**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO: Order/GR/BM/2023-24/28335]**

---

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

**In respect of:**

**Mr. Arun Panchariya (PAN: AEVPP6125N)**

**In the matter of GDR Issue of Edserv Softsystems Limited**

---

## BACKGROUND AND FACTS OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted investigation into the alleged irregularities in the Global Depository Receipts (herein after referred to as "**GDRs**") issued by Edserv Softsystmes Ltd., (hereinafter referred to as "**Company"/ "Edserv**") during the period from July 01, 2011 to August 31, 2011 (hereinafter referred to as "**Investigation Period**").

2. Edserv is a company whose shares are listed on the BSE Ltd. (BSE) and National Stock Exchange of India Ltd. (NSE). The investigation, prima facie, revealed that Edserv had issued 1.60 million GDRs (amounting to USD 23.89 Million), on August 10, 2011 equivalent to 80,00,000 equity shares having par value of Rs.10 each, and the said issue was subscribed by one entity viz. Vintage FZE (now known as Alta Vista International FZE) (hereinafter referred to as "**Vintage**").

3. It was observed that the subscription amount was paid by Vintage by obtaining a loan from European American Investment Bank AG **("EURAM Bank")** by entering into Loan Agreement dated July 25, 2011 with EURAM Bank. The said loan agreement was executed by Mr. Mukesh Chauradiya as Managing Director of Vintage. Further, Edserv was observed to have signed a '**pledge agreement**' dated July 25, 2011 with EURAM Bank, pledging GDR proceeds as collateral against the loan availed by Vintage vide '**loan agreement'** dated July 25, 2011. The aforesaid pledge agreement was an integral part of the loan agreement (i.e. Vintage shall be provided a loan by EURAM and the same shall be used only to subscribe to GDRs of Edserv) entered between Edserv and EURAM. This agreement enabled Vintage to avail a loan from EURAM for subscribing to the GDRs of Edserv. It was observed that the GDR issue would not have been subscribed had the company not given any such security towards the loan taken by Vintage. In this connection, the company suppressed the material and price sensitive information from the stock exchange by not informing the following to the exchange viz. (i). execution of pledge agreement dated July 25, 2011 by Edserv in favor of EURAM Bank pledging the GDR proceeds for providing security

to the loan taken by Vintage, (ii) linking of the aforesaid pledge agreement to the loan agreement dated July 25, 2011 by Vintage for obtaining loan from the EURAM bank for subscribing the GDR issue of Edserv and (iii) Vintage was the only subscriber of GDR issued by Edserv. Therefore, the entire scheme involving entering into Pledge Agreement, making corporate announcement that the GDRs were successfully subscribed without disclosing the arrangement to the investors resulted in publication of misleading news to the stock exchanges which contained information in distorted manner and which might have influenced the decision of the investors. Such announcements misled Indian retail investors and induced investors to deal in shares of Edserv. Thereby, the scheme of issuance of GDRs was fraudulent.

4. The said Loan agreement was integral part of the GDR issue which was executed by Mr. Mukesh Chauradiya as Managing Director of Vintage. As the Vintage was controlled by Mr. Arun Panchariya (hereinafter referred to as **'Noticee')** and also the copy of the pledge agreement (which was an integral part of the loan agreement) was verified by the Noticee, it was alleged that the Noticee had acted as party to the fraudulent scheme.

5. It was also observed that on default on loan payment of USD 23.29 million by Vintage, the amount was adjusted by EURAM Bank from the GDR proceeds of Edserv as it had pledged GDR proceeds against the said loan. It was also observed that some Foreign Institutional Investors (FIIs) connected and controlled by the Noticee, namely India Focus Cardinal Fund, sub-account of EURAM Bank and Cardinal Capital

Partners and High Blue Sky Emerging Market Fund, sub-account of Golden Cliff (FII), converted the GDRs into Equity Shares and sold shares in the Indian securities market amounting to Rs.12,85,90,978.

6. Considering the fact that Vintage was sole subscriber to GDR issue, with the Noticee being the beneficial owner of Vintage, which defaulted on loan repayment, it was alleged that converted equity shares sold by the aforesaid FIIs were originally acquired by Vintage free of cost. Thus, it was alleged that the Noticee had devised GDR scheme along with Edserv which misled the Indian investors by concealing the information of entering into Pledge Agreement which made investors believe that GDRs were genuinely subscribed while loan default alone caused loss to the shareholders of Edserv to the tune of USD 23.29 million. Therefore, it was alleged that the Noticee was a part of the scheme of fraudulent issuance of GDRs.

