BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/AS/GD/2022-23/19603)

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:

Name	PAN
Shri Rajesh Pavithran	AAZPN1547N

A. BACKGROUND OF THE CASE

1. Hon'ble Securities Appellate Tribunal (SAT), vide order dated order May 21, 2021, Misc. Application No. 385 of 2021 in appeal no. 334 of 2021, set aside the Adjudication Order dated January 25, 2021 in the matter of Rajesh Pavithran Vs. SEBI and the matter was remitted to the Adjudicating (AO) for passing a fresh order in accordance with law.

2. In accordance with the directions of Hon'ble SAT vide order dated May 21, 2021. SEBI had appointed Shri Prasanta Mahapatra as Adjudicating Officer under Section 19 of the SEBI Act read with Section 15-I(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') read with Rule 3 of the SEBI (Procedure of Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'SEBI Adjudication Rules'). Pursuant to transfer of Shri Prasanta Mahapatra, vide communique dated June 07, 2022, the case was transferred to the undersigned.

B. FACTS OF THE CASE IN BRIEF

3. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), had conducted investigation in regards to certain companies which had come out with their respective issues of Global Depository Receipts (GDR). During the course of investigation, it was observed that K Sera Sera Limited, now known as KSS Limited**,** (hereinafter referred to as 'KSS /Company') had come up with its two GDR issues viz. first on March 30, 2007 and second on May 15, 2009. In this regard, it is observed that one Pan Asia Advisors Ltd (hereinafter referred to as 'Pan Asia') was the Book Running Lead Manager for both of these said GDR issues of KSS. Further, it was also observed that one Mr. Arun Panchariya (hereinafter referred to as 'AP') was the founder, director as well as 100% shareholder of Pan Asia. It is alleged that the complete process of GDR issuances by KSS was devised and structured by AP in connivance with KSS to the detriment of the Indian investors wherein loans were arranged for the subscription of GDRs of KSS on both these occasions. It is further alleged that AP was Managing Director, 100% shareholder and Authorized Signatory of Vintage. Thereafter, using certain Foreign Institutional Investors (FIIs), AP got the GDRs converted into underlying shares and sold them in the Indian securities market with the help of certain domestic entities connected to him.

4. On the basis of the said investigation, it was alleged that KSS , Shri Hussain Sattaf, Director of K Sera, Shri Rajesh Pavithran, Managing Director of K Sera (hereinafter referred to as "Noticee"), Dinesh Bhanusali, Director of K Sera have violated the provisions of Section 12A(a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with Regulations 3(b), (c), (d), 4(2)(c), (f), (k) & (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations').

5. In view of the above, SEBI initiated adjudication proceedings against the above entities including the Noticee for the alleged violations under sections 15HA of

the SEBI Act and vide order dated July 05, 2018 appointed Shri K Saravanan as the adjudicating officer.

6. A Show cause notice (hereinafter referred to as "SCN") bearing ref. no. SEBI/EAD-8/KS/VB/8174/3/2019 dated March 28, 2019 was sent to above entities including the Noticee. The SCN was sent to the Noticee through SPAD but had returned with the comment 'left'. Subsequently the said SCN was sent for service through affixture however, notice could not be affixed and returned back with the comment 'consignee shifted'. Thereafter, SCN and hearing notice were served on Noticee vide Newspaper Publication dated October 01, 2019 in Mumbai Edition (viz. Hindustan Times, Navbharat Times and Times News). The hearing was scheduled on October 15, 2019. However, Noticee neither filed reply nor attended the hearing on October 15, 2019.

7. In light of the above, the proceeding was concluded ex parte based on the material and facts available on record & vide order dated January 25, 2021 the Noticee was found to be in violation of provisions of Section 12A(a), (b), (c) of the SEBI Act read with Regulations 3(b), (c), (d) and Regulations 4(2)(c), (f), (k) and (r) of PFUTP Regulations and a penalty of Rs. 1,00,00,000/- (Rupees One Crore) was imposed.

C. SHOW CAUSE NOTICE, HEARING AND REPLY

8. The allegation in the SCN are as follows:

   a. *It is observed from the Investigation Report (hereinafter referred to as "IR") that there were two GDR issues by K Sera. First GDR Issue was of 47,61,900 GDRs (amounting to USD 25 Million) and issue closed on November 02, 2007. Second GDR issue was of 44,75,238 GDRs (amounting to USD 29.98 Million) and issue closed on October 16, 2009. Further, Pan Asia Advisors Ltd. (herein after referred to as 'Pan Asia') was the Lead Manager of both GDR issue of K Sera. Summary of the GDR issues as provided by K Sera is tabulated below:*

Table 1

GDR issue close date	***No. of GDRs Issued***	***Capital raised (US mn.)***	***No. of equity shares underlying GDRs***	***Lead Manager***	***Bank where GDR proceeds were deposited***

November 02,2007	*47,61,900*	*25*	*4,76,19,000*	*Pan Asia Advisors Ltd*	*EURAM Bank, Austria*
October16, 2009	*44,75,238*	*29.98*	*13,42,57,140*	*Pan Asia Advisors Ltd*	*EURAM Bank, Austria*

b. The following were the investors in the first GDR issue of K Sera as submitted by K Sera vide its letter dated November 02,2011(enclosed as annexures to the SCN).

Name of Subscriber	GDRs Subscribed	Amount Paid (USD)	% of total GDR issue
Rexflec	5,00,000	26,25,000	10.50
Figura	4,21,900	22,14,975	8.86
Tradetec	9,90,000	51,97,500	20.79
Knightsbridge Management Inc.	10,00,000	52,50,000	21.00
Flamboyant	9,00,000	47,25,000	18.90
Greenwich	9,50,000	49,87,500	19.95

c. Further, following were the investors in the Second GDR issue of K Sera as submitted by K Sera.

Name of Subscriber	GDRs Subscribed	Amount Paid (USD)	% of total GDR issue
Dynamic holding Investment Corp	*5,75,000*	*38,52,500*	*12.85*
Greenwich	*4,75,000*	*31,82,500*	*10.61*
Ababil	*3,25,000*	*21,77,500*	*7.26*
Figura	*5,48,000*	*36,71,600*	*12.25*
Flagstaff	*5,23,000*	*35,04,100*	*11.69*
Tradetec	*4,69,238*	*31,43,895*	*10.49*
Imagination	*5,25,000*	*35,17,500*	*11.73*
Echelon	*5,50,000*	*36,85,000*	*12.29*
Flamboyant	*4,85,000*	*32,49,500*	*10.84*

Loan & Pledge Agreement signed among K Sera, Vintage &Euram.

d. It is alleged that the Loan and Pledge Agreement for its first GDR issue and second GDR Issue were signed among K Sera, Vintage and Euram. The same is discussed below in detail:-

ISSUE 2 (in 2009)

e. It is observed that a loan agreement (Loan Agreement No. K061009-002) dated October 06, 2009 (enclosed as annexures to the SCN) ,was signed between Euram and Vintage. The agreement was signed by Arun Panchariya (hereinafter referred to as AP) as Managing Director on behalf of Vintage. The Loan agreement states that Euram has agreed to make available a loan of USD 29984094.60 to Vintage (referred to as "the Borrower"). The nature and purpose of the loan facility is to provide funding enabling Vintage to take down GDR issue of K Sera and may only be transferred to Euram account no: 540019 for K Sera Production Ltd. The following is stated in the Loan Agreement.

