

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: Order/GR/BM/2022-23/23317]

ORDER UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of:

Mr. P.V.R. Murthy (PAN: ABRPM1271B)

In the matter of GDR Issue by Birla Cotsyn (India) Ltd.

BACKGROUND

1. The Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigations into the alleged irregularities in the Global Depository Receipts (hereinafter referred to as “**GDR**”) Issue by **Birla Cotsyn (India) Limited**, (hereinafter referred to as “**the Company / BCIL**”) during the period from February 15, 2010 to April 15, 2010 (hereinafter referred to as “**Investigation Period / IP**”).
2. BCIL is a company whose shares are listed on the BSE Ltd. (BSE) and National Stock Exchange of India Ltd. (NSE). The investigation, prima facie, revealed that BCIL had issued 9.69 million GDRs (amounting to USD 24.99 million) on

March 15, 2010, equivalent to its 96,89,00,000 equity shares of Re.1 each, and the said issue was subscribed by only one entity viz. Vintage FZE (now known as Alta Vista International FZE) (hereinafter referred to as '**Vintage**'). It was observed that the subscription amount was paid by Vintage by obtaining a loan from European American Investment Bank AG (hereinafter referred to as '**EURAM Bank**') by entering into Loan Agreement dated February 23, 2010 with EURAM Bank.

3. It was observed that directors of BCIL in its Board Meeting held on December 21, 2009, had passed Board Resolution *inter alia* authorizing the opening of an account with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue of BCIL and also for using the funds deposited in the said bank account as security in connection with loans, if any. BCIL had signed a pledge agreement dated February 23, 2010 with EURAM Bank pledging GDR proceeds as collateral against the loan availed by Vintage, executed by Mr. P. V. R. Murthy (**Noticee**), Director of BCIL. Vide the said pledge agreement, BCIL had pledged the GDR proceeds against the loan availed by Vintage FZE for subscribing to GDRs of BCIL, thus securing Vintage FZE's loan. The loan agreement and the pledge agreement enabled Vintage to avail loan from the EURAM Bank for subscribing to GDR of the company. The said GDR issue would not have been subscribed, had the company not given such security towards the loan taken by Vintage. The bank account in which GDR proceeds were held was in the name of the company but the amount deposited in the account was not at the disposal of the company as the same was pledged as security against the loan availed by Vintage. Therefore, it was alleged that the scheme of issuance of GDRs was fraudulent.

4. As the said execution of Pledge agreement by the Noticee on behalf of BCIL and he was also present in the aforesaid board meeting where the decision to come up with GDR issue by BCIL was taken and in furtherance to the same board resolution was also passed, it was alleged that the Noticee had acted as party to the fraudulent scheme.
5. SEBI had, therefore, initiated adjudication proceedings *inter alia* against the Noticee, under Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) for the alleged violation of the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 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**”)

APPOINTMENT OF THE ADJUDICATING OFFICER

6. Earlier, Shri Biju S, Chief General Manager, was appointed as Adjudicating Officer (AO) in the matter, which was communicated to the AO vide order dated January 09, 2018, to inquire into and adjudge under Section 15HA of the SEBI Act, 1992 and Section 23E of the SCRA the aforesaid violations. Subsequently, vide Order dated July 06, 2018, Shri Satya Ranjan Prasad was appointed as the Adjudicating Officer in the matter in the place of Shri Biju. S. Thereafter, the undersigned was appointed as the Adjudicating Officer in the instant case, which was communicated vide communique dated May 22, 2019. Thereafter, an order dated May 25, 2022 (hereinafter referred to as the “**earlier order**”), was passed.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

7. Show Cause Notice bearing No. EAD-2/ADJ/BS/AE/OW/18563/1/2018 dated June 29, 2018 ('**SCN**') was issued *inter alia* to the Noticee in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the SEBI Adjudication Rules for the alleged violation of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.
8. The SCN had returned undelivered from the addresses of the Noticee which were available in our records. Thereafter, a copy of the SCN alongwith the hearing notice was affixed at the same addresses and was also published in Hindi and English Newspaper on May 04 and 03, 2022 respectively (as per Rule 7 of SEBI Adjudication Rules), wherein Mr. PVR Murthy was advised to download the soft copy of the SCN from SEBI's website and appear for personal hearing. However, no response was received from him.
9. The earlier order passed against BCIL, its Directors and the Noticee, *inter alia* holding that the Directors of BCIL and the Noticee had aided and abetted the fraudulent scheme of self- financing of its GDR issue by the company and had *inter alia* imposed a penalty of Rs. Rs.20,00,000/- (Rupees Twenty Lakhs) on the Noticee.
10. The Noticee had appealed the aforesaid order before the Hon'ble SAT and vide order dated November 22, 2022, the order was set aside and was remitted to the Authority of SEBI with respect to the Noticee.