7. SEBI had, therefore, initiated adjudication proceedings inter alia against the Noticee, under Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") for the alleged violation of the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003 (hereinafter referred to as "**PFUTP Regulations**") for acting as party to the fraudulent scheme.

8. On examination of the alleged violations, Adjudicating Officer (hereinafter referred to as **'AO'**) vide Order dated May 31, 2022 ***('earlier order')*** held that the Noticee had violated the aforesaid provisions, and had accordingly imposed a penalty on the Noticee.

9. Subsequently, the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **'SAT'**) in Appeal No.137 of 2023 of the Noticee allowed the same on the ground of violation of the principles of natural justice that the show cause notice was never served upon him and no opportunity of personal hearing was provided. Accordingly, the impugned SEBI order dated May 31, 2022 was set aside by Hon'ble SAT vide an order dated March 28, 2023 and the matter was remitted back to the AO for passing a fresh order on merits after giving an opportunity of personal hearing to the appellant. Further, directed the appellant to appear before the AO on April 10, 2023 on which date the AO would serve the show cause notice upon the appellant or his learned counsel and from there onwards the matter would be proceeded in accordance with law.

## APPOINTMENT OF THE ADJUDICATING OFFICER

10. Subsequent to the Order passed by Hon'ble SAT dated March 28, 2023 and in furtherance to the direction given in the said order, the undersigned was appointed as Adjudicating Officer ("AO"), vide order dated April 06, 2023, in terms of Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter

referred to as "SEBI Adjudication Rules") read with Section 15-I of the Act to inquire and adjudge the aforesaid violations under Section 15HA of the SEBI Act, 1992.

## SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

11. Show Cause Notice No. EAD4/ADJ/BS/DS/OW/18140/1/2018 dated June 27, 2018 (hereinafter referred to as "**SCN**") was issued inter alia to the Noticee in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the SEBI Adjudication Rules for the alleged violation of the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

12. As directed by SAT, the nominated advocate of the Noticee visited SEBI office on April 10, 2023 and the aforesaid SCN along with its annexures was served through hand-delivery and the same was acknowledged.

13. The Noticee vide email dated May 28, 2023, had filed its written submissions in response to the SCN, the contents whereof are summarized as given below:

    a) *Noticee cannot be made liable for any misinformation supplied by the company to stock exchange. As per the SEBI, the issue of GDR is not a fraudulent scheme but the manner of information to the stock exchange is such that it has resulted in fraudulent action on the part of the company, thereby, misleading the investors.*

*Under such circumstances had the company informed the Stock Exchange, there was no occasion for a SEBI to allege anything against the noticee.*

b) *The Loan Agreement was not signed and the pledge agreement was not verified by the Noticee.*

c) *The Noticee has no connection with Mukesh Chauradiya*

d) *Wrongly held the Noticee as the perpetrator of the alleged irregularities and a beneficiary of the alleged fraud.*

e) *India Focus Cardinal Fund (IFCF) was regulated by FSC Mauritius as Alternate Investment Fund. IFCF being regulated as a FUND, was required to have professional Board to run and not individual as AP. Arun Panchariya was only a director of IFCF from 22.08.2008 to 28.10.2010. IFCF was sub-account of Euram FII till20.07.2011 and thereafter, of CCPL. Arun Panchariya never controlled any broker, any Fund or contacted for any purpose of conversion or sale of GDR or underlying shares. IFCF had no relationship with HBSEMF or Golden Cliff or KBC Aldini Capital Mauritius or PAN Asia or Vintage.*

f) *Euram Bank was having ownership rights on subscribed investments to IFCF. Euram Bank never discharged its ownership rights. Euram Bank held 63.11 Class A shares in IFCF, which acquired the GDRs and sold in India.*

g) *Euram bank provided loans to Vintage to subscribe to the GDRs, but held the control of the funds and the GDRs. Euram bank took the GDRs from Vintage and then sold the same through IFCF a SEBI registered FII Sub account or other* *funds. To hold the underlying shares in India and carry out the conversion of GDR into shares, the Noticee is not a party to this arrangement.*