"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. 540 019 at the Bank as set out in a separate pledge agreement which is enclosed as annexures to the SCN) and which forms an integral part of this Loan Agreement.*
- *Pledge of the account no. 540 019 of the Borrower held with the Bank as set out in a separate pledge agreement which is enclosed as annexures to the SCN and which forms an integral part of this Loan Agreement."*

f. *Further, a Pledge Agreement dated October 08, 2009 (enclosed as annexures to the SCN) is also signed between K Sera and Euram Bank. The agreement was signed by Noticee-2 on behalf of K Sera as Director of K Sera. The following Resolution was passed by the Board of Directors of K Sera at its meeting dated October 01, 2009 (enclosed as annexures to the SCN):*

> *"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 Mr; Rajesh Pavithran, Managing Director and Mr. Dinesh Bhanusali, Authorised Signatory be and are hereby authorise. to sign, execute, any application /agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s), jointly from time to time as may be required by the Bank and to carry and to affix the Common Seal of the Company thereon, if and when so required."*
>
> *"RESOLVED FURTHER THAT Mr. Rajesh Pavithran, Managing Director and Mr. Dinesh Bhanusali, Authorised Signatory be and are hereby authorized to draw cheques and other documents, and to give instructions, jointly from time to time as may be necessary to the said Euram Bank or any of branch of Euram Bank, including the Offshore Branch, for the purpose of operation of and dealing with the said bank account and to carry out other relevant and necessary transactions and generally to take all such steps and to do all such things as may be required from time to time on behalf of the Company."*

g. *According to the Pledge Agreement, K Sera has been referred as "Pledgor" and Euram has been referred to as "Bank". The preamble of the Pledge Agreement states*

> *"By loan agreement K061009-002(hereinafter referred to as "Loan Agreement") dated October 06 ,2009, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates ("the Borrower") in the amount of $ USD 2,99,84,094.60. The Pledgor has received a copy of the Loan Agreement and acknowledges and agrees to its terms and conditions."*

h. *From the above preamble of Pledge Agreement, it is clear that Noticee-2 and K Sera were also the party to the Loan Agreement. Further, the pledge created in the Pledge Agreement is stated below:-*

> *" 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 2,99,84,094.60 existing from time to time at present or hereafter on the securities account(s) no. 540 019 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. 540 019 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 deposit in the amount of the facility amount of the loan will be fixed at 2.5% 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."*

i. *Further, following condition have been put in the Pledge agreement for the realization of the pledge.*

"6. Realization of the Pledge

6.1 *In the case that the Borrower fails to make payment on any due amount, or default 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. "*

j. *It is noted that the bank account no. 540019 is the account which K Sera has maintained with Euram Bank to keep the proceeds of GDRs, thus it is alleged that K Sera has pledged money received through issuance of GDRs to secure rights of Euram Bank against the loan given by Euram Bank to Vintage for subscription of GDR issue (as mentioned in Loan agreement of Vintage).*

k. *It is alleged that these agreements enabled Vintage to avail the loan from Euram Bank for subscribing GDRs of K Sera and the GDR issue would not have been subscribed had K Sera not given such security towards the loan taken by Vintage.It is also alleged that the Noticees did not inform Bombay Stock Exchange or shareholders of the company about signing the Pledge Agreement and Loan Agreement.*

ISSUE 1 (in 2007)

l. *It is observed that a Loan agreement was also signed between Vintage and Euram bank previously on October 30, 2007 (enclosed as annexures to the SCN) in relation to first GDR issue of K Sera. Similarly, a Pledge Agreement was signed between K Sera and Euram on October 30, 2007. The Loan agreement and Pledge Agreement signed 1st time were exactly similar to the 2nd Loan Agreement and Pledge Agreement except following differences:*
   1. *The Loan Agreement and Pledge Agreement were signed for the subscription of 1st GDR issue of 47,61,900 GDRs of K Sera Ltd which closed on November 02, 2007.*
   2. *The Loan amount of USD 2,49,99,975 was exactly equal to the size of GDR issue.*
   3. *The Pledge Agreement was signed by Noticee-3, as Managing Director of K Sera Productions Ltd.*

Acquisition, Cancellation and Sale of GDRs:-

m. *It is noted that the GDRs of K Sera were purchased by Sub-Accounts in overseas market. The detail of the purchase of 1st GDR issue of K Sera is given below:-*
Issue 1 (2007)

Date	Name of Acquirer	Name of Seller	Quantity of GDRs Acquired	Value of GDRs Acquired ($)	Trading Platform	Value per GDR($)
27-Dec-07	Rhodes	NA	1,50,000	11,26,876	Exchange	7.51
15-Jan-08	Sophia	NA	1,50,000	10,51,801	Exchange	7.01
17-Jan-08	Rhodes	NA	1,50,000	10,51,801	Exchange	7.01
22-Jan-08	Sophia	NA	2,00,000	12,02,201	Exchange	6.01
1-Apr-08	Sophia	NA	2,60,000	9,01,801	Exchange	3.47
23-Apr-08	Rhodes	NA	1,50,000	9,76,726	Exchange	6.51
05-Aug-08	Rhodes	NA	94,000	5,00,138	Exchange	5.32
12-Dec-08	Sophia	NA	20,000	61,800	OTC	3.09
29-May-09	KII	Euram	9,25,000	20,04,660	OTC	2.17
9-Jun-09	KII	Euram	3,00,000	9,97,970	OTC	3.33

Date	Name of Acquirer	Name of Seller	Quantity of GDRs Acquired	Value of GDRs Acquired ($)	Trading Platform	Value per GDR($)
14-Jul-09	KII	Euram	1,75,000	3,96,900	OTC	2.27
7-Sep-09	IFCF	Euram	85,000	2,29,500	OTC	2.70
26-Nov-09	IFCF	Euram	98,000	2,30,300	OTC	2.35
30-Nov-09	IFCF	Euram	1,45,000	3,30,600	OTC	2.28
4-Dec-09	IFCF	Euram	76,000	2,05,200	OTC	2.70
17-Dec-09	IFCF	Euram	1,26,000	2,98,620	OTC	2.37
4-Jan-10	KII	Euram	2,36,000	5,28,111	OTC	2.24
5-Jan-10	IFCF	Euram	1,80,000	3,99,600	OTC	2.22
11-Jan-10	IFCF	Euram	6,01,757	17,15,007	OTC	2.85
13-Jan-10	KII	Euram	3,09,143	7,16,717	OTC	2.32
		Total	44,30,900	1,49,26,329		

Issue 2 (2009)

Date	Name of Acquirer	Name of Seller	Quantity of GDRs Acquired	Value of GDRs Acquired ($)	Trading Platform	Value per GDR($)
13-Jan-10	IFCF	Euram	1,37,500	9,90,000	OTC	7.20
14-Jan-10	KII	Euram	17,000	1,23,379	OTC	7.26
18-Jan-10	IFCF	Euram	1,64,000	11,95,560	OTC	7.29
19-Jan-10	IFCF	Euram	3,25,000	23,40,000	OTC	7.20
20-Jan-10	KII	Euram	1,90,000	13,78,944	OTC	7.26
20-Jan-10	KII	Euram	1,25,000	9,05,940	OTC	7.25
24-Jan-10	IFCF	Euram	1,52,000	10,91,360	OTC	7.18
26-Jan-10	KII	Euram	80,000	5,78,995	OTC	7.24
27-Jan-10	KII	Euram	65,000	4,29,156	OTC	6.60
21-Nov-10	IFCF	Euram	1,30,000	10,10,100	OTC	7.77
		Total	13,85,500	1,00,43,434		

n. *The Following are the details of GDRs for receipt of underlying shares. Issue 1 (in 2007)*

Transaction Date	Entities cancelling GDRs on behalf of FIIs/Sub-Accounts	GDRs Cancelled	Shares Released	Sub-Account receiving shares	Date of receiving shares
17-01-08	BROWN BROTHERS HARRIMAN CO	1,50,000	15,00,000	Rhodes	17-01-08
22-01-08	BROWN BROTHERS HARRIMAN CO	1,50,000	15,00,000	Sophia	23-01-08
25-01-08	BROWN BROTHERS HARRIMAN CO	1,50,000	15,00,000	Rhodes	28-01-08
11-03-08	BROWN BROTHERS HARRIMAN CO	1,50,000	15,00,000	Sophia	13-03-08
24-04-08	BROWN BROTHERS HARRIMAN CO	45,000	4,50,000	Sophia	07-05-08
06-06-08	BROWN BROTHERS HARRIMAN CO	60,000	6,00,000	Rhodes	09-06-08
18-06-08	BROWN BROTHERS HARRIMAN CO	30,000	3,00,000	Sophia	19-06-08
10-09-08	BROWN BROTHERS HARRIMAN CO	60,000	6,00,000	Sophia	11-09-08
12-09-08	BROWN BROTHERS HARRIMAN CO	60,000	6,00,000	Sophia	15-09-08