11. Subsequent to the Order passed by Hon'ble SAT dated November 22, 2022 and in furtherance to the direction given in the said order, vide order dated November 30, 2022, the undersigned was appointed as Adjudicating Officer ("AO") in terms of Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**") read with Section 15-I of the Act to inquire and adjudge the aforesaid violations under Section 15HA of the SEBI Act, 1992. Accordingly, as directed by the SAT, the nominated advocate of the Noticee visited SEBI office on the said date and the SCN along with its annexures was served through hand-delivery and the same was acknowledged.

12. The Noticee vide letter dated January 13, 2023, received by SEBI on January 19, 2023, had filed its written submissions in response to the SCN, the contents whereof are summarized as given below:

- a. The Noticee has submitted that, he has faced extreme hardship in defending himself against the allegations levied in the SCN on account of considerable quantum of time that has passed between the alleged date of purported violations and the date of notice and the date of receipt of the said notice. Since approx. 12 years have passed from the occurrence of violation, initiation or continuation of present proceedings shall be gross violation of principle of natural justice.
- b. In light of Article 14 of the Constitution of India it was stated that the Noticee has been denied meaningful opportunity to present his case due to such delay. The delay has severely handicapped and incapacitated the Noticee to defend himself.

- c. In order to substantiate the contention of delay the Noticee has placed reliance on various orders of Hon'ble SAT and Hon'ble Supreme Court. Such as:
- a) *Libord Finance v. Whole Time Member, SEBI* [2008] 86 SCL 72 (SAT)
 - b) *Hindustan Finstock Limited v. SEBI* [2003] 47 SCL 530 (Guj.)
 - c) *Bharat J. Patel vs. SEBI* [Date of Order September 09, 2020]
 - d) *ICICI Bank Limited v. SEBI* (Appeal No. 583 of 2019; Date of Order July 08, 2020)
 - e) *Ashok Shivilal Rupani and Ors. Vs. Securities and Exchange Board of India* (Appeal No. 417 of 2018)
 - f) *Ashok Gunvantbhai Shah and Ors. V. SEBI* (Appeal No. 169 of 2019; Date of Order January 31, 2020.
 - g) *Adjudicating officer, Securities and Exchange Board of India vs. Bhavesh Pabari* (Civil Appeal No. 11311 of 2013; Date of Order February 28, 2019)
- d. Quoting the aforesaid orders, the Noticee submitted that the unreasonable delay has put him in a state of bereavement and hampers him in effectively defending himself as most of the documents which are required to prove his case are not available with him.
- e. The Noticee has further pleaded that he is an old aged retired person with comorbidities and already facing investigations by EOW and all the accounts are already attached and frozen. He was not at all involved in the day-to-day affairs/ business of the company and the company had Managing Director, CEO, CFO for the same. Noticee has always acted as per the instructions of the Board of Directors through the duly convened Board Meetings and was no longer involved in the working and daily affairs of the company. Opening of bank account with EURAM bank was similarly done on their instructions. Noticee was only appointed as Managing Director of the company on August 10, 2011 post

issue of the subject GDRs and resigned from the company on September 30, 2012.

- f. Noticee was not aware of the misconduct on part of the company or other directors of the company. There is not even an iota of evidence in the SCN that can prove that there was wrongdoing on the part of Noticee and there was no monetary benefit derived by the Noticee through his actions.
- g. The Noticee is already serving 3 years' debarment imposed by the Learned Whole Time Member of SEBI in the present matter. The order was passed without giving him an opportunity to defend and without following principle of natural justice.
- h. GDR issue is not an area of expertise of Noticee however he was acting as per the advice of the professional advisors engaged by the company for the said issue. The documents signed by the Noticee in relation to GDR issue were also on the advice of the professionals who were expert in the GDR. Further, Noticee being merely a signatory cannot be a reason to implead in the present proceedings. Noticee was just bonafidely carrying out instructions given to him by the Board of the company.
- i. In view of the above, the Noticee has submitted that all the allegations raised in SCN are baseless, uncorroborated and are merely surmise. Arun Panchariya and Pan Asia Advisors were main perpatrators and the company was misguided by them to sign certain papers/ documents. No adverse inference may be drawn against Noticee for being part of the Board and for merely affixing his signature.