h) *High Blue Sky (HBS) is an investment company incorporated in Mauritius and registered as a sub account of KBC Aldini Capital Limited from 18.06.2010 to 21.10.2012 and Golden Cliff 22.10.2012 to 28.02.2017. AP is not associated with HBS at all. As per the allegations, in order to connect HBS with the noticee, it has been alleged that one Anant Kailash Chandra Sharma was Director in HBS since 11.08.2014 and owner since 09.09.2014. The show Cause Notice has failed to establish or show any evidence with regard to connection of the Anant Kailash Chandra Sharma with HBS during the dates of conversion. Further, entire connection (though strictly denied), which has been shown between the noticee and HBS is again without any evidence and is based upon conjuncture and surmises and on hypothetical basis. Similar is the position with regard to Reema Narayan Shetty.*

i) *In so far as Vintage FZE is concerned, it has been alleged that AP was a Managing Director as well as beneficial owner. Apart from signing the loan agreement, there is no evidence to allege that the noticee was the beneficial owner. Noticee was having only one share as on 30 September, 2010 and thereafter in the year 2011 noticee was not even the shareholder. Further, noticee has already resigned from Vintage much prior to the default having been occurred.*

*j) In so far as IFCF is concerned, the noticee had already resigned in October, 2010. In fact the ownership rights of the GDRs as well as shareholding pattern of Class A share belongs to Euram Bank, Austria.*

*k) The SCN fails to explain the rationale and / or manner in which the alleged loss caused to the shareholders of Hiran or how such alleged loss is attributable to the notice.*

*l) The Noticee also referred to the judgements of the Hon'ble Supreme Court in Civil Appeal No.380 of 2020 titled as SEBI Versus Adi Cooper and Appeal No.745 of 2021 titled as M/s. Winsome Yarns Ltd. Vs. SEBI before Hon'ble SAT to submit that Arun Panchariya nor the Vintage FZE (though not connected to Arun Panchariya) were required to make any representation or disclose anything either to the shareholders or to the investors of the security market through BSE and hence are not a party to the fraud.*

*m) As per the loan/Pledge Agreement, company was having all the time control over its GDR issue and it was open for the company not to set off the GDRs against fixed deposits and rather the company would have call back issued GDRs (underline equity shares) and could have cancelled the same at the moment when Vintage defaulted in the loan. This is for the simple reason because the GDR proceeds were lying as a security with the Bank and even the GDRs were also lying in the Bank. Therefore, it was required of the company to cancel the GDRs and call back the same after making payment from the fixed deposit (proceeds) which was lying as a security with the Bank. If the company did not do so then it* *is clear that the company had in fact received the money in some other account or in some subsidiary account in cash or kind. On the other hand, if the company had not received the amount then it is not discernible as to why the company let go its GDR to be set off.*

n) *Post the year 2011, Arun Panchariya was full time Consultant General and was not at all director in any of the companies nor holding any office of profit with any other companies. Therefore, it is not discernible as to how any proceeds, profits or gain could go to Arun Panchariya especially when he was already restrained from dealing in Security Markets in the year 2011 itself.*

o) *There is no allegation against Arun Panchariya that he advised any of the companies to execute such Resolutions or Pledge GDRs in order to generate capital or equity or advised the company to set off the Pledged deposits of GDR proceeds with the outstanding loan of Vintage.*

p) *It is wrong to allege that AP (through Vintage FZE) controlled certain sub-accounts Viz. IFCF or HBS etc.*

q) *There is an inordinate and unexplained delay in issuing Show Cause Notice qua the Noticee to the extent of more than 8 years. Further, there is also inordinate and unwarranted delay in deciding the proceedings by the AO*

r) *SEBI investigation officer in the Ex-parte order legitimately portrayed GDR purchase & cancellation by IFCF in a wrong way, just to misguide court and public investors with malafide intention for acceptance of Bribe from alleged parties. SEBI first order in year Sept 2011 with confirming order passed in year 2012 with* *specific investigation period killed GDR issuance market as SEBI order itself closed all GDR business and GDR scripts trading were suspended by SEBI itself. It created situation of default with the Vintage.*

s) *Noticee resigned as director from Vintage in 2010. Noticee was a director in IFCF only till October 2010.Cardinal Capital Partner Ltd. was the sponsor of the fund and held the hundred percent shareholding of the Fund. CCP was FII only for the period of two months prior to the ex parte order published by SEBI against FUND and AP. Before that Euram Bank Austria was managing day to day business of IFCF. IFCF was controlled by EURAM as it was provided in the FII umbrella by EURAM and it was EURAM's staff that controlled the affairs of IFCF.*

t) *The noticee categorically prays that the proceedings qua him as initiated in the present Show Cause Notice may kindly be dropped as the noticee has nothing to do with the transactions executed between Southern Ispat, Euram or Vintage FZE nor any illegal gain or ill-gotten gain has been passed on to the noticee and further there is no proof or evidence to support the same*

14. In terms of Rule 4(3) of SEBI Adjudication Rules, vide email dated May 22, 2023, an opportunity of personal hearing was granted to the Noticee on May 30, 2023. On the said date, the Noticee through its Authorized Representative **('AR'),** appeared through web based video conference and reiterated the submissions already made by the Noticee vide reply dated May 28, 2023.

