BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO: Order/GR/KG/2019-20/5604-5608]

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:

1. **Bhoruka Aluminium Limited (PAN: AAACB8073D)**
2. **Dr. M.K. Panduranga Shetty**
3. **Mr. Rajkumar Agarwal**
4. **Mr. Rajat Agarwal**
5. **Mr. Ajay Kumar Dalmia**

In the matter of GDR Issue by Bhoruka Aluminium Limited

BACKGROUND IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigations into the alleged irregularities in the GDR (**Global Depository Receipts**) Issue by **Bhoruka Aluminium Limited** (hereinafter referred to as **"Company / BAL"**) during the period from November 1, 2010 to December 31, 2010 (hereinafter referred to as **"Investigation Period"**).

2. BAL is a company whose shares are listed on the BSE Ltd. The investigations, *prima facie,* revealed that BAL had issued 1.12 million GDRs (amounting to USD 10.38 million) on December 3, 2010, equivalent to 1,12,26,280 equity shares of Re. 1 each, and the said issue was subscribed by 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 (**EURAM Bank**) by entering into Loan Agreement dated November 23, 2010 with EURAM Bank. It was observed that directors of BAL in its board meeting held on September 28, 2010, 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 BAL and also for using the funds deposited in the said bank account as security in connection with loans, if any. BAL had signed a pledge agreement dated November 23, 2010 with EURAM Bank pledging GDR proceeds as collateral against the loan availed by Vintage, executed by Mr. Ajay Kumar Dalmia, Chief Financial Officer (hereinafter referred to as "CFO") of BAL. Vide the said loan agreement, BAL had pledged the GDR proceeds against the loan availed by Vintage FZE for subscribing to GDRs of BAL, thus securing Vintage FZE's loan.

3. Therefore, it was alleged that the scheme of issuance of GDRs was fraudulent. It was observed that the directors of BAL namely, Dr. M.K. Panduranga Shetty, (2) Dr. B.L. Amla, (3) Mr. Prabir Chakravarti, (4) Mr. R.K. Aggarwal, (5), Mr. Rajat Aggarwal and 6) Mr. Ajay Kumar Dalmia who had had attended the board meeting dated September 28, 2010, and passed the aforementioned resolution. It was therefore alleged that the individuals named above had acted as parties to the fraudulent scheme. Vide orders dated August 23, 2018, adjudication proceedings were disposed against Dr. B.L. Amla and Shri Pravir Chakravarty as abated due to the demise of the said persons.

4. SEBI had, therefore, initiated adjudication proceedings *inter alia* against BAL 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") and Section 21 of the Securities Contracts Regulations Act, 1956 read with Clauses 32, 36(7) and 50 of the Listing Agreement.

5. **APPOINTMENT OF THE ADJUDICATING OFFICER**

Earlier, Shri Biju S, Chief General Manager, was appointed as Adjudicating Officer (AO) in the matter, which was communicated to the AO vide communiqué dated May 17, 2018, to inquire into and adjudge under Section 15HA of the SEBI Act, 1992 and Section 23E of the SCRA the aforesaid violations alleged to have been committed by the Noticee. 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.These proceedings are therefore been carried forward where they had been left off by the previous AO, and an opportunity of personal hearing was granted as detailed hereinafter.

6. **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

Show Cause Notice No. EAD-4/ADJ/SRP/HKS/OW/P/19755/1/2018 dated July 13, 2018 (hereinafter referred to as "SCN") was issued to the Noticee in terms of Section 15-I of the SEBI Act, 1992 and Section 23I of the SCRA read with Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "SEBI Adjudication Rules") and Rule 4 of Securities Contracts (Regulation) (procedure for holding Inquiry and Imposing Penalties by Adjudicating Officer) rules, 2005 (hereinafter referred to as "SCRA Adjudication Rules") 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 PFUTP Regulations.