13. Further, in terms of Rule 4(3) of SEBI Adjudication Rules, vide email dated January 03, 2023, an opportunity of personal hearing was granted to the Noticee on January 10, 2023. The authorized representative (“AR”) of the Noticee vide email dated January 05, 2023 sought extension to submit reply to the SCN till January 19, 2023 and adjournment for the hearing scheduled on January 10, 2023. Subsequently, vide email dated January 06, 2023, it was informed to the AR that the extension sought has been accepted and new date of personal hearing was provided i.e. January 20, 2023. On the said date the Noticee, through its AR, appeared before me through web based video conference and reiterated the submissions already made by the Noticee vide letter dated January 13, 2023.

14. Taking into account the aforesaid facts, I am of the view that principles of natural justice have been followed in the matter by granting the Noticee opportunity of being heard and submit his reply in the matter. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record and the reply of the Noticee.

CONSIDERATION OF ISSUES

15. I have carefully examined the allegations against the Noticee and his replies to the SCN and the documents / material available on record. The issues that arise for consideration in the present case are:

- I. Whether the Noticee has violated the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations?

- II. Does the violation, if established, attract monetary penalty under Section 15HA of the SEBI Act, 1992?
- III. If yes, then what should be the quantum of penalty?

OBSERVATIONS AND FINDINGS

16. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of the SEBI Act, 1992 and PFUTP Regulations alleged to have been violated by the Noticee. The same are reproduced herein below:

SEBI Act, 1992:

“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, 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 thereunder;*
- (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 thereunder.*

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.

PRELIMINARY ISSUE RAISED BY NOTICEE

17. Before proceeding with the merits of the matter, it would be appropriate to first deal with the preliminary contention raised by Noticee. The Noticee has contended that the instant proceedings deserve to be dropped on account of delay as the proceedings have been initiated after a lapse of more than twelve (12) years from the date of the GDR issuance and has caused prejudices against him as he cannot defend himself effectively. In this regard, the Noticee has placed reliance on various decisions viz; *Libord Finance v. Whole Time Member*, (supra) *Hindustan Finstock Limited v. SEBI* (supra) *Bharat J Patel vs. SEBI* (supra), *Ashok Shivlal Rupani & Anr. vs. SEBI* (supra), *ICICI Bank Ltd. vs. SEBI* (supra), *Ashlesh Gunvantbhai Shah & Ors. vs. SEBI* (supra), etc., However, it is noted that the present proceeding and the issues involved herein are different to that involved in the orders cited by the Noticee.

18. Further, in defense to the said contention, I would draw reference to the Hon'ble SAT order in *Jindal Cotex Ltd. and others vs. SEBI* (Appeal No. 376 of 2019 decided on 05.02.2020) whereby while dealing with an appeal emanating from the similar GDR issue wherein a plea of delay was also taken by the appellant therein, Hon'ble SAT observed as under:

“....Arguments on delay in investigation and consequently affecting natural justice are also devoid of any merit in the matter since this Tribunal is aware of the complexity involved in the entire manipulative GDR issue; how long it took SEBI to gain information relating to the various entities from multiple jurisdictions in the matter of PAN Asia Advisors Limited (Date of Decision: October 25, 2016 in Appeal No. 126 of 2013) and Cals

Refineries Limited (Appeal No 04 of 2014; Date of Decision 12.10.2017)
etc....”

19. It is therefore, the orders quoted by the Noticee to support his contention of inordinate delay may not be helpful, firstly, because as seen in *Jindal Cortex Ltd.* (supra) the Hon'ble SAT has accepted the complexities involved in the matters pertaining to GDR issues and held that the time period taken by SEBI in such cases is justified. Secondly, the orders referred by Noticee may not be squarely applicable in the instant case. For instance, both in *Libord Finance* (supra) and *Hindustan Finstock Limited* (supra) the orders challenged before Hon'ble SAT were Section 11B directions passed by SEBI which has different implications than what is pursued in the instant adjudication proceeding.

20. For instance, in *Libord Finance* (supra) it was held “*We do not think that the Board was right in initiating proceedings against the appellant under Section 11B of the Act. It should have proceeded under the Regulations. ...It could still proceed under the Enquiry Regulations but in its wisdom, it chose to proceed under Section 11B.*” (Emphasis supplied)

21. In another case relied upon by the Noticee i.e. *Bharat J. Patel vs. SEBI* (supra) the matter pertained to certain fraudulent trades done by the appellant who is a broker and was unable to defend his case due to want of records and trade data, which he had no obligation to preserve after certain period of time. However, in the instant case, the Noticee has failed to demonstrate as to how precisely the delay has caused prejudice to him and his right to properly defend himself. A mere sweeping statement was made by the Noticee stating that the documents required to prove his case are not available without specifically defining the documents may not be acceptable. Further, it is also noted that all

the relevant documents were duly provided in the form of annexures to the SCN, the veracity of which is not disputed / challenged by the Noticee.