Transaction Date	*Entities cancelling GDRs on behalf of FIIs/Sub-Accounts*	*GDRs Cancelled*	*Shares Released*	*Sub-Account receiving shares*	*Date of receiving shares*
15-12-08	*JULIUS BAER, ZUR, SWITZERLAND*	*20,000*	*2,00,000*	*Sophia*	*16-12-08*
22-05-09	*KAS DEPOSITARY TST/CUST,*	*2,99,000*	*29,90,000*	*ARES*	*25-05-09*
03-06-09	*KAS DEPOSITARY TST/CUST,*	*2,46,000*	*24,60,000*	*ARES*	*04-06-09*
03-06-09	*JPM CL CORP.,BK, UNITED STATES*	*3,25,000*	*32,50,000*	*KII*	*04-06-09*
04-06-09	*JPM CL CORP.,BK, UNITED STATES*	*3,00,000*	*30,00,000*	*KII*	*05-06-09*
08-09-09	*Euram*	*85,000*	*8,50,000*	*IFCF*	*09-09-09*
25-11-09	*Euram*	*85,000*	*8,50,000*	*IFCF*	*26-11-09*
27-11-09	*Euram*	*98,000*	*9,80,000*	*IFCF*	*30-11-09*
01-12-09	*Euram*	*1,45,000*	*14,50,000*	*IFCF*	*02-12-09*
04-12-09	*Euram*	*76,000*	*7,60,000*	*IFCF*	*07-12-09*
18-12-09	*Euram*	*1,26,000*	*12,60,000*	*IFCF*	*21-12-09*
31-12-09	*JPM CL CORP.,BK, UNITED STATES*	*3,00,000*	*30,00,000*	*KII*	*02-01-10*
05-01-10	*JPM CL CORP.,BK, UNITED STATES*	*3,00,000*	*30,00,000*	*KII*	*06-01-10*
06-01-10	*JPM CL CORP.,BK, UNITED STATES*	*1,75,000*	*17,50,000*	*KII*	*07-01-10*
07-01-10	*Euram*	*1,80,000*	*18,00,000*	*IFCF*	*08-01-10*
11-01-10	*JPM CL CORP.,BK, UNITED STATES*	*2,36,000*	*23,60,000*	*KII*	*12-01-10*
13-01-10	*Euram*	*6,01,757*	*60,17,570*	*IFCF*	*14-01-10*
15-01-10	*JEFFERIES CO INC,*	*3,09,143*	*30,91,430*	*KII*	*18-01-10*
	Total	*47,61,900*	*4,76,19,000*		

Issue 2 (in 2009)

Transaction Date	Entities cancelling GDRs on behalf of FIIs/Sub-Accounts	GDRs Cancelled	Shares Released	Sub-Account receiving shares	Date of receiving shares
15-Jan-10	Euram	1,37,500	41,25,000	IFCF	20-01-10
19-Jan-10	JEFFERIES CO INC	17,000	5,10,000	KII	21-01-10
20-Jan-10	Euram	1,64,000	49,20,000	IFCF	21-01-10
21-Jan-10	Euram	1,25,000	37,50,000	IFCF	22-01-10
21-Jan-10	JEFFERIES CO INC	1,90,000	57,00,000	KII	22-01-10
25-Jan-10	Euram	2,00,000	60,00,000	IFCF	27-01-10
26-Jan-10	Euram	75,000	22,50,000	IFCF	27-01-10
27-Jan-10	Euram	57,000	17,10,000	IFCF	28-01-10
27-Jan-10	JEFFERIES CO INC	1,25,000	37,50,000	KII	28-01-10
28-Jan-10	JEFFERIES CO INC	80,000	24,00,000	KII	29-01-10
29-Jan-10	JEFFERIES CO INC	65,000	19,50,000	KII	01-02-10
	Total	12,35,500	3,70,65,000		

o. *On receipt of the underlying shares, the Sub-Accounts sold the shares in the Indian market and interestingly, as has been observed for other Examined Companies, the main counterparties to these sales were AP related entities such as Basmati and Oudh:-*

FII	CP PAN	CP Name	Sell Volume	Sell value (Rs.)	% to total Sale

IFCF	*AAACB4324K*	*Basmati*	*81,64,299*	*10,55,92,702*	*30.9*
IFCF	*AAACO3597K*	*Oudh*	*54,37,005*	*6,80,62,401*	*19.9*
IFCF	*AACCN3776H*	*Newgen International*	*27,66,800*	*3,44,53,906*	*10.1*
IFCF		*Others*	*1,06,44,646*	*13,40,04,591*	*39.1*
		IFCF Total	*2,70,12,750*	*34,21,13,600*	*100.0*

FII	*CP PAN*	*CP Name*	*Sell Volume*	*Sell value (Rs.)*	*% to total Sale*
KII	*AACCN3776H*	*Newgen International*	*57,18,100*	*8,30,76,318*	*25.8*
KII	*AAACB4324K*	*Basmati*	*43,31,324*	*5,46,65,391*	*17.0*
KII	*AAACO3597K*	*Oudh*	*24,92,795*	*3,12,28,167*	*9.7*
		Others	*1,21,19,211*	*15,26,73,849*	*47.5*
		KII Total	*2,46,61,430*	*32,16,43,725*	*100.0*

FII	*CP PAN*	*CP Name*	*Sell Volume*	*Sell value (Rs.)*	*% to total Sale*
Rhodes	*ACRPP5552H*	*SV*	*11,35,560*	*1,34,10,847*	*36.2*
Rhodes	*AAACO3597K*	*Oudh*	*5,87,765*	*70,53,180*	*19.1*
Rhodes	*AAACB4324K*	*Basmati*	*5,82,642*	*70,06,128*	*18.9*
Rhodes	*AABCA6702F*	*Alka*	*2,27,550*	*38,79,728*	*10.5*
		Others	*4,66,483*	*56,68,654*	*15.3*
		Rhodes Total	*30,00,000*	*3,70,18,536*	*100.0*

FII	*CP PAN*	*CP Name*	*Sell Volume*	*Sell value (Rs.)*	*% to total Sale*
Sophia	*AAACO3597K*	*Oudh*	*4,11,236*	*55,62,066*	*20.2*
Sophia	*AAACE2875N*	*Jitendra Patel (Excel Paints Pvt Ltd)*	*3,17,730*	*43,00,528*	*15.6*
Sophia	*ACRPP5552H*	*SV*	*1,95,695*	*20,61,398*	*7.5*
		Others	*7,50,545*	*1,07,07,248*	*38.9*
		Sophia Total	*20,00,000*	*2,75,22,638*	*100.0*

p. From the counterparty analysis of the sell trades of Sub-Accounts, it is observed that Indian entities like SV, Alka, Basmati and Oudh have been the major counterparties. It is noted that these entities are connected with AP as observed from the Bank account statements, the Demat statements and KYC of these entities. The connections among entities and with AP are explained below.

Sr. No	*Name of Entity*	*Details of connection*
1	*Alka India Ltd (Alka)*	*AP is among the promoters of Alka.* *As per Annual Return of Basmati filed with MCA on September 30, 2005, Alka and Oudh are among the shareholders of Basmati. Together, they hold 37.68% of the shares of Basmati.* *Alka and Oudh have common phone number (9702001974) in their KYC documents available with their respective brokers viz, Mansi Share & Stock Advisors Pvt Ltd, Alankit Assignments Ltd and Arch Finance Ltd.* *(Source: MCA and BSE filing of Alka. KYC documents with B. Lodha Securities Ltd. IndiabullsSecurities Ltd, Mansi Share & Stock Advisors Pvt Ltd, Alankit Assignments Ltd and Arch Finance Ltd, Ssj Finance & Securities Pvt. Ltd, Madhya Pradesh stock Exchange Indiabulls Securities Ltd, Shriram Insight Share Brokers Ltd and Multiplex Capital Ltd.)*

