BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/BM/RK/2024-25/30324

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

In respect of the Noticee,

Arun Panchariya

(PAN No : AEVPP6125N)

In the matter of

GDR issue of Winsome Yarns Limited.

A. BACKGROUND

1. Securities and Exchange Board of India **("SEBI")** had conducted investigation against several Indian companies including Winsome Yarns Limited that had issued Global Depository Receipts **("GDR")** in overseas markets to ascertain whether there was any violation of SEBI Act, Rules and Regulations thereunder during the period March 01, 2011 to April 30, 2011 (hereinafter referred to as the "**Investigation period/IP"**).

2. Pursuant to that an Adjudication order (hereinafter referred to as **"AO"**) [ADJUDICATION ORDER NO. Order/MC/DS/2020-21/9498] dated October 29, 2020 was passed against Shri Arun Panchariya (hereinafter referred to as the "**Noticee/AP"**) for violation of Section 12A(a), (b), (c) of SEBI Act 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 the **"PFUTP Regulations")** imposing penalty of Rs 25 crores.

3. Noticee preferred an appeal against AO dated October 29 2020. Hon'ble SAT vide its order dated November 29, 2023 (**"SAT order"**) remitted the matter to the Adjudicating Officer to pass a fresh order after providing necessary documents in Annexure 29 to the SCN and opportunity of hearing to the Noticee. The relevant excerpt from the SAT order is as under:

"37. In view of the aforesaid, the appeal is partly allowed. ***The impugned order in so far as it relates to the first leg of the transaction is affirmed. The impugned order relating to the second leg of the transaction is set aside. The matter is remitted to the AO to redecide the matter in the light of the observations made above after giving due opportunity of hearing and after supplying the necessary documents contained in annexure 29 to the show cause notice."***

B. APPOINTMENT OF ADJUDICATING OFFICER

2. Subsequent to the aforesaid SAT order, the undersigned was appointed as the Adjudicating Officer vide order dated December 05, 2023 under section 15I of the Securities and Exchange Board of India Act, 1992 read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 **('Adjudication Rules')** to inquire into and adjudge under Section 15HA of the SEBI Act.

C. SHOW CAUSE NOTICE

3. Show Cause Notice **("SCN")** dated September 11, 2019 bearing reference no. EAD5/MC/DPS/23572/2019 was issued to the Noticee under Rule 4(1) of the SEBI (Procedure for holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as

'Adjudication Rules') to show cause as to why an inquiry should not be held and penalty be not imposed against him under Section 15HA of the SEBI Act for the alleged violations of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

4. Pursuant to the restoration of the case to the file of Adjudicating Officer, in accordance with the direction of Hon'ble SAT, the appointment of the undersigned in the matter was communicated to the Noticee and they were called upon to appear before the undersigned to collect the Annexure 29 to the SCN on December 21, 2023. Necessary documents contained in Annexure 29 was handed over to the Authorized Representative (AR) of the Noticee on December 21, 2023 with an advise to file reply in the matter within 21 days.

D. <u>REPLY AND HEARING</u>

5. In the absence of any response from the Noticee, a reminder email dated January 12, 2024 was sent to the Noticee to reply by January 17, 2024. Subsequently, Noticee vide email dated January 12, 2024 sought extension of time to file reply in the matter which was accordingly granted and the Noticee was advised to file reply in the matter by February 12, 2024. Noticee filed reply in the matter vide letter dated February 11, 2024. Further, in the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, vide letter dated February 21, 2024, which was duly delivered, a hearing opportunity was granted to to the Noticee to appear on March 12, 2024. However, vide email dated March 07, 2024, the AR of the Noticee sought adjournment of the hearing and accordingly, vide email dated March 19, 2024, the Noticee was granted another opportunity of hearing on April 03, 2024.The said hearing was attended to by the AR wherein he reiterated the submissions made earlier by the Noticee vide his letter dated February 11, 2024.