15. In view of the above, I note that principles of natural justice have been duly complied with, as SCN and hearing Notice were duly served upon the Noticee and sufficient opportunity was also granted to the Noticee to submit reply to the SCN and appear for personal hearing. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record and reply of the Noticee.

**CONSIDERATION OF ISSUES**

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

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

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

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

**OBSERVATIONS *AND FINDINGS***

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

***SEBI Act, 1992:***

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

***12A. No person shall directly or indirectly –***

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

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

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

***PFUTP Regulations, 2003:***

***3. Prohibition of certain dealings in securities***

*No person shall directly or indirectly—*

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

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

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

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

***4. Prohibition of manipulative, fraudulent and unfair trade practices***

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

## PRELIMINARY ISSUE RAISED BY NOTICEE

18. Before proceeding with the merits of the matter, it would be appropriate to first deal with the preliminary contention raised by Noticee. The Noticee has contended that

there is inordinate and unexplained delay in issuance of show cause notice qua the Noticee of more than eight (8) years.

19. In this regard, I note that in the present case, SEBI investigated issue of GDRs in the overseas markets by the Indian companies on receipt of a complaint, in the year 2009, regarding misuse of GDR route by few companies. The investigation prima facie revealed that in many of the GDR issues, money for subscribing to GDR was availed as a loan by the subscribers, from an overseas Bank wherein the issuer company gave security for such loan taken by the subscribers, by pledging/creating charge on the GDR issue proceeds. It was also observed that such subscribers subscribed the GDRs without any valid consideration and sold the underlying shares in the securities market in India. Accordingly, wherever such modus operandi were prima facie observed, those GDR issues were examined. SEBI initiated investigation as soon as SEBI came to know that such companies have adopted the modus operandi as referred above. Since, the GDRs are issued abroad and related transactions were carried out outside India, SEBI had to call information from the various entities situated abroad in such large number of fraudulent GDR issues.

20. Such information inter alia included seeking information on diversion of funds and subsequent tracing of proceeds from large number of entities and the details of (a) GDR issuer companies, (b) custodian of securities, (c) overseas depository, (d) overseas banks, (e) subscribers of GDR issue (mostly overseas), (f) lead manager, (g) various layers of transactions, etc., which was not readily forthcoming. Therefore,

SEBI had to collect information and documents from various sources including approaching the foreign regulators for assistance in procuring information and documents from the concerned entities situated outside India from many jurisdictions.

21. The foreign regulators had also to collect this information from the concerned entities and then to furnish to SEBI. Thus, the process of collection of information in the matter was complex, tedious and time consuming. It is noted that in most of these cases Mr. Arun Panchariya (Noticee) and his connected entities were found to be involved. It is noted from SEBI order dated June 16, 2016 that investigation was initiated in respect of 59 GDR issues made by 51 Indian Companies during the period 2002 to 2014. Edserv was one such GDR issuer where such modus operandi were also observed and the investigation was completed in December 18, 2018. I note that after completion of the investigation, the SCN was issued to the Noticee dated June 27, 2018. Therefore, the time taken for completion of collective investigation into a large number of similar cases and also for issuing SCNs to a large number of Noticees is fairly understandable and cannot be ignored.

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

*"....Arguments on delay in investigation and consequently affecting natural justice are also devoid of any merit in the matter since this Tribunal is aware of the complexity involved in the entire manipulative GDR issue; how long it took SEBI to gain information relating to the various entities from multiple jurisdictions in the matter of PAN Asia Advisors Limited (Date of Decision: October 25, 2016 in Appeal No. 126 of 2013) and Cals Refineries Limited (Appeal No 04 of 2014; Date of Decision 12.10.2017) etc...."*

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

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

24. Further for the instant matter, qua the Noticee, I note that, the SCN dated June 27, 2018 was earlier served to the Noticee in 2018 to which the Noticee also replied vide letter dated July 19, 2018. Further, vide hearing notice dated April 18, 2022, an opportunity of personal hearing was granted to him on April 27, 2022. The said hearing notice returned undelivered from all 3 available addresses of the Noticee. Thereafter, it was served to him vide mail dated April 28, 2022 but he didn't attend the aforesaid hearing and therefore the earlier order was passed against the Noticee.