2	***Basmati Securities Pvt Ltd (Basmati)***	***Basmati holds 27.8% of the shares of Oudh. As per Annual Return of Basmati filed with MCA on September 30, 2005, Alka and Oudh are among the shareholders of Basmati. Together, they hold 37.68% of the shares of Basmati. Basmati and Oudh have common authorised signatory (Rahul C Shah) for operating their demat accounts as per the KYC documents provided by depository participants – Shriram Insight Share Brokers, K & A Securities Pvt Ltd and MotilalOswal Securities Ltd. Basmati and Oudh have common phone number (9619040060) and address - Room No. 5, Ground Floor, HeeraMahal Building, 250 Kalbadevi Road, Mumbai - 400002 in the KYC documents available with depository participant Shriram Insight Share Brokers Ltd. Basmati and Oudh have common phone number (32015743) and address – 5/7 Kothari House 2nd Floor Office No 4 Fort Mumbai in the KYC documents available with brokers/ depository participants B.lodha Securities Ltd., MotilalOswal Securities Ltd, Anand Rathi Share and Stock Brokers Ltd and Networth Stock Broking Ltd. Basmati and Oudh have common phone number (24526764) and address – Kothari House 1st Floor 5/7 Oak Lane Fort Bombay in the KYC documents available with broker Vertex Securities Ltd. (Source: MCA and BSE filing of Alka. KYC documents available with Religare Securities Ltd. and Cpr Capital Services Ltd, Shriram Insight Share Brokers, K & A***
		Securities Pvt Ltd, MotilalOswal Securities Ltd., Shriram Insight Share Brokers Ltd., B.lodha Securities Ltd. and Networth Stock Broking Ltd., Anand Rathi Share and Stock Brokers Ltd and Vertex Securities Ltd.
3	***Oudh Finance& Investment Pvt Ltd. (Oudh)***	***Basmati holds 27.8% of the shares of Oudh. As per Annual Return of Basmati filed with MCA on September 30, 2005, Alka and Oudh are among the shareholders of Basmati. Together, they hold 37.68% of the shares of Basmati. Basmati and Oudh have common authorised signatory (Rahul C Shah) for operating their demat accounts as per the KYC documents provided by depository participants – Shriram Insight Share Brokers, K & A Securities Pvt Ltd and MotilalOswal Securities Ltd. Basmati and Oudh have common phone number (9619040060) and address - Room No. 5, Ground Floor, HeeraMahal Building, 250 Kalbadevi Road, Mumbai - 400002 in the KYC documents available with depository participant Shriram Insight Share Brokers Ltd. Basmati and Oudh have common phone number (32015743) and address – 5/7 Kothari House 2nd Floor Office No 4 Fort Mumbai in the KYC documents available with brokers/ depository participants B.lodha Securities Ltd., MotilalOswal Securities Ltd, Anand Rathi Share and Stock Brokers Ltd and Networth Stock Broking Ltd. Basmati and Oudh have common phone number (24526764) and address – Kothari House 1st Floor 5/7 Oak Lane Fort Bombay in the KYC documents available with broker Vertex Securities Ltd. (Source: MCA and BSE filing of Alka, KYC Documents available with Shriram Insight Share Brokers, K & A Securities Pvt Ltd, MotilalOswal Securities Ltd., Shriram Insight Share Brokers Ltd., B.lodha Securities Ltd. and Networth Stock Broking Ltd., Anand Rathi Share and Stock Brokers Ltd and Vertex Securities Ltd.)***
4	***SV Enterprise / Sarfaraz Khan Pathan (SV)***	***SV is the proprietary firm of Mr.Sarfaraz Khan Pathan. SV is involved in fund transactions with Alka. From the statement of SV's account no. 002405013273, maintained with ICICI Bank, it is observed that during the period from January 1, 2010 to April 30, 2010, SV received Rs. 83 lakh from Alka and transferred Rs. 85 lakh to Alka. In the demat account of Sarfaraz Khan Pathan maintained with Shah Investors Home Limited, the nominee of the account is mentioned as Ashok and the witnesses are SatishPanchariya and MadanlalBugaliya (Source: Bank account statements of Gujarat Enterprise's account no. 2306 with Gujarat Mercantile Co-op Bank Ltd., SV's account no. 002405013273 with ICICI Bank, KYC documents of SV available with ICICI Bank and KYC of demat account of SV with Shah Investors Home Limited)***

q. Thus, it is observed that all the above entities have connections with AP and AP has substantial influence over their activities.

r. *In view of the foregoing, it is alleged that the Noticees have violated Sections 12A(a), (b) and (c) of the SEBI Act read with regulations 3 (b), 3(c), 3(d), 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations.*

9. In line with directions of Hon'ble SAT vide order dated May 21, 2021, Noticee was served the SCN along with annexures, vide email dated June 01, 2021 by the erstwhile AO.

10. In the context of the current proceedings, it is observed that the Noticee had opted for settlement of the proceedings under the provisions of SEBI (Settlement Proceedings) Regulations, 2018 and filed a settlement application dated August 09, 2021. However, vide email dated November 23, 2021, the concerned department of SEBI informed that the settlement application has been rejected. Subsequently adjudication proceedings have been resumed in the instant matter.

11. I note that vide Hearing Notice dated March 29, 2022, Noticee was granted an opportunity of hearing on April 05, 2022 by the erstwhile Adjudicating officer. Vide email dated March 29, 2022, Notice requested for reschedulement of aforesaid hearing. On request of Noticee, said hearing was rescheduled to April 20, 2022. Thereafter, vide email dated April 08, 2022, Noticee has sought documents and material which has been relied upon in issuance of SCN. Vide email dated April 11, 2022, Noticee was provided with the documents which were relied upon in the SCN. Vide email dated April 18, 2022, Authorized representative (hereinafter referred to as "AR") of Noticee has expressed his unavailability to attend hearing on April 20, 2022. Pursuant to transfer of case to the undersigned, Noticee was granted an opportunity of hearing on July 15, 2022 vide email dated July 08, 2022. In reply Noticee indicated that he is travelling during the said period and requested for reschedulement of hearing and accordingly hearing was rescheduled to July 13, 2022. Vide email dated July 11, 2022, AR of Noticee has expressed his unavailability to attend hearing. On request of AR, hearing was rescheduled to July 21, 2022. Noticee submitted his reply to the SCN vide email dated July 21, 2022. The AR of the Noticee appeared for the scheduled hearing and reiterated the contents of the reply submitted *vide* letter dated July 21, 2022.

12. The Noticee vide emails dated August 22, 2022, August 29, 2022 and September 01, 2022 submitted additional replies to the SCN.

13. The key submissions of the Noticee made in his aforesaid replies are as under:

Reply vide letter dated July 21, 2022

a. *At the outset, it is submitted that I vehemently deny each and every allegation levied upon me. It is humbly submitted that the allegations set upon me are baseless and devoid of any evidence in support of them. Further, at the outset, I humbly submit that neither I am connected to Mr. Arun and his connected entities nor aware of the same.*
b. *It is pertinent to mention herein that during my tenure with the Company, I looked after the marketing, purchase, operational and technical aspects of film distributions and production of the Company. Further, it is pertinent to mention herein that raising funds and arrangements of funds for the Company's business affairs are always with other directors and promoters of the Company.*
c. *It is essential to point out that during my tenure with the Company as director, I was merely involved as a salaried employee in day-to-day activities of the Company. Further, it is also important to point out that neither I was a shareholder of the Company nor I have traded in the shares of the Company during any period.*
d. *As far as, I remember that one day, Mr. Sanghvi called me to meet Mr. Panchariya, for raise the funds for the next few films through GDR issue. I remember that Mr. Panchariya introduced himself as Lead Manager. On the next occasion, around August, 2007, Mr. Panchariya called me for signing few documents and papers. Accordingly, I have signed some documents and papers. It is pertinent to mentioned herein that without prejudice I am humbly submitting that I have just signed the documents in my professional capacity to raise funds for the Company business. Further, it is humbly submitted that at the time of signing, I was not aware of or knowledge of about the said fraud, which will be played by Mr. Panchariya in collusion with Mr. Sanghvi on Indian securities market through me.*
e. *I have signed the said documents and papers in bonafide interest of the Company. Since, the decision of raising funds and utilisation of the same for the Company is with Mr. Sanghvi and Mr. Amar. I have to trust their decisions as the director of the*

Company. Further, I clarify that at the time of signing the documents, I was unaware that the documents are self-financing GDR issue agreements.