7. Thereafter, vide letter dated August 3, 2018, the Noticees No. 1-4 *inter alia* denied all allegations contained in the SCN and sought time for filing a detailed reply after inspecting the documents which were to be relied upon in the adjudication proceedings. Such request was granted by the erstwhile adjudicating officer vide letter dated August 8, 2018 and an inspection of the documents was carried out on August 27, 2018 by the authorized representatives of the Noticee. Subsequently, vide letter dated October 4, 2018, a detailed response was filed by BAL on behalf of itself and three of its Directors, Dr. M. K. Panduranga Setty, Mr. Rajkumar Aggarwal and Mr. Rajat Agarwal. A brief synopsis of the written submissions of the Noticee is provided herein below:

   a. It was admitted that BAL had in fact issued 11,22,628 GDRs (amounting to USD 10.38 Million), equivalent to 1,12,26,280 equity shares of Rs. 10 each as stated in the SCN.
   b. It was denied that there was only one allottee to the GDR issue, namely Vintage, but there were actually three allottees namely, Axinite Capital Inc, Cruise Waterford Investments Limited and Creative Stone Holdings Limited.

c. Since there were three allottees to the GDR issue as detailed above, it is not correct that BAL had itself financed the subscription by Vintage to its GDR issue.

d. The opening of account by Vintage with EURAM Bank and the subsequent loan agreement between the two are unrelated to BAL and/or its Directors.

e. The pledge agreement between BAL and EURAM Bank as referred to in the SCN, was unknown to BAL prior to the receipt of the said SCN and was not authorized by BAL and/or its shareholders and as such BAL and/or the said Directors are unrelated to the same. Further, the authenticity of the seal on the said agreement was disputed by BAL and that no resolution was passed by the shareholders of BAL approving any such agreement. In short, BAL and the said Directors disowned the said agreement submitting that the same is fake and no such agreement was entered upon by them.

f. BAL had opened account with EURAM Bank for receiving the proceeds of the GDR issue in the ordinary course of business and for that purpose had authorized Shri Ajay Kumar Dalmia, its Chief Financial Officer, to operate the said account.

g. The issue of GDRs was fully subscribed and the list of subscribers was submitted to the BSE on the basis of the list received from the Lead Managers and nothing was done by BAL to mislead investors.

h. The Directors of BAL merely carried out their duties as Directors and had passed the resolutions to enable smooth completion of the GDR issue.

i. BAL was planning a major expansion and was looking for funds to finance this plan. As per the advice of Shri Ajay Kumar Dalmia, its CFO at the relevant time (who had resigned soon after the GDR issue), it had sought to raise monies through the issue of GDR. BAL admitted that there have been a few activities pertaining to the issue of GDRs which have occurred without the knowledge of the company and/or its Directors.

j. BAL had been completely taken in/ cheated by the plans and ideas provided by their CFO and Lead Manager, Pan Asia Advisors Limited.

8. In its aforesaid letter dated November 12, 2018, the Noticee enclosed the following documents:

a) Copy of email received from Pan Asia Advisors Limited, Lead Manager for the GDR issue inter alia communicating the list of allottees for the GDR issue.

b) Copy of documents submitted to stock exchange bearing the actual seal of the company.

9. Subsequently, vide letter dated June 4, 2019, BAL and the tree aforesaid Directors were provided an opportunity of personal hearing, which was held on June 19, 2019. BAL and the three Directors were represented by Ms. Shailasree Bhakar, Company Secretary, during the hearing as their Authorized Representative (hereinafter referred to as "AR"). The AR reiterated the submissions made earlier vide their reply dated October 4, 2018 and no additional submissions were made.

10. The SCN dated July 13, 2018 had returned undelivered from the address of the Mr. Ajay Kumar Dalmia with the postal endorsement "unclaimed". Thereafter, on resumption of the proceedings by the instant AO, an opportunity of personal hearing was sought to be provided to Mr. Ajay Kumar Dalmia vide letter dated August 6, 2019. The said letter was sent along with copy of the SCN. The said letter had also returned undelivered. Thereafter, a copy of the SCN and the hearing notice was uploaded on the website of SEBI under the heads "unserved summons/notices' and was also published in various regional and national dailies on October 10, 2019, wherein Mr. Ajay Kumar Dalmia was advised to appear for personal hearing on October 15, 2019. Till date, no response has been received from him.

