SCN which are attributable to me and I have refrained from addressing to any observation/violation that have been attributed in *the SCN to other entities, since the same do not concern me and the contents thereof are irrelevant and extraneous to my case.*

SHANTI LAL:

Preliminary submissions:

a. *I state that I am a B.E (Mech.) from Shri G.S.I.T.S Indore College, graduated in the year 1968.*

b. *I say that I was appointed as a Non-Executive Independent Director of Texmo on 14.08.2008. I say that I have retired and resigned as Non-Executive Independent Director effective from 13.08.2019. Please find enclosed copy of my resignation letter dated 13.08.2019 as* ***Annexure 1****.*

c. *I state that the findings in the said SCN as against me are based on totally incorrect assumptions and presumptions and are therefore unsustainable.*

d. *It is submitted that I should not be construed to have accepted or admitted anything stated in the said SCN except save and except where the same has been expressly admitted by me in this reply.*

RISHABKUMAR:

Preliminary submissions:

I state that I am is Company Secretary graduated in the year 2008 And was I was appointed as CS of Texmo on 01.08.2008. I say that I have resigned as CS effective from 15.05.2011 i.e. immediately after 35 days of issuance of alleged GDR on 11.04.2011. A copy of resignation letter is enclosed as Annexure 6. Thus I was in employment for about 33 months.

I state that the findings in the said SCN as against me are based on totally incorrect assumptions and presumptions and are therefore unsustainable.

It is submitted that I should not be construed to have accepted or admitted anything stated in the said SCN except save and except where the same has been expressly admitted by me in this reply.

Para 1 to 7:

The contents of the para are matters of record. We deny that we have violated provisions of

TEXMO:

Regulation 12A(a), (b), (c) of SEBI Act, 1992 read with Regulation 3(a), (b), (c), (d) and 4(1), 4(2)(f), (k) and (r) of SEBI PFUTP Regulations, 2003 and Section 21 of SCRA read with clauses 36(7) and 50 of Equity Listing Agreement

SANJAY, SHANTI LAL and RISHABKUMAR:

Regulation 12A(a), (b), (c) of SEBI Act, 1992 read with Regulation 3(a), (b), (c), (d) and 4(1)of SEBI PFUTP Regulations, 2003.

in respect of issuance of Global Depository Receipts as wrongly alleged. As regards to the observation vide para 5 that the Offering Circular did not earmark the amount for each objective individually is concerned it is submitted that it was the responsibility of the Lead Managers to indicate amount at page 54 of the offering circular showing use of proceeds. Consequentially we had only forwarded the same to the stock exchange and hence we deny that we had failed to earmark the amount for each objective individually.

Para 8 and Para 9:

TEXMO and SANJAY:

It is submitted that in so far as the list of GDR allottees is concerned, our company had confirmed the names of 4 subscribers vide letter dated 18.06.2015, which information was based on the facts provided to the company by Pan Asia Advisors Ltd. (hereinafter referred to as "PAN ASIA/ Lead Manager") the Lead Manager to the company's GDR issue. The company had relied upon the same since it was not possible to ascertain and verify the facts independently and the company had no reason to disbelieve and doubt the information provided by the Lead Manager.

The said list was also provided to the stock exchange on the information received from the Lead Manager and we have relied upon the list which was communicated to us by the Lead Manager. Further we did not have any independent mechanism to verify the list of subscribers due to secrecy laws applicable in other jurisdiction.

SHANTI LAL:

With respect to Para No. 8 and 9, I state and submit that as a NEID of Texmo, I was not involved with the compliance requirements of the company and no adverse inference may be drawn against me in this regard. However, I can comprehend that Texmo would never intentionally provide incorrect information.

RISHABKUMAR:

With respect to Para No. 8 and 9, I state and submit that as CS of Texmo, I believe that list of subsribers was submitted based on the information received from the Lead Managers and will never resort to submitting a false list to the exchange.

It may also be appreciated that I am not in position to gather necessary information and records and no adverse inference may be drawn against me in this regard. However, I can comprehend that Texmo would never intentionally provide incorrect information

Para 10 to 14:

SHANTI LAL and RISHABKUMAR:

With respect to Para No.10 to 14, I most humbly submit that I am not aware of any loan agreement between Vintage and EURAM. It may be a matter of fact on record, but was never brought to my knowledge and therefore no comments are called from my end.

The paras deal with a certain loan agreement entered on 01.03.2011 between one Vintage FZE ((hereinafter referred to as "Vintage"), European American Investment Bank AG (hereinafter referred to as "EURAM"). It is observed that Mukesh Chauradiya was Managing Director of Vintage, Arun Panchariya was the beneficial owner and Managing Director of Vintage, Alkarni Holding Ltd was sole shareholder of Vintage and Arun Panchariya (AP) was sole shareholder of Alkarni. The information may be a matter of records and we refrain from offering any comments on the veracity thereof or otherwise. Since the loan agreement was signed between Vintage and EURAM Bank for subscriptions of GDRs and since Vintage and EURAM Bank are parties to the present SCN, our company cannot be held liable for any averments/ declaration/ statements made there in. It is submitted that the liability of Vintage and EURAM Bank cannot be saddled on Texmo.

Para 15, 16, 17 and 18:

TEXMO and SANJAY:

It is submitted that the veracity of the contents of the para no. 11 in so far as reference to the pledge agreement dated 01.03.2011 between Texmo and Euram are concerned are denied.

SHANTI LAL and RISHABKUMAR:

I state that with respect to the contents of para 15 to para 18, I am not aware of any Pledge Agreement between Texmo and EURAM Bank. It may be a matter of fact on record, but was never brought to my knowledge and therefore no comments are called from my end.

It is submitted that surprisingly, the purported Pledge Agreement has made no mention of any authority granted to Mr. Sanjay Agarwal being so authorized by the Company to execute the said Agreement. Further Annexure 10 (purported pledge agreement) is also not indicative of any resolution of the Board of Directors of the Company granting such authority. It is surprising that investigation has relied on documents which are devoid of material and binding information. It is denied that the Company had authorized Mr. Sanjay Agrawal to execute any Pledge Agreement with respect to issuance of GDR.

SANJAY:

I reiterate that several documents were given to me in bulk for signatures by Mr. Arun Panchariya and Mr. Anil Mehta, CEO, PAN Asia Advisors Ltd., Lead Manager in Dubai, UAE. I say that the said documents have been signed due to oversight while signing Escrow Agreement dated 01.03.2011.

It is denied that that Texmo had pledged 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 Texmo.

Para 19:

TEXMO and SANJAY:

It is submitted that Texmo had an account in Euram Bank. The GDR proceeds received in the escrow account was immediately transferred to money market investment account of Euram Bank and thereafter the proceeds were received in the Euram Bank account which were then transferred to Standard Chartered Bank of Tapti Pipes and Products Limited's Account in UAE, our wholly owned subsidiary. It is submitted that Pan Asia refrained from providing accounts statements. It is only when the account statement was annexed to the SCN, did we realized the same. The Lead Managers have not made an effort to provide the account statement to Texmo. Please find enclosed communication with the Lead Managers requesting the account's statements as Annexure A.

SHANTI LAL and RISHABKUMAR:

With respect to Para No.19, I state that I was neither aware nor involved in execution of purported Loan Agreement and Pledge agreement. I was not aware of the fact that the Vintage was sole subscriber to GDR issue of Texmo. The entire issue was managed by Lead Managers and I had no reason to doubt their credibility.

Para 20 to 25:

TEXMO and SANJAY:

We deny all the allegations levied in paras under reply. It is submitted that on 28.10.2010, an Extra Ordinary General Meeting of Texmo was held.

SHANTI LAL:

*I deny all the allegations levied in paras under reply. It is submitted that on 28.10.2010, an Extra Ordinary General Meeting of Texmo was held wherein I was not present. Please find enclosed copy of minutes of EGM held on 28.10.2010 as **Annexure 2**.*

RISHABKUMAR:

I deny all the allegations levied in para under reply. It is submitted that on 28.10.2010, an Extra Ordinary General Meeting of Texmo was held.

However, no meeting of the Board of Directors was held on 28.10.2010, as made available by FMA.

TEXMO and SANJAY:

Under the circumstances, the question of authorizing the use of funds deposited with EURAM as security in connection with any loan vide Board Resolution dated 28.10.2010 can never arise. We deny that we had authorised execution of the purported pledge agreement and further deny that we authorised EURAM Bank to use the funds so deposited in the EURAM Bank account as security in connection with loan extended to Vintage as wrongly alleged.

SANJAY:

I vehemently deny that I have fraudulently approved the board resolution dated 28.10.2010 and acted on the said resolution and executed the pledge agreement, enabled the fraudulent scheme of issuance of GDR and acted as party to the fraudulent scheme.

SHANTI LAL:

Under the circumstances, the question of authorizing the use of funds deposited with EURAM as security in connection with any loan, if any, and I along with Mr. Sanjay Agarwal and Mr. Rishab kumar Jain being authorised to sign any agreement related to GDR issue of Texmo vide Board Resolution dated 28.10.2010 can never arise. Further, I deny the knowledge of/ involvement in execution of the purported pledge agreement and authorising EURAM Bank to use the funds so deposited in the EURAM Bank account as security in connection with loan extended to Vintage as wrongly alleged.

I vehemenently deny the allegations against me in toto and submit that I have merely been implicated as a noticee in my capacity as NEID of Texmo and it does not entail that I acted as a party to the alleged fraudulent scheme, if any.

I vehemently deny that I have fraudulently approved the board resolution which enable the fraudulent scheme of issuance of GDR and acted as party to the fraudulent scheme and thereby violated provisions of Regulation 12A(a), (b), (c) of SEBI Act, 1992 read with Regulation 3(a), (b), (c), (d) and 4(1) of SEBI PFUTP Regulations, 2003 in respect of issuance of Global Depository Receipts as wrongly alleged.

RISHABKUMAR:

Under the circumstances, the question of authorizing me along with other directors to use the GDR proceeds deposited with EURAM as security in connection with any loan vide Board Resolution dated 28.10.2010 can never arise. It is denied that Board Resolution dated 28.10.2010 authorized execution of the purported pledge agreement and further authorised EURAM Bank to use the funds so deposited in the EURAM Bank account as security in connection with loan extended to Vintage as wrongly alleged. I vehemently deny that I have fraudulently certified the board resolution dated 28.10.2010 and acted on the said resolution and executed the pledge agreement, enabled the fraudulent scheme of issuance of GDR and acted as party to the fraudulent scheme.

I vehemenently deny the allegations against me in toto and submit that I have merely been implicated as a noticee in my capacity as CS of Texmo and it does not entail that I acted as a party to the alleged fraudulent scheme, if any.

I vehemently deny that I have fraudulently certified the board resolution which enable the fraudulent scheme of issuance of GDR and acted as party to the fraudulent scheme and thereby violated provisions of Regulation 12A(a), (b), (c) of SEBI Act, 1992 read with Regulation 3(a), (b), (c), (d) and 4(1) of SEBI PFUTP Regulations, 2003 in respect of issuance of Global Depository Receipts as wrongly alleged.

It is submitted that since Euram Bank has forwarded certain documents, purported to be minutes of the meeting of the Board of Directors of Texmo, we reserve our right to cross examine the signatory to the said communication and any other persons in knowledge of the origination of the alleged Board Resolution. In any event we deny that a meeting of the Board of Directors was held on 28.10.2010 and crave to rely on the fact that neither any information in this regard was mentioned in the annual report for financial year 2010-2011 nor any intimation was provided to the Stock Exchange of the proposed Board Meeting as required under the Listing requirements.

It is further submitted that since Euram Bank has allegedly forwarded certain documents, purported to be minutes of the meeting of the Board of Directors of Texmo, the Annexure to the SCN is silent on the forwarding mail/ letter purportedly enclosing the Board Resolution. It is submitted that therefore the origin of the purported minutes of the meeting of the Board of Directors of Texmo remain in doubt and is therefore questionable.

Under the circumstances we reserve our right to cross examine the concerned personnel of Euram Bank and any other persons in knowledge of the origination of the alleged Board Resolution.

SANJAY:

I reiterate my submissions made hereinabove and deny all the allegations as against me. I state and submit that the entire issue was managed by Lead Managers and I had no reason to doubt *their credibility. I reiterate that several documents were given to me in bulk for signatures by Mr. Arun Panchariya and Mr. Anil Mehta, CEO, PAN Asia Advisors Ltd., Lead Manager in Dubai, UAE. I say that the said documents may have been signed due to oversight while signing Escrow Agreement dated 01.03.2011.*

I deny that I had signed the Pledge Agreement dated 01.03.2011, wherein the GDR proceeds to be received by Texmo were pledged as collateral against loan availed by Vintage from Euram Bank. Further, Texmo's authorization to Euram Bank to use the funds so deposited in the said bank account as security in connection with loan, if any, could conclude that the abovementioned board resolution was to provide security in connection with loan. I confirm that no meeting of the Board of Directors was held on 28.10.2010 and thus the question of passing the abovementioned board resolution does not arise.

In view of the aforesaid submissions, I deny that I have violated the provisions of section 12A (a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations as wrongly alleged.

I vehemently deny that Texmo was involved in the entire fraudulent scheme of GDR issue on account of signing of Pledge Agreement by me in my capacity as the Chairman and Managing Director of Texmo with Euram Bank for loan availed by Vintage from Euram Bank for entire subscription of GDRs of Texmo. I deny that these agreements enabled Vintage to avail the loan from Euram Bank for subscribing GDRs of Texmo and the GDR issue would not have been subscribed, had Texmo not given any such security towards the loan taken by Vintage.

I deny that as Chairman and Managing Director of the Company, I had complete knowledge about the subscriber to GDR issue, source of the funding for subscription of GDR issue, Pledge Agreement and the Loan Agreement and had understanding with Vintage but the same was not disclosed to the shareholders/ investors of Texmo. I further deny that I was aware of the Pledge Agreement.

TEXMO:

Para 26 to 28:

It is denied that we provided security towards the loan obtained by Vintage FZE, through Pledge Agreement and that the aforesaid Pledge Agreement was an integral part of Loan Agreement entered into between Vintage FZE and EURAM Bank, and these agreements enabled Vintage FZE to avail the loan from EURAM Bank for subscribing GDRs of Texmo. We deny that the GDR issue would not have been subscribed had Texmo not given such security towards the loan taken by Vintage.

It is further denied that we were aware or have authorized the alleged pledge agreement and accordingly there was no lapse by way of non disclosure to the shareholders/ investors of Texmo or Stock Exchange about execution of pledge agreement/ collateral security as wrongly alleged. Therefore, no adverse inference may be drawn therefrom.

Para 29 and 30:

We reiterate the submissions made hereinabove. We deny that there was any fraudulent arrangement of Loan and Pledge agreements which resulted into subscription of GDR issue which fact was not disclosed to the Exchange in a true and complete manner but was reported as misleading news which contained information in a distorted manner which might have made investors believe that the said GDR issue was genuinely subscribed. We neither authorised nor were aware of nor executed alleged Loan or Pledge Agreement and therefore needless to say that the question of making disclosures in respect of said documents does not arise.

Further, the allegation that the same was reported as misleading news to the stock exchanges which contained information in a distorted manner is contrary to the allegation of the subject SCN, which states that the stock exchanges were not informed about the pledge and loan agreements at all.

It is further denied that we made any announcements which misled Indian retail investors and induced investors to deal in shares of Texmo in Indian capital market. In any event, allegation that which might have influenced the decision of the investors is just an observation and remains

to be substantiated. It is submitted that without bringing on record any evidence of the so-called influence on the decision of the investors is proved the allegation falls flat.
Further, assuming while denying that the pledge and loan agreement were not expressly made public by intimating to the stock exchange, no misleading news was ever published by Texmo and the same could have been at the most a technical lapse and no adverse inference may be drawn there from.

SANJAY:
In view of the aforesaid submissions, I deny that I have violated the provisions of section 12A (a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations as wrongly alleged.

SHANTI LAL and RISHABKUMAR:
Para 26 to 30:
With respect to Paras under reply, I reiterate that I am not aware of any loan agreement between Vintage and EURAM or pledge agreement between EURAM and Texmo. It may be a matter of fact on record, but was never brought to my knowledge and therefore no comments are called from my end.
In any event, the GDR issue was subscribed, converted into equity shares, sold in the Indian capital market, the GDRs proves beyond doubt that there was any fraudulent practice, as wrongly alleged. The SCN itself observes that Mr. Sanjay Agarwal, the then Chairman and Managing Director, had complete knowledge about the subscribtion of the GDR issue and he had executed the pledge agreement with Euram and pledged the GDR proceeds as collateral against the purported loan availed by Vintage from Euram and as such no inference is drawn against me.
With respect to paras under reply, I state and submit that even though I was not in charge of operations of Texmo, Texmo could not have intentionally concealed the loan and pledge agreements. Further, the allegation that the same was reported as misleading news to the stock exchanges which contained information in a distorted manner, is contrary to the allegation, which states that the stock exchanges were not informed about the pledge and loan agreements at all.
Further, assuming that even if the pledge and loan agreement were not expressly made public by intimating to the stock exchange, I understand that no misleading news was ever published by Texmo. At the most it could have been a technical lapse.
I deny that the scheme of issuance of GDR was fraudulent and thereby violated provisions of Regulation 12A(a), (b), (c) of SEBI Act, 1992 read with Regulation 3(a), (b), (c), (d) and 4(1) of SEBI PFUTP Regulations, 2003 in respect of issuance of Global Depository Receipts as wrongly alleged.

TEXMO and SANJAY:
Para 31 to 40:
We reiterate that we neither authorised nor were aware of nor executed alleged Loan or Pledge Agreement. Therefore, needless to say that the question of disclosing the significant restriction on our current investment on account of the alleged loan defaults by Vintage and consequential writing off of the said loan amount in our annual report for FY 2011-2012 does not arise. Similarly, there was no question of disclosing a contingent liability to the extent of 17.90 crores in our financial statements for the year 2011-2012 as wrongly alleged vide para 36 or informing the stock exchanges with regard to entering into Pledge Agreement with EURAM Bank and pledging of GDR proceeds against the loan availed by Vintage for subscription of its GDRs which was a price sensitive information and could have impacted the price of the scrip.
We deny that Texmo failed to follow prudence as required under AS-1 since we did not disclose the contingent liability / make provision for potential liability 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 users of the financial statements.

We deny that Texmo failed to comply with AS-1, 13, 29 which is in violation of Section 21 of SCRA read with clause 50 of the Equity Listing Agreement

It is submitted that post receipt of GDR proceeds, i.e. after allotment of underlying equity shares, the Company complied with all the disclosure requirements i.e. compliance of Clause 43 of the Listing Agreement was regularly made till the time of final utilization of issue proceeds as per requirements of said Clause 43.
It is submitted that the disclosure regarding utilization of GDR Issue proceeds were also given under the Quarterly Reporting of UFR/AFR and the same were filed with NSE BSE.
We deny that Texmo have failed to comply with clause 36(7) of the Equity Listing Agreement and therefore violated Section 21 of SCRA read with Clause 36(7) of Listing Agreement.
In any event, the GDR issue was subscribed, converted into equity shares, sold in the Indian capital market, the GDRs proves beyond doubt that there was any fraudulent practice, as wrongly alleged.

SHANTI LAL and RISHABKUMAR:

<u>Para 31 to 40:</u>

With respect to paras under reply, I reiterate that I am not aware of alleged pledge agreement.

SHANTI LAL:

I state and submit that I was not involved with the compliance requirements of the company and no adverse inference may be drawn against me.