6. The submissions made by the Noticee vide its letter dated February 11, 2024 are mentioned as under :-

a) *Noticee submitted that he has not violated the provisions as alleged and was not the beneficiary nor there is any proof or evidence of benefit having gone to him with regard to second leg of transaction and that Winsome had confirmed of having received the GDR proceeds and the same has also been held by SAT.*

b) *Noticee submitted that there is no connection nor there is any concrete evidence to prove connection between him and Highblue Sky(HBSF) and Aspire.*

c) *With respect to its connection with HBSF, the Noticee relied upon submission made by HBSF in its reply to Show Cause Notice dated June 30, 2017 and that the said reply finds its mention in the member order dated October 06, 2021 in the matter of GDR Issue of Hiran Orgochem Ltd., which reads as mentioned below:*

> **a)** *It is a limited liability company incorporated under the law of the Republic of Mauritius. It has a license issued by the Financial Service Commission (FSC) of Mauritius and its business was in the nature of a mutual fund/hedge fund i.e. it receives fund and "in kind subscription" from investors, which it in turn invests in shares and securities across the global markets (including India). The investors are foreign corporates and institutional investors, and none of its investors are Indians or Non Resident Indians (NRIs).*
>
> **b)** *Allegation in the SCN that the GDRs were converted by Highblue Sky on behalf of Arun Panchariya and his connected entities was not correct. Noticee's investments did not belong to Arun Panchariya or his connected entities, and the Noticee did not have any connection with Arun Panchariya or his connected entities in any manner.*
>
> **c)** *Allegation that Highblue Sky was connected to Arun Panchariya, on the ground that Anant Sharma and Reema*

Shetty were connected to Arun Panchariya, was not correct as the cancellation of GDRs and the sale of the converted equity shares of Hiran Orgochem were done upto July 30, 2014, which was prior to the association of Anant Sharma (August 11, 2014) and Reema Narayan Shetty (April 21, 2014). Anant Sharma himself approached SEBI to give his statement, and to assist in the investigation, which shows the bona fide intention of Anant Sharma. Fact that Arun Panchariya and An ant Sharma were Directors in one of the Indian company cannot be used to conclude that Anant Sharma was connected with Arun Panchariya in all businesses, which were independently handled by Anant Sharma.

d) *In respect of the allegation that Anant Sharma had worked with Vintage FZE in the past, the Noticee has submitted that the past employment of Anant Sharma did not affect the business decisions of the Fund, and Anant Sharma had never hidden any information about his past employment, which was disclosed to FSC and other regulatory authority, at the time of his appointment as a Director in Golden Cliff and Emerging Market Opportunities Fund, and also to /CIC/ bank while seeking conversion of Sub-account Emerging Market Opportunities Fund (Previously known as Highblue Sky) into FPI.*

e) *With respect to the KYC documents of Highblue Sky showing its address and contact numbers being common with one Aurisse Fund, it has been submitted by the Noticee that Aurisse was the management company for Highblue Sky and provided services, viz., accounting, NA V calculations, provision of Directors, Secretary, Registered office, maintenance of books and accounts, filing of change on Directors, shareholders, tax advice etc., which was a normal practice."*

d) *As regards its connection with Aspire Noticee relied upon SATorder dated September 13, 2023 in* ***Winsome Textile Industries Ltd Vs SEBI*** *to justify that he was not connected with the entities involved in the second leg of transaction and submitted that even in connected appeal No 248 of 2022 pertaining to ASPIRE in the GDR issue of Winsome Yarns, the Hon'ble Tribunal had relied upon the above SAT order passed in Appeal No.251 of 2022 and set aside the order of the Adjudicating Authority.*

e) *That in view of the above said categoric findings of the Hon'ble SAT, the allegation of connection of the noticee with High blue Sky and Aspire in the SCN and Annexure 29 just supplied to the noticee cannot be sustained and therefore, the noticee cannot be involved in the second leg of transaction.*