25. In view of the aforesaid facts and as the Hon'ble SAT has accepted the complexity involved in the investigation process of said GDR issues and held that such matters are bound to take longer than usual time as various entities from other jurisdictions are also involved, I find no merit in the contention of delay raised by the Noticee. Further, there are more than 50 Indian Companies who were found by SEBI to be involved in similar fraudulent GDR issuance and disclosures using similar modus operandi and SEBI has been taking actions against such companies and other associated persons.

26. Having addressed the aforesaid preliminary issue, I shall now proceed to examine the key issues to determine the veracity of allegations raised against the Noticee.

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

27. From the material available on record, I note that Edserv had issued 1.60 million GDRs (amounting to USD 23.89 million) on August 10, 2011, equivalent to 80,00,000 equity shares having par value of Rs.10 each. Summary of the aforesaid GDRs issued by Edserv, is tabulated below.

| GDR issue date | No. of GDRs Issued (mn.) | Capital raised (US$ mn.) | Local custodian | No. of equity shares underlying GDRs | Global Depository Bank | Lead Manager | Bank where GDR proceeds deposited | GDRs listed on |
|---|---|---|---|---|---|---|---|---|
| 10-Aug-2011 | 1.60 | 23.89 | HSBC, Mumbai | 80,00,000 | Bank of New York Mellon | Pan Asian Advisors Ltd., London | EURAM Bank, Austria | Luxomberg Stock Exchange |

28. SEBI Investigation observed that subscription to the GDR was obtained through a loan agreement as well as a pledge agreement, details of which are discussed in the following paragraphs, and therefore, it was alleged that the GDR issuance was done through a fraudulent arrangement.

29. Investigations further observed that an entity viz. Vintage FZE (now known as Alta Vista International FZE) (hereinafter referred to as "**Vintage**") had obtained a loan of USD 23.89 million by entering into a Loan Agreement dated July 25, 2011, with

EURAM Bank to subscribe to the GDRs of Edserv. The aforesaid Loan Agreement was signed by Mr. Mukesh Chauradiya, in the capacity of Managing Director of Vintage. On perusal of the Loan Agreement, I note that the following has been *inter alia* mentioned therein –

1. *<u>Currency and the amount of facility:</u>*
   *USD 23,888,000*

   *(The amount is exactly the same amount raised by Edserv through the said GDR offering.)*

2. *<u>Nature and purpose of facility:</u>*
   *To provide funding enabling Vintage FZE to take down GDR issue of 1,600,000 Luxembourg public offering and may only be transferred to EURAM account nr. 580048, Edserv Softsystems Limited*"

6. *<u>Security</u>*
   6.1. *In order to secure all and any of the Bank's claims and entitlements against the Borrower, arising now or in the future out of or in connection with the Loan or any other obligation or liability of the Borrower to the Bank, including without limitation other loans granted in the future , it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be demanded by the Bank:*
   - *Pledge of certain securities held from time to time in the Borrower's account no. 540012 at the Bank as set out in* ***<u>a separate pledge</u> <u>agreement</u>*** *which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*

   - *Pledge of the account no. 580048 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.*

30. From the aforesaid Loan Agreement, I note that Vintage had availed a loan facility to the extent of USD 23.89 million from EURAM Bank to subscribe to the GDRs of Edserv.

31. And also from the certified true copy of Edserv's Board Resolution dated April 29, 2011 provided by EURAM Bank, it is observed that the following resolution was *inter alia* passed in the said meeting–

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

***"RESOLVED FURTHER THAT*** *Mrs. G Gita, Managing Director of the Company, be and are hereby severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required."*

***"RESOLVED FURTHER THAT*** *Mrs. G Gita, Managing Director of the Company, be and are hereby severally authorized draw cheques and other documents, and to give instructions from time to time as may be necessary to the said Euram Bank or any of branch of Euram Bank, including the Offshore Branch, for the purpose of operation of and dealing with the said vank account and carry out other relevant and necessary transactions and generally to take all such steps and to do all such things as may be required from time to time on behalf of the Company.*

*“**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.”*

32. Further, as per Edserv’s Board Resolution dated July 25, 2011, it is observed that Mr. S. Giridharan, Chairman & CEO of the Company was additionally authorised to sign, execute any application, agreement etc. as may be required. The relevant part of the Board Resolution is reproduced below:

*“**RESOLVED THAT** in addition to the authority granted by the ADR/GDR/FCCB Committee at its meeting held on 29th April 2011 to Mrs. G.Gitaa, Managing Director of the Company, Mr. S. Giridharan, Chairman & CEO of the Company be and is hereby additionally authorised to operate the company's account held with EURAM bank or any branch of EURAM Bank, including the Offshore Branch, outside India, 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 and to draw cheques and other documents, and to give instructions from time to time as may be necessary to the said EURAM bank or any of branch of EURAM bank, including the Offshore Branch, for the purpose of operation of and dealing with the said bank account and carry out other relevant and necessary transactions and generally to take all such steps and to do all such things as may be required from time to time on behalf of the company.”*

33. From the aforesaid resolution of the Board Meeting it is observed that the Board of Directors of Edserv had authorized, S Giridharan, Chairman and CEO, to sign and

execute any application, agreement and other paper from time to time as may be required by EURAM Bank. For this purpose, S Giridharan was inter alia authorized to carry and use the seal of Edserv. In the said resolution, the Board of Directors had further authorized EURAM Bank to use the funds deposited in the bank account opened with EURAM Bank in the manner of subscription money in respect of the GDR issue of the company, as security in connection with loans, if any.

34. I note from the records made available by EURAM Bank that subsequently Edserv had entered into a Pledge Agreement with EURAM Bank on July 25, 2011. The said Pledge Agreement was signed by S Giridharan on behalf of Edserv, in the capacity of Chairman and CEO of Edserv. The salient Clauses of the Pledge Agreement are *inter alia* as under:

1. *Preamble*

   *By loan agreement K250711-001 (hereinafter referred to as the "Loan Agreement") dated 25 July, 2011, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahmadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates ("the Borrower") in the amount of $ USD 23,888,000. The Pledgor has received a copy of the Loan Agreement No. K250711-001 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 thereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the* ***Loan Agreement*** *– including those limited as* *to condition or time or not yet due – irrespective of whether such claims have originated from the account relationship, from bills of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations")* ***the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:***

*2.1.1. all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount of USD 23,888,000 existing from time to time at present or hereafter on the* ***securities account(s) no.580048*** *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. 580048 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account ") and all amounts credited at any particular time therein. The interest rate on the deposit in the amount of facility amount of the Loan Agreement will be fixed at 0.25% p.a.*

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

*2.1.3. 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……..*

3. Realisation of the Pledge:

*6.1. In the case that the **Borrower fails to make payment** on any due amount, or defaults in accordance with the Loan Agreement, the Pledgor herewith grants its express consent and the Bank is entitled to apply the funds in the Pledged Accounts to **settle the Obligations**. In such case the Bank shall transfer the funds on the Pledged Accounts, even repeatedly, to an account specified by the Bank*

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

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

35. I note that the Pledge Agreement refers to the Loan Agreement dated July 25, 2011 between the borrower i.e. Vintage, and EURAM Bank, whereby Vintage was granted

a loan of USD 23.89 million, and it is stated that the Pledgor i.e. Edserv has received a copy of the said Loan Agreement and acknowledges and agrees to its terms and conditions. By signing the Pledge Agreement, Edserv is deemed to be clearly aware that Vintage was the subscriber to the GDR issue. On perusal of the contents of the Pledge Agreement, it is noted that the Pledgor had agreed to pledge Edserv its rights, title and interest in and to the securities deposited in the Pledge Securities Account and funds in Pledged Time Deposit Account so as to secure the present and future obligations of Vintage. As already reproduced above, the Pledge Agreement also expressly states that:

*"In the case that the Borrower fails to make payment on any due amount, or defaults in accordance with the Loan Agreement, the Pledgor herewith grants its express consent and the Bank is entitled to apply the funds in the Pledged Accounts to settle the Obligations. In such case the bank shall transfer the funds on the pledged accounts, even repeatedly to an account specified by the Bank."*

36. I further note that the Pledge Agreement as well as the Loan Agreement were both dated July 25, 2011. Further, I also note that the Loan Agreement expressly states that the Pledge Agreement was an integral part of the Loan Agreement.