f. *It is submitted that having my background in managing the operations part of the various Companies, the term GDR issuance as well as process of the same is new as well as highly technical to me. It is the SEBI's own case, where SEBI has taken more than 12 years to complete the investigation on the ground that the GDR matters are highly complex and technical. Thus, by no stretch of the imagination, it can be presumed that being the recent appointed director in the Company, I should have expertise in all filed.*

g. *I have not made any pecuniary benefit from the issuance of the said GDR as I have acted merely in a professional capacity of a salaried employee.*

h. *That merely signing of documents as an employee does not create a liability in an artificial manner. Further all the cost of executing the documents, agreement was borne by the Company. I did not execute the alleged agreement on my own accord and merely acted as the agent and employee on behalf of the Company. I reiterate my submissions that I had no knowledge that I was involved in any fraudulent transactions undertaken by the Company in collusion with other directors and promoters and being used as managing director for necessary for dealing in the Company's account maintained with Euram.*

i. *Further, it is pertinent to mention that I was never a part of any of the documents of the Company other than documents related to the issuance of GDRs such as account opening forms, undertakings, and alleged agreements. Therefore, it goes on to show that I have no knowledge of the fraudulent transactions undertaken by the Company in collusion with other directors and promoters.*

j. *Without prejudice, I humbly submit that even if I was involved in the alleged scheme then also there is no additional or any accrual benefits to me and there are no additional incentives made by me, even the Notice also failed to show the same. Hence, the allegations made upon me are baseless and without any merits.*

k. *Further, your goodself's kind attention draw to my submissions that though the allegation has been alleged in the Notice, no evidence has been placed on record to show my action in any way was fraudulent. Here the definition of the term 'Fraud' as defined in the PFUTP Regulations needs to be referred, which states that any act, expression, omission or concealment committed should have induced another person to deal in the securities market but the same was not established by SEBI in the Notice.*

l. In this regard, the Judgment of the Supreme Court of India in the matter of Securities and Exchange Board of India Vs. Kanaiyala Baldevbhai Patel (Civil Appeal 2595 of 2013) dated September 20, 2017 can be referred wherein it was observed that:

"A person can be said to have induced another person to act in a particular way or not to act in a particular way if on the basis of facts and statements made by the first person the second person commits an act or omits to perform any particular act. The test to determine whether the second person had been induced to act in the manner he did or not to act in the manner that he proposed, is whether but for the representation of the facts made by the first person, the latter would not have acted in the manner he did. This is also how the word inducement is understood in criminal law. The difference between inducement in criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient. No element of dishonesty or bad faith in the making of the inducement would be required."

m. In the light of the aforesaid observation of the Judgment, it is submitted that I have not made any suggestion as to a fact which is not true or which it does not believe it to be true which would have induced any entity. In the present case, there is no suggestion of facts of inducement. As per above judgment it can be observed that the inducement is cannot be a mere presumption that someone may have been induced, the Supreme Court clearly specified that the inducement needs to be established by way of the facts, and in the present case, the Notice failed to establish any facts that I have induced any person in the captioned matter.

n. I again humbly submit and reiterate my submission that I acted bona fide in the interest of the Company. I was not aware or have knowledge about that the papers which I was signing is the key element of fraud. Because I have limited knowledge *of financial transactions, I have to trust the lead manager as well as the other director and promoter of the Company.*

o. *It is humbly submitted that it can be seen from the Notice that there is no specific averment, allegation or statement against me as to the nature of fraud which has been alleged or in fact there has been no allegation that which provisions of law or regulations does the GDR Issuance violate for being conducted and issued in the manner that is has been alleged. After dealing with basic facts of the GDR Issuance and stating documents and materials that are matters of fact and record, the Notice directly jumps to a conclusion that there has been a fraudulent scheme of GDR Issuance without providing any material, detail, opportunity to me to defend any specific violations of any law or regulations which have given rise to such apprehension and allegation in the Notice.*

p. *The Notice nowhere suggests what specifically has been erroneous or fraudulent or violative of the specific provisions of law and directly in a completely vague and general manner alleges fraud and violations of the provisions of the specified provisions of SEBI Act and PFUTP Regulations as a result of undertaking the said GDR Issuance.*

q. *After reading the complete Notice, it's only appears that I have signed the alleged agreements, which were not disclosed to the Exchange. To which I humbly submit by all means, it can be assumed that I have blindly trusted the promoters and other directors and shown my lack of diligence in financial transactions, but I cannot be liable for fraud by no stretch of the imagination. Nevertheless, I already ex-parte debarred for ten years for acting negligently in financial transactions by the Hon'ble WTM. Thus, again making me liable for the same monetary penalty, in nothing but a violation of my human and fundamental rights.*

r. *It is humbly submitted that I have no relation/connection with Mr Arun and entities/persons mentioned in the Notice i.e. Alka India Ltd. (hereinafter referred to as "Alka"), Basmati Securities Pvt. Ltd. (hereinafter referred to as "Basmati"), Oudh Finance & Investment Pvt. Ltd. (hereinafter referred to as "Oudh"), S V enterprise (hereinafter referred to as "SV Enterprises") or with any of the counter parties to sell trades sub-Account's trades i.e. Sophia, Rhodes, Mavi, IFCF, KII, IFCF.*

s. *it is further humbly submitted that the Notice has also failed to bring out any connection between me and the other persons/entities mentioned in the Notice (other than Noticees), including of the counterparties to sell trades sub-Account's trades. Therefore, by no stretch of the imagination, it can be presumed that I had* *any relationship/nexus/prior meeting of mind with any entities involved in GDR issuance.*

t. *There has been a long and unexplained delay in the initiation of proceedings against me. It is a fact on record that the Notice was issued in year 2021 and the alleged nefarious committed in securities market in year 2007, i.e., after a lapse of nearly more than fourteen years from the date of issuance of GDRs. Moreover, I would like to submit that the Notice is not forthcoming with any reason or explanation for the inordinate and unwarranted delay in the issue of the present Notice.*

u. *I humbly submit that such a delayed proceeding will cause prejudice to "me" in as much as it is likely not to remember the antecedents, and be unable to dilate on the factual position which took place in year 2007. In this regard, I humbly submit that on account of the unnatural and unexplained delay of more than 14 years, the present proceedings are liable to be quashed.*

v. *I humbly submit that the complete materials/documents in support of the aforesaid allegations have not been made available to me. Due to the unavailability of all such documents/ material based on which the allegations have been levelled qua me, it makes me handicapped in effectively answering the charges levelled against me in the Notice. Failure to provide such complete material is bad, being contrary to the settled principles of natural justice.*

w. *In this context, it is submitted that I vide my email dated April 08 and 12, 2022, I had requested certain documents/materials/statements which were referred to and relied upon by SEBI in the issuance of the Notice.*

- *Copy of the Investigation Report*
- *Copy of the documents/materials/information obtained from Euram Bank*
- *Copy of the documents/materials/information obtained from Vintage FZE*
- *Copy of the documents/materials/information obtained from Mr. Arun Panchariya*
- *Copy of the documents/materials/information obtained from Luxembourg Stock Exchange, if any, in the matter of KSS*
- *Copy of communications between, if any, Euram Bank and SEBI*
- *Copy of communications between, if any, Vintage FZE and SEBI*
- *Copy of communications between, if any, SEBI and other Noticees, including Mr. Arun Panchariya during the investigation*

- *Any other documents/materials/information collected during the investigation which resulted in the issuance of captioned Notice, including the copies of the files of investigation.*
- *Cross examination of Mr. Arun Panchariya and Mr. Mukesh*
- *Copies of minutes of all the meetings of Audit Committee, Investor grievance committee and Management committee held in the year 2007 to 2008.*
- *The shareholding pattern of promoter and promoter group (in the years 2006, 2007 and 2008)*
- *Announcements & Disclosures made by the Company with respect to GDR issuance at Exchanges (in the years 2006, 2007 and 2008)*
- *Documents, information with respect to appointment, designations and resignation with respect to me. (in the years 2006, 2007 and 2008).*
- *Board of Directors meetings and its minutes (in the years 2006, 2007 and 2008)*
- *Minutes of the meeting of the board of KSS dated July 31, 2007.*
- *Audit Committee meetings and their minutes (in the years 2006, 2007 and 2008).*

x. *However, my request was completely ignored and rejected by your goodself and emails dated April 11 and 18, 2022 and informed that "…all the documents and information relied upon in the SCN have already been provided to you in the annexures to the said SCN". In this regard, it is submitted that it would not be possible for me to present a comprehensive submission without the aforesaid information. The same is a gross violation of natural justice, and therefore the entire Notice should be quashed and set aside on this ground alone. Hereto marked and annexed as Exhibit- "H" and Exhibit – "I" is the copy of emails dated April 11 and 18, 2022, respectively.*

y. *The paras no. 13 of the Notice deals with the alleged Loan agreement dated October 30, 2007 which was signed between Vintage and EURAM Bank in relation to First GDR issue of the Company. Similarly, a Pledge agreement was signed between the Company and EURAM on October 30, 2007. It is alleged that the said agreement on behalf of the Company is signed by me. In this regard, I repeat and reiterate my submission that I did not execute the alleged agreement on my own accord and merely acted as the agent and employee on behalf of the Company as well as the promoter and other director. Further, I had no knowledge of the fact that*