f) *Noticee had already resigned as director from Vintage in 2010. Vintage was merely a SPV subscriber. Accordingly, utilizing the loan availed from EURAM Bank, Vintage subscribed to the GDRs. From time to time, EURAM bank changed the GDRs from Vintage through the Bank's over the counter platform and adjusted the sale proceeds towards the loan.*

g) *Noticee was Director in IFCF only till October 2010. However, it did not exercise any control over IFCF. Investment decisions were taken by the board of directors of which the Noticee was not a part. IFCF held a collective investment scheme license and raised funds by issuing different classes of shares to various beneficiaries. IFCF floated schemes for various classes of shares. Class A shares dealt in GDRs and was held 63% by EURAM Bank and 7.82 % by Citco Bank, Netherland and that both are institutional investors. 29% was held by Atique Atadi Trading LLC. IFCF was controlled by EURAM as it was* *provided in the FlI umbrella by EURAM and it was EURAM's staff that controlled the affairs of IFCF.*

h) *Noticee submitted that the financial penalties were charged upon him on the basis of letter signed and executed by company management and Euram Bank on failure of their commitment towards Loan-Pledge agreement which all happened in the year 2012-13-14 due to SEBl's Ex-Parte order which prohibited all parties involved in transaction to deal into securities market. So, it was a consequence of events effected by SEBI order where all dates are out of SEBI investigation period of its first Ex-Parte order. It submitted that by the time, he had already resigned and was not even aware of any commitment or failure on the part of company management, Euram Bank or Vintage or Pan Asia.*

i) *Noticee never controlled any broker, any Fund or contacted for any purpose of conversion or sale of GDR or underlying shares.*

7. I shall now proceed to decide the matter on the basis of SCN issued, reply made by the Noticee and material available on record.

E. <u>CONSIDERATION OF ISSUES AND FINDINGS</u>

8. It is pertinent to mention that Hon'ble SAT vide its order dated November 29, 2023 has upheld the first leg of the of the transaction i.e. the issuance of GDR did not suffer from any error of law and has remanded back to establish the connection of the Noticee with the entities involved in the second leg of the transaction and flow of money from sub-accounts to the Noticee and also to reconsider the quantum of penalty levied upon the Noticee vide the AO. In view of the observation of Hon'ble SAT, the issues that arise for consideration before me are therefore:

F. <u>ISSUES</u>

i) To establish connection of the Noticee with the entities involved in the second leg of transaction and flow of money from sub-accounts to the Noticee.

ii) Reconsideration of the quantum of penalty as per SAT order.

Issue no. (i) Connection of the Noticee with the entities in the second leg of transaction and flow of fund from sub accounts to the Noticee.

9. It is pertinent to mention here that the instant proceedings are based upon the directions of the SAT wherein the SAT had directed as mentioned herein below:

*“**35**. In view of the aforesaid, we are of the view that the finding of the AO with regard to the violation committed by the appellant in the first leg of the transaction does not suffer from any error of law and the same is affirmed by us for the reasons stated in the earlier part of our order.* ***The connection of the appellant with the entities in the second leg of the transaction is not proved and the relevant documents have not been considered nor supplied to the appellant and, therefore, to that extent the impugned order cannot be sustained.”***

10. From the above, it is observed that the SAT affirmed that finding of the AO with respect to the first leg of the transaction i.e. the issuance of GDR did not suffer from any error of law. However, with respect to the second leg of the transaction i.e. regarding conversion of the GDR into equity shares which were subsequently sold to the investors in the Indian market, SAT observed that the connection of the Noticee with the entities in second leg of the transaction was not proved and that the relevant documents had not been considered nor supplied to the Noticee.

11. As stated above, pursuant to Hon'ble SAT order, Annexure 29 showing the connection was provided to the Noticee. In this regard, Noticee submitted that he was not the beneficiary nor there is any proof or evidence of benefit having gone to him with regard to second leg of transaction and that Winsome had confirmed of having received the GDR proceeds and the same has also been held by SAT. Noticee further made a submission that there is no connection nor there is any concrete evidence to prove connection between him and Highblue Sky and Aspire and also relied upon SAT judgements in the matter of Winsome Textile Industries Ltd Vs SEBI to justify that he was not connected with the entities involved in the second leg of transaction.