22. In the instant case, while considering the aspect of delay, the direction given by Hon'ble Supreme Court in *University of Delhi vs Union of India & Ors.* (Civil Appeal No. 9488 of 2019) was kept in mind and also understood that there is no standard yardstick for condoning the delay, and the same needs to be considered on a case-to-case basis depending on the varying circumstances and facts. It was held therein that,

“20. the position is clear that, by and large, a liberal approach is to be taken in the matter of condonation of delay. ...In that background while considering condonation of delay, the routine explanation would not be enough but it should be in the nature of indicating “sufficient cause” to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the Courts based on the fact situation.”

23. In view of the above, I am inclined to reject the contention raised by the Noticee as the Hon'ble SAT has accepted the complexity involved in the GDR issues and held that such matters are bound to take longer than usual time as various entities from other jurisdictions are also involved. Also, there are more than 50 Indian Companies who were found by SEBI to be involved in fraudulent GDR issuance and disclosures using similar modus operandi and SEBI has been taking actions against such companies and other associated persons.

24. In addition to the aforesaid observation, I also note that the SCN was previously served upon the Noticee on the addresses available on the records by way of Newspaper publication, which is a substitute method of serving the notices, as the SCN could not be served through post and returned undelivered. Subsequently, the SCN was also sent to another address of Noticee which was

provided by the Noticee while filing the appeal before Hon'ble SAT i.e. C/402, Fortune Tower, Madhupur, Hyderabad – 82. However, the SCN returned undelivered from this address as well.

Issue I: Whether the Noticee has violated the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations?

25. From the material available on record, I note that BCIL had issued 9.69 million GDRs (amounting to USD 24.99 million) on March 15, 2010, equivalent to 96,89,00,000 equity shares of Rs.1 each. Summary of the aforesaid GDRs issued by BCIL as submitted by BCIL vide its letter dated June 08, 2015, is tabulated below:

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
15 March, 2010	9.69 (at USD 2.58 each GDR)	24.99	HSBC Bank	96,89,00,000	The Bank of New York Mellon	Pan Asia Advisors Ltd.	EURAM Bank, Austria	Luxembourg Stock Exchange

26. SEBI Investigations observed that subscription to the GDR was obtained through a loan agreement as well as a pledge agreement, details of which are

discussed in the following paragraphs, and therefore, it was alleged that the GDR issuance was done through a fraudulent arrangement.

27. Investigations observed that an entity viz. Vintage had obtained a loan of USD 24.99 million by entering into a Loan Agreement dated February 23, 2010 with EURAM Bank to subscribe to the GDRs of BCIL. The aforesaid Loan Agreement was signed by Mr. Arun Panchariya in the capacity of Managing Director of Vintage. On perusal of the Loan Agreement, I note that the following has been inter alia mentioned therein –

1. Currency and amount of facility:

USD 24,997,6200.00

(The amount is exactly the same amount raised by BCIL through the said GDR offering.) {Explanation supplied}.

2. Nature and purpose of facility:

To provide funding enabling Vintage FZE to take down GDR issue of 9,689,000 Luxembourg public offering and may only be transferred to EURAM account nr. 580015, Birla Cotsyn (India) Limited.

(The specific purpose of the loan/ draw down was for the purpose of subscribing to the GDR issue of BCIL. 580015 is the client account number of BCIL. Exactly, the amount of USD 24,997,6200.00 was credited to the escrow account of BCIL with EURAM Bank on the same date of loan being debited to the account of Vintage i.e., March 12, 2010 {Explanation supplied}.

6. Security

6.1 In order to secure all and any of the Bank's claims and entitlements against the Borrower, arising now or in the future out of or in connection with the Loan or any

other obligation or liability of the Borrower to the Bank, including without limitation other loans granted in the future , it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be demanded by the Bank:

- *Pledge of certain securities held from time to time in the Borrower's account no. 540012 at the Bank as set out in a **separate pledge agreement** which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement. (emphasis supplied)*
- *Pledge of the account no. 580015 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.*

28. From the aforesaid Loan Agreement, I note that Vintage had availed a loan facility to the extent of USD 24.99 million from EURAM Bank to subscribe to the GDRs of BCIL.

29. From the certified true copy of BCIL's Board Resolution dated December 21, 2009 provided by EURAM Bank, and copy of minutes of the Board Meeting of BCIL held on the same date provided by BCIL to SEBI, it is observed that the following resolution was inter alia passed in the said meeting—

“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 P.V.R. Murthy, Director** and Shri Tushar Dey, Company Secretary, of the Company be and are hereby jointly and severally authorized to sign, execute, any application, agreement, escrow agreement,*

document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.”