RISHABKUMAR:

I state and submit that I had resigned on 15.05.2011 and no adverse inference may be drawn against me.

Nevertheless, I believe that Texmo could not have intentionally concealed restriction on its current investment in its annual report for the FY 2011-12 or any price sensitive information from the stock exchanges as wrongly alleged. Similarly, I believe that Texmo is always compliant with the accounting standards, provisions of SCRA and provisions of Equity Listing Agreement.

SHANTI LAL:

I state that the alleged lapse in accounting and compliance can never be attributed to me as I was only acting as NEID.

RISHABKUMAR:

I state that the alleged lapse in accounting and compliance can never be attributed to me.

TEXMO and SANJAY:

Para 41 and rest of the SCN:

With respect to Para nos. 41 to 43, it is submitted that the contents therein are a matter of fact attributed to the realization/utilization of GDR proceeds. We reiterate that despite several request our Lead Managers refrained from providing us with relevant information. It may be appreciated that the SCN itself concludes that the company had in fact realized USD 9.99 million as GDR proceeds. We deny that GDRs to the tune of USD 3.49 million were issued by us to Vintage free of cost.

TEXMO:

The entire issue was managed by Lead Managers and I had no reason to doubt their credibility. We reiterate that we neither authorised nor were aware of nor executed alleged Loan or Pledge Agreement and therefore needless to say that the question of mentioning the loan default by Vintage and consequential writing off of the said loan amount and informing stock exchanges *does not arise. We deny that Texmo failed in safeguarding interest of our shareholders and we were hand in glove with AP and his connected entities and caused the loss to its shareholders to the tune of $3.49 million by acting as a party to the whole fraudulent scheme and violated the provisions of Sections 12A (a), (b), (c) read with regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.*

It is submitted that post receipt of GDR proceeds, i.e. after allotment of underlying equity shares, the Company complied with all the disclosure requirements i.e. compliance of Clause 43 of the Listing Agreement was regularly made till the time of final utilization of issue proceeds as per requirements of said Clause 43.

It is submitted that the disclosure regarding utilization of GDR Issue proceeds were also given under the Quarterly Reporting of UFR/AFR and the same were filed with NSE BSE.

In any event, the GDR issue was subscribed, converted into equity shares, sold in the Indian capital market, the GDRs proves beyond doubt that there was any fraudulent practice, as wrongly alleged.

SANJAY:

It is submitted that Texmo had come up with issue of GDR only with the intention of expansion of the company in the best interest of the investors. I reiterate that the entire issue was managed by Lead Managers and I had no reason to doubt their credibility. There could have been inadvertent technical lapse on account of lack of knowledge or advice. I understand that we have been victimized by wrongful intentions and acts of commission and omissions of the Lead Manager.

SHANTI LAL and RISHABKUMAR:

<u>Para 41 to rest of the SCN:</u>

SHANTI LAL:

The contents of Para No. 41 to 48 are a matter of fact attributed to the realisation/utilisation of GDR proceeds and no comments thereon are called from my end.

RISHABKUMAR :

The contents of Para No. 41 to 48 are a matter of fact attributed to the realisation/utilisation of GDR proceeds after my resignation and no comments thereon are called from my end.

The contents of para 44 pertain to purported letter dated 19.07.2012 signed by Mr. Sanjay Agarwal of which I am not aware and no comments thereon are called from my end.

I reiterate my submissions hereinabove. I neither have any knowledge nor have means to verify the contents of paras under reply.

SHANTI LAL:

Although as NEID, I did not doubt the credibility of our professionals especially the Lead Managers. and I was under bonafide belief that laws of the countries including India, involved in the process of issue of GDR are duly complied.

RISHABKUMAR:

Although as CS, I did not doubt the credibility of our professionals especially the Lead Managers and I was under bonafide belief that laws of the countries including India, involved in the process of issue of GDR are duly complied. As the CS of Texmo, I had no authority or discretion to amend the contents of the communication that were sent out, including those that were addressed to BSE. It may be appreciated that as an employee of Texmo drawing Rs. 21,100 (Rupees Twenty One Thousand One Hundred only) pm as salary. My salary slip is enclosed as Annexure 7.

The SCN itself concludes that the company had in fact realized USD 9.99 million as GDR *proceeds. I deny that the GDR was fraudulent. In view of the above, the allegations made against me may be withdrawn forthwith.*

Substantial submissions on findings/observations of the SCN as against me:

SHANTI LAL:

1. *I submit that the SCN is deemed to have been issued to me in my capacity as NEID which fact has been admitted at Para 2 in the SCN. The SCN ought not to have proceeded against me at all in my capacity as NEID. I state that for this reason alone the SCN against should be dropped as against me.*

2. *The specific allegations against me are for the limited role that I have played as an NEID and as such, none of the allegations against me stand established as is more specifically detailed hereinafter.*

3. *I wish to place on record that Section 2(30) of the Companies Act, 1956 provides that an officer includes any Director, Manager, Secretary or any person in accordance with whose directions or instructions, the Board of Directors or any one or more of the directors is or are accustomed to act.*

4. *I state that Section 5 of the Companies Act, 1956 provides that an officer of the company who is in default shall be liable to punishment or penalty and defines "officer who is in default" which shall mean all the following officers of the Company, namely*

(a) the Managing Director or Managing Directors;

(b) ....

(g) where any company does not have any of the officer specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified all the directors;

I submit that thus by implication, if a company has any officer specified in clause (a) above, the other directors will not be held as officer in default per Section 5(g) of the Companies Act, 1956. I deny that I was in-charge or control of the day-to-day affairs of Texmo and hence, I can never be held responsible.

Further, the SCN too is silent as to my role in-charge or control of the day-to-day affairs of Texmo. Needless to say, the Hon'ble Supreme Court has held that "to be in-charge" would mean that" the person should be in overall control of the day-to-day business of the company". I wish to quote that in ***GirdhariLal Gupta's case*** *[1970 SCC (2) 530[FERA Case]* ***Annexure 3****, the Hon'ble Supreme Court has construed the expression "a person in-charge and responsible for the conduct of business of the company" shall mean the "person in overall control of the day-to-day business of the company".*

Further, in ***R.K. Khandelwal v State*** *[(2004) 55 SCL 416]* ***[Annexure 4]****, the Hon'ble Supreme Court referred to the judgment in GirdhariLal Gupta's case (supra) and succinctly stated as under:*

> *"In companies there can be directors who are not in charge of, and responsible to the company for the conduct of the business of the company. There can be directors who merely law down the policy and are not concerned with the day-to-day working of the company. Consequently the mere fact that the accused person is a director of the company shall not make him criminally liable. To put it different for the offences committed by the company unless the other ingredients are established which make him criminally liable. To put it differently, no director of a company can be convicted of the offence under section 27 of the Act unless it is proved that the sub-standard drug sold with the consent or connivance or was attributable to any neglect on his part, or it is proved that he was a person in charge of, and responsible to the company for the conduct of the business of the company."*

Thus, I state that the analogy of vicarious liability of a NEID squarely applies to the present proceedings since there was neither any consent nor connivance from my side nor was it attributable to any neglect on my part.

5. *I further state that the alleged violations were not committed with my consent/knowledge/connivance and that I was not negligent. I wish to quote Section 633(1)* *of the Companies Act, 1956 which is an enabling provision for a director to seek relief from the court by proving that he had exercised all due diligence to prevent the commission of an offence and had acted honestly and responsibly and that the director ought to be excused. I state that as has already been stated in my written submissions, I was not aware of the day-to-day affairs of Texmo.*

RISHABKUMAR:

I submit that the specific allegations against me are for the limited role that I have played as CS and as such, none of the allegations against me stand established as is more specifically detailed hereinafter.

I further state that the alleged violations were not committed with my consent/knowledge/connivance and that I was not negligent

*I wish to place reliance on the order dated 09.08.2019 passed by the Hon'ble SAT in the matter of **Sayanti Sen [Annexure5]**, as discussed at length hereunder:*

8. The WTM held that even though the appellant may not be involved in the decision making process, nonetheless, the appellant cannot wriggle out of her responsibility as a Director of the Company and plead ignorance of the affairs of the Company and therefore held that being a Director the appellant was responsible for the prospectus and for compliance of Section 56(1), 56(3) and 56(4) of the Companies Act and was liable jointly and severally under Section 73(2) of the Companies Act on the ground that every Director of the Company, were officers in default, and were liable to repay the money along with interest.

9. In our view the order of the WTM is patently erroneous and against the provisions of Section 73(2) read with Section 5(g) of the Companies Act. The WTM has proceeded with the assumption that in the absence of any officer being nominated as an officer in default then all the Directors were liable under Section 5(g) of the Companies Act. The approach adopted by the WTM ignoring the evidence that has come on record makes the impugned order illegal and unsustainable.

11. .... Thus, when the Company is the offender, vicarious liability of the Directors cannot be imputed automatically. It is the cardinal principle that there can be no vicarious liability unless the statutes specifically provides for it.

15. ... 15. In Agritech Hatcheries & Food Ltd. vs Valuable Steels India Pvt. Ltd., (1999) 96 Com Cases 534 (Mad), it has been held that where there is a managing or whole time director or a manager, it would be an abuse of the process of the court if proceedings are launched against the ordinary directors without examining their role in default. Similar view was also reiterated in Smt. G. Vijaylakshmi & Ors. vs. SEBI (2000) 100 Comp Cases 726 (AP)].

The reason is not far to see. It is not necessary that every director is required to be penalized merely because he is a director on the ground that he is responsible for the affairs of the company. If the director can explain that he had no role to play in the alleged default or that he did not perform his duties assigned to him under the agreement of his appointment, the presumption of guilt and thereafter penalty cannot be fastened upon him.

17. Ordinarily directors of a company are not allowed to be prosecuted under Section 220 of the Companies Act for default in filing the accounts when the company has a managing director at the relevant time as has been held in Ravindra Narayan vs ROC, Jaipur, (1994) 81 Com Cases925 (Raj). This decision was accepted by the Department of Company Affairs and a circular dated 24.06.1994 was issued accordingly.

18. The contention that the appellant being a Director of the Company cannot disown responsibility for the acts of the Company is misconceived. In the instant case, the power under Section 11 or 11B of the SEBI Act has been exercised debarring the appellant from accessing the securities market on the ground that the appellant was responsible for the acts of the Company and thereby in an indirect manner has introduced the concept of strict liability of vicarious liability under Section 11 or 11B of the SEBI Act. In this regard it would be, thus, relevant to peruse Section 27 of the SEBI Act which reads as follows:-

"27(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company

for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in subsection
(1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Section 27 of the Act states that a person is deemed to be guilty of an offence on condition that he was in charge and responsible to the company. The proviso to Section 27 states that:

"Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence."

19. ....The spirit of Section 27 of the SEBI Act would indicate that if a finding is given that the appellants have nothing to do with the day today affairs of the Company then they cannot be held guilty of any violation as there is no such thing as vicarious liability under Section 11B of the SEBI Act.

21. In this regard the Ministry of Corporate Affairs while initiating prosecution against the Directors under the Companies Act came across a lot of hurdles as to who was an officer in default and whether any Director could be prosecuted without there being evidence with regard to being responsible for the affairs of the Company. In this regard, the Ministry of Corporate Affairs issued a Master Circular dated 29th July, 2011 on prosecution of Directors and clarified that the prosecution should be filed primarily against the Managing Director and against such Directors who were in charge and responsible for the affairs of the Company. It was clarified that extra care should be taken in examining such cases and no such Director should be held liable for any act of omission or commission by the Company which would constitute a breach or violation of any provisions of the Companies Act which had occurred without his knowledge or consent or where he had acted diligently in the Board process.

26. In the light of the aforesaid the WTM has held that the Company has violated provisions of Section 73(2) of the Companies Act and has therefore in the same breadth has booked all the Directors to be responsible for the day today affairs of the Company. This approach as stated earlier was
wholly incorrect.

27. Thus, the WTM was required to arrive at a specific finding that a Director or Directors were responsible for the acts of the Company. The mere fact that a person is a Director would not make him automatically responsible for refund of monies under Section 73(2) of the Companies Act.

RISHABKUMAR:

Thus, I state that the analogy of vicarious liability of a CS squarely applies to the present proceedings since there was neither any consent nor connivance from my side nor was it attributable to any neglect on my part. Even otherwise when Non Executive Independent Directors are not made responsible for acts when there is a Managing Director in pace, I say that I was just an employee of Texmo following orders of the management.

Further, it has observed by the Hon'ble SAT in order dated 14.02.2019 in the matter of Pritha Bag [Annexure6/9] that "in absence of any finding that the appellant was entrusted to discharge his *functions contained in Section 73 of the Companies Act and in absence of any material to show that the said appellant was entrusted to discharge as an officer in default as set out in Clauses (a) to (c) of Section 5 of the Companies Act, the said appellant could not be penalized under Section 73(2) of the Companies Act". This decision squarely applies to the present case.*

SHANTI LAL:

I further submit that the Hon'ble Supreme Court in the matter of ***SEBI vs. Gaurav Varshney*** *[(2016) 14 SCC 430] [Annexure7] has held that "a company being a juristic person, all its deeds and functions are the result of acts of others. Therefore, officers of a company who are responsible for acts done in the name of the company are sought to be made personally liable for acts which result in criminal action being taken against the company. It makes every person, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, liable for the offence.*

The liability arises from being in charge of and responsible for the conduct of business of the company, liable for the offence. The liability arises from being in charge of and responsible for the conduct of business at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status." I place reliance on the said order passed by the Hon'ble Supreme Court.

I further state and submit that I was not an officer in default as per Section 5 as a consequence of which whether the alleged violation was wilful or not does not arise. I quote C.V. Siva Prasad v Registrar of Companies [(1997) 2 Comp J 205 (AP) and/or 1997 88 CompCas 420 AP] [Annexure 8] in support of my contentions. I place reliance on the judgment in Smt. G. Vijayalakshmi v SEBI [(2000) 25 SCI 183 (AP) and/or 2000 100 CompCas 726 AP] [Annexure9] wherein it has been settled that criminal liability of ordinary directors would arise only in respect of a company which has no Managing Director. I state that it is on record that I am not the Managing Director and thus no liability could be fastened to me.

Needless to say that the aforesaid judgment pertains to criminal liability whereas the SCN is for violation of the SEBI Act and the Regulations framed thereunder, the vigour of criminal liability is far more than a civil liability and as such the SCN needs to be withdrawn against me.

6. *I submit that ordinarily, courts have inclined to relieve the directors who are not concerned with day to day management of a company unless there is clear evidence to the contrary.*

In Mahalderam Tea Estate Pvt Ltd v D.N. Prodhan [1979 49 CompCas 529 Cal][Employees Provident Fund Case] [Annexure10], wherein all the directors of the company were prosecuted for the offence, the Hon'ble Calcutta High Court held that under the said section a company is made primarily liable for an offence committed under Act. The liability may be extended to other persons vicariously only under the conditions laid down in the section. A director of a company may be concerned only with the policy to be necessarily be immune from such prosecution.

Thus, it has to be established by placing before the court part in running of the business of the company and a mere bald statement that the accused persons are directors of the company and hence responsible for the conduct of the business and management of the company will not do.

All the officers of the company not in direct charge of management of the business are immune from the liability for the offence, unless they have contributed to its commission by consent, connivance or neglect. Thus, all directors or officers of the company do not come within the mischief of subsection (1) of the standard penal provision.

From the discussion in the aforesaid paragraphs it would be amply convincing that it is only the directors who are concerned with the day to day management of the company that should ordinarily be held liable for company's offences and no liability could ever be cast on me as NEID.

7. *I say that as NEID, the directors who are there on the board by virtue of their special skill, expertise, profession or knowledge or those who are merely for name sake or in advisory capacity would virtually be outside the net of liability for the company's offences except where, of course, it is established that the director concerned was in charge of and responsible to the company for the conduct of its business, which, as already mentioned is a question of evidence and depend upon facts and circumstances of each case. I therefore state that it is virtually an impossibility to establish this for the simple reason that as a matter of fact these professional directors have hardly any hand in the day to day functioning and management of the company. In this connection, I wish to place on record, Circular No. 2/13/2003/CL-V dated 25.03.2011 issued by the Ministry of Corporate Affairs [Annexure11] and addressed to all Regional Directors, all Registrars of Companies and all Official Liquidators clarifying that the Registrars of Companies and others should take extra care in examining cases where independent directors are identified as "officer in default". The Circular directs that the ROC should examine whether the violation has taken place with the knowledge attributable through Board process, with his consent or connivance and whether he acted diligently or not.*

I state that the Ministry of Corporate Affairs too has taken a pragmatic view on the role and responsibilities of independent directors and hence I pray that the same premise should apply to me.

8. *I further wish to place on record, RBI Circular under reference DBR. No. CID. BC.89/20.16.001/2014-15 dated 23.04.2015 [Annexure 12] on Collection and Dissemination of Information on Defaulters. Para 3 thereof makes in abundantly clear that a Non- Whole Time Director should not be considered as a defaulter unless it is conclusively established that the default had taken place with consent or connivance.*

In all fairness, the Reserve Bank of India has also adopted a practical view in labelling defaulters and excluding Non- Whole Time Directors from its purview which is my case in the present proceedings.

9. *I crave leave to rely on Circular no. No. 27 dated 28.02.2002 issued by the Office of the Chief Metropolitan Magistrate, Esplanade Mumbai [Annexure 13] communicating concern that many a time process is issued against Non-Executive Directors who are not responsible to the Company for the conduct of business of the company which is causing hardship to such Non-Executive Directors in attending courts, engaging lawyers for defence and filing discharge applications.*

The Circular mandates that the Magistrate should find out prima facie if, the Non-Executive Director is in any manner responsible for the conduct of the business of the company and thereafter consider and decide whether process should be issued or not against such Non-Executive Directors.

It may be appreciated that a liberal interpretation has been granted in criminal matters on the responsibility of Non-Executive Directors. I state that the gravity of the issue of the present SCN is far less than criminal liability.

10. *Further I place reliance on Order no. WTM/GA/54/ISD/02/06 dated 16.02.2006 of the WTM, SEBI in the matter of Home Trade Limited* ***[Annexure14]***

5.5 As regard the vicarious liability of the Directors of the ATL for the market manipulations, it has to be satisfied that the persons were (at the time of the contravention) was in charge of and responsible o the company for the conduct of the business. Section 27 of the SEBI Act, 1992 states that a person would be deemed to be guilty of offence only when he was in charge and was responsible to the company during the relevant period.

In this regard, Hon'ble SAT in Rahul Shah's case [(2004) 55 SCL 416] (SAT) has observed that no hard and fast rule exists whereby it could be said as to when a director will be vicariously responsible for the acts of directors in charge of day to day affairs of company. However, even non-executive directors shall be made liable where Non-executive directors are commonly appointed so as to watch and keep a check on the whole time directors, to provide a view of an impartial outsider to bring the benefit of their experience to the company, to act as a figure head (particularly in the case of a non-executive chairman), to add credibility to the company *with the public and shareholders, though the inference has to be drawn from the facts and circumstances surrounding each case.*

Thus, the vicarious liability turns on the merits of each case and has to be determined accordingly and the case cited is in context of prosecution proceedings against the company. In any event, there has to be a modicum of evidence linking the said directors with the manipulation and in its absence, complicity cannot be presumed.

5.6 Similarly, in State of Haryana v BrijLal Mittal [(1998) 5 SCC 343], [Annexure 15] the Hon'ble Supreme Court has observed as follows: "it is thus seen that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company for the conduct of its business. Simply because a person is a director of the company it does not necessarily mean that he fulfils both the above requirements so as to make him liable.

