BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: Order/AA/ASR/2020/ 01-03]

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 AND UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005.

In respect of:

Chromatic India Ltd
PAN: AAACC6220B

Mr. Vinod Kumar Kaushik
PAN: AMAPK7964P

Mr. Ajay Sethi
PAN: AIDPS3802K

In the matter of

Chromatic India Ltd

FACTS OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted an investigation of several Indian companies that had issued Global Depositories Receipts (hereinafter referred to as '**GDRs**') in overseas market with the intention of defrauding Indian investors. **Chromatic India Ltd** (hereinafter referred to as **'the Noticee 1' / 'the Company' / 'Chromatic'**) is one of such companies that was investigated by SEBI, in connection with its GDR issue, wherein, it is revealed that it failed to inform stock exchanges about a Pledge Agreement entered into, between itself and European American Investment Bank (herfeinafter referred to as **'Euram Bank'**) which was a price sensitive information and therefore, alleged to have violated the provisions of section 21 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SCRA**') read with clause 36(7) of the Equity Listing Agreement. The Company by entering into a Pledge Agreement with the Euram Bank and having a Loan Agreement signed between Euram Bank and Vintage FZE (hereinafter referred to as '**Vintage'**), wherein Vintage was the only entity to have subscribed the aforementioned GDR issue of the Company, fraudulently issued GDRs.

2. Further, it was alleged that the Noticee 1 reported misleading news to the stock exchange which contained information in a distorted manner and, *prima-facie*, influenced the decision of investors. Therefore, it is alleged that this entire arrangement of the issuance of GDRs and signing of Pledge Agreement and Loan Agreement for the issuance of GDRs, which was concealed by the Noticee 1 from the investors and stock exchanges, is fraudulent. In view of such fraudulent acts, it is alleged that Noticee 1 has violated provisions of section 12A (a), (b), (c) of SEBI Act read with regulation 3(a), (b), (c), (d), 4(1), 4(2) (f), (k) and (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**').

3. Further, it is alleged that the Noticee 1 failed to follow Accounting Standards (AS) - 1, 3 and 29 as it failed to disclose and make provisions for potential liability arising out of pledging of GDR proceeds. It is also alleged that Noticee 1 presented its cash balance with Euram Bank as free cash available with the Company and failed to disclose the facts regarding signing of Pledge Agreement and consequent pledging of GDR proceeds, the knowledge of which might influence the decision of the user of the financial statements. Therefore, it is alleged that the Noticee 1 is in violation of section 21 of SCRA read with clauses 32 and 50 of the Equity Listing Agreement.

4. The investigation further revealed that the Directors of the Noticee 1 viz. Mr. Vinod Kumar Kaushik (hereinafter referred to as '**Noticee 2'**) and Mr. Ajay Sethi (hereinafter referred to as '**Noticee 3'**), approved the board resolution and authorized the Euram Bank to use the GDR proceeds of the Noticee 1 to be deposited with Euram Bank as security in connection with the loan taken by Vintage for subscription of GDRs. Further, the Whole Time Director of the Chromatic, i.e. the Noticee 2 executed the Pledge Agreement and therefore, allegedly, acted as one of the parties to the fraudulent scheme. Thereby, it is alleged that the directors of Chromatic viz, the Noticee 2 and the Noticee 3 by being parties to the fraudulent scheme pertaining to the GDR issue of Chromatic have violated section 12A (a), (b), (c) of the SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of the PFUTP Regulations.

5. In view of the findings of the Investigation conducted by SEBI w.r.t the GDR issue of Chromatic, it is alleged that Chromatic has violated the provision of sections 12A (a),(b) and (c) of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**') read with Regulations 3(a), (b), (c), (d) and 4(1), 4(2) (f), (k) and (r) of PFUTP Regulations and section 21 of the SCRA read with Clauses 32, 36(7) and 50 of the Equity Listing Agreement. In this context, the Noticees 2 and 3 are alleged to have violated the provisions of the sections 12A (a), (b) and (c) of the SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of the PFUTP Regulations. In view of the above observations and alleged violations, the adjudication proceedings were initiated against the Noticees 1 to 3 (hereinafter collectively referred to as '**the Noticees**') under the provisions of section 15HA of the SEBI Act and additionally under section 23E of the SCRA against Chromatic.

APPOINTMENT OF ADJUDICATING OFFICER

6. Shri Suresh B. Menon was appointed as the Adjudicating Officer(hereinafter referred to as '**AO**'), vide communique dated November 21, 2017, under section 15-I of the SEBI Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) and also under Ssection 23 I of the SCRA read with Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as '**SCRA Adjudication**

Rules') to inquire into and adjudge under the provisions of section 15 HA of the SEBI Act and section 23E of the SCRA, the alleged violation of the relevant provisions of the PFUTP Regulations, SCRA and Equity Listing Agreement by the Noticees, wherever applicable. Pursuant to the transfer of Shri Suresh B. Menon to another department, I was appointed as an AO in the present matter vide communique of appointment of AO dated March 25, 2019.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

7. A common Show Cause Notice ref. A&E/EAD3/SBM-ASR/10861/2018 dated March 28, 2018 (hereinafter referred to as '**SCN'**) was issued to the Noticees in terms of Rule 4 of the Adjudication Rules and the SCRA Adjudication Rules to show cause as to why inquiries should not be initiated and penalties, if any, be not imposed on them under section 15HA of the SEBI Act and section 23E of the SCRA, for the alleged contravention of the provisions of the PFUTP Regulations, SCRA and the Equity Listing Agreement by the Noticees, wherever applicable. Briefly, the allegations made in the SCN against the Noticees are given below

*a) Chromatic Ind Ltd (Noticee 1) issued 4.2 million GDRs and raised USD 35.78 million, on October 22, 2010. It is alleged that Vintage FZE (hereinafter referred to as '**Vintage**') was the only entity to have subscribed to 4.20 million GDRs (amounting to USD 35.78 million) of Noticee 1 and the subscription amount was paid by obtaining loan from European American Investment Bank AG (hereinafter referred to as '**Euram Bank**'). A Loan agreement was signed between Euram Bank and Vintage for the purpose of subscription of the GDRs of Noticee 1*.

b) It is alleged that Noticee 1, simultaneously, provided security towards the aforesaid loan obtained by Vintage, through a Pledge agreement signed between Noticee 1 and Euram Bank, wherein Noticee 1 pledged entire GDR proceeds against the loan availed by Vintage for subscription of GDRs of Noticee 1. The aforesaid Pledge agreement signed between Noticee 1 and Euram Bank was an integral part of the Loan agreement signed between

Euram bank and Vintage. It is alleged that on October 22, 2010, Noticee 1 made a corporate announcement to Bombay Stock Exchange (BSE) that it had successfully completed placement of 42,00,000 GDRs at USD 8.52 per GDR amounting to USD 35.78 million. However, information regarding signing of Pledge Agreement, which was material information pertaining to the contingent liability to the extent of GDR issue size, was not disclosed to BSE. Therefore, it is alleged that the corporate announcement by Noticee 1 was to mislead the Indian retail investors that the GDRs of Noticee 1 were fully subscribed without any liability, whereas, in reality the GDR issue was indirectly funded by Noticee 1 itself. Therefore, it is alleged that Noticee 1 did not inform stock exchanges about the aforesaid Pledge agreement entered into between itself and Euram Bank which was a price sensitive information and, therefore, could have a bearing on the price of the scrip of Noticee 1. It is thus alleged that Noticee 1 has violated provisions of section 21 of SCRA read with clause 36(7) of the Listing Agreement.

c) It is alleged that Mr. Vinod Kumar Kaushik / Noticee 2, who is Whole Time director of Noticee 1, executed the Pledge agreement with Euram (wherein Noticee 1 had pledged entire GDR proceeds of USD 35.78 million as collateral against the loan taken by Vintage). It is alleged that the aforesaid Pledge agreement was an integral part of Loan agreement entered between Vintage and Euram (wherein Euram extended a loan of USD 35.78 million to Vintage for subscription of GDRs of Noticee 1). Therefore, prima-facie, it was these two agreements that enabled Vintage to avail the loan from Euram for subscription of GDRs. Therefore, it is alleged that the GDR issue would not have been subscribed had Noticee 1 not given any such security towards the loan taken by Euram.