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

30. From the aforesaid minutes of the Board Meeting it is observed that the Board of Directors of BCIL had jointly and severally authorized, Noticee and Shri Tushar Dey to sign, execute, any application, agreement and other paper(s) from time to time as may be required by EURAM Bank. For this purpose, Noticee / Shri Tushar Dey were inter alia authorized to carry and use the seal of BCIL. In the said resolution, the Board of Directors had further authorized EURAM Bank to use the funds deposited in the bank account opened with EURAM Bank in the manner of subscription money in respect of the GDR issue of the company, as security in connection with loans, if any.

31. From the said copy of the minutes of the meeting, it is observed that the Noticee along with other directors had attended the Board meeting dated December 21, 2009 and approved the aforementioned resolutions.

32. I note that, subsequently BCIL had entered into a Pledge Agreement with EURAM Bank on February 23, 2010. The said Pledge Agreement was signed by Noticee on behalf of BCIL, in the capacity of Director of BCIL. The salient clauses of the Pledge Agreement are inter alia as under:

1. Preamble

By loan agreement K23022010-005 (hereinafter referred to as the "Loan Agreement") dated 23 February 2010, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahmadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates ("the Borrower") in the amount of USD 24,997,620.00. The Pledgor has received a copy of the Loan Agreement No. K23022010-005 and acknowledges and agrees to its terms and conditions."

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 of \$ USD 24,997,620.00 existing from time to time at present or hereafter on the **securities account(s) no. 580015** 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. 580015 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account ") and all amounts credited at any particular time therein. The interest rate on the deposit in the amount of facility amount of the Loan Agreement will be fixed at 1.00% p.a.

(the Pledged securities account and the Pledged Time Deposit account hereinafter referred to as the "Pledged Accounts", the Pledged Securities and the Pledged Accounts hereinafter collectively referred to as "Collateral")

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

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

6. Realisation of the Pledge:

6.1 In the case that the **Borrower fails to make payment** on any due amount, or defaults in accordance with the Loan Agreement, The Pledgor herewith grants its express consent and the **Bank is entitled to apply the funds in the Pledged 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 transactions, 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."

33. I note that the Pledge Agreement refers to the Loan Agreement dated February 23, 2010 between the borrower i.e. Vintage, and EURAM Bank, whereby Vintage was granted a loan of USD 24,997,620.00, and it is stated that the Pledgor i.e. BCIL through Noticee has received a copy of the said Loan Agreement and acknowledges and agrees to its terms and conditions. By signing the Pledge Agreement, BCIL through Noticee is deemed to be clearly aware that Vintage was the subscriber to the GDR issue. On perusal of the contents of the Pledge Agreement, it is noted that the Pledgor had agreed to pledge all its rights, title and interest in and to the securities deposited in the Pledge Securities Account and funds in Pledged Time Deposit Account so as to secure the present and future obligations of Vintage. The Pledge Agreement also expressly states that:

"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".

34. Regarding the dates, it is noted that the Pledge Agreement and the Loan Agreement were both dated February 23, 2010. Further, I also note that Clause

6.1 of the Loan Agreement specifies that the Pledge Agreement was an integral part of the Loan Agreement.

35. From the Loan Agreement and the bank account statement of Vintage, I note that Vintage had availed a loan from the EURAM Bank to the extent of USD 24,997,620.00 to subscribe to the GDRs of BCIL. From the statement of Vintage's bank account and the escrow account for the GDR issue, it is observed that Vintage received the loan amount of USD 24,997,620.00 on March 12, 2010 and the same was then transferred to the escrow account (No. AT341934005800150029) of BCIL on the same date. From the above, it is evident that GDR subscription money was received from only one entity i.e. Vintage. Accordingly, I note that the GDR issue of BCIL comprising 9.69 million GDRs amounting to USD 24.99 million, was subscribed by only one entity, i.e. Vintage. I further note that the amount was transferred to BCIL's retail account (No. AT301934005800150101) held with EURAM Bank on the same day i.e. March 12, 2010, and that BCIL's account was pledged with EURAM Bank under the Pledge Agreement.