Conversely, without being a director, a person can be in charge of and responsible to the company for the conduct of its business. From the complaint in question we, however, find that except a bald statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in charge of the company and also responsible to the company for the conduct of its business.

5.7 The above judgment was adhered by the Hon'ble Supreme Court in its recent judgment in ***S.M.S Pharmaceuticals*** *[AIR 2005 SC 3512] [Annexure 16] where it was held that merely being a director in a company is not sufficient to make a person liable under section 141 of Negotiable Instruments Act, 1881. Director in a company cannot be deemed to be in charge and responsible for conduct of its business at the relevant time, requirement of section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant period*

6.1 It is, therefore, concluded that there is no specific evidence against any of these directors that they were in control of the affairs of HTL during the first or seconds phase of manipulations. On the basis of the allegations in the show cause notice, it is clear that no such case has been made out and further there is no evidence to suggest that there is an indication of their duties and obligations or collusion and therefore these directors cannot be held liable for acts of the HTL or acts of the Director KetanSheth and other Executive Directors acting for and on behalf of the company.

6.2 in the absence of corroborative evidence for their involvement in the manipulation in the scrip of HTL, I am inclined to give them a benefit of doubt and therefore no directions are required. Accordingly, in exercise of the powers delegated to me under Section 19 of the SEBI Act, 1992 read with section 11 and 11B, I hereby dispose off the case against the aforesaid directors without any direction.

Needless to say, SEBI too has taken a liberal interpretation in the matter and has rightly passed the captioned order, relieving NEIDs.

I crave leave to rely on the judgment by the Hon'ble Delhi High Court in the case of ***S.S. Thakur v SEB/MANU/DE/1024/2013 [Annexure17]****, dealing with the issue of vicarious liability of ordinary director for violation of SEBI Act which has observed as under:*

11*. However, as far as the other appellants are concerned though there is evidence in the form of the reply sent by the Company through Shri. P.S Chaudhary to show that they were directors of the Company, there is no evidence which would show that they were also in charge of and responsible of the appellants other than Shri. P.S. Chaudhary, SEBI was required to prove not only that the persons in charge of and responsible to the Company conduct of its business.*

No evidence to this effect, however, has been led by SEBI this is also not the case of the SEBI that connivance of the appellants other than Mr. P.S. Chaudhary and is attributable to some neglect on their part. In these circumstances, the conviction of the appellants, Mr. D.S. Thakur, Mr. S.S. Thakur and Mr.RoopLalKaundal cannot be sustained."

I state that it is an admitted fact and the SCN has also concluded that I was an NEID of Texmo and as such I cannot be held responsible for the alleged violations, if any, by Texmo.

I further crave leave to rely on Circular No. List/JJB/DSS/2000 dated 11.04.2000 ***[Annexure18]*** *issued by the Stock Exchange Mumbai to all listed companies. On Page 8,*

reference has been drawn to Clause 49 of the Listing Agreement being the Clause on "Corporate Governance" which is reproduced below:
I. Board of Directors
A. The company agrees that the board of directors of the company shall have an optimum combination of executive and non-executive directors with not less than fifty percent of the board of directors comprising of non-executive directors. The number of independent directors would depend whether the Chairman is executive or non-executive. In case of a non-executive chairman, at least one-third of board should comprise of independent case of an executive chairman, at least half of board should comprise of independent directors.
Explanation: For the purpose of this clause the expression 'independent directors' means directors who apart from receiving director's remuneration, do not have any other material pecuniary relationship or transactions with the company, its promoters, its management or its subsidiaries, which in judgment of the board may affect independence of judgment of the director.
It may be appreciated that the Stock Exchanges too as also addressed the expression "Independent Directors" and has expressly excluded Independent Directors and I submit that I fairly fall under the said expression.

RISHABKUMAR:

I further state that in the absence of corroborative evidence for my involvement in GDR issue of the Company benefit of doubt ought to be granted to me and further inquiry against me for imposition of penalty be dropped.

I humbly state that in view of our aforesaid submissions and the settled position in law, no liability may be fastened on us for the violation of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulation 3(a), (b), (c), (d) and 4(1) of SEBI PFUTP Regulations, 2003.

We most humbly submit that we have not committed any act in defiance of any regulations or any provisions of law and that we are not liable to be proceeded against with an inquiry and penalty, including any directions.

b) Submission of Noticee No. 3:

Noticee No. 3 submitted that he was adopting the submissions made by company vide its letter dated March 08,2021.

c) Brief submissions of Mukhesh chauradiya (Noticee no. 7) pursuant to SCN dated July 29, 2019:

1. This has reference to the captioned SCN issued under the aforementioned Rules. I am Noticee number 2 in the captioned SCN.
2. I hereby file my reply to the SCN under Rule 4 (3) of the said Rules as under.
3. I submit that the SCN alleges broadly as under
i. TEXMO issued 6,27,500 GDR (each GDR representing 20 equity shares) in the year 2011amounting to US$ 9.99 Million;
ii. Pan Asia Advisors Limited ("Pan Asia") was the Lead Manager for the GDR Issue. Pan Asia was fully owned and controlled by Mr. Arun Panchariya. Further Arun Panchariya along with Pan Asia were involved in the documentation and related activities for the GDR;
iii. Vintage FZE, whose sole beneficial owner was Arun Panchariya, was the sole subscriber to the above GDR;
iv. Vintage FZE had taken loan from Euram Bank A.G., Vienna, Austria ("Euram Bank") for subscribing to the said GDR;
v. TEXMO pledged the proceeds of the GDR as security for the said loan;

vi. Vintage FZE defaulted on loan payment of US$ 3.49 Million;
vii. On cancellation of GDR, the shares so converted were sold in Indian capital market;
viii. The shares were offloaded in Indian market through entities I sub accounts I Fils connected to Arun Panchariya;
ix. TEXMO provided incorrect details to SEBI and failed to make appropriate disclosures to Indian Exchanges and shareholders and suppressed facts,
x. Arun Panchariya was instrumental in managing and structuring the GDR issue;
xi. Therefore, it amounted to fraud under section 12A of SEBI Act and Regulations ma de thereunder.

4. It was alleged in the above back ground that:
4.1 I signed the loan agreement no. K280211-006 dated 1st March 01, 2011 with Euram Bank on behalf of Vintage FZE for subscribing to GDRs of TEXMO [Para 9, Para 54 and 55];
4.2 I had long association with Arun Panchariya and acted as an aid to Arun Panchariya (Para 54 and Para 55);
4.3 I held key position in Vintage FZE i.e. I was its Director, Managing Director and Authorised Signatory [Para 39, point 7 in the Table and Para 55]
4.4 I signed the loan repayment instructions as the Managing Director as well as authorised signatory of Vintage FZE for the loan availed in respect of subscription to TEXMO's GDR [Para 54 and 55];
4.5 I had acted as an aid to Arun Panchariya and facilitated Arun Panchariya's scheme by executing the Loan Agreement for the GDR subscription of TEXMO in capacity of the Managing Director of Vintage FZE (Para 55);
4.6 I acted as party to the fraudulent scheme of GDR issue (Para 56).

5. In this context I respectfully submit as under:
5.1 At the outset, the SCN makes a number of allegations in relation to parties, who best reasons known to SEBI, have not been made a part of the SCN. A sample list of such person is as follows:
•Texmo Pipes and Products Ltd.
(• Euram Bank Austria
•Pan Asia Advisors Limited
•India Focus Cardinal Fund
• Highblue Sky Emerging Market Fund
• Sparrow Asia Diversified Opportunities FunD
• Leman Diversified Fund
• Golden Cliff
• Vintage FZE
It may kindly be noted that I am in no position to comment on the allegations made against the above entities.
Enclosed as Annexure No.1 is a sample extract of the allegation made in the SCN in relation to the above-mentioned persons who are not part of the SCN.
5.2 The reference made vide point no. 7 of para 39 to Annexure 11 of the SCN for documents relied upon by SEBI in alleging that I served as Managing Director, Authorized Signatory and director seems incorrect. Annexure 11 of the SCN does not include any such documents. NOTWITHSTANDING receipt of the documents relied upon by SEBI while making the above allegation in point no. 7 of para 39 of the SCN, I submit my interim reply.
5.3 I submit that I have NEVER BEEN THE DIRECTOR OR MANAGING DIRECTOR OF VINTAGE FZE as alleged in the SCN. I hereby deny all the allegations contained in the SCN. I submit that I have tried to collect relevant documents/papers from Jebel Ali Free Zone Authority, UAE ("JAFZA") to prove that I was never a Director or Managing Director of FZE. I am enclosing herewith the copy of my e-mail correspondence dated December 2, 2017 written JAFZA seeking the desired information (i.e. either a DMSS certificate i.e. Director, Manager, Secretary Shareholder of Vintage FZE since its incorporation or a certificate clearly stating my position/ designation in relation to Vintage FZE

for the period I was is JAFZA) which is necessary for the purpose of defending the charges against me in the SCN.

5.4 I would like to place on record that vide its email dated December 25 2017, JAFZA replied as follows:

"Please be advised that as per JAFZA concern department Jafza can't issue any letter confirmation for below and can't provide any service when the Contract status terminated, in case if you need any documents or facing problem with the company you can provide us a Court order addressed to Jafza in order to provide with any details.

5.5 In this connection, I submit that since SEBI has powers of a civil court under section 11 of the SEBI Act, 1992, appropriate directions under section 11 may be issued to JAFZA requiring it to issue us necessary clarification or information. Alternatively, under the bilateral and multilateral convention between SEBI and the concerned regulator of UAE, the information may kindly be sought from the said entity. This information so obtained will be of great help to me in defending my case. Copies of my mail correspondence with the said JAFZA officials is enclosed herewith as Annexure No.2

5.6 Further, in terms of the copy of certificate from JAFZA dated December 28 2010 ("DMSS Certificate"), addressed to EURAM Bank (part of Annexure 8 and 26 to the SCN) stating as follows in relation to Vintage FZE:

- *FZE Shareholder: Alkarni Holdings Limited;*
- *FZE Directors: Ashok Ramswarup Panchariya*
- *FZE Manager: Mukesh Babulal ChauradiyA*
- *FZE Secretary: Ashok Ramswarup Panchariya*

The above letter has an inward stamp of March 18 2011 by Euram Bank and provided by Euram Bank to FMA, Austria along with the KYC documents of Vintage FZE vide letter dated 22nd January 2016. None of such documents provided by Euram Bank and relied upon by SEBI (Annexure 8 and 26 to the SCN) shown my designation at the Director or the Managing Director of Vintage FZE in relation to the bank account held by Vintage FZE with Euram Bank.

The above clearly clarifies my position as a Manager and not as Director or Managing Director of Vintage FZE.

A similar confirmation from JAFZA for the entire duration of operation of Vintage FZE would be essential to clearly demonstrate the Director/Managing Director and Owner/Shareholder of Vintage FZE and that I was only a Manager and not a Director/Managing Director of Vintage FZE.

5.7 I request that copies of statements recorded of Arun Panchariya during the course of investigation may kindly be furnished to me so that I can prove that I was only an employee of Vintage FZE working under Arun Panchariya. I submit that since I am no more associated with Vintage FZE and Arun Panchariya, I do not have access to any material to properly defend my case. I am now staying in Ahmedabad where no documents related to the GDR issue is available to properly reply to the SCN. In this connection, I may be permitted to inspect all the documents collected during the investigation including any regulatory confirmation from JAFZA or any other authority showing conclusively the ownership and the directorship of Vintage FZE during the relevant period, so as to enable me to defend myself properly and adequately.

5.8 I submit that I was never asked to participate in the investigation proceedings by the investigation officers at any point in time. My statement was not recorded during the course of investigation. Had I been called by the investigation officers at the relevant points in time, I would have clarified that I had no role to play in the affairs of Vintage FZE except as an employee taking instructions from Mr. Arun Panchariya and that the allegations contained in the SCN as far as I am concerned are without any basis

6. At the outset, I humbly submit that I was only an employee of Vintage FZE, the subscriber to the GDR of TEXMO. I submit that the said Vintage FZE was fully owned and controlled by Mr. Arun Panchariya. This fact has been appropriately captured in the SCN itself . I was drawing only a monthly salary for the work done by me in Vintage FZE. I did not have any other advantage, monetary or otherwise for any of the acts done by me as an employee of Vintage FZE working under Arun Panchariya.

6.1 I joined Vintage FZE as Manager in the year 2005. After joining Vintage FZE, I had relocated myself from Ahmedabad to Dubai. I had been staying in Dubai till the year 2016.

6.2 I submit that under the Implementing Regulations No. 1/92 (Pursuant Law No. 9 of 1992) of FZE ("FZE Regulation"), under which the Vintage FZE was registered as a Free Zone Enterprise ("FZE") in JAFZA shall have a SINGLE OWNER. I submit that in this case it was Mr. Arun Panchariya who has been the beneficial and legal owner of Vintage FZE (directly and indirectly) and the real face behind Vintage FZE. It was a single member enterprise and he was the owner. It can be said to be akin to a sole proprietorship concern with the sole proprietor taking keen interest in its operations. You would appreciate that in such organization, the sole proprietor or the ultimate sole owner effectively takes all important decisions in relation to the activities of such organization.
A copy of the said FZE Regulation is enclosed herewith as Annexure No.3
6.3 Mr. Arun Panchariya was initially the sole director and subsequently somewhere in 2010 - 2011 Mr. Ashok Panchariya, his brother, replaced him as the Director of the Vintage FZE. As stated above, I was a mere manager and never the Director or Managing Director of Vintage FZE.
6.4 I submit that from the copies of my resident permits for the period September 14, 2005 to September 9, 2017, it can be seen that my designation/position has always been mentioned as the General Manager and not as a Director/Managing Director. I couldn't have functioned as the Director/Managing Director in Vintage FZE (which operated in JAFZA) or in any other entity within JAFZA without an appropriate work permit as a Director/Managing Director from JAFZA.
Copies of my resident permits enclosed as Annexure No. 4. Original passport can be produced by me to demonstrate the above submission.
6.5 I submit that from the Letter dated October 01, 2009 written by Vintage FZE to Abu Dhabi Commercial Bank it can be seen that I was referred to as the General Manager since Sept 2005. The said letter was signed by Mr. Arun Panchariya himself.
Copy of the said dated October 01,2009 enclosed as Annexure No.5.
6.6 I submit that it can be seen from the copy of the JAFZA Visa of Mr. Arun Panchariya for the period January 12, 2010 to January 11, 2013 that his designation was mentioned clearly as the Managing Director.

Copy of the JAFZA Visa of Mr. Arun Panchariya for the period January 12,2010 to January 11,2013 is herewith enclosed as Annexure No 6. I submit that I do not have the original of the said Visa. 6.7 I submit that from the Employment Card issued to me by JAFZA, it can be seen that I had always been an employee of Vintage FZE and not a Director or Managing Director of it.
Copy of the Employment Card is enclosed as Annexure No.7.
6.8 I further submit that as can be seen from the Annexure 30 of SCN in Shareholder's list as on September 30,2009/2010/2011/2012/2013 in relation to Ramsai Investment Holding Private Limited (Vintage FZE Investment Holding Private Limited), it can be clearly seen that Mr. Arun Panchariya holds 9,998/18,59,013 Equity Shares in Vintage FZE Investment Holding Private Limited in his capacity as a Director of Vintage FZE. This clearly demonstrates that Mr. Arun Panchariya has all along been the Director/Beneficial Owner of Vintage FZE. This also clearly proves that I cannot have any role to play in Vintage FZE except as an employee and acting on instructions and under supervision of Arun Panchariya.

6.9 This shareholding in Vintage FZE Investment Holding Private Limited by Arun Panchariya was more than 99.99% of its shareholding. I was just holding qualification shares of mere 1 or 2 shares.
6.10 The Administrative fine statement passed by DFSA imposing fine of US$ 12,000 on Mr. Arun Panchariya (Annexure 24 of the SCN) also clearly indicates that Arun Panchariya was the Licensed Director in relation to Vintage FZE.
6.11 I further submit that as per regulation 30 of FZE Regulations as mentioned above, the business of a Free Zone Establishment shall be managed by the Directors who shall exercise all the powers under the Free Zone Establishment - which were exercised solely by Mr. Arun Panchariya or through his brother Mr. Ashok Panchariya. Key decision-making powers such as availing loans from Banks, subscribing to GDRs or other investments, repayment of loan etc. were taken by the Owner and Director of Vintage FZE which was Mr. Arun Panchariya/ Mr. Ashok Panchariya. As an employee

and Manager, I was required to execute such decisions taken. At no point of time I had the authority to take any such decision.

6.12 I submit that since I have not been in possession of the constitutional documents of the Vintage FZE, I am not in a position to submit the same. I humbly submit that these Documents may be part of the documents collected by the investigation department of SEBI during its investigation- DMSS Certificate FZE i.e. from the date of its incorporation till closure. I may be furnished with a copy of the said documents to demonstrate this point.

6.13 Further, I draw reference to the Loan Agreement No K300508-002 dated May 30,2008 between Euram Bank and Vintage FZE, Mr. Arun Panchariya had signed as Managing Director of Vintage FZE included as Annexure 8 and 26.

Somewhere in 2010 after Arun Panchariya setup Euram Bank Asia Ltd. ("Euram Bank Asia") in JV with Euram Bank and got it UAE DIFC License, there were concerns in relation to conflict of interest raised by Euram Bank as Arun Panchariya was also signing/verifying transaction documents as the Director /President of Euram Bank Asia. Pursuant to the above, Arun Panchariya, while continuing as the sole beneficial owner of Vintage FZE, stepped down as Director of Vintage FZE and was replaced by his brother, Ashok Panchariya. Also, on account of the above conflict, I was instructed by Arun Panchariya to sign the loan agreement and other documents which were hither to signed by him. As an employee and authorised signatory of Vintage FZE, based on the instruction from the Director/Sole Owner of Vintage FZE, I had signed certain documents on behalf of Vintage FZE. As a salaried employee of Vintage FZE following instruction from its sole beneficial owner, Arun Panchariya, I cannot be deemed to be the key employee/managing the affairs of Vintage FZE or treated as a key person in structuring GDR issue.

6.14 I submit that Mr. Arun Panchariya as a Director of Euram Bank Asia had verified the signature of the representatives of the Company on the pledge agreement, in case of GDR issuance by Rasoya Protein Limited, Hiran Orgochem Limited and Nakoda Limited.

Copy of the above-mentioned pledge agreements in relation to GDR issuance by Rasoya Protein Limited, Hiran Orgochem Limited and Nakoda Limited are enclosed as Annexure 8.

6.15 With regards to para 13 of the SCN, I submit that on Specimen Signature format dated June 06,2007 (Annexure 8 and 26 of the SCN), Mr. Arun Panchariya's name had been mentioned solely as the Owner or member of Management Board or Managing Director. In the second table, my name was mentioned as one of the persons with signing authority. The said form dated June 06, 2007 was signed by Mr. Arun Panchariya himself.

I submit that Mr. Arun Panchariya's name has been mentioned as sole Beneficial Owner and Director of Vintage FZE on the declaration of beneficial ownership (This declaration was also signed by Mr. Arun Panchariya).

I submit that I was only an employee of Vintage FZE and I was drawing monthly salary for the work done by me. I did not have any other advantage, monetary or otherwise for any of the acts done by me.