d) It is further alleged that the Noticee 1 made following misleading disclosure to Bombay Stock Exchange (hereinafter referred to as 'BSE') on October 22, 2010 that "...the meeting of the Board of Directors was held on October 22, 2010 and successfully concluded placement of 42,00,000 Global

Depository Receipts at US$8.52 per Global Depository Receipt...". It is alleged that the above disclosure by Noticee 1, prima facie, made investors of the company to believe that the said GDRs issue was genuinely subscribed by the investors without any liability or agreement like Pledge agreement signed by the company or Loan agreement. Therefore, it is alleged that the arrangement of Loan agreement and Pledge agreement which resulted in subscription of GDRs issue of the Noticee 1, was not disclosed to the stock exchange and Noticee 1 reported misleading news to the stock exchange which contained information in a distorted manner and, prima-facie, influenced the decision of investors. Therefore, it is alleged that this whole arrangement of Pledge agreement and Loan agreement for the issuance of GDRs, which was concealed by Noticee 1 from the investors and stock exchanges is fraudulent. In view of such fraudulent acts, it is alleged that Noticee 1 has violated provisions of Section 12A (a), (b), (c) of SEBI Act read with regulation 3(a), (b), (c), (d), 4(1), 4(2) (f), (k) and (r) of PFUTP Regulations. The complete allegation and findings in this regard are mentioned in the IR.

e) It is alleged that the Directors of Noticee 1 viz. Mr. Vinod Kumar Kaushik / Noticee 2, Mr. Vipin Sharma / Noticee 3 and Mr. Ajay Sethi, / Noticee 4, approved the board resolution and authorized the Euram Bank to use the GDR proceeds of Noticee 1 to be deposited with Euram Bank as security in connection with loan taken by Vintage for subscription of GDRs. Further, the Whole Time Director of the Noticee 1, i.e. Mr. Vinod Kumar Kaushik / Noticee 2 executed the Pledge agreement and therefore, allegedly, acted as one of the party to the fraudulent scheme. Thereby, it is alleged that the directors of Noticee 1 viz, Mr. Vinod Kumar Kaushik, Mr. Vipin Sharma and Mr. Ajay Sethi by being party to fraudulent scheme pertaining to the GDR issue of Noticee 1 have violated section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.

f) The GDRs of Noticee 1 were listed on Luxembourg Stock Exchange (hereinafter referred to as 'LSE') with effect from October 27, 2010. It is observed that LSE suspended the listing of GDRs of Noticee 1 with effect from February 17, 2015. It is also noted that, as on that date, 27,88,549 GDRs were outstanding. It is further observed that on December 14, 2015, the Global Depository Bank for the GDRs i.e. The Bank of New York Mellon terminated the GDR program of Noticee 1. However, it is alleged that Noticee 1 did not inform to the Indian stock exchanges about suspension of its GDRs on LSE and termination of the GDR program by the Bank of New York Mellon, which are material events and price sensitive in nature and thereby it is alleged that Noticee 1 had violated section 21 of SCRA read with clause 36(7) of Listing Agreement.

g) It is alleged that Noticee 1 did not follow Accounting Standards (AS) - 1, 3 and 29 as it did not disclose and also did not make provision for potential liability arising out of pledging of GDR proceeds. Further, it is also alleged that Noticee 1 presented its cash balance with Euram Bank as free cash available with the company and did not disclose the fact of signing of Pledge agreement and pledging of GDR proceeds as the same are the items, the knowledge of which might influence the decision of the user of the financial statements. Therefore, it is alleged that Noticee 1 is in violation of section 21 of SCRA read with clauses 32 and 50 of the Listing Agreement.

h) In view of the above, it is alleged that the dealings of Noticees in connection to the GDR issue of Noticee 1 have, prima facie, led to the violation of various provisions/sections of SEBI Act, SCRA, PFUTP Regulations and Equity Listing Agreement. The respective violations alleged to have been committed by the Noticees are tabulated below:

Sr. No	Name of the Noticee (Noticee no.)	Provisions allegedly violated	Penal Provisions
1	*Chromatic India Ltd (**Noticee 1**)*	*Section 12A(a), (b), (c) of SEBI Act read with regulation 3(a), (b), (c), (d), 4(1), 4(2) (f), (k) and (r) of PFUTP Regulations* *Section 21 of SCRA read with clauses 32, 36(7) and 50 of the Equity Listing Agreement.*	*Section 15HA of SEBI Act* *Section 23E of the SCRA*
2	*Mr. Vinod Kumar Kaushik (**Noticee 2**)*	*Section 12A(a), (b), (c) of SEBI Act read with regulation 3(a), (b), (c), (d), 4(1) of PFUTP Regulations*	*Section 15HA of SEBI Act*
3	*Mr. Ajay Sethi (**Noticee 3**)*	*Section 12A(a), (b), (c) of SEBI Act read with regulation 3(a), (b), (c), (d), 4(1) of PFUTP Regulations*	*Section 15HA of SEBI Act*

8. The SCNs for all the Noticees were sent to the address of Chromatic, as the Noticees 2 and 3 are the directors of Chromatic. In response to the SCN, the Noticees filed a common reply dated July 19, 2018. Pursuant to the appointment of the new AO, hearing notices dated July 17, 2019 were sent to respective addresses of the Noticees, informing them about the appointment of new AO in the matter and also granting them an opportunity of personal hearing on August 27, 2019. The Noticees, vide their common letter dated August 23, 2019 mentioned about the proceedings under section 11B of the SEBI Act initiated against them in the same matter and requested to reschedule the date of hearing. Subsequently, Chromatic filed a common reply dated November 06, 2019 on behalf of all the Noticees, in the matter. The submissions made by Chromatic in the aforesaid reply are given below in brief:

a) *On October 22, 2010, the company came up with an offering of 42,00,000 GDR representing 3,78,00,000 underlying equity shares.*

Each GDR represented 9 equity shares in the capital of the company. The offer price was US$ 8.52 per GDR which amounted to USD 35.78 million- approximately INR 159 Crore.

b) *It may be noted that the above said action was taken by us (viz. issue of GDR's) by seeking requisite approvals, complying with the applicable provisions of law and after making proper disclosures. Further, the event was in public domain and nobody had raised any queries or objections at that point in time.*

c) *We had also provided a list of subscribers to SEBI vide our letter dated June 19, 2013 ….The above list was provided to Stock Exchanges also at the time of completion of the issue which was based on information received from the Lead Manager.*

d) *We submit that we issued GDR to expand our business, we were of the view that with the issue of GDR the Company will get the benefit of flow of foreign capital and company will get the benefit of global stock exchange. However, SEBI has without going into the merits of the case and without any documentary evidence made serious allegations for violation of SEBI Act, SCRA and PFUTP Regulations.*

e) *We would like to bring to your kind attention that along with the said SCN, we have also been issued Show Cause Notice no. EFD/DRA-1/SM/TVB/Chromatic/ OW/14851/1/2017 dated June 28, 2017 under Section 11B of SEBI Act, 1992. It is submitted that issuing two SCNs for the same offence amounts to double jeopardy, and is in gross violation of Article 20 (2) of the Constitution of India. Issue of two Show Cause Notices in the same matter not only causes the mental and physical trauma, but also increases the legal costs.*

f) *It has been stated in SCN that the copy of Investigation Report has been enclosed containing the finding with reference to noticees wherein detailed allegations have been levelled. The parawise reply to the said SCN also gives reply to the Investigation Report with respect to set of allegations. Although it has been stated that the Investigation Report* *enclosed at Annexure -2 shall be referred for detailed allegation against the noticee, however, it is submitted that no cross reference of the para of Investigation Report has been given in SCN. We have tried to correlate the allegations contained in the SCN with findings/ observations in the investigation report as per our understanding. It is being brought to your notice that no annexures as stated in the Investigation Report have been provided to enable us to give a suitable reply. We reserve our right to give a detailed reply once we receive all the annexures of the Investigation Report.*