37. From the Loan Agreement and the bank account statement of Vintage, I note that Vintage had availed a loan from the EURAM Bank to the extent of USD 23.89 million to subscribe to the GDRs of Edserv. From the statement of Vintage's bank account and the escrow account for the GDR issue, it is observed that Vintage had instructed

EURAM to transfer an amount of USD 23.89 million from its account and to credit it into the escrow account of Edserv. Accordingly, the said amount was credited to the account of Edserv on August 09, 2011. The bank account statement of Edserv clearly shows that the said amount as received from one entity only, i.e. Vintage. From the above, it is evident that GDR subscription money was received from only one entity i.e. Vintage. Accordingly, I note that the GDR issue of Edserv comprising 1.60 million GDRs (amounting to USD 23.89 million), was subscribed by only one entity, i.e. Vintage. I further note that the loan agreement between Vintage and EURAM was signed on July 25, 2011 and on the same date Vintage had instructed EURAM to transfer the said amount of USD 23.89 million from its account to that of Edserv and in turn the same Edserv account was pledged with EURAM Bank under the Pledge Agreement.

38. Another aspect that draws attention in the aforesaid arrangement, is that the company pledged the GDR proceeds prior to realizing the same, which is in contradiction to the usual pledging mechanism. It is common understanding that to pledge something as security against the loan taken by the borrower, the borrower first need to have the possession of the thing which is to be pledged and thereafter the same can be transferred to the pledgee for the purpose of creation of pledge. However, in the instant matter, I note that the GDRs was issued in August 10, 2011 and the pledge agreement was entered into on July 25, 2011 which is prior to the said issue date and in turn prior to realizing the GDR proceeds. Hence, it can be said that the GDR proceeds were given as security by Edserv prior to realizing the same and accodingly

this establishes that there was meeting of minds between the company, EURAM and Vintage and they all were acting in furtherance of common objective to misled the Indian investors.

39. Further, it is observed from Vintage's loan account statement with EURAM Bank that Vintage repaid the loan amount to the extent of USD 0.6 million on February 23, 2012 and thereafter defaulted on the repayment of balance loan amount of USD 23.29 million (including interest on loan amount). Details of repayment of loan by Vintage as observed from information provided by EURAM Bank are tabulated below:

| *Date* | *Particulars* | *Repayment of loan by Vintage to EURAM* | *Payment (transfer) of amounts by Edserv* |
|---|---|---|---|
| *23-Feb-12* | *Repayments* | *600,000* | |
| *23-Feb-12* | *Edserv Softsystems Limited* | | *300,000* |
| *23-Feb-12* | *Edserv Softsystems FZE* | | *300,000* |
| | *Total* | *600,000* | *600,000* |

40. From the details of fund transfer stated immediately above, I observe that only after Vintage repaid loan installment to EURAM Bank, that Edserv could make payments from its account maintained with the same bank and such payments were exactly for the same amount that Vintage repaid to EURAM Bank.

41. I further note that when loan repayment was made by Vintage, Edserv transferred funds from its EURAM Bank account to the other bank accounts of Edserv. In view of the above, I note that the transfer from Edserv's EURAM account to other accounts of Edserv is in sync with the date and amount of loan repaid by Vintage to EURAM Bank (the details pertaining to this have already been tabulated in preceding paragraph). Therefore, I note that the amounts transferred from Edserv's EURAM account to Edserv's other bank accounts were dependent on the repayment of the loan by Vintage. It also establishes that the purpose of the Pledge Agreement was to facilitate the subscription of GDR issue and securing the loan obtained by Vintage.

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

43. I also note that with regards to the subscription of GDR issues of certain other listed Indian companies through the aforesaid *modus operandi* viz. involving arrangement of Loan Agreement and Pledge Agreement, the Hon'ble Securities Appellate Tribunal ("SAT") in its Order dated October 25, 2016 in Appeal No. 126 of 2013 in the matter of ***Pan Asia Advisors Limited vs. SEBI*** had observed:

*“28.... there can be no dispute that the GDR subscription amounts running into several million US $ were not available to the issuer companies till the loan taken by Vintage for subscribing to GDRs were repaid to Euram Bank. Admittedly, the loans were repaid by Vintage after a long period of time. Therefore, in the facts of present case, findings recorded by SEBI that in reality there was no fund movement after the GDRs were subscribed, cannot be faulted.”*

44. In the present matter, I note that the GDR subscription amount of USD 23.89 million was not available to Edserv for utilization until the loan taken by Vintage for subscribing to the GDRs was repaid to the EURAM Bank. I also note that after the subscription of GDR on August 10, 2011, a small amount of USD 6,00,000 could be made available to Edserv that too only on February 23, 2012, i.e. after a period of almost 5 months since the subscription money for the GDR issue was received in the EURAM Bank account of Edserv. From the above mentioned table, I note that the date and amount of repayment of loan by Vintage to Euram Bank are synchronous with every transfer by Edserv out of its account held with Euram Bank, which was pledged as security for the loan. Hence, it appears that only when Vintage repaid the sum of money, Edserv was able to transfer a similar sum to its bank accounts in India and was able to use the same for any other purpose, as the charge on the pledged account was removed to that extent.