36. It is observed from Vintage's loan account statement with EURAM Bank that the Vintage repaid the entire loan amount in several installments. Details of repayment of loan by Vintage as provided by EURAM Bank as well as subsequent transfer of fund by BCIL are tabulated below: -

Date of transfer of funds	Amount repaid by Vintage (USD)	Amount of funds transferred from BCIL's EURAM Bank a/c to:
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		1) BCIL's bank a/c in India (USD), 2) BCIL's UAE subsidiary's bank a/c and 3) Other entities
06/07/2010	145,700	142,050
27/07/2010	765,000	762,410
28/07/2010	9,000	12,038
01/09/2010	150,000	150,000
20/09/2010	300,500	300,000
18/01/2011	2,000,000	2,000,000
31/01/2011	1,800,000	1,800,000
03/02/2011	2,000,000	2,000,000
18/03/2011	2,000,000	2,000,000
03/05/2011		11,506
10/05/2011		233,000
11/05/2011		13,507
12/05/2011	1,500,000	
13/05/2011		1,500,000
26/07/2011	1,500,000	1,500,000
27/07/2011	1,700,000	1,700,000

02/08/2011	400,000	400,000
16/08/2011	3,500,000	3,500,000
18/08/2011	2,000,000	2,000,000
22/08/2011	2,000,000	2,000,000
23/08/2011	1,500,000	1,500,000
25/08/2011	1,000,000	1,000,000
26/08/2011	727,420	772,313
Total	24,997,620	25,296,823

37. From the details of fund transfer stated immediately above, I observe that only after Vintage repaid loan instalments to EURAM Bank, that BCIL could make payments from its account maintained with the same bank and such payments were exactly for the same amount or less amount except for adjustments on account of bank charges / interest earned by BCIL. Therefore, it is evident that the amount transferred from BCIL's EURAM Bank account was dependent on the repayment of the loan by Vintage to EURAM Bank.

38. I further note that as and when, loan repayments were made by Vintage, BCIL used to transfer funds from its EURAM Bank account to 1) BCIL's bank account in India, 2) BCIL's UAE based subsidiary's bank account, and 3) various entities. In view of the above, I note that every transfer from BCIL's account is in sync with the date and amount of loan repaid by Vintage to EURAM Bank. Therefore, I note that the amount transferred from BCIL's EURAM account was dependent

on the repayment of the loan by Vintage. 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.

39. The entire trail of funds as can be observed from the bank account statements of Vintage and BCIL with EURAM Bank and the pattern of subsequent disbursements as already observed above, when seen as a whole, strongly establishes collusion between Vintage and the company along with aforesaid Noticee with respect to the subscription of the said GDR issue of BCIL. In this regard, I refer to the Hon'ble SAT Order dated July 14, 2006, in the case of **Ketan Parekh vs. SEBI** (Appeal no. 2/2004), wherein, Hon'ble SAT has observed 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.” [Emphasis supplied]

40. Thus, I note that in the above manner, the obligation of Vintage under the Loan Agreement was secured by BCIL through the Pledge Agreement, and accordingly, the subscription of the GDR issue was facilitated in the above manner. I note that due to such pledging of the GDR proceeds, the funds were not available at BCIL's disposal. In view of the above, I note that the GDRs were not issued in a genuine manner, but rather through a fraudulent arrangement.

41. I also note that with regards 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 observed:

"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."

42. In the present matter, I note that the GDR subscription amount of USD 24.99 million was not available to BCIL for utilization until the loan taken by Vintage for subscribing to the GDRs was repaid to the EURAM Bank. I also note that after the subscription of GDR on March 15, 2010, a partial amount of USD 142,050/- could be made available to the company only on July 06, 2010 i.e. after a period of around four months. The last instalment towards amount of USD 24.99 million along with accrued interest was available to BCIL only in August 26, 2011 when the loan was fully repaid by Vintage to EURAM Bank. Subsequently, the said GDR proceeds along with the interests accrued thereupon less bank charges was transferred by BCIL.

43. As discussed above and as per the disclosure made by BCIL to stock exchange during investigation period that the BCIL suppressed the material and price

sensitive information from the stock exchange by not informing the following viz.

(i). execution of pledge agreement dated January 11, 2010 by BCIL in favor of EURAM Bank pledging the GDR proceeds for providing security to the loan taken by Vintage, (ii) linking of the aforesaid pledge agreement to the loan agreement dated January 11, 2010 by Vintage for obtaining loan from the EURAM bank for subscribing the GDR issue of BCIL and (iii) Vintage was the only subscriber of GDR issued by BCIL and the subsequent corporate announcements made by BCIL, might have mislead the investors and created a false impression in the minds of the investors that the GDR issue was fully subscribed whereas, BCIL had itself facilitated subscription of its GDR issue through the back end arrangement wherein the subscriber (Vintage) obtained loan from the EURAM Bank for subscribing the GDR issue of BCIL and BCIL secured that loan by pledging the GDR proceeds with the EURAM Bank. (Issue of corporate announcements dealt in earlier order)

44. The aforementioned act of BCIL 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.”

45. In view of the above observations, I note that the Noticee being the Director and Authorised Signatory of BCIL and while exercising his power executed pledge agreement with the EURAM Bank whereby it was stated that the amount shall be pledged against loan amount taken by Vintage for subscribing the GDR issue of ZBIL suggests that the Noticee has clearly allowed himself to be a part of the fraudulent scheme. Further, EURAM Bank, through the said pledge agreement, was also authorized to use the proceeds of GDR issue against any default made by Vintage of repayment of the said loan amount.