g) *Prospect Capital Limited (herein after referred to as 'Prospect'), a UK based entity and registered with UK-FCA was lead Manager of GDR issue of our Company. UK FCA is a regulatory authority responsible for the regulation of the financial services industry in the United Kingdom which is reputed globally. In view of the same we were of the opinion that they would be well aware of the policies/procedures in other jurisdiction.*

h) *We therefore trusted them & carried out the process as per instructions given by them. We further submit that during that point in time, no regulatory authority/stock exchange pointed out violation on our part despite disclosures made by us at each stage of the activity.*

i) *It is submitted that we were provided with list of subscribers by our Merchant Banker- Prospect, which was provided to BSE at the time of completion of the issue. We did not have any independent mechanism to verify the same and as per the secrecy laws applicable in other jurisdictions, it was not possible for us to verify the same.*

j) *Loan agreement entered into by and between Vintage FZE & Euram bank for subscription of GDRs of CIL. We submit that we were not signatories to the said agreement, therefore, we cannot be held liable for any averments/declaration/ statements/conditions mentioned in the agreement since we are not party to the agreement. Hence, any liability of Vintage & Euram bank cannot be lumbered upon us.*

k) *We submit that the Company relied upon the Merchant Banker, considering the cross boarder nature of transactions and registration of Merchant Banker with reputed foreign authority. It came as a shock to us on getting to know that GDR was subscribed by only a sole entity by the name of Vintage.*

l) *It is submitted that it was never an intention of the Board that the funds which are to be deposited to the GDR proceeds are given as security in lieu of the loan to be given for the subscription of the GDR issue itself. The SCN is misdirected towards company and its other directors just for being part of the Board Meeting. It is further submitted that we were not aware about the alleged Loan Agreement. We deny that we have carried out or employed any arrangement with regard to financing the subscription of GDR issue and mislead the investors by making false disclosures. Further, we deny that we have violated any of the provisions of PFUTP Regulations.*

m) *As regards to Pledge Agreement dated October 12, 2010 signed between company and Euram Bank; we submit that the same was signed in the routine course of business relying on Prospect, which is well reputed globally, assuming that they would be well aware of the policies/ procedures in other jurisdictions. The alleged Pledge Agreement was signed out of sheer trust we reposed on Prospect. It is further submitted that the Board Resolution dated August 13, 2010 wherein SEBI has alleged that the GDR proceeds were used as security against the loan, it is brought to your notice that the resolution only states that the proceeds so deposited in the bank account can be used as security <u>if and when so required.</u> Nowhere in the resolution it has been specifically stated that the proceeds are pledged on account of loan availed by Vintage. The same is reiterated for your kind perusal:*

"...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)

Hence, no adverse inference ought to be drawn against us in this regard.

n) *As regards signing of the Pledge Agreement by Mr. Vinod Kumar Kaushik, it is submitted that Mr. Vinod Kumar Kaushik signed the Pledge Agreement relying upon the expertise of the Merchant Banker/ Lead Manager- Prospect which shouldered the entire responsibility of carrying out the process of GDRs. The Company also relied upon the Merchant Banker/ Lead Manager, considering the cross border nature of transactions, registration of Merchant Banker/ Lead Manager with reputed foreign authority and their knowledge about the fund raising activity.*

o) *Further, it has been alleged that company has violated provision of section 21 of SCRA read with clause 36(7) of the Listing Agreement, in view of the above submission we once again deny as we were not aware of any such agreement being signed between Vintage and Euram and hence, we deny to have violate Section 21 of SCRA read with Clause 36(7) of Listing Agreement.*

p) *As is observed from the above, suspension of GDRs on Luxembourg Stock Exchange (LSE) has not been categorized as a material event, hence, no disclosure was made. Further, majority of our GDRs were already converted into Shares which was being disclosed in the shareholding pattern & details of the same were available in Public domain. In view of above, we deny that we have violated section 21 of SCRA, 1956 read with clause 36(7) of the listing agreement.*

q) *With regard to para 9 of the said SCN & para 9.5 of Investigation Repot, we deny that we have violated accounting standards 1, 3 and 29 and Section 21 of SCRA, 1956 read with clause 32 and 50 of the listing agreement.*

r) *It is submitted that after receipt of the said SCN we tried to contact the Merchant Banker/ Lead Manager, however they were not contactable. No action was taken by us against the Merchant Banker/ Lead Manager; however, we took our best efforts to contact the Merchant Banker/ Lead Manager but could not reach them. As these are international entities, the cost of initiating proceedings against them would be very high and would result in foreign exchange outflow which will adversely affect the Indian Shareholders. Despite being a regulatory authority, SEBI has not done complete and impartial investigation and have also not taken any action against these entities operating outside India. SEBI is a signatory to IOSCO MMOU and is entrusted with powers to call for information and take action against perpetrators of fraud, which has not been done in this case. Despite having adequate powers, no action has been taken/ initiated by SEBI against Prospect and only debarment has been given to Mr. Arun Panchariya who have been mentioned in the SEBI investigation as the main perpetrators of fraud.*

9. In addition to the abovementioned common reply of the Noticees, Noticees 2 / Mr. Vinod Kumar Kaushik and Noticees 3 / Mr. Ajay Sethi also filed separate replies to the SCN. Both the Noticees mentioned in their respective replies that they are making submissions in addition to the submissions made by Chromatic on their behalf vide letter dated November 06, 2019. The additional submissions made by the Noticees 2 and 3 are given below in brief:

<u>*Noticee no. 2 / Mr. Vinod Kumar Kaushik*</u>

a) *With regard to para 9.4 (e) & (f] of Investigation Report, in so far as signing of the Pledge Agreement by me, it is submitted that I had signed the Pledge Agreement relying upon the expertise of the Merchant Banker/ Lead Manager- Prospect which shouldered the entire responsibility of carrying out the process of GDRs. The Company also relied upon the Merchant Banker/ Lead Manager, considering the cross* *border nature of transactions, registration of Merchant Banker/ Lead Manager with reputed foreign authority and their knowledge about the fund raising activity. As regards pledging the GDR proceeds as security for availing loan, it is submitted that no specific permission to utilize the proceeds for subscription of GDR issue granted by the board of CIL for loan obtained by Vintage. I relied upon the expertise of Prospect, and it was never my intention to get the issue subscribed by pledging GDRs.*

b) *I have never indulged in any fraudulent practices relating to the securities. I have not made any gains or derived unfair advantage as a result of alleged violations. There is nothing to indicate in the Notice that I have made any gains. I have also not caused any loss to the investors or group of investors.*

Noticee no. 3 / Mr. Ajay Sethi

c) *I was appointed on the Board as the Non- Executive Independent Director of CIL on May 29, 2010. During my tenure with CIL, I was a part of the Audit Committee, Investors/ Shareholders Committee and Remuneration Committee. At the outset, I would like to state that I was not a part of any other committee wherein any decision relating to GDR issue of CIL was taken.*

d) *It is submitted that apart from just being an Independent Director, I had no role or participated in any of the activities or decision taking in CIL in the capacity of Independent Director. My role as an independent director was very limited and restricted. I was not involved in day to day management and affairs of CIL. I did not have any kind of material/ pecuniary relationship as director with CIL, its promoters, directors, Senior Management or its holding Company, its subsidiaries or associates which may affect my independence as a director. I was not related to the promoters or partners occupying management position at the Board level or at one level below the Board and I had not been executive of CIL or any company within the group at any point of time. I was neither a partner nor an executive, nor was partner or executive in* *the Statutory Audit Firm or Internal Audit Firm associated with CIL and/or legal firms and/or consultancy firm that have a material relationship with CIL. I had no direct or indirect financial or any other involvement in the affairs of CIL or received any benefits from CIL or its promoters.*