CONSIDERATION OF ISSUES

11. At the outset, I find it necessary to settle a preliminary issue. Neither the SCN nor the hearing notices could be delivered upon Mr. Ajay Kumar Dalmia and as such he was not represented during the hearing before me. I find that all possible steps have been taken to bring the SCN and the hearing notices to the knowledge of Mr. Ajay Kumar Dalmia, including sending the same by post and publication in regional and national newspapers. Therefore, I conclude that all the process of service of the SCN and the hearing notices as specified under Rule 7 of the SEBI (Adjudication) Rules, 1995 and concomitant provisions under SCRA (adjudication) Rules, 2005 have been exhausted and therefore the principles of natural justice has been complied with qua Mr. Ajay Kumar Dalmia. I now proceed to deal the case on merits.

12. 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 Noticees have 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 and Section 23E of SCRA?

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

OBSERVATIONS AND FINDINGS

13. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of the SEBI Act, 1992 and PFUTP Regulations, SCRA and Listing agreement alleged to have been violated by BAL. The same are reproduced 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.

Section 21 of SCRA 1956

[*Conditions for listing*.

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

Clause 36 (7) of Listing Agreement:

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

....

(7) Any other information having bearing on the operation/performance of the company as well as price sensitive information…….,

The above information should be made public immediately."

Clause 50 of the Listing Agreement:

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

Clause 32 of Listing Agreement:

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

<u>Issue I :</u> Whether the Noticees have 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 and Section 21 of SCRA 1956, read with Clause 36 (7), Clause 32 and Clause 50 of the Listing Agreement.?

14. From the material available on record, I note that BAL had issued 1.12 million GDRs (amounting to USD 10.38 million) on December 3, 2010, equivalent to 1,12,26,280 equity shares of Rs.10 each. Summary of the aforesaid GDRs issued by BAL as submitted by BAL vide its letter dated June 23, 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
03-Dec-2010	1.12 (at USD 9.25 each GDR)	10.38	DBS Bank	1,12,26,280 of Rs.10 each	The Bank of New York Mellon, USA	Pan Asia Advisors Ltd.	EURAM Bank, Austria	Luxembourg Stock Exchange (LSE)

15. BAL vide letter dated June 23, 2015 provided list of subscribers to its GDRs to SEBI and the list is tabulated as under:

Sl. No.	**Name of the subscriber**	**No. of GDRs**	**No. of Shares**	**Value (USD)**
1	Axinite Capital INC	3,22,628	810,000	29,84,309
2	Cruise Waterford Investments Limited	4,50,000	750,000	41,62,500
3	Creative Stone Holdings Limited	3,50,000	720,000	32,37,500
	Total	**11,22,628**	**112,26,280**	**103,84,309**

16. 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.

17. Investigations further observed that an entity viz. Vintage FZE (now known as Alta Vista International FZE) (hereinafter referred to as "Vintage") had obtained a loan of USD 10.38 million by entering into a Loan Agreement dated November 23, 2010 with EURAM Bank to subscribe to the GDRs of BAL. 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 the amount of facility:*
>
> *USD 10,384,309.-*
>
> (The amount is exactly the same amount raised by BAL 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 1,122,628 Luxembourg public offering and may only be transferred to EURAM account nr. 580032, Bhoruka Aluminium Limited*"
>
> *(*The specific purpose of the loan/ draw down was for the purpose of subscribing to the GDR issue of BAL. 580032 is the client account number of BAL. Exactly, the amount of USD 10,384,309 was credited to the escrow account of BAL with Euram Bank on the same date of loan being debited to the account of Vintage i.e., December 02, 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. 580032 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.*

18. From the aforesaid Loan Agreement, I note that Vintage had availed a loan facility to the extent of USD 10.38 million from EURAM Bank to subscribe to the GDRs of BAL.