6.16 With regard to the Loan Agreement No K280211-006 dated March 01, 2011(Annexure 7 of the SCN) and a fund transfer letter dated 1st March 2011 (Annexure 3 to the SCN) which was in relation to GDR of TEXMO, I submit that it was mentioned as Managing Director of Vintage FZE under my signature. I submit that I was never a Managing Director/Director of Vintage FZE as demonstrated above. I submit that I was instructed by Mr. Arun Panchariya to sign this Document because in view of the conflict of Arun Panchariya as Director and President of Euram Bank, Asia. He had a stake in the Euram Bank Asia and hence it was advised that somebody other than him should sign the document. Since the title "Managing Director" was pre-printed or part of the pro-forma of the Bank, it was by oversight continued to be so. I signed in the capacity of an authorized signatory as mentioned above. I reiterate that I have never acted as a Managing Director at any point of time. I submit that I signed the Document representing the sole Beneficiary Mr. Arun Panchariya at his behest and on his behalf and instructions.

6.17 With regard to para 54 and para 55 of the SCN alleging that I signed the loan redemption of loan account in my capacity of Managing Director as well as authorised signatory of Vintage FZE, no copy of such loan redemption request as relied upon by SEBI have been provided as part of the

SCN. I request for a copy of the documents relied upon by SEBI in relation to the above to fully explain my position.

NOTWITHSTANDING, I submit that the re-payments of loan taken from Euram Bank were made as and when Arun Panchariya generated liquidity to repay. Since they are only loan redemption requests, I submit that nothing adverse can be read in to the same.

6.18 In the light of the above, I submit that the allegation that I was associate of and collaborated with Mr. Arun Panchariya and Vintage FZE and thus acted as party to fraudulent scheme and thereby violated the provisions of SEBI Act and PFUTP Regulations is incorrect and without any basis.

7. Without prejudice to the generality of the above submissions that I had no role to play in the decision making and execution of the same in respect of the GDR of TEXMO, I submit my para-wise replies to the SCN as under:

7.1. With reference to the para 1 of the SCN, I submit that I was not involved in the investigation. The Investigation Office did not call me for any clarifications nor did he record my statement during the investigation. No summons was issued to me by the Investigation Officer.

7.2. Further, the following documents referred to in the SCN have not been provided as part of the SCN:

- *Documents relied upon by SEBI in alleging that I served as Managing Director, Authorized Signatory and director of Vintage FZE - incorrectly referred to Annexure 11 in point no. 7 of para 39 of the SCN;*
- *Documents relied upon in para 54 and para 55 of the SCN alleging that I signed the loan redemption of loan account in my capacity of Managing Director as well as authorised signatory of Vintage FZE.*

7.3.In the absence of receipt of the documents referred to above, I cannot comment whether the findings extracted in the SCN are correct or not. I will be able to reply to SCN properly only upon receipt of the documents as listed above.

WITHOUT PREJUDICE to the above I give my replies/ clarifications in relation to the SCN as hereunder

7.4. With reference to

- *para 2, para 17, para 18, para 20, para 21, para 24, para 60 and para 63 of the SCN concerning Texmo Pipes and Products Ltd.;*
- *para 6 of the SCN concerning PAN Asia;*
- *para 42, para 59 and para 68 of the SCN concerning India Focus Cardinal Fund;*
- *para 48, para 51 and para 59 of the SCN concerning Highblue Sky Emerging Market Fund;*
- *para 59 of the SCN concerning Sparrow Asia Diversified Opportunities Fund and Leman Diversified Fund;*
- *Para 62 of the SCN concerning Euram Bank and Golden Cliff; and*
- *Para 19, para 58 and para 69 concerning Vintage FZE*

I submit that, I am not in a position to reply to allegation made in relations to the entities mentioned above.

7.5. With reference to para 2 to para 5, para 7, para 8, para 14 to para 17, para 20 to para 24, of the SCN I submit that the details of

- *formation and incorporation of TEXMO,*
- *shareholding pattern of TEXMO,*
- *GDR issued by TEXMO,*
- *corporate announcements and disclosures made by TEXMO,*
- *escrow agreement entered into by TEXMO,*
- *list of GDR subscribers provided by TEXMO,*
- *pledge agreement entered into by TEXMO,*
- *realization of GDR proceeds by TEXMO*

are matter of record and I have no comments to make on the same. I submit that the facts stated therein do not in any way suggest that I was involved in the decision making of TEXMO to issue GDR or in the allotment or closure of the GDR. contains an allegation that TEXMO had given false information to SEBI regarding the list of subscribers to GDR. I am not concerned with the said allegation. I however submit that Vintage FZE, in which I was an employee, was the sole subscriber to the GDR of TEXMO.

7.6.With regard to above para , I submit that the allegations are against TEXMO and its officials. I submit that there is no allegation in the SCN that I personally know (or Vintage FZE knows) that TEXMO failed to take appropriate corporate and regulatory approvals or failed to make appropriate disclosures of the same. If TEXMO complied with these disclosure requirements and accounting requirements, there would not have been any allegation of fraud in the whole transaction. I submit that I cannot be blamed for fraud on account of certain corporate non-compliances by TEXMO and its officials.

7.7. I submit that the Lead manager to the GDR issue as mentioned in Para 4 and Para 6 of the SCN was Pan Asia, an entity wholly owned, managed and controlled by Mr. Arun Panchariya. I have never held any beneficial or any other interest with Pan Asia.

7.8. With reference to para 7 and para 8 of the SCN, I submit that, Vintage FZE, in which I was an employee, was the sole subscriber to the CDR of TEXMO.

7.9. With reference to para 9 to para 12, para 18, para 19, para 24 of the SCN, I submit that, it's a matter of fact that:

- Vintage FZE, in which I was an employee, had signed a loan agreement and availed a loan of US$ 9.99 million from Arun panchariya's connected entity Euram Bank;
- The said loan amount was utilised for subscription to the GDR of TEXMO; and
- Vintage FZE, was the sole subscriber to the GDR of TEXMO.

I submit that as an employee of Vintage FZE, I can only say that the proceeds of loan were not misused and were applied for the purposes for which it was obtained. I say that taking a loan for subscribing to the GDR per-se is not a violation of any laws, especially that of UAE and JAFZA. I submit that taking loan on such terms is not a violation of any Indian laws also. I submit that Vintage FZE was the sole subscriber is a fact and it is not a violation by Vintage FZE or me especially. Further, I submit that I am not aware of any arrangement that Arun Panchariya may have had with TEXMO in arranging the loan and its repayment. I submit that 1 had no role to play in the said transaction.

7.10. I submit that the allegations contained in these paragraphs have nothing to do with me. As an employee of Vintage FZE, I had no role to play in procuring loan from Euram Bank and in arranging pledge of TEXMO GDR proceeds. As the sole beneficial owner I Director of Vintage FZE along with its connected entity Euram Bank, Arun Panchariya was the sole decision-making authority in relation to subscribing to GDRs of TEXMO, securing loan from connected entity, securing security for such loans, arranging funds for repayment of such loans and evoking securityI pledged security in relation to such loan.

7.11. Further, I submit that, it's a matter of fact that Vintage FZE, had signed a loan agreement and availed a loan of US$ 9.99 million from Arun Panchariya's connected entity Euram Bank for subscription to the GDR of ISSUER. Such loan arrangement and the related security for such loan was finalized by Mr. Arun Panchariya as the sole owner and beneficiary of Vintage FZE. I, as an employee of Vintage FZE (controlled by Arun Panchariya) was not in any position to take any such decisions nor responsible for the same. Vintage FZE was a single owner company fully owned and controlled by Arun Panchariya.

7.12. With regard to para 9 to para 12 of the SCN, I draw your reference to the Loan Agreement No K300508-002 dated 30th May 2008 included as Annexure 8 and 26 of the SCN, between Euram Bank and Vintage FZE, wherein Mr. Arun Panchariya had signed as Managing Director of Vintage FZE.

Somewhere in 2010 Arun Panchariya setup Euram Bank Asia in JV with Euram Bank (shares held through Pan Asia Advisors Limited)- as recorded in point no. 5 of the table in para 39 and para 41of the SCN, and got it UAE DIFC License. It is an admitted fact that Mr. Arun Panchariya has been the Director and 100% owner of Pan Asia Advisors Limited as recorded in para 6, point 1 in table of para 39 and para 57 of the SCN.

There were concerns in relation to conflict of interest raised by Euram Bank as Arun Panchariya was also signing/ verifying transaction documents as the Director/President of Euram Bank Asia. As he was also representing Euram Bank, it was advised that somebody other than him should sign the document. Post which, Arun Panchariya, while continuing as the sole beneficial owner of Vintage FZE, stepped *down as Director of Vintage FZE and was replaced by his brother, Ashok Panchariya. Also, on account of the above conflict, I was insh·ucted by Arun Panchariya to sign the loan agreement which were hither to signed by him. As an employee and authorised signatory of Vintage FZE, based on the instruction from the Director /Sole Owner of Vintage FZE, I had signed certain documents on behalf of Vintage FZE.*

7.13. I submit that the decision to subscribe to GDR of TEXMO and to obtain loan from Euram Bank for subscribing to GDR of TEXMO was the sole decision of Mr. Arun Panchariya as the Director/ sole owner of Vintage FZE and I, as an employee, had no role to play in it. I submit that I was neither instrumental in nor was I involved in arranging loans for Vintage FZE or arranging Proceeds of GDR of TEXMO as security for the said loan. Since Mr. Arun Panchariya is Owner/Director of Vintage FZE and was also Director and President of erstwhile Euram Bank Asia, it was he who had taken all decisions.

7.14. I submit that I was asked by Mr. Arun Panchariya to sign the Loan Agreement in relation to the GDR of TEXMO because of the conflict with Euram Bank as explained above. Since the title "Managing Director" was pre-printed or part of the proforma of the Bank, it was by oversight continued to be so. I signed in the capacity of an authorized signatory as mentioned above. I reiterate that I have never been a Director or the Managing Director at any point of time. I submit that I signed the Document representing the sole Beneficiary Mr. Arun Panchariya at his behest and on his behalf and instructions. As a salaried employee of Vintage FZE following instruction from its sole beneficial owner, Arun Panchariya, I cannot be deemed to be managing the affairs of Vintage FZE or treated as a key person in structuring GDR issue.

7.15. The entire structuring in relation subscription to the GDR, availing loan from connected entity for subscription to GDR, the decision for repayment of these loans were made by Arun Panchariya as the ultimate owner of Vintage FZE. As rightly pointed out in para 6, point 1, 5 and 6 of the table at para 39 and para 41, Arun Panchariya through its 100% controlled entity, Pan Asia held stake in Euram Bank Asia. Euram Bank Asia was thus a JV between Euram Bank and Arun Panchariya, wherein Arun Panchariya was the Director and President. As an employee of Vintage FZE, I had no decision-making role in relation to any of the above.

7.16. With regard to a fund transfer letter dated 1st March 2011 (part of Annexure 3 to the SCN) which was in relation to GDR of TEXMO, signed by me as an authorized signatory but wrongly mentioned as Managing Director- from Vintage FZE to Euram Bank, I reiterate that I was asked to sign the said document in view of the conflict of Arun Panchariya as Director and President of Euram Bank Asia. I submit that I was never a Managing Director/Director of Vintage FZE as demonstrated above. I submit that I signed the Document representing the sole Beneficiary Mr. Arun Panchariya at his behest and on his behalf and instructions.

7.17. With regards to para 13 of the SCN, I submit that on Specimen Signature format dated June 06,2007 (Annexure 8 and 26 of the SCN), Mr. Arun Panchariya's name had been mentioned solely as the Owner or member of Management Board or Managing Director. In the second table, my name was mentioned as one of the persons with signing authority. The said form dated June 06, 2007 was signed by Mr. Arun Panchariya himself.

I submit that Mr. Arun Panchariya's name has been mentioned as sole Beneficial Owner and Director of Vintage FZE on the declaration of beneficial ownership. This declaration was also signed by Mr. Arun Panchariya.

I submit that I was only an employee of Vintage FZE and I was drawing monthly salary for the work done by me. I did not have any other advantage, monetary or otherwise for any of the acts done by me. The KYC documents as available with Euram Bank and provided by Euram Bank to FMA, Austria vide its letter dated 22nd January 2016 also clearly demonstrate my position as a Manager at Vintage FZE and not as a Director or Managing Director of Vintage FZE. Had there been any change in my designation at Vintage FZE, the same would have reflected in the KYC records of Euram Bank with appropriate backup/ authorisation for the same.

7.18. With regard to para 25 to para 38 dealing with the cancellation of GDRs (conversion into equity shares) and sale of converted equity shares by Arun Panchariya connected entities viz: India Focus Cardinal Fund ("IFCF"), Leman Diversified Fund ("Leman"), Sparrow Asia Diversified

Opportunities Fund ("Sparrow") and Highblue Sky Emerging Market Fund ("HSB"), I submit that I am not aware of the said details and I had no role to play in the same.

7.19. With regard to para 39 of the SCN, I submit that while I can have no comment on the relation between other entities and Arun Panchariya, I submit that as far as I am concerned, he was my employer. He correctly depicts the fact that Arun Panchariya was the beneficial owner of Vintage FZE. With regard to Row number [7] in the said table, I submit that I was never a Director or Managing Director of Vintage FZE as alleged in the table in the paragraph. I submit that I was an employee with Mr. Arun Panchariya.

7.20. As highlighted in the table to para 39, Arun Panchariya was connected with the various entities mentioned therein viz. Pan Asia Advisors Limited, Vintage FZE, IFCF, Cardinal Capital Partners Ltd., Euram Bank, Euram Bank Asia, HSB, Golden Cliff, KBC Aldini Capital Limited, Aspire Emerging Fund, Leman and Sparrow. Arun Panchariya has been mentioned in point 3 of the table as the Director of IFCF and that he was the beneficial owner of the said Fund. I therefore submit that it is Mr. Arun Panchariya who as Director/ Beneficial Owner of Vintage FZE taken decision to transfer the GDRs to IFCF where he was the beneficial owner. I submit that I am not responsible for the said decision.

Further, I submit that I have never held any beneficial or any other interest with any of the entities mentioned in the above paras i.e. Pan Capital Limited, Aspire Emerging Fund, Leman and Sparrow, nor have they alleged my involvement in the GDR issue in any manner.

7.21. With regard to point 7 of the table in Para 39 of the SCN, I submit Annexure 11 of the SCN do not include any documents which would lead to a conclusion drawn in the above point that I served as Managing Director, Authorized Signatory and director of Vintage FZE. I request that the documents relied upon by SEBI while making the above allegation may kindly be provided so that I can provide a suitable reply j explanation for the same.

7.22. With regard to point 7 of the table in Para 39, para 45 and para 54 of the SCN, I submit that as per the Shareholders List of Vintage FZE Investments Holdings Pvt. Ltd (M/ s Ramsai Investment Holding Private Limited), Annexure 30 to the SCN, I held only 1 or 2 shares whereas Mr. Arun Panchariya held more than 99.999% shares. It was an admitted fact that Arun Panchariya was the beneficial owner of the said company. I submit that holding nominal or qualification shares in the above company is normal business practice and nothing sinister can be attributed to me on account of the same.

7.23. I submit that merely by being on the Board as nominee Directors on Ramsai, it does not connect me with Arun in any sense other than the then existing relation of employer and employee. It is an admitted fact that the common thread is Arun Panchariya in all the relations and connections. I reiterate that I was a Director on Vintage FZE(Investment Holding Private Limited (Ramsai Investment Holding Private Limited- first appointment and subsequent from August 17,2010 to March 17, 2016) and nothing sinister can be attributed to the same. As the ultimate owner of the Holding company, it is the prerogative of Arun Panchariya to appoint me as Director of its subsidiaries. I submit that the above stated limited relation as employee and employer had nothing to do with the allegations contained in the matter as far as TEXMO GDR issue is concerned. There can be no allegation of any culpability in such an association.

7.24. With regard to point 7 and 8 of the table in Para 39 and para 45 of the SCN I submit that I was a Director of Alka India Ltd as a nominee Director appointed by Arun Panchariya. Nothing sinister can be attributed to the same. I submit that the fact that I was Director on the Board of Alka India Ltd have nothing to do with the allegations contained in the matter as far as GDR issue of TEXMO is concerned. There is no culpability in such an association. I had no relationship what so ever with Anant Kailash Chandra Sharma other than sharing board seat in a company Alka India Ltd. and Ramsai Inveshnent Holding Private Limited (Vintage FZE Inveshnent Holding Private Limited), and also the fact that Anant was an employee for some time in Vintage FZE. All the above entities viz. Alka India, Ramsai and Vintage FZE were controlled by Arun Panchariya and his family.

7.25. With regard to para 40 to para 42, para 44, para 46 to para 53 of the SCN, I submit that the allegations contained in the paragraph have nothing to do with me. I have never held any beneficial or any interest with any of the entities mentioned in that paras. The conclusion drawn in para 53 in relation to me along with Arun Panchariya in collusion with TEXMO and the entities mentioned *in this para devising the fraudulent GDR issue of TEXMO and its subsequent sale of shares in the Indian market is incorrect. I was only an employee of Vintage FZE and not its Director or Managing Director. Vintage FZE was a single owner company fully owned and controlled by Arun Panchariya.*

7.26. With reference to paras 43 of the SCN, I submit that Aurisse had no financial or ownership interest whatsoever in relation to HBS. Aurisse was involved in providing back office services to various entities including to HBS. Such services were pure back office service and did not involve any operational, financial or investment decision making on my part or on the part of Aurisse for such entities. It is common practice in Mauritius that many entities are registered in the same address and there is nothing sinister in the same. I deny that I have anything to do with HBS.

7.27. With regard to para 54 to para 56 of the SCN, I submit that there is no fraud committed by me in signing the loan agreement with Euram Bank as an authorized signatory (wrongly referred to as Managing Director) on the instructions of my employer Mr. Arun Panchariya. I submit that I had no role in arranging loans to Vintage FZE, in TEXMO executing the Pledge agreement, in Vintage FZE defaulting the loan or in cancelling GDRs and selling the underlying shares in Indian Capital Market. My role, if any, is limited to signing the loan agreement as an authorized signatory of Vintage FZE in view of the conflicting positions Mr. Arun Panchariya had with Vintage FZE and with Euram Bank.

7.28. With regard to para 54 and para 55 of the SCN alleging that I signed the loan redemption of loan account in my capacity of Managing Director as well as authorised signatory of Vintage FZE, no copy of such loan redemption request as relied upon by SEBI have been provided as part of the SCN. I request for a copy of the documents relied upon by SEBI in relation to the above to fully explain my position.

NOTWITHSTANDING, I submit that the re-payments of loan taken from Euram Bank were made as and when Arun Panchariya arranged funds and as per his instructions. I had no role to play in the said transaction as an employee and authorized signatory only of Vintage FZE.

7.29. With regard to para 54 of the SCN, referring to letter dated 5th September 2012 (Annexure 47 of the SCN), by which it had intimated on my email ID at Vintage FZE about realization of Pledge, do not in any way establish my position at Vintage FZE. I submit that the conclusion drawn therein in relation to my role at Vintage FZE are unsubstantiated, without any basis and based on irrelevant consideration and documents not relevant to the current SCN.

7.30. The conclusion drawn in para 55 about my holding key position at Vintage FZE is without any basis and based on irrelevant considerations. My only association with Vintage FZE was that of a salaried employee of Vintage FZE, an entity fully owned and controlled by Arun Panchariya. As stated in para 5 and para 6 above designation/position as that of a General Manager and not as a Director/ Managing Director. I cannot have held the post of a Director/Managing- Director of ANY ENTITY in JAFZA, wherein Vintage VZE was located, without a valid work permit from TAFZA. Further, as stated in para 5.6 above, the DMSS certificate from JAFZA dated December 28, 2010 in relation to Vintage FZE clearly mentions my position as a Manager and not as the Owner or Director of Vintage FZE.