I was involved in any fraudulent transactions being undertaken by the Company in collusion with other directors and promoters.

z. *The paras no. 14 to 16 of the Notice deals with the acquisition, cancellation and sale of GDRs. With regard to this, it is pertinent to mention herein that the acquisition, cancellation and sale of GDRs, happened after my resignation, i.e. February, 2008. Thus, the said facts alone prove that if I were in collusion, then I should be part of each and every stage in the present matter. However, on the contrary, I am not part of the same. Further, it is pertinent to mention herein that one thing from the year 2007 to 2012 (from the First GDR to the cancellation of the Second GDR issue), is not changed, i.e. promoters and other directors of the Company, who was actually controlling everything.*

aa. *Very serious allegations of fraud, etc. have been raised against me. These allegations require a high level of proof and establishment of "mens rea". No complaint by any person or no concern of loss caused to any person has been even brought out. I humbly submit that thus the proceedings against me does not meet the well-settled standards of law and evidence in such a case and need to be dropped qua me.*

bb. *Attention is invited to the decision of the Supreme Court in Union of India vs. Chaturbhai M. Patel (AIR 1976 SC 712), which holds that fraud, even in civil proceedings, must be established beyond a reasonable doubt.*

cc. *I would like to draw attention to the decision of the Securities Appellate Tribunal in Parsoli Corporation vs. SEBI (Appeal No 146/2011 order dated 12th August 2011) where the Hon'ble SAT observed:-*
" ...a serious charge like fraud has to be established on preponderance of probabilities and since this charge is serious, higher has to be the degree of probability to establish the same."

dd. *The Hon'ble SAT also held in Sterlite Industries vs. SEBI (Appeal No. 20/2001 dated 22nd October 2001) that:-*

"...in the absence of reasonably strong evidence, even in a civil proceeding, a person cannot be held guilty and awarded punishment. Mere surmrise, conjuncture or suspicion cannot sustain the finding of fault".

ee. Attention is invited to the decision of the Hon'ble SAT in Paresh Parekh vs. SEBI (2002) 40 SCL 139 where it has been held that market manipulation is a serious charge and must be proved beyond reasonable doubt.

ff. I would like to draw attention to the observations of Hon'ble SAT in the case of Ess Intermediaries v. SEBI (dated 19th June 2013):-

"Thus, a perusal of the above stated provisions of Regulation 4 and its sub-regulations reveals that the allegations of fraud can be leveled against a person/entity only for good reasons and on the basis if clear and unambiguous evidence. Such an allegation of fraud may shake the very foundation of the business of the entity in question and may adversely affect the same. Therefore, the onerous task of proving such a serious allegation lies on the person leveling such accusation on the basis of preponderance of probability".

Additional Submission vide email dated August 22, 2022

gg. Further, I humbly submit that merely signing of documents as an employee does not create a liability in an artificial manner. Further all the cost of executing the documents, agreement was borne by the Company. I did not execute the alleged agreement on my own accord and merely acted as the agent and employee on behalf of the Company. I reiterate my submissions that I had no knowledge that I was involved in any fraudulent transactions undertaken by the Company in collusion with other directors and promoters and being used as managing director for necessary for dealing in the Company's account maintained with Euram.

hh. Further, it is pertinent to mention that I was never a part of any of the documents of the Company other than documents related to the issuance of GDRs such as account opening forms, undertakings, and alleged agreements. Therefore, it goes on to show that I have no knowledge of the fraudulent transactions undertaken by the Company in collusion with other directors and promoters.

ii. *Without prejudice, I humbly submit that even if I was involved in the alleged scheme then also there is no additional or any accrual benefits to me and there are no additional incentives made by me, even the Notice also failed to show the same. Hence, the allegations made upon me are baseless and without any merits. I humbly request your goodself's to kindly issue the Notice to real culprits, who has run the entire fraudulent show.*

jj. *Further, it is pertinent to mention herein that the acquisition, cancellation and sale of GDRs, happened after my resignation, i.e. February, 2008. Thus, the said facts alone prove that if I were in collusion, then I should be part of each and every stage in the present matter. However, on the contrary, I am not part of the same. Further, it is pertinent to mention herein that one thing from the year 2007 to 2012 (from the First GDR to the cancellation of the Second GDR issue), is not changed, i.e. promoters and other directors of the Company, who was actually controlling everything.*

Additional Submission vide email dated August 29, 2022 and September 01, 2022

kk. *Noticee referred to two recent case laws of Hon'ble SAT in the similar matter of GDRs issuance, i.e. Mr. P.F.Sundesha & Ors. Vs SEBI (Appeal No. 534 of 2019) date of decision 27.06.2022 and Sybly Industries Ltd & Ors. Vs AO, SEBI, (Appeal No.381 of 2019) dated of decision 14.07.2022, where the Hon'ble SAT not only found the penalty of 20 lakhs is excessive on the Managing Director/other director but also found that five years of debarment period is also excessive on them. Accordingly, My Client humbly submits that if the Ex-parte Whole Time Member's Order dated September 05, 2017 qua My Client is to be considered, whereby WTM proceeded ex-parte qua My Client and prohibited the same for a period of ten years. Then My Client humbly submits that there ought not to be any monetary penalty qua him, since the said ex-parte order not only harmed his reputation but also washed his entire life's credibility being a trustworthy person and which is very highly excessive.*

D. CONSIDERATION OF ISSUES AND FINDINGS

14. I have taken into consideration the material available on record. The issues that arise for consideration in the present case are as follows:

I. Whether Noticee has violated the provisions of Section 12A(a), (b) (c) of SEBI Act read with 3(b), (c), (d), 4(2)(c), (f), (k) & (r) of PFUTP Regulations

II. Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act, 1992

III. If the answer to issue no. II is in affirmative, then what should be the quantum of monetary penalty?

15. Before moving forward, it is pertinent to refer to the text of regulations which reads as under:

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—

(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

(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:—

(c) advancing or agreeing to advance any money to any person thereby inducing any other person to offer to buy any security in any issue only with the intention of securing the minimum subscription to such issue;

(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.

Preliminary Issues raised by Noticee

16. I note that Noticee has raised some preliminary submissions regarding delay in initiating adjudication proceedings qua notice and the proceedings are liable to be quashed on account of delay of more than 14 years. In this regard, I note that SEBI investigated issue of GDRs in the overseas markets by the Indian companies on receipt of a complaint, in the year 2009, regarding misuse of GDR route by few companies. 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 the GDRs without any valid consideration and sold the underlying shares in the securities

market in India. SEBI initiated investigation as soon as SEBI came to know that such companies have adopted the *modus operandi* as referred to above. Since, the GDRs are issued abroad and related transactions were carried out outside India, SEBI had to call information from the various entities situated abroad in such large number of fraudulent GDR issues. Such information *inter alia* included seeking information on diversion of funds and subsequent tracing of proceeds from large number of entities and 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. This information was not readily forthcoming. Therefore, 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 from many jurisdictions. The foreign regulators had also to collect this information from the concerned entities and then to furnish to SEBI. Further the proceedings in respect of the GDR issue of KSS were initiated by SEBI as early as 2011, wherein SEBI passed an interim order dated September 21, 2011. Thereafter, pursuant to complete investigation in the matter, vide final order dated September 05, 2017, directions were passed against KSS and its directors.

17. 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................"

18. Further 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."

19. In view of the above observations of Hon'ble SAT, I am not inclined to accept the contention raised by the Noticee as the Hon'ble SAT has accepted the complexity involved in the GDR issues and appreciated the time taken by SEBI to gain information relating to the various entities from multiple jurisdictions. In view of said aforesaid judgements of Hon'ble SAT, I hold that there is no delay in the matter that would vitiate the proceedings.