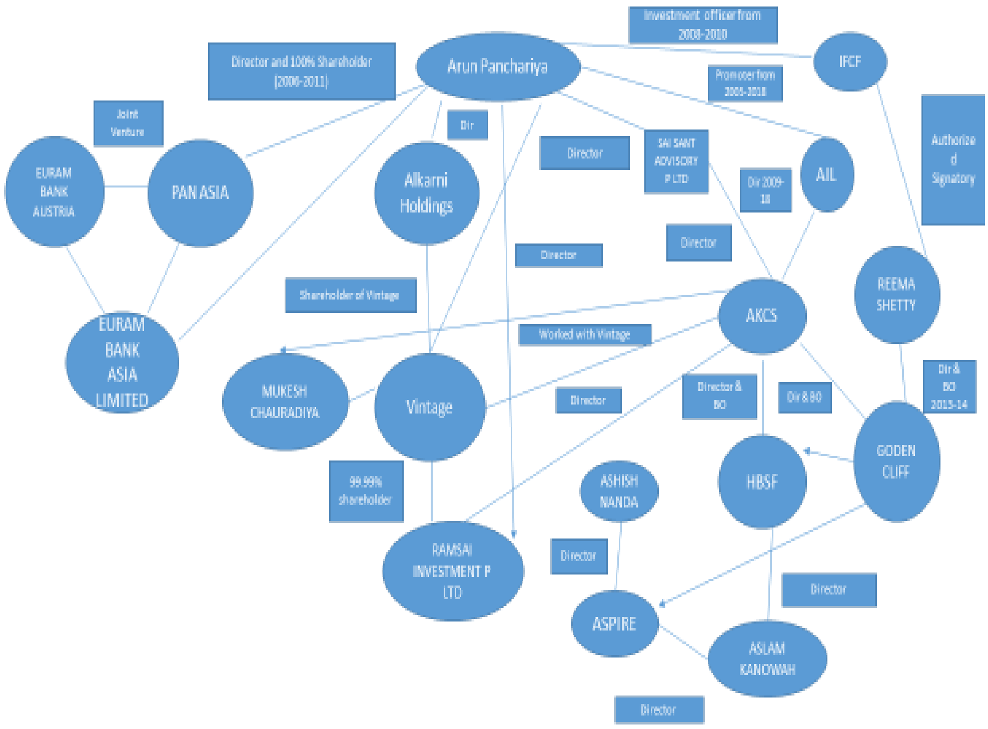
12. With regard to the aforesaid submission of the Noticee, it is pertinent to refer to the connections as brought out in the annexure 29, the same is given in the Table 1 below :

Table 1

Sl. No.	**Name of entity**	**Connection/association of Noticee with other entities**
1	Pan Asia Advisors Ltd. (now known as Global Finance and Capital Ltd.)	Noticee No. 9 was director (April 24, 2006 to September 29, 2011) and 100% shareholder (July 01, 2008 to January 20, 2012)
2	Vintage FZE (now known as Alta Vista International FZE)	Noticee No. 9 was beneficial owner and Managing Director (as on June 06, 2007 and June 07, 2010 respectively). Alkarni Holdings Limited was shareholder of Vintage as on December 28, 2010 and Mr. Arun Panchariya was sole director of Alkarni as on April 21, 2014.
3	India Focus Cardinal Fund (IFCF)	Noticee No. 9 was director from August 22, 2008 to October 28, 2010, Investment Officer (100% shareholder) and beneficial owner
4	EURAM Bank, Austria	Noticee No. 9 connected to Pan Asia Advisors Ltd. had joint venture with EURAM Bank namely EURAM Bank Asia Limited.
5	EURAM Bank Asia Limited	Noticee No. 9 was director and president (resigned on September 22, 2011)