19. From the certified true copy of BAL's Board Resolution dated September 28, 2010 provided by EURAM Bank, and copy of minutes of the board meeting of BAL held on the same date provided by BAL vide email dated October 31, 2017 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 Ajay kumar Dalmia, CFO and Authorized Signatory of the Company, be and are hereby severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required."

"RESOLVED FURTHER THAT 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]

20. From the aforesaid minutes of the board meeting it is observed that the Board of Directors of BAL had authorized, *Shri Ajay kumar Dalmia, CFO* to sign, execute, any application, agreement and other paper(s) from time to time as may be required by EURAM Bank. For this purpose, Shri Ajay Kumar Dalmia was *inter alia* authorized to carry and use the seal of BAL. 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.

21. From the copy of the minutes of the meeting, it is observed that the Noticees had attended the Board meeting dated September 28, 2010 and approved the aforementioned resolutions. The aforesaid fact of opening of account with EURAM Bank for such purposes as stated in the Board resolution and reproduced above has also been admitted by BAL in its submissions.

22. I note that subsequently BAL has admittedly entered into a Pledge Agreement with EURAM Bank on November 23, 2010. The said Pledge Agreement was signed by Mr. Ajay Kumar Dalmia on behalf of BAL, in the capacity of Chief financial Officer of BAL. The salient Clauses of the Pledge Agreement are *inter alia* as under:

> ***1.*** *Preamble*
> *By loan agreement K231110-003 (hereinafter referred to as the "Loan Agreement") dated 23 November 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 10,384,309.-. The Pledgor has received a copy of the Loan Agreement No. K231110-003 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 **Borrowe**r 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 10,384,309 existing from time to time at present or hereafter on the **securities account(s) no. 580032** 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. 580032 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. *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…….*

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."*

23. I note that the Pledge Agreement refers to the Loan Agreement dated November 23, 2010 between the borrower i.e. Vintage, and EURAM Bank, whereby Vintage was granted a loan of USD 10,384,309, and it is stated that the Pledgor i.e. BAL has received a copy of the said Loan Agreement and acknowledges and agrees to its terms and conditions. By signing the Pledge Agreement, BAL 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".

Regarding the dates, it is noted that the Pledge Agreement and the Loan Agreement were both dated November 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.

24. 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 10,384,309 to subscribe to the GDRs of BAL. 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 10,384,309 on December 2, 2010 and the same was then transferred to the escrow account (No. AT961934005800320021) of BAL 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 BAL comprising 1.12 million GDRs amounting to USD 10.38 million, was subscribed by only one entity, i.e. Vintage, and not by the three entities (viz. Axinite Capital INC, Cruise Waterford Investments Limited and Creative Stone Holdings Limited) as claimed in BAL's letter dated June 23, 2015. I further note that the amount was transferred to BAL's retail account (no. AT70193400-580032-0101) held with EURAM Bank on the same day i.e. December 2, 2010, and that BAL's account was pledged with EURAM Bank under the Pledge Agreement.

25. Vide its reply dated October 4, 2018, BAL has *inter alia* denied that there was only one subscriber to its GDR issue, viz. Vintage and has instead named three entities who had purportedly subscribed to its GDR issue. This information pertaining to the list of allottees was purportedly received by it from its Lead Manager, Pan Asia Advisors Limited. Neither in its written submissions nor during the personal hearing it was submitted by BAL that its escrow account opened with EURAM Bank was being operated by its Lead Manager. Therefore, it shall be correct to assume that BAL itself (through its Directors/agents) was operating the said escrow account in which the GDR proceeds were received. The transfer of the proceeds from

Vintage's account to that of BAL is clearly visible from the account statement dated December 2, 2010 (Annexure-8 to the SCN) which can reasonably be presumed to have been known by BAL and its directors/ key managerial personnel as well. The said statement of account was directly addressed to BAL. Therefore, it was evident from the fund transfer details itself that BAL ought to have known that the GDR proceeds were being received from only one entity, viz. Vintage.