e) *I, as an independent director was not a part of any of the day to day activities of CIL pertaining to the GDR issue or the Pledge agreement by the Company, which are the core of allegations in the notice. By virtue of attending the Board Meeting, SEBI has concluded that I, along with other directors, have approved the board resolution and authorized EURAM Bank to use CIL's GDR proceeds deposited with EURAM Bank as security in connection with loan. Further, except for making allegation with respect to attending the Board Meeting of the Company, nothing specific has been attributed to me in the Notice in terms of as to how I was involved in the day to day activities or that the alleged activities had my approval or I was aware of it etc. While levelling the allegations in the Notice, it has been ignored and overlooked that Independent Directors are not involved in day to day affairs of the company and they do not monitor on daily basis the day to day activities, which lies in the domain of whole time directors. I reiterate that I as an independent director was not even remotely involved in the alleged activities as stated in the Notice carried out by CIL. The fundamental distinction between the role of Whole Time Directors and Independent Directors has been lost of while levelling allegations in the Notice to my utter detriment and prejudice.*

f) *Further I would like to reiterate that I was not part of the procedural aspects of GDR issue for any time from the start of the issue, through its execution, till its conclusion, either for execution of agreements, receipt of funds, or any other consequential matters. Admittedly, I participated in the Board Meeting of the Company which authorized Mr. Vinod Kumar Kaushik to execute the necessary formalities in respect of*

GDR issue. Pursuant to the same in the Board meeting of the Company dated August 13, 2010 we were informed that the GDR issue had been successfully subscribed.

10. Subsequently, vide letter dated October 01, 2019 the Noticees were granted another opportunity of hearing on October 18, 2019. On October 18, 2019, the Authorized Representative (hereinafter referred to as '**AR'**) of the Chromatic and Noticee 2 appeared for personal hearing and requested for further time to submit another reply to the SCN. In view of the request made by the AR, Noticees were advised to make further submissions in the matter by November 04, 2019 and appear for hearing on November 11, 2019.The Authorized representative was also advised to inform Noticee 3 / Mr. Ajay Sethi regarding the opportunity of hearing scheduled on November 11, 2019. In response, the Noticees vide letter dated November 06, 2019 requested for copies of Annexures to the SCN. Vide our letter dated December 09, 2019, the Noticees were provided with the requested documents and were also informed that the hearing in the matter has been rescheduled to December 19, 2019. In response to the same, the Noticees vide their letter dated December 16, 2019, requested for three weeks' time to make additional submissions in the matter and appear for personal hearing. Thereafter, the Noticees were granted time till January 30, 2020 to file additional reply in the matter and were also advised to appear for the personal hearing on February 05, 2020.

11. Subsequently, the Noticees filed additional submissions vide letter dated January 30, 2020 and availed the opportunity of hearing on February 05, 2020. During the course of personal hearing on February 05, 2020, the AR on behalf of the Noticees reiterated the submissions made by them vide their replies dated July 19, 2018, November 11, 2019 and January 30, 2020, in the matter. The AR was advised to make additional submissions, if any, along with their authorization by the Noticees. In this regard, the Noticees filed additional submissions along with their respective authority letters vide common letter dated February 17, 2020. Briefly, the additional submissions made by the

Noticees vide their letter dated January 30, 2020 and during the course of hearing are given below:

a) *The finding that the said entities are not traceable is devoid of any merit since SEBI has sought the information after nearly seven years of the date of GDR issue.*
b) *As a company we only allot GDRs in the name of the Global Depository which in this case was the Bank of New York Mellon.*
c) *We are not aware of the beneficial owners due to the secrecy laws in other jurisdictions.*
d) *As regards to Annexure 7 of the Investigation report, which contains correspondence between Prospect and UK FCA, wherein, FCA had sought certain details from Prospect. It is observed from the communication that Prospect has not given proper information to FCA which raises doubt over the conduct of Prospect. Despite all this and other submissions made by us in our reply, no action has been proposed or taken against Prospect and/or Mr. Aran Panchariya apart from debarring him for 10 years in 2013. We had acted in a bona fide manner on the advice and information provided to us by our lead managers assuming that they were well aware about the laws and other procedures in other jurisdictions as well as our legal system.*
e) *It is further submitted that SCN has not brought out any concrete figure of the loss incurred by the Indian investors due to the transaction made by the company. The SCN ignores the core involvement of Mr. Arun Panchariya and/or Prospect and does not impute any penalty on any of them. The SCN is based on surmises and conjectures. In view of the same, we submit that we have been roped in wrongfully to broaden the ambit of investigation without having any real involvement whatsoever.*

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

12. I have carefully perused the charges levelled against the Noticees, their replies and the documents / material available on record. The issues that arise for consideration in the present case are-

A. **Whether the Noticees are in violation of the SEBI Act and the PFUTP Regulations as the GDR issuance of the Company was fraudulent in the light of the fact that the Company had entered into Pledge Agreement with Euram Bank pursuant to the board resolution dated August 13, 2010 for the purpose of subscription of GDR issue and the same was concealed from the shareholders?**

B. Whether the Company failed to make the correct disclosures under Clause 36(7) of the Equity Listing Agreement pertaining to its GDRs.

C. Whether the Company failed to follow provisions mandated under Accounting Standards (AS) by not disclosing/ making correct provisions for potential liability arising out of pledging of GDR proceeds?

D. Does the violation by the Noticees, attract monetary penalty under section 15HA of the SEBI Act and section 23E of the SCRA, as applicable? If so, what would be the monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in section 15 J of the SEBI Act and 23-J of the SCRA?

13. Before proceeding further, I would like to refer to the relevant provisions of the PFUTP Regulations and SCRA, alleged to have been violated by the Noticees, as below:

- ***SEBI Act***

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

12A. No person shall directly or indirectly—

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

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

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

- ***PFUTP Regulations***

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in

contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

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

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

- ***SCR Act***

Conditions for listing.

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

- ***Equity Listing Agreement***

32. …

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.

…

36. 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.

***(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.

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

14. The Noticees have raised a contention that proceedings under section 11B have also been initiated against them for the same set of allegations and therefore the present proceedings amount to double jeopardy and is in violation of Article 20(2) of the Constitution of India. I am not in agreement with the aforesaid contention of the Noticee as the instant Adjudication Proceedings and the proceedings under section 11B are two different quasi-judicial proceedings/actions, which are independent of each other and separate provisions for the same have been made in the SEBI Act. In this regard, it is pertinent to refer to the observations of Hon'ble SAT in the matter of Sunita Gupta vs SEBI dated April 21, 2017, wherein it was held that *"SEBI Act itself contemplates that where a person violates SEBI Act and the regulations made thereunder, then apart from imposing penalty under Chapter VIA, it would be open to the Board to issue such directions at it deems fit under Chapter IV of SEBI Act."*

Therefore, in view of the observations of Hon'ble SAT, I dismiss the contentions raised by the Noticees in respect of parallel Adjudication proceedings and proceedings under section 11B of the SEBI Act.

Whether the Noticees are in violation of the SEBI Act and the PFUTP Regulations as the GDR issuance of the Company was fraudulent in the light of the fact that the Company had entered into Pledge Agreement with Euram Bank pursuant to the board resolution dated August 13, 2010 for the purpose of subscription of GDR issue and the same was concealed from the shareholders?