20. Noticee has further contended that following documents on the basis of which the SCN was issued, were not provided to them despite the request.

    a. Copy of the Investigation Report
    b. Copy of the documents/materials/information obtained from Euram Bank
    c. Copy of the documents/materials/information obtained from Vintage FZE
    d. Copy of the documents/materials/information obtained from Mr. Arun Panchariya
    e. Copy of the documents/materials/information obtained from Luxembourg Stock Exchange, if any, in the matter of KSS
    f. Copy of communications between, if any, Euram Bank and SEBI
    g. Copy of communications between, if any, Vintage FZE and SEBI
    h. Copy of communications between, if any, SEBI and other Noticees, including Mr. Arun Panchariya during the investigation
    i. Any other documents/materials/information collected during the investigation which resulted in the issuance of captioned Notice, including the copies of the files of investigation.
    j. Cross examination of Mr. Arun Panchariya and Mr. Mukesh
    k. Copies of minutes of all the meetings of Audit Committee, Investor grievance committee and Management committee held in the year 2007 to 2008.
    l. The shareholding pattern of promoter and promoter group (in the years 2006, 2007 and 2008)

m. Announcements & Disclosures made by the Company with respect to GDR issuance at Exchanges (in the years 2006, 2007 and 2008)
n. Documents, information with respect to appointment, designations and resignation with respect to me. (in the years 2006, 2007 and 2008).
o. Board of Directors meetings and its minutes (in the years 2006, 2007 and 2008)
p. Minutes of the meeting of the board of KSS dated July 31, 2007.
q. Audit Committee meetings and their minutes (in the years 2006, 2007 and 2008).

21. In this regard, I note that vide email dated April 11, 2022, all the above mentioned documents except (d), (e), (f), (g), (h), (i), (j), (k), (n) and (q) above, which was relied upon and relevant while issuance of SCN was again sent to the Noticee's email ID. Noticee in his reply dated July 21, 2022 has also annexed a copy of email dated April 11, 2022 as an exhibit H which shows that the above referred documents have been emailed to him. Further vide email dated April 18, 2022 it was communicated to the Noticee that all the documents and information relied upon in the SCN have already been provided to the Noticee. Noticee in his reply dated July 21, 2022 has also annexed a copy of email dated April 18, 2022 as an exhibit I.

22. It would be appropriate to refer to the *Order of Hon'ble SAT dated February 12, 2020 in Shruti Vora vs. SEBI (Appeal No. 28 of 2020)* wherein, it was observed that: "*The contention that the appellant is entitled for copies of all the documents in possession of the AO which has not been relied upon at the preliminary stage when the AO has not formed any opinion as to whether any inquiry at all is required to he held cannot be accepted. A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon.*"

23. It would also be appropriate to refer to the Hon'ble Supreme Court judgment in the matter of T. takano vs SEBI (Civil Appeal Nos. 487-488 of 2022) wherein, it was held that: ""the requirement of compliance with the principles of natural justice cannot therefore be read to encompass the right to a roving disclosure on matters unconnected or as regards the dealings of third parties. The investigating authority may acquire information of sensitive nature bearing upon the orderly functioning of the securities market. The right of the Noticee to disclosure must be balanced with a need to preserve any other third party rights that may be affected."

24. In view of above, the contention of Noticee relating to non-issuance of necessary documents is erroneous, hence unacceptable.

25. Having discussed preliminary issues, I now proceed to deal with the other issues in the matter.

I. Whether Noticee has violated the provisions of Section 12A(a), (b) (c) of SEBI Act read with 3(b), (c), (d), 4(2)(c), (f), (k) & (r) of PFUTP Regulations

26. I note from material available on record, there were two GDR issues by KSS. First GDR issue was of 47,61,900 GDRs (amounting to USD 25 Million) and issue closed on November 02, 2007. Second GDR issue was of 44,75,238 GDRs (amounting to USD 29.98 Million) and issue closed on October 16, 2009. On both the occasions, the scheme relating to GDR issues was devised and structured by Arun Panchariya (AP) in connivance with KSS to the detriment of the Indian investors, wherein AP arranged for loans for the subscription of GDRs by Vintage, a Dubai based company, which was allegedly 100% owned and controlled by AP. KSS, in turn, helped AP in arrangement of those funds by signing two separate pledge agreements, with European American Investment Bank AG (hereinafter referred to as 'Euram Bank'), a bank based in Vienna, Austria, thereby, providing security for such loans taken by Vintage at the time of both first and second issues. Thereafter, these GDRs were converted into underlying shares and sold

to Indian investors with the help of certain FIIs registered with SEBI or their Sub-Accounts as well as certain Indian entities connected to AP. At the same time, KSS misled the Indian investors by not disclosing information regarding pledge agreements signed by Shri Rajesh Pavithran (Noticee) and Dinesh Bhanusali, at the time of first issue and signed by Shri Hussain Sattaf at the time of second issue, whereby the funds received by KSS under the respective GDR issues were given as collateral for the loans taken by Vintage. In light of this, it was alleged that the activities of Noticees, KSS and its Directors, in connivance with AP and his connected entities, involved in the whole scheme, created a wrong impression before the Indian investors that foreign investors were interested in investing in KSS due to its reputation and future prospects and therefore, defrauded them.

27. I also note that the Board of Directors of KSS at its meeting dated July 31, 2007 has authorized the Noticee and Mr. Dinesh Bhanushali to do all such things as may be required from time to time on behalf of the Company relating to first GDR issue. Subsequently, Pledge Agreement dated October 30, 2007 is signed between KSS and Euram Bank in first GDR issue. The Loan agreement was also signed on October 30, 2007. Thereafter the GDRs were issued on November 2, 2007.

28. The pledge agreements were signed by the Noticee and Mr. Dinesh Bhanushali on behalf of KSS. Further, I note that the Definition Clause of the Pledge Agreement clearly defines loan agreement in the terms quoted above. In view of this, 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. I also note that only by virtue of the pledge agreement executed by directors of KSS including Noticee, Vintage was granted loan by Euram. Without the said loan, the GDR subscription itself would not have happened. Thus, I note that the loan and pledge agreements played the central role in the whole scheme of GDR issuance.

29. The scheme of arrangement of KSS, in allotting GDR issue to only one entity on each of the two occasions, i.e. Vintage during both 1st and 2nd GDR issue which subscribed to the GDR issue by obtaining loans from Euram and which were secured by KSS by pledging its GDR proceeds, seen along with the GDRs issued and allotted without disclosing the crucial details to BSE pertaining to the aforesaid Loan and Pledge Agreements which were price sensitive information and capable of inducing investors, lead to a conclusion that the same were done in a fraudulent manner. The fact that KSS itself had secured the loans taken by Vintage for the subscription of its GDR and the documents related to that were signed by its directors, indicate that KSS and its directors were well aware that the GDRs were subscribed only by Vintage. In the instant case, I note that Shri Rajesh Pavithran (Noticee) was Managing Director and the Authorized Representative of KSS for all the purposes of 1st GDR issue. At the same time, the pledge agreement was signed by Shri Rajesh Pavithran and Dinesh Bhanusali in their capacity as the Authorized Representative of KSS. They were also the authorized person on behalf of KSS to execute other documents in relation to the 1st GDR issue.

30. Noticee has *inter alia* contended that he has signed the documents and papers in the bonafide interest of the Company and the decision of raising funds and utilisation of the same for the Company is with Mr. Sanghvi and Mr. Amar. Noticee further contended that he was unaware that the documents are self-financing GDR issue agreements and did not execute the alleged agreement on its own accord but acted as the agent and employee on behalf of the Company and merely signing of documents as an employee does not create a liability in an artificial manner. Further all the cost of executing the documents, agreement was borne by the Company. Noticee has also placed reliance on the decision of Hon'ble Supreme Court in *Union of India Vs. Chaturbhai M.Patel (AIR 1976 SC 712), Hindustan Steel vs. State of Orissa (AIR 1970 SC 253)* and Hon'ble SAT order in *Parsoli Corporation vs. SEBI (Appeal No 146/2011 order dated 12th August 2011, Sterlite Industries vs. SEBI (Appeal No. 20/2001 dated 22nd October 2001), Paresh Parekh vs. SEBI (2002) 40 SCL 139*) and Ess

Intermediaries v. SEBI (dated 19th June 2013. Noticee has also averred that excessive penalty is imposed onto him, while in similar GDR matters, Hon'ble AO has imposed lesser penalty. In this regard, Notice has referred the decision of Hon'ble Supreme Court in *Ex-Naik Sardar Singh vs. Union of India (1991) 3 SCC 212, Ranjit Thakur vs. Union of India (AIR 1987 SC 2386), Adjudicating Officer vs.Bhavesh Pabari dated 28th February, 2019 and* Hon'ble SAT order *in the matter of P G Electroplast vs SEBI, Sybly Industries Ltd & Ors. Vs AO, SEBI, (Appeal No.381 of 2019) dated 14.07.2022, Mr. P.F.Sundesha & Ors. Vs SEBI (Appeal No. 534 of 2019) date of decision 27.06.2022.*

31. I note that said explanation coming from Noticee ("Managing director") is extremely casual, imprudent and uncalled for. Being a Managing director of the company, Noticee must be aware and informed of its duties as a director. Here I would like to refer the definition of "Managing Director" as stipulated under 2(26) of Companies act,1956 read with section 166 of Companies act, 2013.