7.31. With regard to para 56 of the SCN, I submit that the allegations contained in the paragraph have nothing to do with me. As an employee of Vintage FZE, I had no role to play in procuring loan from Euram Bank and in arranging pledge of TEXMO CDR proceeds. As the sole beneficial owner/ Director of Vintage FZE along with its connected entity Euram Bank, Arun Panchariya was the sole decision- making authority in relation to subscribing to GDRs of TEXMO, securing loan from connected entity, securing security for such loans, arranging funds for repayment of such loans and evoking security /pledged security in relation to such loan.

7.32. With regard to para 57 to para 64 of the SCN, I submit that the facts averred therein are for Arun Panchariya to defend and I have nothing to do with the same. My role as an employee of Vintage FZE did not in any manner involve taking any key decisions in relation to the affairs of Vintage FZE.

7.33. With regard to para 60 to para 63 of the SCN, I submit that the contents of the para clearly demonstrate that Mr. Arun Panchariya was the sole person behind the entire GDR episode. It was also mentioned in the KYC Documents of the Bank that he was the Owner or Member of Management of the Board or Managing Director of Vintage FZE.

7.34. With regard to para 71 of the SCN, I submit that I have demonstrated in the above paragraphs that my position was that of an employee of Vintage FZE reporting to and taking instructions from Arun

Panchariya, and not as a Director or Managing Director as wrongly alleged. Further the fact was that it was a single owner company, completely owned and controlled by Arun Panchariya, who was also its Director/ sole decision maker. I had no role to play in taking such decisions, neither was I a beneficiary in any manner, other than as a salaried employee of Arun Panchariya. My role in acting as an employee cannot lead to me being held responsible for the same.

7.35. Lastly, I submit that the commissions and omissions on my part as alleged in the SCN were done in the JAFZA in Dubai and it is beyond the territorial jurisdiction of SEBI. I submit that this SCN is beyond the scope and authority of SEBI.

8. In the light of the above I deny that Vintage FZE had committed any fraud on the Indian shareholders. I submit that none of the commissions and omissions of Vintage FZE constitute any offence/ violation of any of the provisions of tl1e securities laws in India. In any case, I humbly submit that as an employee of Vintage FZE, I have no role to play in any of the acts committed by Vintage FZE and its sole beneficial owner and Director Mr. Arun Panchariya.

9. I submit that I did not violate SEBI (Prohibition of fraudulent and Unfair trade practices relating to Securities Market) Regulations, 2003 as alleged in the SCN.

9.1.I submit that I did not use nor employ in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder. I submit that I did not employ manipulative or deceptive device or contrivance as foreseen in Section 12A (a) of the Act.

9.2.I submit that I did not employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed on a recognized stock exchange. I therefore submit that I have not violated section 12A (b) of the Act.

9.3.I submit that I did not engage in any act, practice, course of business which operated as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made there under; I did not defraud any person and hence I had not violated section 12A (c) of the Act.

9.4. I submit that I had not bought or sold or otherwise dealt in securities in a fraudulent manner. Hence, we submit that we have not violated Regulation 3 (a) of the PFUTP Regulations.

9.5.I submit that I did not use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under; Hence I submit that we have not violated Regulation 3 (b) of the Regulations.

9.6. I submit that I did not employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange. I submit that there was no allegation that we had defrauded any person or class of persons. Hence, I submit that I have not violated Regulation 3 (c) of the Regulations.

9.7.I submit that I did not engage in any act, practice, course of business which operated as fraud or deceit upon any person in connection with any dealing in or issue of securities in contravention of the provisions of the Act or the rules and the regulations made there under. Hence, I have not violated Regulation 3 (d) of the Regulations.

9.8.I submit that I had not indulged in manipulative, fraudulent or unfair trade practices as alleged in the SCN and hence not violated Regulations 4 (1) of the Regulations.

10. In the light of the above, I submit that I am not guilty of the violations alleged against me and that there was no case made out in the SCN that an inquiry has to be conducted in the matter as foreseen under Rule 4 (3). I therefore humbly pray that the proceedings against me may kindly be dropped and I be exonerated of all charges.

Issues for Consideration and Findings

13. I have carefully perused the charges levelled against Noticees, replies of Noticee no. 1,2,3,4,5 and 7 to the SCN and other documents/ evidence available on record. The following issues are before me for consideration in this case:

Issue No. I: Whether :

a) Noticees has violated Section 12A (a), (b), (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations, 2003?

b) Noticee no. 1 has violated the provisions of 4(2) (f), (k), (r) and section 21 of SCRA read with clause 36(7) and 50 of the listing agreement?

Issue No. II: If the answer to Issue No. I is in affirmative do the violations, if any on the part of the Noticees would attract monetary penalty under :

a) Sections 15HA of SEBI Act and for the alleged violations by Noticees?

b) Section 23E of the SCRA for the alleged violations by Noticee 1?

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

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

SEBI Act

12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or

deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

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

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

PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

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

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

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

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

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

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

[Explanation.– For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.][6]

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

(a) ………

(b) ……….

…………….

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

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

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

SCRA, 1956

21. Conditions for listing.

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

[6] *Inserted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Second Amendment) Regulations, 2020 w.e.f. October 19, 2020.*

Clause 36 of the listing agreement

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

(1)…

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

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

Clause 50 of the listing agreement

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

Accounting Standard (AS) 1-Disclosure of Accounting Policies

Considerations in the Selection of Accounting Policies

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

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

<u>a) Prudence</u>

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.

<u>b) Substance over Form</u>

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

c) Materiality

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

AS 13 — Accounting for Investments

Disclosure

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

AS 29 — Provisions, Contingent liabilities and Contingent Assets

10.4 A contingent liability is:

a) *a possible obligation that arises from past events and the existence of which will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the enterprise; or*

b) *a present obligation that arises from past events but is not recognised because:*

   i. *it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation;*

   ii. *a reliable estimate of the amount of the obligation cannot be made.*

……….

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

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

a) *an estimate of its financial effect, measured under paragraphs 35-45*

b) *an indication of the uncertainties relating to any outflow; and*

c) *the possibility of any reimbursement.*

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

Findings

15. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticee no.1,2,3,4,5 and 7, I record my findings hereunder:

Issue No. I: Whether:

a) Noticees has violated Section 12A (a), (b), (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations, 2003?

b) Noticee no. 1 has violated the provisions of 4(2) (f), (k), (r) and section 21 of SCRA read with clause 36(7) and 50 of the listing agreement?

16. Before proceeding with the merits of the matter, it would be first appropriate to deal with certain preliminary objections raised by Noticees in the matter.

Delay in issuance of SCN:

17. Noticee no. 1 to 5 have raised the objection of inordinate delay in issuance of SCN. I note that the SCN in the present matter was issued in the year 2019 and pertains to the GDR issue of Texmo which occurred in the year 2011. In this regard, I note that SEBI initiated multiple investigations in the issue of GDRs in the overseas markets by the Indian companies with the intention of defrauding Indian investors. The investigation, prima facie, revealed that in many of the GDR issues, money for subscribing to GDR was availed as a loan by the subscribers, from an overseas Bank wherein the issuer company gave security for such loan taken by the subscribers, by pledging/creating charge on the GDR issue proceeds. It was also observed that, such subscribers subscribed to the GDRs without any valid consideration and sold the underlying shares in the securities market in India through their connected entities. It is noted that investigation was initiated in respect of 59 GDR issues made by 51 Indian Companies during the period 2002 to 2014 involving the same modus operandi, as discussed above. In these investigations,

since the GDRs were issued abroad and related transactions were carried out outside India, SEBI had to call for information from various entities situated abroad in such large number of fraudulent GDR issues. Such information, *inter alia*, included the details of (a) GDR issuer companies, (b) custodian of securities, (c) overseas depository, (d) overseas banks, (e) subscribers of GDR issue (mostly overseas), (f) lead manager, (g) various layers of transactions, etc. Since, this information was not readily forthcoming, SEBI had to collect information and documents from various sources including approaching the foreign regulators for assistance in procuring information and documents from the concerned entities situated outside India. The foreign regulators had also to collect this information from the concerned entities and then to furnish to SEBI and it also added to time. Thus, the process of collection of information in the matter was complex, tedious and time consuming. It is noted that in most of these cases Mr. Arun Panchariya and his connected entities were found to be involved. One of the connected entity of Mr. Arun Panchariya, namely, Pan Asia Advisors Ltd. contested the jurisdiction of SEBI over the GDRs which was ultimately decided by Hon'ble Supreme Court in *SEBI Vs. Pan Asia Advisors Ltd. & Anr. (2015) 14 SCC 71 on July 06, 2015.* Texmo was one such GDR issuer where a similar modus operandi, as discussed above, was observed during investigation. On account of the multiple entities involved, many of which were based overseas, and the complexity of data to be gathered and collated, the investigation which was initiated in the instant matter in the year 2016 was completed in February 22, 2019. I note that after completion of the investigation, adjudication proceedings were initiated with appointment of Shri K Sravanan as Adjudicating Officer and the SCN was issued to the Noticee no. 1 to 5 on July 16, 2019 and on July 29, 2019 to Noticee no. 6 and 7.

18. Thus, in the facts and circumstances of the present matter, I note that the investigation has been conducted and proceedings have been initiated in reasonable time. Further, I note that in Jindal Cotex Ltd. and others Vs. SEBI (Appeal No. 376 of 2019 decided on 05.02.2020) while dealing with an appeal emanating

from the similar GDR issue wherein a plea of delay was also taken by the appellant therein, Hon’ble Securities Appellate Tribunal (SAT) held that*“..............Arguments on delay in investigation and consequently affecting natural justice are also devoid of any merit in the matter since this Tribunal is aware of the complexity involved in the entire manipulative GDR issue; how long it took SEBI to gain information relating to the various entities from multiple jurisdictions in the matter of PAN Asia Advisors Limited (Supra) and Cals Refineries Limited (Supra) etc................”*

19.Again, in the matter of *G.V. Films Ltd. Vs. SEBI* (Date of Decision: February 15, 2021, SAT Appeal No. 168 of 2020), the Hon’ble SAT opined on the issue of delay in a similar matter pertaining to issue of GDR’s as follows:

“Having heard the learned counsel for the parties on this issue, we find that there is no doubt that there has been a delay in the issuance of the show cause notice after 10 years from the date of the GDRs issue. However, on this ground of delay, the proceedings cannot be quashed for the reasons that we find that an investigation was required to be done beyond the borders of India which took time.”

(Underline added)

20.Noticee no. 5 in its submission has quoted the judgments of order dated 07.09.2012 passed in the matter of Khandwala Securities Ltd, *order dated 07.09.2012 passed in the matter of HB Stockholdings Ltd*, *Appeal No. 37 of 2008 in the matter of Libord Finance Ltd* by the Hon’ble SAT, *order of the Hon'ble Supreme Court of India in Mansaram vs S. P. Pathak and Others (Civil appeal No 1262 (N) of 1978), order dated October 23, 2001 by Gujarat High Court in Ramalabhai Jahalabhai Ganava v. State of Gujarat.* However, I note that the facts and circumstances of the present case is clearly distinguishable from those of the aforementioned decisions and therefore not applicable to the present matter as none of the cases referred to by the Noticees deals with GDR issue which involved complex investigation where numerous entities involved were situated outside India and information had to be collected with the help of overseas regulators.

21. Further, in *Ravi Mohan & Ors. v. SEBI* and other connected appeals decided on August 27, 2013, the Hon'ble SAT while referring to its own decision in *HB Stockholdings Ltd. v. SEBI*(Appeal no. 114 of 2012 decided on August 27, 2003) and decision of Hon'ble Supreme Court in Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India)reported in 2003 (158) ELT 129 (S.C.), held as under:

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

22. From the above facts and circumstances of the case, I am of the view that the time taken in the matter is reasonable and explained by the course of proceedings as described above. Thus, it cannot be said that there was inordinate and unnecessary delay in issuance of SCN in the matter as contended by the Noticees.

<u>Inspection/supply of documents</u>:

23. I note that, Noticee no. 1 to 5 sought inspection of documents during instant adjudication proceedings.In this regard, I note that Noticee no. 1 to 5 also sought inspection of documents pursuant to receipt of the Show cause notice issued during ongoing parallel 11B proceedings under section 11B read with 11(1) and 11(4) of

the SEBI Act, 1992 on 11.04.2019 in the matter and thus, inspection was carried by Noticee no.1 to 5 on June 11, 2019. Subsequently, upon receipt of SCN issued under instant adjudication proceedings, Noticee no. 1 to 5 again carried out the inspection of documents on March 04, 2020. I note that Noticee no. 1 to 5 have contended that they were provided inspection of the photocopies of all records except record at Annexure 1 and has also mentioned the documents which they state to not have been submitted by them. Further, I note that pursuant to inspection of documents, AR of the Noticee no. 1 to 5 vide letter dated March 13, 2020 sought the inspection of complete set of documents/full records collected during investigation. in this regard, I note that, SCN contained the relevant portions of the Investigation Report and findings of investigation with respect to the charges levelled against them. Moreover, I note that copies of all documents which were relied upon by SEBI in making allegations in the SCN have been provided to the Noticees along with the SCN not only during instant adjudication proceedings but also alongwith the SCN issued in parallel 11B proceedings as Annexures. Further, Noticees have inspected the documents twice during parallel 11B proceedings and instant adjudication proceedings. Contentions regarding the documents which Noticees have denied to execute have been dealt in below mentioned paras. I note that, Noticee no. 1 to 5 have been *inter-alia* provided copies of following documents along with annexures to SCN and also during both the inspections:

Annexure 2: Letter dated June 18, 2015 from Texmo to SEBI.

Annexure 3: Page no. 54 of Offering Circular issued by Texmo for the purpose of GDR issue.

Annexure 4: Copy of Escrow Agreement signed by Texmo, Pan Asia and Euram Bank.

Annexure 5: Copy of letter dated February 25, 2016 from Pan Asia to Financial Conduct Authority, United Kingdom.

Annexure 6: Letter dated February 20, 2012 from Pan Asia to SEBI.

Annexure 7: Email dated March 01, 2016 from FMA to SEBI.

Annexure 8: Loan Agreement bearing No. K280211-006 dated March 01, 2011 signed by Vintage with Euram Bank.

Annexure 9: Copy of the KYC documents and shareholding details of Vintage as submitted by it to Euram Bank.

Annexure 10: Pledge Agreement dated March 01, 2011 entered by Texmo with Euram Bank.

Annexure 11: Bank Account statement of retail account of Texmo maintained with Euram Bank.

Annexure 12: Bank Account statement of loan account of Vintage maintained with Euram Bank.

Annexure 13: Email dated October 08, 2018 from FMA to SEBI along with a copy of certified copy of Texmo's Board Resolution dated October 28, 2010.

Annexure 14: Email dated November 17, 2018 from Texmo to SEBI.

Annexure 15: Copy of page no. 37 and 45 of Annual Report of Texmo for Financial Year 2011-12.

Annexure 16: Email dated September 17, 2018 from Texmo to SEBI.

Annexure 17: Copy of page 48 of Annual Report of Texmo for the Financial Year 2011-12.

Annexure 18: Euram Bank's letter dated September 05, 2012 to Texmo.

Annexure 19: Letter dated July 09, 2012 from Texmo to Euram Bank.

Annexure 20: Bank Account statement of Escrow account of Texmo maintained with Euram Bank.

24. Thus, in view of the above, I find that, the allegations against the Noticees are clearly delineated in the SCN and all the relevant documents that have been relied upon in the SCN have also been provided to the Noticees as annexures to the SCN as mentioned above during parallel 11B proceedings and also in instant adjudication proceedings. Thus, I am of the opinion that principle of natural justice have been duly complied with in the instant proceedings and no prejudice has been caused to Noticee no. 1 to 5 in defending their interest and contesting the allegation made

against them in the SCN. Thus, I note that the contention of Noticee no. 1 to 5 in this regard is bereft of merits and is untenable.

Jurisdiction:

25.Noticee no. 7 in his reply has *inter-alia* stated that, "*7.35. Lastly, I submit that the commissions and omissions on my part as alleged in the SCN were done in the JAFZA in Dubai and it is beyond the territorial jurisdiction of SEBI. I submit that this SCN is beyond the scope and authority of SEBI.*

8.In the light of the above I deny that Vintage FZE had committed any fraud on the Indian shareholders. I submit that none of the commissions and omissions of Vintage FZE constitute any offence/ violation of any of the provisions of tl1e securities laws in India".

26.In this regard, I note that with regard to jurisdiction of SEBI against MC and the lead manager viz. Pan Asia involving the alleged violations of provisions of SEBI Act and PFUTP Regulations, the Hon'ble Supreme Court in the matter of *SEBI vs Pan Asia Advisors Ltd & Anr* vide its Order dated July 06, 2015 has held that –

"73. Along with the Section 12A, when we read Regulation 2(1)(c) of 2003 Regulations, the act of fraud has been elaborately defined to include any kind of activity which would work against the interest of the investors in securities. Further, such interest of investors can be better ascertained by making reference to Section 2(h)(iii) of the SCR Act, 1956 which defines the 'security' to mean the right or interest in securities. A conspectus reference to Section 12A(a) (b) and (c) read along with Regulation 2(1)(b) and (c), as well as Section 2(h)(iii) of the SCR Act, 1956 sufficiently disclose that it would cover any act which will have relevance in protecting the interest of the investors in securities and security market with any person however remotely the same are connected with such securities, in the event of such an act working against the interest of investors in securities and securities market by way of fraud which has been elaborately defined under Regulation 2(i)(c) of 2003 Regulations.

74. Having thus noted the statutory prescription relating to the issuance of GDR based on the underlying shares of the issuing company, the manner in which such GDRs were being traded in the global market with the support and assistance of Lead Manager, the scope of construing GDRs as 'securities' falling under the definition of 'securities' as defined under Section 2(h) of the SCR Act, 1956 requires to be noted. The extent of duties and powers vested with SEBI, namely, the protection of the interest of investors in securities and securities market and also the prohibitive measures as well as penal action that can be taken by SEBI whenever it comes across any fraud committed by any person relating to the interest of the investors in securities and securities market are very wide."

I note that Hon'ble Supreme Court of India also made the following observations:

"We are therefore convinced that having regard to the nature of allegations in the interests of investors in securities as well as the statutory obligation/duty cast upon SEBI to protect their interests, SEBI has got every jurisdiction to proceed against the respondents as well as the issuing company."

Thus, In view of the foregoing, I am of the considered view that SEBI has jurisdiction to proceed against MC and find no merits in the above contentions of the Noticee. For similar reasons, in the context of the instant matter, I also find that SEBI has jurisdiction over other Noticees in the matter.

Having decided the preliminary objections raised by the Noticees, now I proceed to deal with the merits of the matter:

27.I note that, In the instant case, the Company after being duly authorized by the Board, had issued 6,27,500 GDR on April 11, 2011 for raising 9.99 million USD. From a perusal of Table 1 mentioned in SCN, I note that the number of underlying shares issued by the Company under the GDR issue was 1,25,50,000 shares.

28. In this regard, SEBI is in receipt of copy of certified copy of Texmo's Board Resolution dated October 28, 2010, submitted at the time of opening of Bank Account with Euram and the same was provided by EURAM Bank received through Austrian Financial Market Authority (**FMA**) vide email dated October 08, 2018. The said Board resolution pertains to opening of Bank Account with Euram Bank for GDR issue and *inter-alia*, authorizes EURAM Bank to use the GDR proceeds as security against loan, if any. Relevant extracts of the Board Resolution are as under:

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

"RESOLVED FURTHER THAT Shri Sanjay Agrawal, Managing Director, Shri Vijay Prasad Pappu, Whole Time Director and Shri Rishabh Kumar Jain, Company Secretary of the Company, be and are hereby severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required,

RESOLVED FURTHER THAT Shri Sanjay Agrawal, Managing Director of the Company, of the Company, be and are hereby severally authorized 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."