15. Chromatic was incorporated on 21 August 1987, and it became a public limited company in the year 1994 and is listed on both BSE and NSE. Chromatic International FZE (hereinafter referred to as '**Chromatic FZE'**) is a subsidiary of Chromatic based in UAE, which was incorporated on October 21, 2010. Chromatic issued 42,00,000 GDRs worth US$ 35.784 million (approximately Rupees 159 crore) on October 22, 2010. Details of the GDR issue of the Company are summarized in the table given below:

GDR issue date	No. of GDRs issued (million	Capital raised (US$ million	No. of equity shares underlying GDRs	Lead Manager	Bank where GDR proceeds deposited
22-Oct- 2010	4.20	35.784	3,78,00,000 (9 share each for 1 GDR)	Prospect Capital Ltd., London	EURAM Bank, Austria

16. Thus, Chromatic had issued 4.2 million GDRs (amounting to US$ 35.784 million) on October 22, 2010. Investigations revealed that Vintage was the only entity to have subscribed to these 4.2 million GDRs of Chromatic by depositing US$ 35.78 million as subscription amount in the account of Chromatic maintained with Euram Bank. However, during the course of investigation, when Chromatic was advised by SEBI to provide the list of subscribers of its GDR issue, Chromatic vide its letter dated June 19, 2013, provided a list of the following entities as the subscribers of its GDR issue:

Sl. No.	Name of the subscriber	Country of subscriber
1	Nigella Ltd.	Bahrain
2	Mediterranean Capital Holdings Corp	Saudi Arabia
3	Uranus Global Ltd.	Philippines
4	Scholari Investments Ltd.	Singapore
5	Fort Tropical Ltd.	Kuwait
6	Kingsly Holdings Ltd.	New Zealand
7	Cromwell Capital Corp	Qatar

17. However, it is observed that during the course of investigation, when the financial regulators of the aforementioned purported investors of GDRs issue were requested by SEBI to provide the information regarding them, most of the concerned regulators stated that no such company exists in their records. A summary of the response received from respective regulators is given below:

Name of the subscriber	Response received from the respective foreign regulators
Nigella Ltd.	No record for the company exists
Mediterranean Capital Holdings Corp	No response received
Uranus Global Ltd.	Company is not registered as corporation or partnership
Scholari Investments Ltd.	Unable to locate such company at given address
Fort Tropical Ltd.	Company is not licensed or registered. Hence, no data is available
Kingsly Holdings Ltd.	No such company registered with this name.
Cromwell Capital Corp	Files do not reflect existence of any information

Therefore, from the above information received by SEBI, it is clear that Chromatic provided fictitious list of entities as the subscribers of its GDR issue.

18. Vintage had entered into a ‘Loan Agreement’ dated October 12, 2010 with Euram Bank for availing loan for payment of subscription amount of US$ 35.784 million for GDR issue of Chromatic. A ‘Pledge Agreement’ also dated

October 12, 2010 was simultaneously entered into by Chromatic with Euram Bank stating that Chromatic has pledged the GDR proceeds received from Vintage as collateral against the loan taken by Vintage for the subscription of GDRs. Pursuant to the Loan Agreement signed between Vintage and Euram Bank and the corresponding Pledge Agreement signed between Chromatic with Euram Bank, Vintage opened a loan account (a/c no. 540012-046-7) with Euram Bank on October 12, 2010 and Chromatic opened a retail account (a/c no. 580029) with Euram Bank. Investigation revealed that the Loan Agreement dated October 12, 2010 was signed between Vintage as a borrower and Euram Bank as the lender bank.

19. The aforesaid Loan Agreement stated that;

"Nature and purpose of facility" is "To provide funding enabling Vintage FZE to take down GDR issue of 4,200,000 Luxembourg public offering and may only be transferred to EURAM account no. 580029, Chromatic India Limited."

As mentioned in the previous paragraph, the aforesaid account no. 580029 is the same account where Chromatic had deposited its GDR proceeds amounting to US$ 35.784 million.

20. With respect to the security for the loan availed by Vintage, the loan agreement states that *"....it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be deemed by the Bank:*

- *Pledge of certain securities held from time to time in the Borrower's a/c no. 540012 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*
- *Pledge of the account no. 580029 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."*

21. From the perusal of the terms of the abovementioned Loan Agreement, it is observed that Vintage (who was the sole subscriber to the GDR issue of Chromatic) had availed a loan facility to the extent of US$ 35.78 million in its bank account no: 540012 from EURAM Bank to subscribe to the GDR issue of Chromatic on the basis of collateral provided by Chromatic in the form of GDR proceeds deposited in its bank account no: 580029. On perusal of the copy of Know Your Customer documents (signed on June 06, 2007) of Vintage, available with Euram Bank, it is observed that Mr. Arun Panchariya was the beneficial owner and the Managing director of Vintage as on June 06, 2007.

22. As mentioned above, a Pledge Agreement was also entered into between Chromatic and Euram bank. The Pledge Agreement was signed by Noticee 2 on behalf of Chromatic, who was its whole time director at that point of time. The following terms were mentioned in the Pledge Agreement:

Preamble

By Loan Agreement K111010-001 (hereinafter referred to as the "Loan Agreement") dated 12 October 2010, 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 35,784,000. The pledgor has received a copy of the Loan Agreement no. K111010-001 and acknowledges and agrees to its terms and conditions.

2. Pledge

2.1 In order to secure any and all obligations, present and future, whether conditional or unconditional of the Borrower towards the Bank under the Loan Agreement and any and all respective amendments hereto 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 bill of exchange, guarantees *and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations")the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:*

2.1.1. all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount USD 35,784,000 existing from time to time at present or hereafter on the securities account(s) no. 580029 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. 580029 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and all amounts credited at any particular time therein....

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

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

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

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

6.2. Notwithstanding the foregoing, in the case that the Borrower fails to make payment on any due amount, or defaults in providing or increasing security, the Pledgor herewith grants its express consent and the Bank is entitled to realize the Pledged Securities (i) at a public auction for those items of Pledged Securities for which no market price is quoted or which are not listed on a recognized stock exchange or (ii) in a private sale pursuant to the provisions of Section 376 Austrian Commercial Code unless the Bank decides to exercise its rights through court proceedings. The Pledgor and the Bank agree to realize those items of the Pledged Securities for which a market price is quoted or which are listed on a stock exchange through sale by a broker publicly authorized for such transaction, a selected by the Bank.

6.3. The Bank may realize the pledge rather than accepting payments from the Borrower after maturity of the claim if the Bank has reason to believe that the Borrower's payments may be contestable."

23. On perusal of the terms of the Loan Agreement and Pledge Agreement, it is clearly established that Vintage availed a loan of US$ 35.78 million from Euram Bank to subscribe to the entire GDR issue of Chromatic. Simultaneously, Chromatic provided US$ 35.78 received as GDR proceeds from Vintage, as collateral to Euram Bank as security against the loan taken by Vintage for subscribing to the GDR issue. Thus, the Pledge Agreement was executed only to secure the obligations of the borrower i.e. Vintage, which was granted a loan for USD 35.78 million by the Euram Bank. The Pledge Agreement explicitly mentions that the Pledgor (Chromatic) received a copy of the Loan Agreement and acknowledges the terms of the Loan Agreement. Further, the Pledge Agreement also mentions that the Pledgor (Chromatic) pledges to Euram Bank, all the rights, title and interest in the securities deposited and balance of funds up to 35.78 million USD in the A/C no. 580029 maintained with Euram Bank, which was the escrow account of Chromatic where the GDR proceeds were deposited. Further, in terms of the clause 6 of the Pledge Agreement (pertaining to Realization of the Pledge), Chromatic had given its consent to the Euram Bank to apply the funds in its account (A/C no. 580029) in case of default of repayment by the borrower, i.e., Vintage for settling its obligations as the borrower. As a result of the signing of the Pledge Agreement by Noticee 2 on behalf of Chromatic, the GDR proceeds of US$ 35.78 million were not available to Chromatic for business purposes. The utilization of GDR proceeds by Chromatic was dependent on the repayment of loan by a third party, viz, Vintage.