26. 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 transfer of fund by BAL to its UAE based subsidiary (Bhoruka Aluminum (Dubai) FZE) are tabulated below:-

Date	Repayment By Vintage (A)	Payment by BAL (B)	Remarks
1-Feb-11	503,000	500,000	Bank charges upto 1-Feb-11 is USD 2,698.08
28-Mar-11	2,000,000	2,000,000	
7-Apr-11	4,500,000	4,500,000	
15-Apr-11	2,000,000	2,000,000	
26-Apr-11	1,000,000	1,000,000	
26-Apr-11	381,309	4,17,364	Interest earned by BAL (36,055)
	10,384,309	10,417,364	Total

A. Repayment of loan by Vintage to Euram bank (Repayments by Vintage)
B. Transfer of amounts from BAL to Bhoruka Aluminum (Dubai) FZE

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

28. BAL, vide its written submissions dated October 4, 2018 has disputed the genuineness of the said pledge agreement and has stated that the said agreement was in fact never known or executed by it and no such pledge agreement was entered between it and EURAM Bank. It was submitted that the pledge agreement was a fake document. To further support this submission, BAL has sought to point out certain purportedly technical deficiencies in the

pledge agreement which *inter alia* includes use of a different seal of BAL, non-mentioning of the date along with the signatures of the signatories etc. I observe that the said pledge agreement was signed by Shri Ajay Kumar Dalmia in his capacity as the Chief Financial Officer of BAL. From the Board resolution dated September 28, 2010, it is clearly evident that Shri Ajay Kumar Dalmia was authorized to carry out all such acts which may be necessary for dealing in the said accounts maintained with EURAM Bank. In the said resolution the bank was authorized to use the GDR subscription monies inter alia "*as security in connection with loans if any..*". Therefore, it is inferred from these facts that Shri Ajay Kumar Dalmia did have the requisite authorization from BAL to enter into the said pledge agreement which related to the subscription to its GDR issue. Therefore, the signing of the said pledge agreement by Shri Ajay Kumar Dalmia is deemed to be an act done by BAL (the principal) through its agent (Shri Ajay Kumar Dalmia) and the same cannot be disowned by BAL at this stage. Further, the GDR proceeds received by BAL was gradually transferred to its Dubai based wholly owned subsidiary, Bhoruka Aluminium FZE ("BAF") within a span of 3 months between February 2011 and April 2011. From the letter dated June 23, 2015 of BAL, I observe that during the said period, Shri Ajay Kumar Dalmia was the Director of BAF.

29. It is pertinent to note that neither in its written submissions, nor in its oral submissions during the personal hearing held on June 19, 2019, did BAL inform that it had taken any steps against the purported fake pledge agreement. It has not been stated by BAL anywhere that any complaint was lodged with police authorities against execution of such purportedly unauthorized pledge agreement on its behalf. Further, the entire trail of funds from the bank account of Vintage to that of BAL and the pattern of subsequent disbursements as already narrated above, when seen as a whole, strongly establishes collusion between Vintage and BAL with respect to the subscription of the said GDR issue of BAL. In this regard, it is appropriate to 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 <u>which could be inferred from the attending circumstances of the cases, because direct evidence in such cases may not be available."</u>*
> [Emphasis supplied]

30. Thus, I note that in the above manner, the obligation of Vintage under the Loan Agreement was secured by BAL 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 BAL'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

31. I note that as and when, loan repayments were made by Vintage, BAL used to transfer funds from its EURAM Bank account to the account of BAF. In view of the above, I note that every transfer from BAL to its UAE subsidiary is in sync with the date and amount of loan repaid by Vintage to EURAM Bank. Therefore, I note that the amount transferred from BAL's EURAM account to its UAE subsidiary 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.