29. On perusal of the above Board Resolution, I find that the aforesaid Board Resolution was approved by Noticee no. 2 to 5 for opening a bank account with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue of the

Company. Further, Euram Bank was authorized to use the GDR proceeds deposited with it as security in connection with loan, if any, as may be required by the Bank and Noticee 2, Noticee 3 and Noticee 5 were authorized to sign any agreement related to GDR issue of Texmo.

30. From the resolution as stated above, I find that the Company and Noticee no. 2 to 5 had already decided as back as on October 28, 2010 to go for a GDR issue and had even decided at that very stage to open a bank account with EURAM for receiving the GDR proceeds. Also in the same Board resolution it had already been contemplated that the GDR proceeds may be used as a security for loans although the nature and purpose of the proposed loans to be availed was not specified in the said resolution.

31. I note that no information/document with regard to the said meeting of Board of Directors of Texmo dated October 28, 2010 was mentioned in its Annual Report for FY 2010-11 and also no information/document with regard to minutes of the said board meeting was received from Texmo. Thereafter, the Company, vide its email dated November 17, 2018, forwarded a copy of its letter dated November 16, 2018 informing SEBI that no such Board of Director's meeting was held on October 28, 2010. The Company, however, informed that an Extra Ordinary General Meeting (**EGM**) was held on October 28, 2010 and provided copy of minutes and the resolutions passed in the aforesaid EGM.

32. In this regard, I have perused the copy of the said board resolution on record, I note that, the said board resolution is certified true copy of the resolution passed by the Board of Directors of Texmo and Noticee no. 5 on October 28, 2010 which is printed on the letter head of the company and signed by Noticee no. 2 to 5. Further, the said board resolution is notarised at Burhanpur which is the place where, company has its registered address.

33. I note that, Section 372 A (2) of the Companies Act, 1956 provides that in order to grant loans, guarantee loans and provide security for loans, a resolution has to be passed at the board meeting of the company with the consent of all the directors present at the meeting. thus, I note that, it was by being signatories to the aforesaid resolution dated October 28, 2010 provided by Austrian FMA, that Noticee no. 2 to 5 passed the resolution for opening a bank account with the EURAM Bank and authorized Noticee no. 2,3 and 5 to sign, execute, any application, agreement, escrow agreement, document, undertaking etc. as may be required by EURAM Bank, further, Noticee No. 2 was also authorized to draw cheques and generally to take all such steps and do all such things as may be required from time to time on behalf of this Company. Thus, the aforesaid resolution gave wide powers to Noticee no. 2, 3 and 5 to enable them to execute the Pledge Agreement and Noticee no. 2 to 5 has consciously agreed to the delegation of such wide powers to Noticee no. 2,3 and 5.

34. Thus, it was only pursuant to the said board resolution that, Noticee no. 2 went on to sign the Pledge Agreement dated March 01, 2011 with EURAM Bank on behalf of Texmo, whereby a deposit account of Texmo maintained with EURAM Bank having USD 9.99 million was given as security for all the obligations of Vintage under the Loan Agreement. The said Pledge agreement also bear the seal of company Thus, in view of the aforesaid, I find no merit in the contentions of Noticee No. 1 to 5 in which they have denied passing of such board resolution and knowing the origination of such board resolution and pledge agreement.

35. Since, Noticee no. 1 to 5 denied executing/ passing such resolution, I am of the view that such board resolution authorizing the use of funds of GDR proceeds deposited with EURAM as security in connection was fraudulently approved by directors of Texmo namely Noticee 2, Noticee 3 and Noticee 4, and Noticee 5 has fraudulently certified the board resolution, and Noticee 2, acted on the above said fraudulent board resolution and executed the Pledge Agreement. Thus, Noticee no. 1 to 5

enabled the fraudulent scheme of issuance of GDRs and acted as party to the fraudulent scheme. Thus, by not disclosing information with regard to such intentions of the Board to the shareholders, I conclude that Noticee no. 1 to 5 misled the investors by concealing such an important disclosure from shareholders of Texmo.

36. I also note that, Noticees have denied executing pledge agreement and Noticee no. 2 submitted that, it may have signed the said agreement due to oversight, in this regard, I note that Pledge agreement was duly signed by Mr. Sanjay on behalf of Texmo and bear the seal of Texmo, it also mentions the loan agreement date and number viz. 01 March 2011 and K280211-006 with respect to loan granted by Euram to Vintage. The preamble of the Pledge Agreement states as under:

"By Loan Agreement K280211-006 (hereinafter referred to as the "Loan Agreement") dated 01 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 9,996,075. The pledger has received a copy of the Loan Agreement No K280211-006 and acknowledges and agrees to its terms and conditions."

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

"*2. Pledge*

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

Obligations") the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:

2.1.1 all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount USD 9,996,075 existing from time to time at present or hereafter on the securities account(s) no. 580038 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. 580038 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."

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

"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 Accounts to settle the Obligations. In such case the Bank shall transfer the funds on the Pledged Accounts, even repeatedly, to an account specified by the Bank.

6.2 Notwithstanding the foregoing, in the case that the Borrower fails to make payment on any due amount, or defaults in providing or increasing security, the 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."

39. By signing the Pledge Agreement, Texmo is clearly aware that Vintage was the subscriber to the GDR issue. on perusal of contents of the pledge agreement, I note that, Pledgor (Texmo) pledges to EURAM Bank, all the rights, title and interest in the securities deposited and balance of funds up to 9.99 million USD in the A/C no. 580038 with EURAM Bank (hereinafter referred to as “as Pledge Accounts”). I note that account no. 580038 was the escrow account where the GDR proceeds of Texmo were deposited. This shows that Texmo had pre-pledged to the EURAM Bank, its entire GDR proceeds as security for the loan to be disbursed to a third party i.e. Vintage, for making subscription to GDR of Texmo on March 01, 2011, much before the actual GDR issue that took place on April 11, 2011. Thus, evidently Texmo already knew in advance who would be subscribing to its entire GDR issue, for which Texmo drew up a premeditated plan to facilitate its GDR issue in the manner as described above much before the actual GDR issue, with the prior approval of the Board of Directors of Texmo which had passed necessary resolution to this effect enabling the MD to execute the plan.

40. Further, I also note that, on behalf of Texmo, Mr. Sanjay vide letter dated July 09, 2012 to EURAM has confirmed the rights of EURAM Bank to set off the pledged deposit (GDR Proceeds) with the outstanding loan amount and interest (mentioned at point no. 4(41) of this order). The said letter was notarised by same notary public placed at Burhanpur.

41. Thus, in view of the above, I note that Texmo, itself held the pledge agreement as valid and did not raised any query regarding the loan amount of USD 3496075.00 due to be repaid and in fact stated in the letter that, *"we confirm that the right of European American Investment Bank AG to set off the pledged cash deposit with the outstanding loan amount 3,496,075 USD* ." Thus, subsequently, on September 04, 2012, an amount USD 34,98,579.85 was adjusted by EURAM Bank against the loan default of Vintage/ Alta Vista International FZE (present name of Vintage). This is evidenced by Texmo's EURAM Bank retail account statement and Vintage's loan account statement.

42. As noted earlier, Vintage had signed a Loan Agreement No. K280211-006 dated March 01, 2011 with EURAM Bank for a loan of 9.99 million USD to pay for the subscription amount of US$9.99 million for the GDR issue of Texmo. Vintage had opened an exclusive loan account (a/c no. 540012-053-0 titled as Loan K280211-006 Texmo pipes) with EURAM Bank for receiving the loan and making subscription to GDR of texmo.

43. On a perusal of clause 2 and 3 of the Loan Agreement, I find that the said loan was availed exclusively by Vintage for the purpose of subscribing to the GDR issue of Texmo and the loan amount could only be transferred to EURAM Account No. 580038 of Texmo. I further note that in terms of clause 6 of the said Loan Agreement, the EURAM Bank A/C no. 580038 of texmo will be pledged as security for the loan taken by Vintage from EURAM as set out in detail in the Pledge Agreement. The said Loan Agreement with EURAM Bank was signed by Noticee no. 7 viz. Mr

Mukesh Chauradiya (designated as Managing Director of Vintage) and a Pledge Agreement was signed by the Noticee no. 2(CMD of Texmo) on the same day. The execution of Loan Agreement dated March 01, 2011 prior to the GDR issue on April 11, 2011 shows that Vintage was already pre-decided by Texmo to be the sole subscriber to the GDR issue. It was also pre-decided that Vintage will subscribe to the GDR by taking a loan equivalent to the total amount of the whole of GDR issue of Texmo. This clearly indicates that Company was aware much before the issuance of GDR that, the proceeds to be realized against the issuance of GDR would be held as security towards the loan amount sanctioned by EURAM Bank to Vintage to enable it to pay the subscription amount. Due to this arrangement, Texmo was restrained from using the proceeds of the issuance of GDR for a considerable period for the stated purpose for which the fund was raised through issue of GDR. *Prima facie*, this does not appear to be a normal loan transaction between EURAM Bank and Vintage. rather, it appears to be a peculiar transaction wherein under the garb of loan agreement, the amount is merely rotated on paper from the Bank to the borrower and from the borrower to the Company's a/c in the same bank where it is kept as a security against the said loan availed by the borrower. The net result is that the Company is not really able to utilize the proceeds of GDR, as the same is pledged as security against the loan taken by the borrower to pay for the GDR subscription. Thus the money/fund only rotates on paper from one a/c to another but remains in the Bank in an encumbered state. Further, Vintage defaulted in repayment of loan to the extent of USD 3.49 million (equivalent to Rs. 19.43 crore, at RBI exchange rate of Rs. 55.536 per USD on September 04,2012), thereby GDR proceeds to that extent were adjusted by EURAM. Hence, it is evident that Vintage acquired GDRs of Texmo to the tune of USD 3.49 million at free of cost. On perusal of copy of Know Your Customer documents (signed on June 06, 2007) of Vintage available with EURAM Bank, it is observed that the Noticee No.6 is the beneficial owner of Vintage.

44. On a perusal of Loan agreement between Euram Bank & Vintage, on the one side, and pledge agreement between Euram Bank and Texmo, on the other side, one would clearly find that the said agreement was executed only to secure the obligations of the borrower viz. Vintage, on the basis of which it was granted a loan for 9.99 million USD from EURAM Bank. However, the Pledge Agreement also mentions that the Pledgor received copy of the Loan Agreement and acknowledges the terms of the Loan Agreement. This cross reference of Loan Agreement in Pledge Agreement and vice-versa indicates that Noticees had, much before the actual issuance of GDR pre-decided on the future subscriber and the entire modus operandi through which GDR were issued by facilitating financing the subscriber and there was no intention to immediately bring the GDR proceeds to India to utilize for the stated needs of the Company. One interesting aspect of the entire matter is the timing of execution of Loan Agreement between EURAM Bank and the borrower i.e. Vintage and execution of Pledge Agreement between the said bank and the issuer company i.e. Texmo. Both these agreements were dated March 01, 2011.i note that Pledge Agreement has been incorporated in the Loan Agreement and made part of it as an annexure in terms of sequence of events and also Pledge Agreement refers to the Loan Agreement dated March 01, 2011 between the borrower i.e. Vintage, and EURAM Bank, whereby Vintage was granted loan of USD 9.99 million and it is stated that the Pledgor i.e. Texmo has received a copy of the said Loan Agreement and acknowledges and agrees to its terms and conditions. Therefore, in view of the above points, I hold that both the loan agreement and pledge agreement are intertwined with each other and support each other. Therefore, one cannot be read in isolation of the another one.

45. Further, from the clause 6 of the Pledge Agreement (pertaining to Realization of the Pledge), also extracted in preceding pages, I note that Texmo had given consent to the Bank to apply the funds in the Pledged Accounts in case of default of repayment by the Borrower, Vintage for settling their obligations. As a consequence, even after the GDR issue, Texmo did not have the GDR proceeds at its disposal until

repayment of the loan made by Vintage. Further, on examination of the Bank A/C statement of Texmo no. 580038 and Vintage's Loan A/C no. 540012, I find that Vintage repaid the loan to EURAM Bank in several instalments from August 03, 2011 to March 02, 2012 and each time, only after repayment of a loan instalment by Vintage, on almost the same day of repayment, an equal amount of money was transferred from Texmo's EURAM Bank A/c to its UAE subsidiary's A/c viz. Tapti. Thus, the Company's subsidiary viz. Tapti did not actually receive the GDR issue proceeds till repayment of loan by Vintage. Therefore, in essence, the money equivalent to the GDR issue amount rotated within the EURAM Bank, firstly, as a loan in the name of Vintage and then it travelled as GDR proceeds to the account of Texmo but there was actually no transfer of money to the Company against the GDR issue as on April 11, 2011 for the purpose of utilization. Therefore, I note that the amounts transferred from Texmo's EURAM account to Tapti's bank accounts were dependent on the repayment of the loan by Vintage and was not at free disposal in the account of texmo's Bank account. It also establishes that the purpose of the Pledge Agreement was to facilitate the subscription of GDR issue and securing the loan obtained by Vintage. Details of repayment of loan by Vintage as observed from information provided by Euram Bank are tabulated below:

Date of Loan Amount repaid by Vintage	Loan amount repaid by Vintage (USD)	Date of Transfer of funds from Texmo's bank account to Tapti	Amount transferred to Tapti	Cumulative Loan Amount repaid by Vintage (USD)	Cumulative Transfer of funds from Texmo's Bank account to Tapti
03/08/2011	1,00,000	04/08/2011	1,00,000	1,00,000	1,00,000
09/08/2011	5,00,000	10/08/2011	5,00,000	6,00,000	6.00,000
24/08/2011	7,00,000	24/08/2011	7,28,000	13,00,000	13,28,000
26/08/2011	12,00,000	26/08/2011	12,00,000	25,00,000	25,28,000
21/09/2011	10,00,000	21/09/2011	10,00,000	35,00,000	35,28,000
27/10/2011	3,00,000	27/10/2011	3,00,000	38.00.000	38,28,000
07/11/2011	10,00,000	07/11/2011	10,15,000	48,00,000	4B,43,000
23/02/2012	4,00,000	23/02/2012	4,05.000	52,00,000	52,48,000

01/03/2012	8,00,000	01/03/2012	8,00,000	60,00,000	60,48,000
02/03/2012	5,00,000	02/03/2012	5,00,000	65,00,000	65,48,000

46. Thus, from the above table, I note that, the obligation of Vintage under the Loan Agreement was secured by Texmo through the Pledge Agreement, and accordingly, the subscription of the GDR issue was facilitated in the above manner. Thus, due to such pledging of the GDR proceeds, the funds were not available at Texmo's disposal. In view of the above, I note that the GDRs were not issued in a genuine manner, but through a fraudulent arrangement. I find that Noticee no. 6 had aided and abetted the fraudulent scheme of self-financing of the GDR issue of Texmo by acting on behalf of Vintage as Noticee No.6 was the beneficial owner of Vintage FZE in which the Noticee No.7 had served as Managing Director. Therefore, Noticee No. 6 was connected with the Noticee No. 7. The role played by Vintage in the fraudulent scheme has already been brought out in details in the preceding paragraphs. From the above, it is observed that the Noticee No. 7 held key position in Vintage (was Managing Director and authorized signatory of Vintage) and was in the knowledge of Noticee No.6's scheme of subscribing to GDR issues through Loan Agreement and defaulting on repayment of loan in several GDR issues (as the Noticee No. 7 had signed the Loan Agreements and Vintage's redemption of loan amount requests for repayment of Vintage's loan in the capacity of Authorized Signatory).

47. Further, with regard to the subscription of GDR issues of certain other listed Indian companies through the aforesaid modus operandi viz. involving arrangement of Loan Agreement and Pledge Agreement, the Hon'ble Securities Appellate Tribunal ("SAT") in its Order dated October 25, 2016 in Appeal No. 126 of 2013 in the matter of Pan Asia Advisors Limited vs. SEBI had held that: "*28.... there can be no dispute that the GDR subscription amounts running into several million US $ were not available to the issuer companies till the loan taken by Vintage for subscribing to GDRs were repaid to Euram Bank. Admittedly, the loans were repaid by Vintage after a long period of time. Therefore, in the facts of present case, findings recorded*

by SEBI that in reality there was no fund movement after the GDRs were subscribed, cannot be faulted."

48. I note that Company reported to NSE on April 11, 2011 that, it had successfully completed placement of GDR and the Board, at its meeting held on April 11,2011, approved & allotted equity shares of Rs. 10 (Rupees ten only) each at Rs. 36/- (Rupees Thirty Six only) each to "The Bank of New York Mellon" in its capacity as a depository represented in the said GDR. Given the way GDR were issued to one subscriber in a pre-planned manner as discussed above, I find that the Company, by making a disclosure on April 11, 2011 that GDR have been successfully subscribed, tried to give a misleading impression to the investors and to the market at large, about the potential of the Company, without disclosing the actual arrangement undertaken (Pledge Agreement/ collateral security) to ensure successful subscription to its GDR. The above disclosures are fraught with fraudulent intentions and is an example of an unfair trade practice which was inflicted by the Company on the shareholders and investors at large. The Company along with other Noticees had successfully misled the investors to believe that the shares of the Company have a good market abroad and have been very well received by foreign investors hence, its shares may be of great value in India as well as abroad.

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

"the most relevant fact which is to be borne in mind is that the existence of GDRs is always dependent upon the extent of underlying ordinary shares lying with the Domestic Custodian Bank……………..

….that for creation of GDRs which can be traded only at the global level, the issuing company should have developed a reputation at a level where the marketability of its investment creation potential will have a demand at the hands of the foreign

investors. Simultaneously, having regard to the development of the issuing company in the market and the confidence built up with the investors both internally as well as at global level, the issuing company's desire to raise foreign funds by creating GDRs should have the appreciation of investors for them to develop a keen interest to invest in such GDRs. Mere desire to raise foreign investments without any scope for the issuing company to develop a market demand for its GDRs by increasing the share capital for that purpose is not the underlying basis for creation of GDRs………. To put it differently, by artificial creation of global level investment operation, either the issuing company on its own or with the aid of its lead Manager cannot attempt to make it appear as though there is scope for trading GDRs at the global level while in reality there is none…."