24. Further, the fact that the utilization of GDR proceeds by Chromatic was subjective to the repayment of loan by a third party Vintage, is also evident from the correlation between the repayment of loan done by Vintage and utilization of GDR proceeds by Chromatic. Vintage is seen to have repaid the loan taken in its Loan account no: 540012 in several installments during the period January 04, 2011 to October 14, 2011. However, for each such instance of repayment of an installment of the loan by Vintage, a similar amount was transferred from the bank account no. 580029 of Chromatic, maintained with Euram Bank, to the account of its subsidiary viz. Chromatic FZE, based in UAE. The correlation between the repayment of loan by Vintage and transfer of funds by Chromatic is brought out in the table given below:

Date	Loan amount repaid by Vintage (US$)	Date	Transfer of funds from Chromatic's EURAM Bank a/c to Chromatic FZE UAE a/c (US$)	Chromatic FZE a/c
04.01.2011	2,000,000.00			
		05.01.2011	2,000,000.00	UAE a/c
13.01.2011	3,000,000.00	13.01.2011	3,000,000.00	UAE a/c
20.01.2011	3,000,000.00	20.01.2011	3,000,000.00	UAE a/c
08.02.2011	2,000,000.00	08.02.2011	2,050,000.00	UAE a/c
01.03.2011	2,000,000.00	01.03.2011	2,000,000.00	UAE a/c
07.03.2011	2,000,000.00	07.03.2011	2,000,000.00	UAE a/c
11.03.2011	2,000,000.00	11.03.2011	2,000,000.00	UAE a/c
16.03.2011	2,000,000.00	16.03.2011	2,000,000.00	UAE a/c
23.03.2011	2,000,000.00	23.03.2011	2,000,000.00	UAE a/c
26.04.2011			150,000.00	UAE a/c
05.07.2011	500,000.00	05.07.2011	500,000.00	UAE a/c

07.07.2011	4,250,000.00	07.07.2011	4,250,000.00	UAE a/c
11.07.2011	2,900,000.00	11.07.2011	2,900,000.00	UAE a/c
14.07.2011	1,500,000.00	14.07.2011	1,500,000.00	UAE a/c
15.07.2011	1,500,000.00	15.07.2011	1,500,000.00	UAE a/c
28.07.2011	1,500,000.00	28.07.2011	1,500,000.00	UAE a/c
19.08.2011	2,000,000.00	19.08.2011	2,000,000.00	UAE a/c
23.08.2011.	1,000,000.00	23.08.2011.	1,000,000.00	UAE a/c
14.10.2011	634,000.00	14.10.2011	676,260.28	UAE a/c
Total			**35,784,000.00**	**36,026,260.28**

Thus, it is evident from the table given above that the repayment of the loan by Vintage was immediately followed by transfer of funds from the account of Chromatic to Chromatic FZE. The above pattern is in line with conditions laid down in the Pledge Agreement signed by Chromatic with Euram Bank to secure the obligations of Vintage towards Euram Bank for the Loan taken for the subscription of GDR issue, by pledging as collateral to the Euram Bank, all of its rights on to the amount US$ 35,784,000 in its account no. 580029 held with the Bank.

25. The Noticees have submitted in their replies that they were not aware of the Loan Agreement signed between Vintage and Euram Bank. The Noticees have further submitted that the Company entered into Pledge Agreement with Euram Bank in their routine course of business related to the issuance of GDRs. As regards the issue of providing names of fictitious entities as the subscribers of the GDR issue instead of Vintage, the Noticee has submitted that such information was disclosed to the stock exchanges and SEBI on the basis of information provided by the lead manager. As explained in the previous Paragraphs, Chromatic was fully aware of Vintage being the sole subscriber of the GDR issue. It is explicitly mentioned in the preamble of the Pledge Agreement that by Loan Agreement dated October 12, 2010, the Bank granted a loan to Vintage (as a borrower) for an amount of US$ 35,784,000. The pledgor has received a copy of the Loan Agreement no. K111010-001 and acknowledges and agrees to its terms and conditions. Further, Chromatic has also agreed to relinquish its right (which also means the rights of its shareholders) on the GDR proceeds, in case Vintage defaults in the payment of the loan taken by it. I am of the view that the act of surrendering the rights of the Company (and its shareholders) on the GDR proceeds amounting to US$ 35.78 million, for securing the rights of a third party which is not at all related to the business activity of the Company, cannot be considered as a routine business activity by any stretch of imagination. Thus I conclude that Chromatic was fully aware of the Loan Agreement between Vintage and Euram Bank and also the implications of entering into Pledge Agreement, which was an integral part of the Loan Agreement.

26. Mr. Vinod Kumar Kaushik / Noticee 2, who is the Whole Time Director of Chromatic, executed the Pledge agreement with Euram Bank by signing the agreement on behalf of Chromatic. As discussed in the previous paragraphs, the entire process of issuing GDRs and getting subscription for the same was made possible because Chromatic agreed to enter into the Pledge Agreement with Euram Bank and allowed the terms of Loan Agreement between Vintage and Euram Bank to be binding on itself. The act of Chromatic deliberately concealing the information regarding the Pledge Agreement and Loan Agreement (wherein Chromatic had pledged entire GDR proceeds of US$35.78 million as collateral against the loan taken by Vintage) from the investors is clearly fraudulent. Therefore, it is established that this entire arrangement of the Pledge Agreement and the Loan Agreement for the issuance of GDRs, which was concealed by Chromatic from the investors and stock exchanges is fraudulent and Mr. Vinod Kumar Kaushik was actively involved in such fraud committed on the investors by Chromatic, as evident from his act of signing the Pledge Agreement on behalf of Chromatic.

27. Further, despite being fully aware that the Company has no right over the GDR proceeds unless Vintage decides to repay the loan taken by it from Euram Bank for being the sole subscriber of the GDR issue, Chromatic made misleading disclosure to Bombay Stock Exchange on October 22, 2010 that *"...the meeting of the Board of Directors was held on October 22, 2010 and successfully concluded placement of 42,00,000 Global Depository Receipts at US$8.52 per Global Depository Receipt...".* In the light of the execution of

Loan Agreement and Pledge Agreement by the Company along with Vintage, it is established that the above disclosure made by Chromatic was made to make the investors of the Company to falsely believe that the GDR issue was genuinely subscribed by the investors without any liability or agreements such as Pledge Agreement signed by the Company or the Loan Agreement. Thus, the information regarding the arrangement of Loan Agreement and Pledge Agreement which was the basis for the subscription of GDR issue, was deliberately concealed from the investors and the general public to fraudulently mislead them into believing the false financial position of the Company.

28. The Board of Chromatic had passed a Resolution in its Meeting on August 13, 2010, wherein *inter alia*, a decision was taken to open an account with Euram Bank for the purpose of receiving subscription money in respect of GDR issue of the Company. Relevant extracts of the Board Resolution are as under:

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

……RESOLVED FURTHER THAT Mr. Vinod Kumar Kaushik, Whole Time Director of the Company, be and is hereby 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."

29. On perusal of the aforesaid Board Resolution, it is observed that the said Resolution was approved by the Board of Chromatic on August 13, 2010 for *inter alia*, opening of a bank account with Euram Bank for the purpose of receiving subscription money in respect of the GDR issue of Chromatic. According to the Resolution, the Noticee no. 2 / Mr. Vinod Kumar Kaushik was authorized to sign, execute any application, agreement, etc. as may be required by the Euram Bank. Accordingly, Chromatic opened bank account no. 580029 in its name in Euram Bank. It was further resolved by the Board to authorize the Euram Bank to use the funds so deposited in the said bank account as security in connection with loans, if any. A comprehensive reading of the above said Board Resolution indicates that a decision was taken as on August 13, 2010, about the proposed issuance of GDR and at that very stage to open a bank account with Euram Bank. Further, the Board had also contemplated on the date of passing of the said Resolution itself, that the funds/proceeds of the proposed GDR to be received in their Euram Bank account would be used as a security for loans, if any. The Noticees have submitted that such Board Resolution was approved by the Board of Chromatic as per the advice of the Lead Manager to ensure successful GDR issuance. It therefore becomes clear that it was this Board Resolution dated August 13, 2010 which enabled Chromatic and the Noticee no. 2 to enter into the Pledge Agreement with Euram Bank and also the execution of Pledge Agreement and Loan Agreement by Euram Bank. Therefore, it would not be prudent to take a simplistic view of the Board resolution dated August 13, 2010 and consider it a mere technical step executed by the Company for the issuance of GDRs.