32. 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."*

33. In the present matter, I note that the GDR subscription amount of USD 10.38 million was not available to BAL 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 December 2, 2010, a partial amount of USD 500,000/- could be made available to the company only on February 1, 2011 i.e. after a period of two months. The last instalment towards amount of USD 10.38 million along with accrued interest was available to BAL only in April 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 to the account of BAF

by BAL. However, BAL has not provided BAF's bank account statement. Instead BAL had informed SEBI vide letter dated August 3, 2015 that BAF has been wound up and most of its records were lost in transit and there was no means available for retrieving the information pertaining to its bank accounts. This *per se* appears to be suspicious and non-genuine.

34. Moreover, it is noted that BAL had provided incorrect information to SEBI vide its letter dated June 23, 2015, wherein it had stated that the GDR issue was subscribed by three investors, namely, Axinite Capital Inc, Cruise Waterford Investments Limited and Creative Stone Holdings Limited.. The same was informed to BSE as well vide letter dated December 13, 2010. However, from the documents available on record, it is observed that the GDRs were subscribed by one entity only, viz. Vintage. I also note that the Pledge Agreement which was specifically signed by the authorized representative of BAL makes reference to Vintage. The same also clearly shows that BAL was aware that the subscriber to the GDR issue was Vintage. Such actions also indicate *mala fide* intention on the Noticee's part.

35. As discussed above, false and misleading corporate announcements were made by BAL and it also suppressed the material and price sensitive information viz. (i). execution of pledge agreement dated November 23, 2010 by BAL 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 November 23, 2010, 2010 by Vintage for obtaining loan from the Euram bank for subscribing the GDR issue of BAL and (iii) Vintage was the only subscriber of GDR issued by BAL. I find that all these three events were price sensitive information and could have impacted the scrip price of BAL. I find that the corporate announcements made by BAL on December 03, 2010 stating that 'issued and allotted 1,122,628 GDR', might have mislead the investors and created a false impression in the minds of the investors that the GDR issue was fully subscribed whereas BAL had itself facilitated subscription of its GDR issue wherein the subscriber (Vintage) obtained loan from the Euram Bank for subscribing the GDR issue of BAL and BAL secured that loan by pledging the GDR proceeds with the Euram Bank. BAL has denied that it has violated Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(f), (k), (r) of SEBI (PFUTP) Regulations, 2003. In its reply dated October 4, 2018, has *inter alia* contended its directors had carried out their normal duties and was not part of any fraudulent scheme to

mislead investors. In this regard, I note that the Hon'ble Supreme Court in its judgment in the matter of **Kanaiyalal Baldevbhai Patel v. SEBI** has also observed that 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*".

I note that the Hon'ble Supreme Court in the same judgment, has also observed that "*that the provisions of Regulations 3 (a), (b), (c), (d) and 4(1) are couched in general terms to cover diverse situations and possibilities. Once a conclusion, that fraud has been committed while dealing in securities, is arrived at, all these provisions get attracted in a situation....*".

36. The aforementioned act of BAL 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."

37. In view of the above, I note that the scheme of arrangement of BAL, in allotting GDR issue to only one entity i.e. Vintage which subscribed the GDR issue by obtaining loan from Euram Bank and the same was again secured by the BAL by pledging its GDR proceeds, seen along

with the false and misleading corporate announcements made by BAL on December 03, 2010 stating that the GDR was issued and allotted, without disclosing the crucial details pertaining to the aforesaid loan and pledge agreements which were price sensitive information, lead to conclusion that the same were done in a fraudulent manner with a view to influence the decision of the investors and to induce the sale or purchase of its scrip. Thus, BAL 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), (2)(f), (k), (r) of PFUTP Regulations, 2003 and Section 21 of the Securities Contracts Regulations Act, 1956 read with Clause 36(7) of the Listing Agreement.