Section 2(26) of Companies act, 1956

26) " managing director " means a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board of directors or, by virtue of its memorandum or articles of association, is entrusted with substantial powers of management which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name called :

***Provided** that the power to do administrative acts of a routine nature when so authorized by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within substantial powers of management :*

***Provided further** that a managing director of a company shall exercise his powers subject to the superintendence, control and direction of its Board of directors ;*

Section 166 of Companies act, 2013

166. Duties of Directors
(1) Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company.

(2) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.

(3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

(4) A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

(5) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

(6) A director of a company shall not assign his office and any assignment so made shall be void.

(7) If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

32. In view of the above, Noticee cannot take defence that he was ignorant of documents pertaining to GDR issue which he was signing and that the acts were done at the behest of third party. It is also pertinent to note that Noticee was immensely important in the hierarchy of KSS as is apparent from his status as Managing Director. Therefore, acts done by Noticee reflects failure to comply with duties as Managing Director of the company.

33. Noticee have also submitted that the allegations of fraud require a high level of proof and establishment of mens rea. In this regard, Noticee has relied upon various judgments/orders of higher courts. I have perused the judgments/orders and I am of the view that the facts of the instant case are different and distinguishable from the facts of the cited judgments/orders and the same shall not be of any help to the Noticee. Thus, contention of the Noticee in this regard is not tenable.

34. Noticee has taken plea that he acted as the agent and employee on behalf of the Company. In this regard I note that upon perusal of material on record, at the time of the first GDR issue, Noticee has played an integral part in the whole scheme on behalf of KSS. By virtue of board resolution, Mr. Rajesh Pavithran (Noticee) as Managing director of KSS, was authorized and given substantial powers pertaining to issuance of GDRs. In this regard it is pertinent to refer to *doctrine of lifting of corporate viel* which means disregarding the corporate personality and looking behind the real person who are in the control of the

company. In other words, where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality. In the instant case, Noticee being the Managing Director of KSS, had been vested with substantial powers in connection with the issue of GDRs of KSS, an artificial juristic person, and the directors of KSS assume the character as "officer in default" for any violation.

35. In this context, I would like to place reliance on the observations of the *Hon'ble Supreme Court of India in the matter of Shri N. Narayanan vs. SEBI decided on 26.04.2013*, wherein it was observed that - *"... 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.".*

36. Further, Hon'ble High Court of Madras in *Madhavan Nambiar vs Registrar of Companies* has held that – "*… Section 5 of the Companies Act defines the expression "officer who is in default". The expression means either (a) the managing director or managing directors ; (b) the whole-time director or whole-time directors ; (c) the manager ; (d) the secretary ; (e) any person in accordance with whose directions or instructions the board of directors of the company is accustomed to act; (f) any person charged by the board with the responsibility of complying with that provision ; (g) any director or directors who may be specified by the board in this behalf or where no director is so specified, all the directors.*

… Section 29 of the Companies Act provides the general power of the board…. Therefore, it follows there cannot be a blanket direction or a blanket indemnity in favour of the petitioner or other directors who have been nominated by the Government either ex officio or otherwise. Hence the second point deserves to be answered against the petitioner…. There may be a delegation, but ultimately it comes before the board and it is the board and the general body of the company which are responsible..."

37. Further, I note that Section 27 of SEBI Act also deals with offences by Companies. In the said provision, Section 27(1) says that, in case of a default 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.

38. In view of the above facts and stipulations, I am unable to accept the contention of the Noticee.

39. I note that by virtue of the respective Board Resolutions mentioned above, Noticee was given authority to open the bank account with Euram Bank and sign relevant documents on behalf of KSS.I also note that Noticee was also the signatory of Pledge Agreements. Subsequently, all of KSS actions in reference to GDR issues have been in keeping with said agreements.

40. At this juncture, it is pertinent to refer *Hon'ble SAT Order dated October 25, 2016 in Appeal No. 126 of 2013 in the matter of Pan Asia"),* the Hon'ble SAT while interpreting the expression 'fraud' under the PFUTP Regulations, 2003, observed:

13. "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."

41. In light of the above discussions regarding the GDR issues of KSS, I am of the view that Noticee had played a major role in this matter. By virtue of the Board

Resolutions mentioned above, he was given authority to open the bank account with Euram Bank and sign relevant documents. Further, I note that it is Noticee who had signed everywhere on behalf of KSS be it KYC document or the pledge agreement / account charge agreement at the time of 1st GDR issue. Therefore, in view of the above I hold that Noticee has violated the provisions of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(b), (c), (d) and 4(2)(c), (f), (k), (r) of PFUTP Regulations.

42. I find it relevant to refer to the judgment of the Apex Court in *SEBI vs Shri Ram Mutual Fund, (Appeal Civil 9523-9524 of 2003)* dated May 23, 2006, wherein it was held that "in our opinion, *mens rea* is not an essential ingredient for contravention of the provisions of a civil act". In view of the aforesaid judgment, I find it difficult to exercise leniency on grounds such as ignorance or lack of intention. If leniency is observed in such cases then every offender would seek impunity citing aforesaid reasons and the legislative intent of the provisions of SEBI Regulations would be defeated.

Issue II. Does the violation, if any, attract monetary penalty under section 15HA of the SEBI Act, 1992

43. In light of findings/observations made against the Noticee brought out in the foregoing paragraphs, the Noticee has violated the provisions of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(b), (c), (d) and Regulations 4(2)(c), (f), (k) and (r) of PFUTP Regulations. Therefore, Noticee is liable for a penalty under Section 15HA of SEBI Act. The text of the said provision of law is being reproduced below:

SEBI

Penalty for 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

Issue III. If the answer to issue no. 2 is in affirmative, then what should be the quantum of monetary penalty?

44. While determining the quantum of penalty under the provisions of Section 15HA of the SEBI Act, it is important to consider the relevant factors as stipulated in 15J of the SEBI Act, which reads as under:

SEBI Act, 1992

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.]

45. In the instant case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the aforesaid violations by the Noticee is not available on record. Further, it does not show that the said failure is repetitive.

46. I am aware of the fact that the default in question pertains to the year 2007 and 2009, since then considerable amount of time has passed. Further, *the Hon'ble SAT in P.G Electroplast Ltd. vs. SEBI (Appeal No. 281 of 2017), dated August 02, 2019*, has held that an order passed in corresponding proceedings before the whole time member should be factored in while fixing the quantum of penalty. In this regard, I note that, a separate and parallel proceeding was initiated against the Noticee under the provisions of sections 11(1), 11(4) and 11B (1) of the SEBI Act under the same facts pursuant to which Hon'ble WTM has passed the order dated September 05, 2017, prohibiting the Noticee 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 ten years. Therefore, I have factored the debarment period while imposition of penalty.

ORDER

47. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules 1995, I hereby impose a penalty of Rs. 20,00,000/-(Rupees Twenty lakhs only) on the Noticee i.e. Rajesh Pavithran under Section 15HA of the SEBI Act. I am of the view that the said penalty is commensurate with the violation/allegations levelled against the Noticee.

48. 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 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

49. The Noticee shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	

Bank details in which payment is made	
Payment is made for	Penalty

50. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticee and also to the SEBI.

Place: Mumbai **ASHA SHETTY**

Date: September 23, 2022 **ADJUDICATING OFFICER**