It is now clear that it was this Board Resolution which enabled Euram Bank to accept the GDR proceeds of Chromatic as pledged securities against the Loan taken by Vintage and it was this Board Resolution which enabled Noticee no. 2 to sign the Pledge Agreement. The fraudulent role of Chromatic in executing the Pledge Agreement is already discussed in the previous paragraph. Therefore, I conclude that Chromatic was fully aware of the importance of such Board Resolution for signing and execution of Pledge and Loan Agreement, which resulted in Company encumbering GDR proceeds in its bank account. The fraud devised by the Company and the signatories to the Board Resolution can also be gathered from the fact that even though the partial details of the Board Resolution dated August 13, 2010 were promptly disclosed to the Exchanges on the same date, the critical outcome of such Board Resolution viz. authorising Euram Bank to utilise the funds of the Company in connection with any loan was witheld.

30. Therefore, passing of such a Resolution by the Board involving the future use of the GDR proceeds as a security against a loan indicates that the Company did not intend to utilize the GDR proceeds immediately for the objects for which the GDR were to be issued. In this regard, I note that the information with regard to the aforesaid Board Resolution, particularly keeping the GDR proceeds as security, was not disclosed to the Shareholders and the Company has misled the investors by concealing such an important disclosure from them.

31. The aforesaid resolution was approved by the Directors of Chromatic which included Mr. Vinod Kumar Kaushik / Noticee 2 and Mr. Ajay Sethi, / Noticee 3, which authorized the Euram Bank to use the GDR proceeds of Chromatic to be deposited with Euram Bank as security in connection with the loan taken by Vintage for subscription of GDRs. I observe that the Noticees have denied any wrongdoing on their part regarding approval of the Board resolution dated August 13, 2010 and submitted that the Board Resolution was generic in nature. The active involvement of the Noticee 2 has already been discussed in detail in previous paragraphs. Therefore, I do not accept the argument put forth by him that the aforesaid Board Resolution doesn't specifically provision for the pledging of GDR proceeds of Chromatic for the loan taken by Vintage, as it was he himself who signed the Pledge Agreement. Therefore, he was fully aware that it was this Board Resolution which will enable him to sign the Pledge Agreement and that the same is essential for the fraudulent issue of the GDRs.

32. The Noticee 3 / Mr. Ajay Sethi has submitted that he was an Independent Director of the Company and although he had attended the Board Meetings of the Company he was not involved in the day to day affairs of the Company and was not related to either the Promoters or the Directors of the Company. I am of the view that, Noticee no. 3, even as an independent director should have been careful in signing the Board Resolution dated August 13, 2010 which, instead of stating the manner in which GDR proceeds could be used, gives a blanket authority to the Company and Euram Bank, which made the funds of the Company susceptible to fraud, as observed in the instant matter. Therefore, Chromatic and its directors (whoever were signatories to the Board Resolution dated August 13, 2010) , could not have given a blanket authority to the Euram Bank for utilization of the GDR proceeds as the security in connection with the loans. Noticee 3 has further submitted that he was appointed as the Non-Executive Independent Director of the Company on May 29, 2010 and during his tenure, he was part of the Audit Committee, Investors/Shareholders Committee and Remuneration Committee but not part of any other committee wherein any decision relating to GDR issue of the Company was taken. In this regard, while I am in agreement with the submission of the Noticee 3 that he was an Independent Director of the Company during the relevant period, I find that the evidence suggests that he was involved in the affairs of the Company which made him privy to the suspicious nature of the GDR issued. Noticee 3, admittedly, was part of the Audit Committee, the Investors/ Shareholders Committee and the Remuneration Committee. As part of the Audit Committee, he had access to the financial status of the Company. As part of the Audit Committee, he would certainly be notified of the fact that the GDR proceeds of the Company are lying in the account in Euram Bank, that the same was not utilized for the business purposes of the Company, rather being used as collateral for the loan to Vintage. As a director, he was duty-bound to raise a red flag on observing that the funds are not being utilized by the Company for any of the stated purposes of GDR issuance, more so as he was also part of the Audit Committee. In this regard, it is pertinent to quote the observation of Hon'ble SAT in the matter of Mr. Kishore Hegde vs SEBI made in the Order dated November 05, 2019:

> "*The contention of this appellant that he was not involved in the day to day running of the company cannot be accepted as he was found to be part of*

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

33. Therefore, I conclude that Noticee 3/ Mr. Ajay Sethi having signed the Board Resolution dated August 13, 2010 and also being part of the Audit Committee of the Company which had access to information regarding unutilized GDR proceeds, was thus aware of the fraudulent GDR issue. However, by not informing the general investors about the wrongdoings of the Company, Noticee 3 acted as a part of the scheme through which issue of GDR by the Company was effected through a fraudulent arrangement of loan agreement and pledge agreement.

34. In view of the fraudulent acts detailed in the previous paragraphs, I conclude that Chromatic has violated provisions of sections 12A (a), (b), (c) of SEBI Act read with Regulation 3(a), (b), (c), (d), 4(1), 4(2) (f), (k) and (r) of the PFUTP Regulations. As the Pledge Agreement was signed by the Noticee no. 2, it is clearly established that the Noticee no. 2 was also actively involved in the fraudulent issuance of GDRs, as explained above. Therefore, I conclude that the Noticee no. 2 has also violated the provisions of sections 12A(a), (b), (c) of the SEBI Act read with Regulation 3(a), (b), (c), (d), 4(1) of the PFUTP Regulations. The Noticee no. 3, having signed the Board Resolution dated

August 13, 2010, and as part of Audit Committee being aware of the financials of the Company, non-utilization of GDR proceeds by the Company and not having taken any steps to inform the investors of the Company about such fraud, violated the provisions of section 12A(a), (b), (c) of the SEBI Act read with Regulations 3(a), (b), (c), (d), 4(1) of the PFUTP Regulations. Therefore, the Noticees are liable for penalty under section 15HA of the SEBI Act for their aforementioned violations of PFUTP Regulations.

Whether the Company failed to make the correct disclosures under Clause 36(7) of the Equity Listing Agreement pertaining to its GDRs.

35. As discussed in the previous paragraphs, on October 22, 2010, Chromatic made a corporate announcement to BSE that it had successfully completed placement of 42,00,000 GDRs at US$ 8.52 per GDR amounting to US$ 35.78 million. However, the information regarding signing of the Pledge Agreement, which was material information pertaining to the contingent liability to the extent of GDR issue size, was not disclosed to BSE. Therefore, the corporate announcement by Chromatic on October 22, 2010 was partial and concealed material information to mislead the Indian retail investors into believing that the GDRs of Chromatic were fully subscribed and the GDR proceeds are free of any encumbrance, whereas, in reality the GDR issue was indirectly funded by Chromatic itself, by providing GDR proceeds as collateral for the Loan taken by Vintage for subscribing to GDRs. The Clause 36(7) of the Equity Listing Agreement states that "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…. Any other information having bearing on the operation/performance of the company as well as price sensitive information". Therefore, I conclude that Chromatic did not inform the stock exchanges about the aforesaid Pledge agreement entered into between itself and Euram Bank which was a price sensitive information having a bearing on the price of the scrip of Chromatic, thereby violating the provisions of Clause 36(7) of the Listing Agreement read with section 21 of SCRA.

36. Further, the GDRs of Chromatic were listed on Luxembourg Stock Exchange with effect from October 27, 2010. It is observed that Luxembourg Stock Exchange suspended the listing of GDRs of Chromatic with effect from February 17, 2015. It is also noted that, as on that date, 27,88,549 GDRs were outstanding. It is further observed that on December 14, 2015, the Global Depository Bank for the GDRs i.e. The Bank of New York Mellon terminated the GDR program of Chromatic. However, Chromatic did not inform the Indian stock exchanges about the suspension of its GDRs on Luxembourg Stock Exchange and the termination of the GDR program by the Bank of New York Mellon, which are material events and price sensitive in nature. In view of the same, I conclude that Chromatic has violated the provisions of Clause 36(7) of the Listing Agreement read with section 21 of SCRA.