50. I note that, SEBI obtained the information regarding the initial investors in GDRs from the Issuer Companies who in turn had received the same from Pan Asia. Interestingly, the Company furnished wrong information to SEBI by providing a list of GDR subscribers to SEBI vide letter dated June 18, 2015, whereas actually the entire 6,27,500 GDRs (amounting to USD9.99 million) was subscribed by only one entity, i.e. Vintage. I also note that the Pledge Agreement dated March 01, 2011, which was specifically signed by the authorized representative of Texmo viz. Noticee no. 2 makes reference to Vintage. The same also clearly shows that Texmo was aware that the subscriber to the GDR issue was just Vintage. Such actions also indicate mala fide intention on the part of Texmo and Vintage. Thus, Texmo had submitted a blatantly false list of the subscribers. In this regard, I note that the Hon'ble SAT in the matter of *Pan Asia Advisors Ltd. vs. SEBI*, held the following in its order dated October 25, 2016:

"It is equally interesting to note from the investigation carried out by SEBI that the alleged initial subscribers to the GDRs were non-existent entities because-mails and summons issued to those entities were return back undelivered. Moreover, the respective securities market regulators of the Countries in which the alleged initial subscribers were supposed to be situated have informed SEBI

thattheaddressesoftheinitialsubscribersareeithernon-existentordonot belong to those entities. In case of Tradetec the address shown was 'level 47, Prudential Tower, 30 Cecil Street, Singapore, 049712'. Investigation carried out by SEBI through the Monetary Authority of Singapore revealed that there was no level 47 and the highest floor of Prudential Tower was level 30 and that Tradetec is not even listed in the office directory of Singapore. One of the alleged initial subscriber known as Rexflex Ltd. was found to be controlled by AP and admittedly the name of Rexflex Ltd. has now been changed PAN Asia Management Ltd. Even in case of other issuer companies, the WTM of SEBI has recorded a finding in para 15 of the impugned order that those entities do not exist at the given address and the names of those entities do not exist in the official directory of the Countries in which the said entities were supposed to be situated. In these circumstances, findings recorded in the impugned order that the names of initial subscribers exist only in fiction and that the appellants have artificially sought to create an impression that the GDRs were initially subscribed by foreign investors other than Vintage cannot be faulted."

51. As discussed above in detail, the GDR issue would not have been subscribed by Vintage had Texmo not given the required security towards the loan taken by Vintage from the EURAM Bank. However, the Company, through its misleading disclosures to NSE and at the same time by suppressing the facts from the public view about its arrangement with EURAM Bank to facilitate financing of the GDR subscription by Vintage, has created a misleading and overrated impression about the potential of the Company in the market.

52. I find that the entire arrangement of issuance of its GDR by way of loan and pledge agreements, non-disclosure of the resolution passed by the Company in its meeting held on October 28, 20210, non-disclosure of the entering into pledge agreement with EURAM bank, making corporate announcement on April 11,2011 about successful subscription of the GDR and not disclosing the pledge and loan

arrangement to the investors, and has resulted in disclosure of misleading and distorted information to the stock exchanges. Therefore, the entire scheme of issuance of GDR was fraudulent.

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

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

54. I also note that, the Hon'ble Supreme Court in its judgment in the matter of *Kanaiyalal Baldevbhai Patel v. SEBI* (civil appeal no. 2595 of 2013) has also observed that:

"*if Regulation 2(c) of the 2003 Regulations was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or not, by any person while dealing in securities to induce another person to deal in securities would amount to a fraudulent act. The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities"*.

Further, I note that the Hon'ble Supreme Court in the same judgment, has also observed that:

"that the provisions of Regulations 3 (a), (b), (c), (d) and 4(1) are couched in general terms to cover diverse situations and possibilities. Once a conclusion, that fraud has been committed while dealing in securities, is arrived at, these provisions get attracted in a situation....".

55. It is therefore, the aforementioned act of Texmo resulted in 'fraud' as defined under the PFUTP Regulations, 2003. In this respect, it would be appropriate to refer to the Order of the Hon'ble SAT in *Pan Asia Advisors Limited vs. SEBI* cited above wherein, while interpreting the expression of 'fraud' under the PFUTP Regulations, 2003, it was observed that:

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

56. In view of the above, I note that the scheme of arrangement of Texmo, in allotting GDR issue to only one entity i.e. Vintage which subscribed the GDR issue by obtaining loan from Euram Bank and the same was again secured by the Texmo by pledging its GDR proceeds, lead to conclusion that the same were done in a fraudulent manner with a view to influence the decision of the investors and to induce the sale or purchase of its scrip. During this entire process the Noticee Nos. 2 to 4 were the Directors of Texmo and Noticee no. 5 was company secretary who was signatory to board resolution.

57. It is pertinent to mention Section 27 of the SEBI Act, 1992 which talks about 'Contravention by Companies', as per the said provision:

"(1) Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

(2) Notwithstanding anything contained in sub-section (1), where an contravention under this Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly."

58. During the investigation period, as seen from the Annual Report for FY 2010-11 & 2011-12, Mr. Sanjay Agrawal (Noticee No.2) was the Chairman & Managing Director (CMD), Mr. Vijay Prasad Pappu (Noticee No.3) was the Whole Time Director and Mr. Shanti Lal Badera (Noticee No.4) was Non-Executive, independent Director ('NED').

59. I note that Noticee no. 2 was the Managing Director of Texmo. Further, it is observed that Noticee No. 2,3 & 5 were authorized to sign, execute any application, agreement, escrow agreement, document, undertaking etc. as may be required by EURAM Bank. It is also observed that Noticee No. 2 was also authorized to draw cheques and generally to take all such steps and do all such things as may be required from time to time on behalf of this Company, by way of the said Board

Resolution dated October 28, 2010. It is also noted from the copy of the board resolution received from EURAM Bank, that it was in fact certified to be true by Noticee no. 2, 3,4 and 5, and furthermore EURAM Bank was authorized to use Texmo's GDR proceeds deposited with them, as security in connection with any loan. It is further noted that the Pledge Agreement entered into by Texmo with EURAM Bank, whereby a deposit account of Texmo maintained with EURAM Bank was given as security for all the obligations of Vintage under the Loan Agreement and had been signed by Noticee No. 2.

60. I further note from the contents of the Pledge Agreement dated March 01, 2011 that Texmo had agreed to pledge all its rights, title and interest in and to the funds deposited in its designated bank account as well as the interest accrued therein so as to secure the present and future obligations of Vintage.

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

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

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

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

subscribed by foreign investors when in fact the GDRs were subscribed by AP through Vintage. Any attempt to mislead the investors in India constitutes fraud on the investors under the PFUTP Regulations, 2003.

62. Noticee No.4 has stated that, he was an Independent, Non-Executive Director. The Noticee has submitted that he was not in charge of the day to day affairs of the Company. I note that, Mr. Shanti lal was independent director of Texmo from 14.08.2008 till 13.08.2019, which is 11 long years. In this regard, I note that, The Hon'ble Supreme Court in ***Official Liquidator vs P.A. Tendolkar*** (1973) 1 SCC 602 has observed that:

"A Director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially".

63. It must be emphasized that the role of independent directors is to work as a watchdog, help in managing risk and safeguard the interests of minority shareholders. Further, I note from the Annual report for FY 2010-2011 and 2011-12 that is the period when the GDR issue of Texmo took place that, Mr. Shanti lal Badera was also member of Audit Committee, remuneration committee and shareholders/investors' Grievance committee during the period. I observe that in terms of Section 177(4) (viii) of the Companies Act, 2013, the audit committee has to monitor the end use of funds raised through public offers and, therefore, the audit committee of the Company may look into the correctness of information submitted by the Noticee no. 1 with respect to GDR issue and proceeds received thereof. Further, in accordance with Clause 49(II)(D) of the then applicable Listing Agreement, it is also *inter-alia* the responsibility of the Audit Committee to review the financial reporting process of the Company, review the annual and quarterly financial

statements of the Company before being presented to the board of the Company and to review the Statement of Use/ Application of funds raised through public issue. thus, being audit committee member, Noticee no. 4 should have analysed the proceeds of GDR issue. However, I note that nothing has been brought on record to show that, Noticee no. 4 has raised any query or sought any clarifications regarding the GDR proceeds. Further, being signatory to board resolution dated October 28, 2010, he should have raised any objection or query regarding the Board Resolution which proposed to pledge the entire GDR proceeds as a security for any loan.

64. In this context, I also note that in another GDR case, namely, *Mohandas Shenoy Adige Vs. SEBI* (Appeal No. 511 of 2020, Order dated July 28, 2021), the Hon'ble SAT noted that the Appellant was a director in the company for several years and was the member of the audit committee which handled/reviewed the financial matters of the Company during the period when the GDR proceeds vanished from the accounts of the Company. In view of the same, the Tribunal held that *"Taking into consideration all these facts, in our view it would be naive to conclude that the appellant Mohandas was only an independent director and had innocently consented to the Board decision authorising Mr. P.V.R. Murthy to deal with the GDR including loan if any.*"

65. Similarly, in the instant matter too, Noticee no. 4 was associated with Texmo for 11 long years and was also the member of audit committee during the period of GDR Issue. Thus, I am unable to accept the contention of Noticee no. 4.

66. Noticee no. 4 has also cited matters such *as Adi Cooper & Anr. Vs. SEBI (SAT Appeal No. 124 of 2019)* to contend that the resolution passed by the Company did not authorize Euram Bank to utilize the GDR proceeds as security in connection with a loan given to third party. However, the Hon'ble Supreme Court, vide order dated September 21, 2021, has reversed the order of the Hon'ble SAT in *Adi Cooper Vs. SEBI* and held that such a resolution facilitated the transaction with Vintage, and

was a fraudulent transaction considering the fact that neither the arrangement nor the resolution was ever disclosed to the shareholders of the Company or the investors of the securities market through the stock exchange(s). Accordingly, the Hon'ble Supreme Court upheld the view taken by SEBI in the matter. Further, vide an order of the same date, i.e., September 21, 2021, the Hon'ble Supreme Court also set aside the order dated November 16, 2020 of the Hon'ble Tribunal in *Adesh Jain Vs. SEBI*, which has also been cited in this regard by the Noticee no. 4. The Hon'ble Supreme Court inter alia observed that the Tribunal's order in Adesh Jain Vs. SEBI had relied upon Tribunal's order in *Adi Cooper Vs. SEBI*. Since the latter has been reversed, the Hon'ble Supreme Court relegated the parties before the Hon'ble SAT for reconsideration of the appeal afresh.

67. Noticee no. 4 has also placed reliance on the decision of the Hon'ble SAT in *Prafull Anubhai Shah v SEBI* (Appeal No. 389 of 2021 decision dated 28.06.2021), I note that SEBI has filed review petition against the Hon'ble SC Order dated 06.12.2021 in the matter of *SECURITIES AND EXCHANGE BOARD OF INDIA vs. PRAFULL ANUBHAI SHAH,* which is pending before Hon'ble Supreme court.

68. I further note that, Hon'ble SAT in *Chromatic India Ltd & Anr vs. SEBI* (Appeal No. 393 of 2020, decision dated May 12, 2021) while deciding on the liability of Independent Director who was also a member of the Audit Committee in a matter involving similar GDR Issue has held the following:

The Resolution dated August 13, 2010 by itself does not create any suspicion nor creates any fraudulent act. Being a signatory to the said Resolution by itself does not violate any provision of the SEBI Act or the PFUTP Regulations. However, being part of the Audit Committee he had access to the financial status of the company. It is deemed to be in his knowledge that the GDR proceeds of the company were lying in an account in European American Investment Bank ("Euram Bank") and the same was not being utilized for the business purposes of the company rather it was being utilized as collateral for the loan given to Vintage. Being part of the Audit Committee *he should have raised a red flag by observing that the funds were not being utilized by the company for the purpose for which the GDR were issued. In this regard, this Tribunal in Mr. Kishore Hegde vs SEBI (Appeal No. 300 of 2019 decided on November 05, 2019) held:-*

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

69. I note that, Noticee no. 4 while referring to minutes of EGM has submitted that he had not attended the EGM dated October 28., 2010 during which the aforesaid resolution pertaining to GDR was passed.in this regard, I note that, Noticee is not present in EGM but has signed the board resolution in the board meeting which was held on the same date i.e., October 28, 2010. thus, his argument regarding his absence from said EGM and Denying signing the board resolution w.r.t. GDR issue raises doubt. Nevertheless, there is lot of evidence mentioned in pre-paras which indicates that, Noticee no. 4 was very well aware of impugned GDR issue and the arrangements of the Company in this regard and being audit committee member he should have taken all possible and expected steps to clarify himself about all the aspects of the proposed GDR issue by asking the management all pertinent

questions. When the relevant board resolutions were placed before the audit committee, why he did not ask pertinent questions, such as – a) to whom the GDR were allotted; b) why the GDR proceeds did not reach the Company; c) how were the proceeds utilize; d) whether the proceeds were used as security against any loan; etc. I note that, as per the offer document for GDR of Texmo, one of the objects was to utilize the funds for payment for current acquisition and investment and loan to subsidiary. However, no records have been submitted/ produced by the Company to prove the utilization of funds in terms of the aforesaid objects of the issue to Noticee no. 4 and he has also not taken any steps to verify the utilization of such proceeds from the management. By remaining mute and not raising any query at any point during his tenure as a member of Audit Committee and as an independent director, Noticee no. 4 has failed to do justice with the duty casted upon him by statute and with his role of independent director in the Company, wherein, he was supposed to act as check and balance and raise his voice with regard to the practices and fraudulent act of the Company, which has jeopardised the interests of shareholders and stakeholders of the Company and investors in the securities market.

70. I further note that, Noticee no. 5 has stated that, he was CS and being an employee of Texmo draw Rs. 21,100 (Rupees Twenty One Thousand One Hundred only) pm as salary and should not be made responsible as even otherwise when Non Executive Independent Directors are not made responsible for acts when there is a Managing Director in place. In this regard I note that, being company secretary he has certified the said board resolution and he was also authorised to sign, execute, any application, agreement etc. which may be required by EURAM Bank and thus, he was delegated with wide powers of decision making with respect to GDR issue of Texmo. I further note that he was employee of Texmo on April 11,2011 i.e., the date of GDR issue and has resigned thereafter.

71.Thus, in view of the above it is construed that, Noticee no. 4 and 5 did not acted diligently and were aware of the fraudulent scheme of issuance of GDRs of Texmo at the time of resolution dated October 28, 2010 and played an active role in the said scheme as it was their duty to ask the question as to why any company or its directors would at all decide at the time of planning to raise funds through an issue of GDR and to pledge the entire GDR proceeds as a security for any loan. Further, being audit committee member and company secretary they failed to examine the financials of Texmo and also failed to ensure the correctness of financial information and utilisation of GDR proceeds and also correct reporting to stock exchanges. Hence, in view of the aforementioned, I held the contentions of Noticee no. 4 and 5 untenable and also find the ratio of orders, judgements, circulars and clarifications cited by Noticee no. 4 and 5 clearly distinguishable from the facts and circumstances of the instant case.

72.Further, in this regard, I refer to the order of Hon'ble SAT in case of Ketan Parekh v. SEBI (Appeal no. 2/2004) (decided on July 14, 2006), wherein Hon'ble SAT had categorically held that in order to find out whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism, will depend upon the intention of the parties which could be inferred from the attending circumstances of the cases, because direct evidence in such cases may not be available. I also find it pertinent to make reference to judgment of Hon'ble Supreme Court in SEBI v. Kishore Ajmera (Civil Appeal No. 2818 of 2008; dated February 23, 2016) in this regard: "*It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded* *and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion…"*

73. *I* note *that by passing such a resolution, the Board has explicitly indicated that the GDR proceeds were not meant to be brought in India but to be kept as a security against a loan and the details of such arrangement was not meant to be disclosed to anyone at that point of time.* Thus, Involvement of Texmo and Noticee no. 2 to 5 in entire fraudulent scheme of GDR issue is observed on account of signing of entering into Pledge Agreements by Mr. Sanjay Agrawal, Chairman and Managing Director of Texmo with EURAM Bank for loan availed by Vintage from EURAM Bank for entire subscription of GDRs of Texmo pursuant to the board resolution dated October 28, 2010 signed by Noticee no. 2 to 5. Further, Loan Agreement was integral part of Pledge Agreement and vice versa and both were executed concurrently. These agreements enabled Vintage to avail the loan from EURAM Bank for subscribing GDRs of Texmo. The GDR issue would not have been subscribed, had Texmo not given any such security towards the loan taken by Vintage.

74. In view of the aforementioned, I note that, Noticee no. 2 to 5 cannot escape their liability by denying passing of such board resolution as they were not only aware of the pledge agreement but their conduct attests to their acceptance of the existence of the pledge agreement as mentioned in the letter dated July 09, 2012 being signed by Noticee no. 2 and Loan availed by Vintage to subscribe to GDR issue of TEXMO by providing such security towards the loan taken by vintage. Also, the said board resolution which authorized the bank to use the funds as security in connection with loans had clearly indicated that there was (at least) an intention to divert the funds even before the issue of GDR was finalized and raising no red-flag to such a clause clearly indicates the involvement of all the signatories to the Board resolution.

75.Further, no rationale has been submitted by Noticee no. 1 to 5 with respect to transfer of only USD 6.54 million (includes the interest earned on money market instruments) to Tapti Pipes & Products Ltd. FZE out of GDR proceeds of USD 9.99 million raised by the GDR issue in April, 2011. Hence, GDRs to the tune of USD 3.49 million were issued by Texmo to Vintage at free of cost. Texmo was aware of the loan default by Vintage as neither the Company nor the Noticee no. 2 to 5 who are now denying passing of such board resolution and execution of pledge agreement, have filed any complaint against vintage for taking loan and pledging the GDR proceeds for the same and nor have they taken any action against vintage for the same. Thus, based on the available documentary evidences, it is evident that neither Texmo nor Noticee no. 2 to 5 take any step to safeguard the interests of the company or shareholders of company. Moreover, Texmo instructed EURAM Bank to transfer the remaining GDRs to Vintage's account with Habib Bank.

76.Thus, in view of the aforementioned, I am of the view that the Texmo, Directors of Texmo namely Noticee 2, Noticee 3 and Noticee 4 and Company Secretary (Noticee 5) have violated the provisions of section 12A (a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations as the fraudulent scheme of GDR issue was enabled only on the basis of board resolution dated October 28, 2010 passed by directors of Texmo namely Mr. Sanjay Agrawal, Mr. Vijay Prasad Pappu, Mr. Shanti Lai Badera who fraudulently approved the board resolution, Company Secretary Mr. Rishabh Kumar Jain who fraudulently certified the board resolution and Mr. Sanjay Agrawal, Chairman & Managing Director who executed the Pledge Agreement, enabled the fraudulent scheme of issuance of GDRs and acted as party to the fraudulent scheme.

77.With respect to the defence of the Noticee no. 7 being an employee of Vintage and not MD, reference is made to the Loan Agreement entered into by Vintage with EURAM Bank where he has signed the said Loan Agreement as MD of Vintage FZE.

Further, he has also signed the loan agreement in other GDR issues investigated by SEBI in the similar capacity. Thus his contention in this regard is not tenable. After having represented himself as being the Managing Director/Director of Vintage, the Noticee no. 7 cannot seek relief from the consequences of such representation by asserting that. he was merely an employee. The circumstances indicate that Mukesh Chauradiya (Noticee No. 7) was playing an important role in the affairs of Vintage during the relevant period. In this regard I note that a similar contention had been raised by Mukesh Chauradiya (Noticee No. 7) before the Hon'ble SAT in *Mukesh Chauradiya vs. SEBI* (Date of Decision: January 7, 2021 Appeal No. 260 of 2020) wherein it was argued that he was never a managing director of Vintage FZE; he was initially only a Manager and later on a General Manager. It was contended that he was never a beneficial owner of the company Vintage FZE and he has never benefited anything in the alleged violation as he was only a salaried employee of Vintage FZE. In the matter, the Hon'ble SAT held as follows:

"It is an undisputed fact that the appellant has signed as Managing Director as we also note at page 94 of the Memo of appeal. It is not that he signed "for managing director" or "on behalf of managing director" etc. Therefore, irrespective of the dispute relating to the designation as contended by the appellant, the appellant was undoubtedly having the power to sign as managing director. In the certificate given by the JAFZA only 3 names [and 4 designations, with the sole Director, being named as the Secretary also] are indicated who are responsible people in Vintage FZE and appellant was one of them. Therefore, the dispute as to what was the exact designation of the appellant is irrelevant in the context that admittedly the appellant signed as Managing Director of Vintage FZE. It is also important to clarify here that using a designation in other jurisdictions, such as UAE in the instant case, or elsewhere, for comparison to similar designations in India is also not relevant because designations vary widely even with respect to similarly placed officials across multiple jurisdictions. What is relevant is only whether the appellant was holding a position in which he could put his signature, that too in a loan agreement for USD 13.24 million with a bank under the designation of Managing Director. In

any case designation of a person and whether a person is "an officer in default" in an organization etc are irrelevant when the charge is that of aiding and abetting fraud under the PFUTP Regulations, which is the case herein.