Sl. No.	Name of entity	Connection/association of Noticee with other entities
6	Anant Kailash Chandra Sharma ('AKCS')	Noticee No. 9 and AKCS were directors in Sai Sant Advisory (I) P. Ltd- Noticee No. 9 - August 31, 2007 to October 20, 2010 AKCS-December 01, 2009 to March 18, 2016. Noticee No. 9 is one of the promoters of Alka India Ltd. from the quarter ended December 2005 to March 2018 (As observed from shareholding pattern of ALKA available on BSE website) AKCS was director in Alka India Ltd From December 01, 2009 to April 26, 2018. In Ramsai Investment Holdings P. Ltd, AKCS was director from September 01, 2015 to March 18, 2016. AKCS has worked with Vintage FZE
7	Highblue Sky Emerging Market Fund (HBSF)	AKCS is director (since August 11, 2014 till date) and beneficial owner (since September 09, 2014 till date) of HBSF. AKCS is connected to Noticee No. 9. (*HBSF's emails dated March 02 & April 29, 2016* Ms. Reema Narayan Shetty was beneficial owner of HBSF from April 21, 2014 to September 09, 2014 (by virtue of being beneficial owner of Golden Cliff from September 12, 2013 till September 09, 2014 which in turn is beneficial owner of HBSF since April 21, 2014). Ms. Reema Narayan Shetty is connected to Noticee No. 9 as she was authorized signatory of India Focus Cardinal Fund.
8	Golden Cliff (previously known as Vaibhav Investments Limited)	AKCS is director (since July 16, 2014 till date) and 100% beneficial owner (since September 09, 2014 till date) of Golden Cliff. AKCS is connected to Noticee No. 9. (*HBSF's emails dated March 02 & April 29, 2016* Reema Narayan Shetty was director and 100% beneficial owner (from September 12, 2013 till September 09, 2014)) of Golden Cliff. She was authorized signatory for the bank account of Noticee No. 9 connected entity India Focus Cardinal Fund which was maintained with EURAM Bank Austria.
9	Aspire Emerging Fund (Aspire)	Mr. Ashish Nanda was a director of Aspire along with Mr. Aslam Kanowah who was also a director of HBSF.

13. The above connection is depicted in pictorial chart below:



14. From the table 1 and chart above, I note that one Mr Anand Kailash Chandra Sharma (AKCS) was a Director in Sai Sant Advisory (I) P Ltd along with the Noticee, wherein Noticee was Director from August 31, 2007 to October 20, 2010 and AKCS was Director from December 01, 2009 to March 18, 2016. Further, Noticee was one of the promoters of Alka India Ltd from the quarter ended December 2005 to March 2018 (As observed from shareholding pattern of ALKA available on BSE website) and the said AKCS was director in Alka India Ltd from December 01, 2009 to April 26, 2018. I note that in Ramsai Investment Holdings P. Ltd where Vintage FZE was holding 99.99% shareholding, AKCS was director from September 01, 2015 to March 18, 2016 and that AKCS had also worked with Vintage FZE. Further, I note that AKCS is director (since August 11, 2014 till date) and beneficial owner (since September 09, 2014 till date) of FII Sub-account HighBlue Sky Emerging Market Fund

(HBSF) and that AKCS is director (since July 16, 2014 till date) and 100% beneficial owner (since September 09, 2014 till date) of Golden Cliff(FII).The material available on record also shows that Mr. Ashish Nanda was a director of Aspire Emerging Fund (Aspire) along with Mr. Aslam Kanowah who was also a director of HBSF.

15. With regard to HBSF and Golden Cliff, I note that Ms. Reema Narayan Shetty was beneficial owner of HBSF from April 21, 2014 to September 09, 2014 (by virtue of being beneficial owner of Golden Cliff from September 12, 2013 till September 09, 2014 which in turn is beneficial owner of HBSF since April 21, 2014) and that Ms. Reema Narayan Shetty was connected to the Noticee as she was authorized signatory of bank account of India Focus Cardinal Fund (IFCF) maintained with EURAM Bank Austria).