46. It was submitted by the Noticee that, he was not at all involved in the day-to-day affairs/ business of the company and the company had Managing Director, CEO, CFO for the same. Noticee has always acted as per the instructions of the Board of Directors through the duly convened Board Meetings and opening of bank account with EURAM bank was similarly done. This contention may not be accepted as it is a dangerous proposition to contend that the director was acting on the direction of other directors of the company. It is settled principle that a director of company has fiduciary duty towards the company and hence while discharging his role as a director the interest of company should be their paramount consideration and should not be compromised at any cost. This responsibility cannot be transferred and becomes even more critical in case of

Public Companies where number of shareholders / investors are huge and are more dependent on directors for efficient management of the company, as direct oversight is not feasible. The fiduciary capacity with which the Directors have to act enjoins upon them a duty to act on behalf of a company with utmost good faith, utmost care and skill and due diligence and in the interest of the company they represent.

47. The Board of Directors take decisions by way of passing resolutions in the board meetings on approval of majority of directors present in the said meeting. For the said purpose each director has been provided with the power to cast their vote. In the present case also the issue of GDR by BCIL was approved by way of passing similar board resolution dated December 21, 2009 which was attended by Noticee. Here, it is also important to note that the Noticee in the instant case is also a Chartered Accountant, law graduate and MBA and possesses 45 years of experience as submitted through his reply. Hence, it is not prudent for such an experienced professional to act solely on the advice of other people specially where the Noticee is holding important and responsible position as director of a public listed company. Further, it is observed that the Noticee was also found to be involved in few other similar fraudulent GDR issues and was discharging responsibility of similar nature in those cases as well.

48. Here I would refer to the order of Hon'ble SAT in the matter of *Adi Cooper vs. SEBI* (Appeal no. 124 of 2019, DoD: November 05, 2019), where it was held that *"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."* Further for the purpose of determining the liability of the

directors where a company is found to be in contravention of any of the provisions of SEBI Act or any rule, regulations framed therein, it is important to mention Section 27 of the SEBI Act, which states:

27. Contravention by companies.

(1) ...

(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.* (emphasis supplied)

49. In this regard, I note that vide order earlier order, BCIL has already been found to be in violation of various provisions of SEBI (PFUTP) Regulations and Securities Contract (Regulations) Act, 1956 with the same GDR issue that is examined in the present proceeding. Further, I will also refer to the order of Hon'ble Supreme Court, in the appeal of *N Narayanan v. Adjudicating Officer, SEBI* (Civil Appeals No. 4112-4113 of 2013) wherein it was observed that:

“33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be 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 business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.”

50. In view of the aforesaid, the contention of the Noticee that he was not at all involved in the day-to-day affairs/ business of the company and the company had Managing Director, CEO, CFO for the same and the Noticee had always acted as per the instructions of the Board of Directors may not be accepted as a ground to discharge him of his responsibility.

51. The Noticee has further contended that it has signed the said Board Resolution and Pledge Agreement on good faith trusting the professionals who had expertise in GDR issue. In this regard, I note that directors are bound by the maxim *delegates non-protest delegare* i.e. authority once delegated cannot be delegated again. Shareholders have appointed him because of their faith in his skill, competence and integrity and they may not have the same faith in another person. This issue came up before Hon'ble Supreme Court in the case of *J.K. Industries v. Chief Inspector of Factories* [1996] 6 SCC 665; Decided on September 25, 1996). Whereby it was held that the rule is, however, not that rigid. The Act or Articles of Association of the Company may make a delegation of functions to the extent to which it is authorized. Also, there are certain duties, which may, having regard to the exigencies of business, properly be left to some other officials. *A proper degree of delegation and division of responsibility is permissible but not a total abrogation of responsibility. A director might be in breach of duty if he left to others the matters to which the Board as a whole had*

to take responsibility. Directors are responsible for the management of the company and cannot divest themselves of their responsibility by delegating the whole management to agent and abstaining from all enquiries. He is the agent of the company except for matters to be dealt with by the company in general meeting and not of the other members of the Board. [Emphasis Supplied]

52. The Noticee has also contended that Arun Panchariya and Pan Asia Advisors were main perpetrators and the company was misguided by them to sign certain papers/ documents. In this regard, I note that the pledge agreement signed by the Noticee explicitly had the mention of Vintage FZE (where Arun Panchariya was the Managing Director and sole beneficial owner) being the beneficiary of the said agreement and also in the pledge agreement the Noticee acknowledged receiving copy of Loan Agreement signed between EURAM Bank and Vintage for the sole purpose of subscribing the said GDR issue of ZBIL. Considering that everything was on paper and transparent hence the Noticee had prior information of the entire scheme. Further, nothing has been brought on record to show that any action has been taken against Arun Panchariya or Vintage for the alleged fraud by the company till date. Hence, the contentions are without any merit and consequently denied.