38. Further, I note that BAL in its Annual Report for Financial Year (FY) 2010-11 (Copy of Annual Report is placed at "Annexure 14" to the SCN) had stated that:

"*The Financial Statement have been prepared in compliance with all material aspects of the applicable Accounting Standards issued by the Institute of Chartered Accountants of India (ICAI) and based on historical cost convention.*"

However, in the Annual Report for the aforesaid FY 2010-11, BAL showed cash balance of Rs.35.19 Crores as on March 31, 2011 and included the same as Cash and Cash equivalents (CCE) for the purpose of Cash Flow Statement required to be prepared in accordance with Accounting Standard 3. However, on perusal of Vintage's loan account statement, BAL's EURAM Bank retail bank account statement and Pledge Agreement it was observed that BAL had pledged its GDR proceeds of USD 10.38 million with EURAM Bank against the loan availed by the Vintage and as on March 31, 2011, an amount of USD 7,881,309 was payable by Vintage which was secured by the amounts lying in the accounts of BAL's EURAM Bank account as on March 31, 2011. Therefore, the balance lying in BAL's EURAM Bank account was not free cash and cash equivalent as per AS-3. BAL has sought to dispute this allegation made in the SCN by stating that it was unaware of the said pledge agreement and therefore has denied non-compliance with the Accounting Standards. As already held above that BAL's knowledge of the pledge agreement is established from a holistic reading of the entire trail of events pertaining to the GDR issue, this submission of BAL cannot be accepted. In view of the above, I hold that BAL has not complied with AS-3 by considering the amount lying in the

EURAM Bank account as CCE. Hence, it is held that BAL by not complying with AS-3 has violated the provisions of Clause 32 and Clause 50 of the Listing Agreement.

39. I also observe that BAL had pledged its GDR proceeds of USD 10.38 million against the loan availed by Vintage for subscription of GDRs issued by BAL. BAL utilized its GDR proceeds only to the extent of amount repaid by Vintage and there was a possible obligation on BAL for the amount of loan outstanding to be paid by Vintage i.e., approximately USD 7.88 Million as on March 31, 2011. Further, the contingent liability was backed by the balances in the EURAM Bank account of BAL as the GDR proceeds were kept with EURAM Bank. In the event of default of repayment of loan by Vintage which was a contingent event, the liability would have crystallized and BAL would have had to repay the loan of Vintage by foregoing the amount of balance held with the Euram Bank. Therefore, a contingent liability to the extent of USD 7.88 Million as on March 31, 2011 was required to be disclosed by BAL. From the examination of the Annual Report of BAL for FY 2010-11, I observe that BAL did not disclose the aforesaid as a contingent liability as on March 31, 2011 in its Annual Report as required in terms of 'Accounting Standard 29'. It is also observed that BAL (in its financial statement for the Financial Year 2010-11) did not follow prudence since it did not disclose the contingent liability/ make provision for potential liability, did not follow substance over form as presented its bank balance with EURAM Bank as free cash available with the company and also did not follow materiality as it did not disclose the fact of signing of Pledge Agreement and pledging of GDR proceeds, as the same are items, the knowledge of which might influence the decision of the user of the financial statements. This charge too has been disputed by stating that BAL was unaware of the pledge agreement. For the reasons already stated in the preceding paragraphs, I hold that this defense in untenable and I hold that BAL has violated Clause 50 of the Listing Agreement.

<u>Issue II</u> : Does the violation, if established, attract monetary penalty under Section 15HA of the SEBI Act, 1992 and Section 23E of the SCRA?

40. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund** 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.*"

41. I note that the Hon'ble Supreme Court, in the matter of *N Narayanan v. Adjudicating Officer, SEBI* (Civil Appeals No. 4112-4113 of 2013) has observed as under:

"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."

42. I find that Mr. Ajay Kumar Dalmia (Noticee No. 5) had signed the Pledge Agreement dated November 23, 2010 for and on behalf of BAL and the seal of BAL is also affixed thereon. Vide this pledge agreement, Euram Bank was authorized to use the funds of BAL as security in connection with loan obtained by Vintage (subscriber of GDR issue of BAL) from the Euram Bank. As such, the Noticee No. 5 was not only part of the fraudulent arrangement of BAL but also played an active role in executing the pledge agreement dated November 23, 2010 which actually facilitated the subscription of GDR issue of BAL.