16. In addition to the aforesaid, I note that the connection of the Noticee with Pan Asia Advisors Ltd, Vintage FZE has already been upheld by SAT vide its order dated November 29, 2023. In this regard, I note that the Noticee was Investment Officer (100% shareholder) and beneficial owner, director in IFCF from August 22, 2008 to October 28, 2010 and that the Noticee connected Pan Asia Advisors Ltd had joint venture with EURAM Bank namely EURAM Bank Asia Limited wherein the Noticee was Director and President and had resigned on September 22, 2011.

17. A fraudulent scheme was orchestrated by a key individual, referred to as the Noticee, in collaboration with connected entities and Winsome. Winsome issued a significant number of GDRs, and the Noticee, along with his connected entities, played a central role in structuring the GDR issue. The Noticee's connected entities were involved in various stages of the GDR issue, including subscribing to GDRs through loans and subsequently selling converted equity shares in the Indian securities market. The scheme involved misleading Indian investors by concealing crucial information and distorting GDR-related news. The Noticee and his connected entities acted as conduits in defrauding Indian investors

by subscribing to GDRs and selling converted equity shares in the market. Despite the connection between the Noticee and sub acocunts viz, HBSF and Aspire, the exact flow of money from sub-accounts to the Noticee is not fully elucidated in the available records. However, it is evident that the Noticee benefitted from the fraudulent scheme.

Issue no (ii) Reconsideration of penalty

Reconsideration of penalty

18. There are two legs to this convoluted transaction. First leg is issuance of the GDR in such a fraudulent manner and the second leg is the liquidation of the GDRs. It is undeniable that the Noticee had a role in both the legs. It is clear from the above that the entities have indulged in issuance of GDRs in a fraudulent scheme, involving misleading investors, concealing crucial information and distorting GDR related information away from the investing public. This has also been confirmed by the Hon'ble SAT in its order. This itself forms a large part of the manipulative enterprise of convoluted transactions. Whether the Noticee has benefited from the device when the GDRs were sold or not is a question of level of evidence available on records. As per the preponderance of probabilities for which there is enough material on records, the Noticee had no other incentive than to enter into such convoluted transactions with the prime objective to cash in on GDRS when they are sold. However, as now determined by SAT that the material available for the second leg is required to be beyond reasonable doubt and the trail of the money flow needs to be established to determine the complicity of the Noticee in the second leg of these transactions.

G. ORDER

19. In view of the foregoing and having considered the facts and circumstances of the case, the factors considered under Section 15J of the SEBI Act, observation of Hon'ble SAT in its order dated November

29, 2023 and in exercise of power conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, I hereby impose following penalty under section 15HA of the SEBI Act, 1992 on the Noticee.

Name of the Noticee	**Penalty Provisions**	**Penalty (Rs.)**
Arun Panchariya (Noticee)	Section 15HA of SEBI Act, 1992.	Rs 15,00,00,000/- (Rupees Fifteen Crores Only)

20. In my view, the said penalty is commensurate with the violations committed by the Noticee in this case as also upheld by the SAT vide its order dated November 29, 2023.

21. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the SEBI website www.sebi.gov.in on the following path by clicking on the payment link. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

ENFORCEMENT > ORDERS > ORDERS OF AO > PAY NOW

22. The aforesaid Noticee shall forward said the details/confirmation of penalty so paid to “The Division Chief (Enforcement Department 1 DRA-3), Securities and Exchange Board of India, SEBI Bhavan II, Plot No. C/7, “G” Block BKC, Bandra Kurla Complex, Bandra (E), Mumbai – 400

051." The Notice shall also provide the following details while forwarding DD / payment information:

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

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

24. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order shall be sent to the Noticee and also to the Securities and Exchange Board of India.

Date: May 07, 2024
Place: Mumbai

BARNALI MUKHERJEE
ADJUDICATING OFFICER