53. In the end, I 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”.

54. I note that the Hon’ble Supreme Court in the same judgment, has also observed 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, all these provisions get attracted in a situation....”.*

55. In view of the above, I hold that the GDR issue would not have been subscribed had BCIL not given any such security towards the loan taken by Vintage and the entire scheme involving entering into pledge agreement, making corporate announcement that the GDRs were subscribed without disclosing the arrangement to the investors resulted in publication of misleading news to the stock exchanges which contained information in a distorted manner so as to influence the decision of the investors by creating a make belief picture that GDR issue was genuinely subscribed (violations regarding misleading disclosures against the Company has already been dealt in the order dated May 25, 2022). Hence, the Noticee, being director and authorized signatory of BCIL, has acted fraudulently alongwith the Company, and is in breach of the provisions of 12A(a), (b), (c) of SEBI Act, 1992 read with regulation 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations, 2003.

Issue II: Does the violation, if established, attract monetary penalty under Section 15HA of the SEBI Act, 1992?

56. The Hon'ble Supreme Court of India in the matter of *SEBI vs. Shri Ram Mutual Fund* [(2006) 68 SCL 216 (SC)] held that:

“once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.”

57. In view of the above, since the charge of violation of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations by the Noticee stands established, it makes him liable for imposition of penalty under Section 15HA of the SEBI Act, 1992.

58. 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:

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 of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.”*

Issue III: If yes, then what should be the quantum of penalty?

59. In this regard, the provisions of Section 15J of the SEBI Act, 1992, Rule 5 of the SEBI Adjudication Rules require that while adjudging the quantum of penalty, 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.

60. From the documents made available, it is noted that few other GDR issues also the Noticee was found to be involved in the similar role and actions has been taken against the same. However, no quantifiable figures or data is available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default of the Noticee. In the present case, I note that BCIL had issued 9.689 million GDRs worth USD 24.99 million to Vintage on March 15, 2010. However, it had pledged the entire GDR proceeds as collateral against the loan availed by Vintage from EURAM Bank. The same was carried out through a Loan Agreement entered between Vintage and EURAM Bank, and Pledge Agreement entered between BCIL and EURAM Bank. It is noted that both the Agreements were executed concurrently i.e. on February 23, 2010, and that the Pledge Agreement was an integral part of Loan Agreement. It is observed that the GDR issue would not have been subscribed had BCIL not given such security towards the loan taken by Vintage through the pledge agreement executed by the Noticee. Such

facilitation of the GDR issue and its subscription was not known to the public and investors. Therefore, the entire scheme of issuance of GDRs was fraudulent which was aided by the Noticee. Further, the Noticee's submission on the quantum of penalty referring the orders of Hon'ble SAT and SEBI whereby the amount of penalty was reduced may not be applicable in the present case as here the Noticee was the Director as well as signatory to the pledge agreement unlike the signatory of the Board resolution only as mentioned in the referred order. Had the pledge agreement been signed and the terms and conditions mentioned therein were not accepted by the Noticee, the said GDR issue would not have been subscribed and hence the Noticee played a vital role in the entire fraudulent scheme.

ORDER

61. After taking into consideration all the facts and circumstances of the case, gravity of violations and the material on record, and also the factors stipulated in Section 15J of the SEBI Act, 1992, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, hereby impose the following penalty on the Noticee:

Noticee	Violations and Penal Provision	Penalty (Rs.)
Mr. P. V. R. Murthy (PAN: ABRPM1271B)	Penalty imposed under Section 15HA of the SEBI Act, 1992 for violation of the provisions of Section 12A (a), (b), (c) of SEBI	Rs.10,00,000/- (Rupees Ten Lakhs Only)

	Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations	
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62. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link.

ENFORCEMENT →Orders →Orders of AO →PAY NOW

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

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

64. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

65. In terms of the Rule 6 of the SEBI Adjudication Rules, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Place: Mumbai

Date: January 31, 2023

G. Ramar

Adjudicating Officer