43. The Noticee No. 2, 3 and 4 had participated in the Board meeting of BAL on September 28, 2010 wherein approvals were made to, among other, authorizing the Euram bank to use the GDR proceeds as security in connection with the loan and the same was acted upon by the Company (Noticee No. 1) in which the Noticee No. 5 has signed and executed the pledge agreement dated November 23, 2010 on behalf of the Noticee No.1. Further, the Noticees No. 2, 3 and 4 had continued to be on the board of Directors of BAL during the entire process of issue of GDRs, receipt of such proceeds etc. Thus, the Noticees No. 2, 3, and 4 were part of the fraudulent scheme and arrangement of the Noticee No.1 in facilitating the subscription of its own GDR.

44. Thus, the 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 and Section 21 of the Securities Contracts Regulations Act, 1956 read with Clauses 32, 36(7) and 50 of the Listing Agreement by BAL and the 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 other Noticees make them liable for imposition of penalty under Section 15HA of the SEBI Act, 1992 and Section 23E of the SCRA, which reads as below –

SEBI Act, 1992

"Penalty for fraudulent and unfair trade practices.

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

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

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

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

SCRA

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

__23E.__ If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees."

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

45. 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.

46. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that 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. From the documents made available, it is noted that no prior default by the Noticee is on record. In the present case, I note that BAL had issued 1.12 million GDRs worth USD 10.38 million to Vintage on December 3, 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 BAL and EURAM Bank. It is noted that both the Agreements were executed concurrently i.e. on November 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 BAL not given such security towards the loan taken by Vintage. 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. Thus, BAL is observed to have acted in a fraudulent manner and has violated Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c),

(d) and 4(1) of PFUTP Regulations and Section 21 of the Securities Contracts Regulations Act, 1956 read with Clauses 32, 36(7) and 50 of the Listing Agreement.

ORDER

47. 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 and Section 23-I of the SCRA read with Rule 5 of the SCRA (Adjudication) Rules, hereby impose the following penalty on the Noticees:

Entity	Violation	Penal Provisions	Penalty (Rs.)
Bhoruka Aluminium Limited (Noticee No. 1)	Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(f), (k), (r) of PFUTP Regulations	Section 15HA of the SEBI Act, 1992	Rs. 10,00,00,000 (Rupees Ten Crore Only)
	Section 21 of SCRA, 1956 read with Clauses 36(7) of Listing Agreement *(1 instance)*	Section 23E of the SCRA, 1956	Rs. 5,00,000/- (Rupees Five Lakh Only)
	Section 21 of SCRA, 1956 read with Clauses 32 and 50 of Listing Agreement *(1 instance)* Section 21 of SCRA, 1956 read with Clause 50 of Listing Agreement *(1 instance)*	Section 23E of the SCRA, 1956	Rs. 10,00,000/- (Rupees Ten Lakh Only)
	Total		**Rs. 10,15,00,000/- (Rupees Ten Crore Fifteen Lakh Only)**

Dr. M.K. Panduranga Shetty, Noticee No. 2	Penalty imposed under Section 15HA of the SEBI Act, 1992 for 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 PFUTP Regulations	**Rs.10,00,000/- (Rupees Ten Lakh Only)**
Mr. Rajkumar Agarwal, Noticee No. 3	Penalty imposed under Section 15HA of the SEBI Act, 1992 for 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 PFUTP Regulations	**Rs.10,00,000/- (Rupees Ten Lakh Only)**
Mr. Rajat Agarwal, Noticee No. 4	Penalty imposed under Section 15HA of the SEBI Act, 1992 for 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 PFUTP Regulations	**Rs.10,00,000/- (Rupees Ten Lakh Only)**
Mr. Ajay Kumar Dalmia, Noticee No. 5	Penalty imposed under Section 15HA of the SEBI Act, 1992 for 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 PFUTP Regulations	**Rs.20,00,000/- (Rupees Twenty Lakh Only)**

48. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link.

ENFORCEMENT Orders Orders of AO PAY NOW

49. 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

50. 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

51. 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 **G. Ramar**
Date: November 20, 2019 **Adjudicating Officer**