78. As held by the Hon'ble SAT, the exact designation of the Noticee No. 7 is not relevant. I note that Noticee No. 7 executed several loan agreements/ signed other documents in various matters involving fraud related to GDR issues where Vintage was involved. In view of this, it can be concluded that Noticee No. 7 held key position in Vintage and cannot plead ignorance of the scheme of manipulation.

79. Therefore, Noticee No. 7 acted as an aide to the Noticee No.6 and facilitated the fraudulent scheme by executing the Loan Agreement and Loan Redemption Letters in capacity of the Managing Director of Vintage.

80. Thus, as discussed in previous paras, the said scheme of issue of GDRs of Texmo constitutes 'fraud' and I find that Noticee no. 6 and 7 connived with Texmo to structure the fraudulent issue of GDRs wherein Texmo did not receive commensurate consideration for its GDR issue to the tune of USD 3.49 million and Noticees No. 6 and 7 being the key managerial personnel/ owner of Vintage, facilitated Vintage in selling the converted equity shares of the company and are squarely responsible for the fraud perpetrated. Further, Vintage received GDRs worth USD 3.49 million without any consideration and the same with interest amounting to USD 3.50 million was recovered from the GDR proceeds at the expense of the shareholders of Texmo and thus, I hold Noticee no. 6 and 7 to have violated section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.

Whether, Noticee no. 1 has violated the provisions of 4(2) (f), (k), (r) and section 21 of SCRA read with clause 36(7) and 50 of the listing agreement?

81. From the discussions above, I find that Texmo was aware and party to the fraudulent scheme to subscribe to the GDRs issued by it on April 11, 2011. Moreover, I also find that the existence of such a scheme was concealed by it from the market and its shareholders.

82. I note from the perusal of Annual Report of Texmo for FY 2011-12 that Texmo showed current investment i.e. investment in money market as Rs. 17.88 crore. Vide email dated September 17, 2018, Texmo had submitted to SEBI the following breakup of GDR proceeds wherein Rs. 17.88 crore of the GDR proceeds was shown as investment in money market through Euram Bank:

(Amount in Rs. Lakhs)

Particulars	**31/03/2013**	**31/03/2012**
Investment in Equity Share Capital of Tapti	4.34	4.34
Loans and Advances to Tapti	4972.33	3131.39
Investment in Money market through Euram Bank	-	1788.59

83. However, upon perusal of Vintage's loan account statement along with Texmo's retail bank account statement with Euram Bank and Pledge Agreement, I note that Texmo had pledged its GDR proceeds of $ 9.99 million with Euram Bank against the loan availed by the Vintage and as on March 31, 2012, Vintage repaid loan amounting to only $6.50 million. Therefore, loan of $3.50 million (approximately Rs. 17.90 crore, at RBI exchange rate of Rs. 51.1565 per USD on 30/03/2012) was outstanding. In view of the above, I note that there was significant restriction on the right of ownership & readability and proceeds of disposal of Rs. 17.88 crore as on 30/03/2012 (i.e. amount pledged with Euram Bank) presented as Texmo's current investment in money market through Euram Bank, considering that the GDR proceeds were pledged by Texmo against the loan availed by Vintage. Since such significant restriction on its current investment was not disclosed by Texmo in its annual report for FY 2011-12, Thus, I conclude that Texmo has not complied with AS-13.

84.Further, AS 29 which deals with 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.*"

85.As mentioned in pre paras, Texmo had pledged its GDR proceeds of $9.99 million against the loan availed by Vintage for subscription of GDRs. As on March 31, 2012, Vintage has repaid loan to the extent of $ 6.50 million during the FY 2011-12 and an amount USD 3.49 million was outstanding as on March 31, 2012 (approximately Rs. 17.90 crore at RBI exchange rate of Rs. 51.1565 per USD on 30/03/2012). In the Instant matter, I note that Texmo could utilize its GDR proceeds only to the extent of amount repaid by Vintage and there was a possible obligation on Texmo for an amounts $ 3.49 million (approximately Rs. 17.90 crore) as on March 31, 2012 in the event of default by Vintage which is a contingent liability in nature.

86. Subsequently, it is noted that Vintage had defaulted in the repayment of loan amount of $ 3.49 million. Therefore, a contingent liability to the extent of Rs. 17.90 crore was required to be disclosed by Texmo in its financial statements for the 2011-12. From the examination of the Annual Report of Texmo for FY 2011-12, it is noted that Texmo 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 2011-12. In view of the same, I conclude that, Noticee 1 has failed to comply with the provision of clause 50 of Equity Listing Agreement read with.

87. Similarly, the Accounting Standard (AS)-1 deals with the disclosure of significant accounting policies followed in preparing and presenting financial statements. AS - 1 inter-alia states the following:

"*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."

88. From the above, it is clear under AS-1, Texmo is required to consider prudence, substance over form and materiality as major parameters while preparing its annual financial statements. I note that Texmo (in its financial statement for the Annual Report 2011-12) did not follow prudence since it did not disclose the contingent liability/make provision for potential liability 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 users of the financial statements. Therefore, I conclude that Noticee 1 failed to comply with AS-1.

89. In view of the above paragraphs, it is noted that, Texmo did not comply with accounting standards -1, 13 and 29 which is in violation of section 21 of SCRA read with clause 50 of the Equity Listing Agreement.

90. Further, on perusal of corporate announcements made by Texmo to National Stock Exchange (hereinafter referred to as "NSE") during the period October 2010 - May 2011, it was observed that Texmo disclosed to the exchanges on April 11, 2011 that: *"The Company has allotted 627500 Global Depository Receipts (GDR) at USD 15.93 each underlying 1,25,50,000 equity shares of Rs. 10 (Rupees ten only) each at Rs. 36/- (Rupees Thirty Six only) each to "The Bank of New York Mellon" in its capacity as a depository".*

91. Thus, I note that Texmo did not inform stock exchanges with regard to Board Resolution dated October 28, 2010 or entering into Pledge Agreement/ collateral security in its corporate announcements during the period October 2010 - May 2011. I find that the artificial arrangement of Loan and Pledge agreements, which resulted in the subscription of GDR issues of the Company, were not disclosed to the stock exchange in a true and complete manner but was reported as misleading news to the stock exchange which contained information in a distorted manner. Thus, I find that the corporate announcements made by the Texmo were false and misleading and the following material information were suppressed viz. (i). execution of Loan Agreement dated March 01, 2011 by Vintage for obtaining loan from EURAM Bank for subscribing the GDR issue of Texmo, (ii) execution of Pledge Agreement dated March 01, 2011 between Texmo and EURAM Bank, for pledging the GDR proceeds to provide security for the loan taken by Vintage, and (iii) Vintage was the only subscriber of 6,27,500 GDRs amounting to USD 9.99 million issued by Texmo. I find that all these events were critical information for the investors to take an informed decision regarding their investment in the securities of Texmo. I also find that Clause 36 of the erstwhile Equity Listing Agreement mandated that a listed company will also immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company. In the present matter, I note that GDRs are issued by any company for fund raising purposes and the proceeds of such GDR issue has to be used by the company for the specific business and operational purposes as disclosed by the issuing company in the offer documents. Therefore, if the proceeds of the issue are not received then it will affect the operations of the issuer company. The fact that Texmo had not received USD 3.49 million from its GDR proceeds for stated objective/utilisation was an important fact had an impact on the operations of Texmo. Therefore, I find that Texmo had failed to disclose the Pledge Agreement dated March 01, 2011 to NSE in violation of Clause 36 of the erstwhile Equity Listing Agreement read with Section 21 of the SCRA, 1956. I, further find that the corporate announcements made by Texmo from October 2010 - May 2011 regarding allotment of GDR issues without disclosing the actual scheme of

GDR issue had the potential to mislead the investors and/or influence the price of the scrip of Texmo and/ or created a false impression in the minds of the investors that the GDR issue was fully subscribed. Texmo itself had facilitated subscription of its GDR issue wherein the subscriber i.e. Vintage obtained loan for subscribing to the GDR issue of Texmo, and Texmo secured that loan by pledging the GDR proceeds with EURAM Bank and, in this connection, Texmo did not receive GDR proceeds to the extent of USD 3.49 million from EURAM Bank as the Vintage defaulted on the repayment of loan as a consequence of which EURAM Bank invoked its pledge on the remaining GDR proceeds of Texmo.Therefore, I conclude that Texmo failed to comply with clause 36(7) of the Equity Listing Agreement and therefore violated Section 21 of SCRA read with Clause 36(7) of Listing Agreement.

92. In view of the above, I hold that the acts of the company to finance the subscription of its own GDR by pledging its securities against loan availed by Vintage to subscribe to the GDRs issued by Texmo, subsequently making corporate announcement regarding successful subscription of its GDR, concealing and suppressing of material facts about the fraudulent arrangements made through the Pledge and Loan Agreement with EURAM bank by not informing the stock exchanges regarding the board meeting dated October 28, 2010, fraudulently approving the board resolution dated October 28, 2010 and about entering into pledge agreement with EURAM bank and not disclosing the potential liability of the pledged GDR proceeds, restrictions on realisation of investments etc. as per the accounting standards are nothing but fraud committed upon the innocent investors of the securities market and therefore such acts of company are in violation of provisions of Sections 4(2)(f),(k),(r) of PFUTP Regulations, 2003 and violation of section 21 of SCRA, 1956 r/w clause 36(7) and Clause 50 of the listing agreement.

Issue No. II: If the answer to Issue No. I is in affirmative do the violations, if any on the part of the Noticees would attract monetary penalty under :

a) Sections 15HA of SEBI Act and for the alleged violations by Noticees?

b) Section 23E of the SCRA for the alleged violations by Noticee 1?

93. The violations committed by the Noticees no. 1 to 7 as detailed in previous paras wherein a fraudulent scheme of GDR issue was carried out jointly and in close connivance with each other, had acted as one part of the entire fraudulent scheme by arranging for the subscription of the GDRs through Vintage using the pledge agreement to obtain a loan from the EURAM Bank and then to dispose the shares acquired through such GDRs, routing of the monies received from GDR proceeds of Texmo, thereby creating an elaborate façade of demand for the securities of Texmo and mislead the Indian investors, which was prejudicial to the interest of the investors and the securities market, calls for imposition of Monetary penalty as contemplated under the SEBI Act, 1992 against Noticee no. 1 to 7 and for contravention of listing conditions, Noticee no. 1 is liable for imposition of penalty under section 23E of SCRA.

94. Reliance is placed on the order of Hon'ble Supreme Court of India in the matter of *SEBI vs. Shri Ram Mutual Fund*, wherein it is held that: "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention n of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow*."

95. I note that, Section 15HA of the SEBI Act, 1992 provides for imposition of penalty in case of fraudulent and unfair trade practices committed by any person. As in the present case, it has been found that Noticee no. 1 have violated Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3 a), (b), (c), (d) and 4(1), (2)(f), (k) & (r) of PFUTP Regulations, 2003 and Noticee no. 2 to 7 have violated Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations. therefore, penalty under Section 15HA of SEBI Act, 1992 is attracted against Noticee no. 1 to 7 which reads as below –

SEBI Act, 1992

*“**Penalty for fraudulent and unfair trade practices.***

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

The provisions of section 15 HA as it stood prior to its amendment before September 8, 2014, at the time of occurrence of the aforesaid violations is reproduced herein below:

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

96. As per the dates of violations, Section 15HA of SEBI Act, as it stood prior to the amendment, is applicable. Nevertheless, guided by the principle of rule of beneficial construction of even ex post facto law to mitigate the rigour of law, as was laid by the Hon’ble Supreme Court in T*. Barai vs. Henry Ah Hoe and Ors.* (07.12.1982 - SC): MANU/SC/0123/1982 [(1983)1SCC177], the amended version of section 15HA of SEBI Act is being applied.

97. Further, with reference to the violations of section 21 of SCRA read with clause 50 of the Equity Listing Agreement and section 21 of SCRA read with Clause 36(7) of the Equity Listing Agreement makes Noticee no. 1 liable for monetary penalty under section 23E of SCRA. In this regard, I note that, the Hon’ble SAT in the matter of ***Suzlon Energy Ltd. and Anr. vs. SEBI*** (Appeal No. 201 of 2018) dated May 03, 2021 has held the following:

“<u>Section 23E provides that where a Company fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof then penalty would be a minimum of Rs. 5 lakh upto maximum of Rs. 25 crore. The words “fails to comply with the listing conditions” cannot mean failure to comply with the</u>

<u>conditions in the Listing Agreement.</u> One of the requirements in the Listing Agreement which is required to be complied with is Clause 36 <u>whereas Section 23E refers to the conditions which are imposed upon a Company when it is applying for its shares to be listed on the stock exchange platform. Section 23E has to be read along with Rule 19 of the Securities Contracts (Regulation) Rules, 1957 ('SCRR' for short).</u> <u>Rule 19 of the SCRR provides certain requirements with respect to a listing of securities on a recognized stock exchange.</u> Rule 19A provides that a Company has to continuously maintain listing requirements. Rule 21 provides conditions for delisting of securities. <u>Failure to comply with the listing conditions which are stated in Rule 19 would entail a penalty as provided under Section 23E. Thus, in our view violation of Clause 36 of the Listing Agreement will attract Section 23A(a) of the SCRA and will not attract Section 23E…</u>..." (emphasis supplied)

98. Further, I note that an appeal has been filed before the Hon'ble Supreme Court against the aforesaid order *vide* civil appeal no. 4741 of 2021. Also, a stay application has been filed before the Hon'ble Supreme Court by SEBI with respect to the findings of Hon'ble SAT in paragraphs 19 of the aforesaid order. In the view of the above, I note that the aforesaid stay application and the appeal is pending. It is important to highlight that *vide* orders in the matter of ***M/s NDTV vs. SEBI*** (Appeal no. 358 of 2015) dated August 07, 2019, and ***Oasis Securities Ltd. & Ors. Vs. SEBI*** (Appeal no. 316 of 2018), dated March 17, 2020, the Hon'ble SAT has upheld the imposition of penalty under section 23E of SCRA on the appellant companies therein for the violation of clauses of the listing agreement. The limited purpose of going into the issue of violation of listing agreement by the Company is to determine if the Company has violated the provisions of the listing agreement, and if yes, to impose penalty, however, the enforcement of penalty with respect to the violation under section 23E of SCRA shall be subject to the outcome of the aforesaid appeal before the Hon'ble Supreme Court.

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

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

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

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

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

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

(c) the repetitive nature of the default.

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

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

100. Having regard to the factors listed in section 15J of SEBI Act and in the light of Supreme Court judgement in the matter of *SEBI vs Bhavesh Pabari* (2019) 18 SCC 246, I note that, SCNs does not mention the amount of disproportionate gain or unfair advantage made as a result of the violations *or the amount of loss caused to an investor or group of investors as a result of the default*. However, it would be appropriate to once again refer to the order of the Hon'ble SAT in *Pan Asia Advisors Limited vs. SEBI*, cited above wherein, while interpreting the expression of 'fraud'

under the PFUTP Regulations, 2003, it was observed that *"…SEBI is empowered to take action against any person if his act constitutes fraud on the securities market, even though no investor has actually become a victim of such fraud. In fact, object of framing PFUTP Regulations is to prevent fraud being committed on the investors dealing in the securities market and not to take action only after the investors have become victims of such fraud."*

101. Thus, I find that, Texmo and its directors (Noticees 2-4), company secretary (Noticee no. 5) and Noticee no. 6 and 7 orchestrated the fraudulent scheme of GDR issue discussed in the previous paras in April 2011 and thus have misled the Indian investors by concealing the information of entering into Pledge and loan Agreement to facilitate and finance the issue of GDRs of company at the cost of shareholders and then cancelling all of the GDRs of Texmo before its GDR termination program and thereby fraudulently issuing shares underlying the GDRs and then selling those converted shares in Indian market by AP connected entities for an approximate amount of Rs. 15 crores. Further, no information was provided to Stock Exchanges and in annual reports of company about pledge and loan agreement. Moreover, Texmo made false announcement that its GDRs were genuinely subscribed thus causing a fraud on the innocent investors. I note that the magnitude of fraud is enormous to the extent of the amount of issue of GDR i.e. USD 9.99 million and thus adequate penalty should be levied so that it serves as a deterrent for any such acts. Further, there is nothing on record to show that loan amount to the tune of USD 3.49 million (approximately Rs. 17.90 crore, at RBI exchange rate of Rs. 51.1565 per USD on 30/03/2012) which was paid by Texmo at the expense of shareholders of company has been paid back to the company.

102. Also, I note that, actions have been taken by SEBI in the past against Noticee Nos. 6 and 7 for their involvement in similar fraudulent GDR schemes and parallel 11B proceedings has been initiated *inter-alia* against Noticees in the matter.

Order

103.After taking into consideration all the facts and circumstances, replies of the Noticee no. 1,2,3,4,5 and 7, material /facts available on record and also the factors mentioned in the preceding paragraphs, I, in the exercise of the powers conferred upon me under section 15-I of SEBI Act read with Rule 5 of SEBI Adjudication Rule and in the exercise of powers conferred upon me under section 23-I of SCRA,1956 read 5 of the SCRA Adjudication Rules, hereby impose the following penalty on the Noticees for the aforementioned violations, as discussed in this order:

S.NO	Noticee	Provisions	Penalty(Indian Rupees)
1	Texmo Pipes and Products Ltd	Section 15HA of SEBI Act	Rs. 10,00,00,000/-(Ten Crore Only)
		Section 23E of SCRA	Rs. 25,00,000/-(Twenty-five lakh only)****
2	Mr. Sanjay Agrawal	Section 15HA of SEBI Act	Rs. 20,00,000/- (Twenty lakh only)
3	Mr. Vijay Prasad Pappu	Section 15HA of SEBI Act	Rs. 20,00,000/-(Twenty lakh only)
4	Mr. Shanti Lal Badera	Section 15HA of SEBI Act	Rs. 10,00,000/-(Ten lakhs only)
5	Mr. Rishabh Kumar Jain,	Section 15HA of SEBI Act	Rs. 2,00,000/-(Two lakhs only)
6	Mr. Arun Panchariya	Section 15HA of SEBI Act	Rs. 25,00,000/-(Twenty Five lakhs only)
7	Mr. Mukesh Chauradiya	Section 15HA of SEBI Act	Rs. 10,00,000/-(Ten lakhs only)

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

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

105.The aforesaid Noticees shall remit/pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI-Penalties

Remittable to Government of India", payable at Mumbai, or, through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

106.The Noticees may also forward the said Demand Draft or the details/confirmation of penalty so paid to "The Division Chief (Enforcement Department-DRA1), Securities and Exchange Board of India, SEBI Bhavan-II, Plot No. C7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai-400051.". The Noticees shall also provide the following details while forwarding the Demand Draft/ payment information:

1. Name and PAN of the Noticee
2. Name of the case/matter
3. Purpose of payment- payment of penalty under AO proceedings
4. Bank Name and Account Number
5. Transaction Number

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

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

Place: Mumbai **VIJAYANT KUMAR VERMA**

Date: June 28, 2022 **ADJUDICATING OFFICER**