Whether the Company failed to follow provisions mandated under Accounting Standards (AS) by not disclosing/ making correct provisions for potential liability arising out of pledging of GDR proceeds?

37. Clause 50 of the Listing Agreement inter-alia states that listed companies have to mandatorily comply with all the Accounting Standards issued by the Institute of Chartered Accountants of India (ICAI) from time to time. Further, Clause 32 of the Listing Agreement stipulates that "*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."*. The Accounting Standard (AS) - 3 , inter alia, reads as follows: "*<u>Cash</u> comprises cash on hand and demand deposits with bank. <u>Cash equivalents</u> are short term, highly liquid investments that are readily convertible into known amounts of cash and which are subject to an insignificant risk of changes in value.*".

38. Chromatic stated in its Annual Reports for FY 2010- that in the preparation of Annual Accounts for the year that ended 2010-2011, the applicable

Accounting Standards have been followed along with proper explanation relating to material departure and there are no material departures from the same. In the Annual Report for FY 2010-11, Chromatic showed cash and cash equivalent at the end of the period as INR 71.95 crore which included bank balance with banks amounting to INR 7194.47 lakhs. Vide email dated December 13, 2016, Chromatic provided the breakup of cash and bank balances which includes INR 7050.80 lakhs deposited with Euram Bank which was pledged with Euram Bank against the loan availed by Vintage as mentioned in the preceding paragraphs. However, as the amount lying with Euram was pledged against the loan taken by Vintage, amount of INR 7050.80 lakhs lying in Euram Bank account cannot be considered as cash and cash equivalent in terms of AS-3. Thus, Chromatic has wrongly disclosed the pledged amount of Rs. 70.51 crore lying with Euram Bank as cash and cash equivalent which was not in terms of AS-3.

39. AS-29 stipulates the provisions pertaining to the Contingent liabilities and Contingent Assets that need to be disclosed by a company. As Chromatic had pledged its GDR proceeds of US$ 35.784 million against the loan availed by Vintage for subscription of its own GDRs, Chromatic could utilize its GDR proceeds only to the extent of amount repaid by Vintage and therefore, there was an obligation on Chromatic for an amount of US$ 15,784,000 million in FY 2010- 11 (kept with Euram Bank in fixed deposit due to pending loan repayment by Vintage) on the date of balance sheet i.e. March 31, 2011, which was a liability contingent to the event of default of repayment of loan by Vintage. From the examination of the Annual Report of CIL for FY 2010-11, it is observed that Chromatic has not disclosed the contingent liability for the amount of GDR proceeds which is kept with EURAM Bank in fixed deposit which not in accordance with the terms of AS-29.

40. Further, The Accounting Standard (AS) - 1 - Consideration of Materiality - deals with the major considerations governing the selection and application of accounting policies while preparing the financial statements, which includes a)

Prudence, b) Substance over form and c) Materiality, as major considerations governing the selection and application of the accounting policies.

41. The concept of Materiality, as per AS 1, *inter-alia,* states as "*Financial statements should disclose all "material" items, i.e. items the knowledge of which might influence the decisions of the user of the financial statements*." However, it is observed Chromatic did not make provision for potential liability due to the potential default on loan repayment by Vintage. Therefore, while preparing the Financial statements, the investors of Chromatic were not made aware of the fact regarding Pledge Agreement, which was material and knowledge of which would have influenced their decision. Therefore, I conclude that the Noticee did not follow the principle of prudence, as stipulated in AS-1, as it failed to disclose complete details of the potential liability due to Pledge Agreement, did not make provisions for such potential liability, did not follow substance over form and presented its cash balance as free cash available with the company (despite such cash balance being contingent to the repayment of loan by Vintage) and also did not follow principles of materiality as it did not disclose the fact of signing of Pledge Agreement and pledging of GDR proceeds, as the same are factors, the knowledge of which might influence the decision of the investors relying the financial statements. Therefore, the Annual reports statements prepared by the Noticee for FY 2010-11 was not according to the terms stipulated in AS-1.

Does the violation by the Noticees, attract monetary penalty under section 15HA of the SEBI Act and section 23E of the SCRA, as applicable? If so, what would be the monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in section 15 J of the SEBI Act and 23-J of the SCRA?

42. Therefore, I conclude that this entire arrangement of the issuance of GDRs which started with the Board Resolution dated August 13, 2010and thereafter, signing of Pledge Agreement and Loan Agreement for the issuance of GDRs, which was concealed by Chromatic from the investors and the stock exchanges was fraudulent and therefore the Noticees have violated the provisions of section 12A(a), (b), (c) of the SEBI Act read with Regulations 3(a), (b), (c), (d), 4(1) of the PFUTP Regulations which makes them liable for penalty under section 15HA of the SEBI Act. Further, due to Chromatic's failure to adhere to the terms of Clause 36(7) of the Equity Listing Agreement as it made incorrect disclosures pertaining to the GDR issue, Chromatic is liable for penalty under section 23E of the SCRA. The accounting treatment given by Chromatic was also incorrect and misleading and therefore, Chromatic has violated the provisions of section 21 of the SCRA read with clauses 32, 36(7) and 50 of the Equity Listing Agreement. Therefore Chromatic is also liable for penalty under section 23E of the SCRA. .

43. The provision of section 15HA of the SEBI Act and section 23E of the SCRA are mentioned below:

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

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

> ***Factors to be taken into account by the adjudicating officer.***
> ***15J.*** *While adjudging quantum of penalty under section 15-I, 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.*

45. While determining the quantum of penalty under section 23E of the SCRA, it is important to consider the relevant factors as stipulated in section 23J of the SCRA which reads as under: -

> ***(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 the investigation department of SEBI has not quantified the profit/loss for the violations committed by the Noticees in the said matter. However, I note that the size of the fraudulent GDR issue was US$ 35.78 million (approximately equal to Rs. 159 crore). Further, I have also considered the fact that vide Order of WTM-SEBI dated September 30, 2019, Chromatic, Mr. Vinod Kumar Kaushik and Mr. Ajay Sethi have already been debarred for a period of five years, three years and one year respectively, from accessing the securities market and further prohibited from being associated with the securities market in any manner.

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 23 J of SCRA 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, and under 23I of SCRA read with Rule 5 of the Adjudication Rules, 2005, I hereby impose following penalties on the Noticees under section 15HA of the SEBI Act and section 23E of the SCRA, wherever applicable.

Sr. No	Name of the Entity	Penalty imposed	Violation Committed	Section
1	Chromatic India Ltd	Rs.10,00,00,000/- (Rupees Ten crore)	Sections 12A(a), (b),(c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d), 4(1), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations	Section 15HA of the SEBI Act
		Rs. 20,00,000/- (Rupees Twenty lakh)	Section 21 of the SCRA read with Clauses 36(7) and 50 of the Equity Listing Agreement	Section 23E of the SEBI Act
2	Mr. Vinod Kumar Kaushik	Rs. 5,00,00,000/- (Rupees Five crore)	Sections 12A(a), (b),(c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) & 4(1) of the PFUTP Regulations	Section 15HA of the SEBI Act
3	Mr. Ajay Sethi,	Rs. 20,00,000/- (Rupees Twenty lakh)	Sections 12A(a), (b),(c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) & 4(1) of the PFUTP Regulations	Section 15HA of the SEBI Act
Total		**Rs. 15,40,00,000/- (Rupees Fifteen crore and Forty lakh only)**		

48. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees. The Noticees shall remit / pay the said amount of penalty within 45 days from April 15, 2020, either by way of demand draft in favour of “SEBI -Penalties Remittable to Government of India”, payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO> PAYNOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of the penalty, the Noticees may contact the support at portalhelp@sebi.gov.in.

49. In the event of failure to pay the said amount of penalty within 45 days from April 15, 2020, recovery proceedings may be initiated 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.

50. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are being sent to the Noticees and also to the Securities and Exchange Board of India.

Date: March 31, 2020
Place: Mumbai

Dr. ANITHA ANOOP
ADJUDICATING OFFICER