45. Further from the documents available on record, it is observed that the GDRs were subscribed by only one entity, viz. Vintage FZE. I also note that the Pledge Agreement dated July 25, 2011, which was specifically signed by the authorized representative of Edserv makes reference to Vintage. The same also clearly shows that Edserv was aware that the subscriber to the GDR issue was just Vintage. Such actions also indicate *mala fide* intention on the part of Edserv and Vintage.

46. In view of the above, I note that the scheme of arrangement of Edserv, in allotting GDR issue to only one entity i.e. Vintage which subscribed the GDR issue by obtaining loan from Euram Bank and securing it again by the Edserv by pledging its GDR proceeds, lead to conclusion that the same were done in a fraudulent manner with a view to influence the decision of the investors and to induce the sale or purchase of its scrip.

47. Further, in the present matter, Vintage was sole subscriber of GDR issue of Edserv and subscription was arranged through a loan availed from EURAM Bank to the extent of USD 23.89 million for which security was provided by Edserv by pledging its GDR proceeds. Further, Vintage defaulted in repayment of loan to the extent of USD 23.29 million, thereby GDR proceeds to that extent were adjusted by EURAM. Hence, it is evident that Vintage acquired GDRs of Edserv to the tune of USD 23.29 million at free of cost. On perusal of copy of Know Your Customer documents (signed on June 06,

2007) of Vintage available with EURAM Bank, it is observed that the Noticee is the beneficial owner of Vintage.

48. I further note that the Noticee was connected with various other entities including Foreign Institutional Investors (FIIs) and Sub- accounts involved in the issuance of GDRs that facilitated FIIs in selling the converted equity shares of the company.

49. From the IR, I note that, the aforesaid sub-accounts were connected to the Noticee in the following manner:

IFCF – Noticee was director from August 22, 2008 to October 28, 2010, Investment Officer (100% shareholder) and Beneficial Owner.

HBSF – Ms. Reema Narayan Shetty was beneficial owner of HBSF from April 21, 2014 to September 09, 2014. Ms. Reema Narayan Shetty is connected to Noticee as she was authorized signatory of IFCF.

Cardinal Capital Partners – Noticee was beneficial owner and 100% shareholder

50. I further note that the aforesaid Foreign Institutional Investors (FIIs) connected and controlled by the Noticee, converted the GDRs into Equity Shares and sold shares in the Indian securities market amounting to Rs.12,85,90,978.

51. Considering the fact that Vintage was sole subscriber to GDR issue, with the Noticee being the beneficial owner of Vintage, which defaulted on loan repayment, it was observed that converted equity shares sold by the aforesaid FIIs were originally acquired by Vintage free of cost. Thus, I note that the Noticee devised GDR scheme along with Edserv which misled the Indian investors by concealing the information of entering into Pledge Agreement which made investors believe that GDRs were genuinely subscribed while loan default alone caused loss to the shareholders of Edserv to the tune of USD 23.29 million.

52. The entire trail of funds as can be observed from the bank account statements of Vintage and Edserv with EURAM Bank and sale of GDRs and its underlying shares, when seen as a whole, strongly establishes collusion between Noticee and Edserv with respect to the subscription of the said GDR issue of Edserv. All the actions of Edserv and Vintage are interdependent on each other from signing of agreements to bank transactions. With regard to the Noticee it was alleged that he was the beneficial owner of Vintage FZE in which Mukesh Chauradiya had served as Managing Director and that the Noticee was also connected with various other entities including Foreign Institutional Investors (FIIs) and Sub- accounts involved in the issuance of GDRs that facilitated FIIs in selling the converted equity shares of the company. Further, Noticee owned PAN Asia Advisors Limited who was the lead managers for the GDR issue. Hence, this establishes that the Noticee has devised and structured the GDR issue in connivance with Edserv.

53. In this regard, I note that the Noticee has submitted that the issue of GDR is not fraudulent scheme but the manner of information to the stock exchange is such that it has resulted in fraudulent action on the part of the company which misled the investors. Hence, it is contended that there is nothing against the Noticee.

54. I note that in the instant case, the allegations against the Noticee is that of violation of Regulation 3(a) (b) (c) and 4(1) PFUTP Regulations, 2003. Further, the definition of 'fraud' provided under PFUTP Regulations, 2003 is:

> **Reg. 2(c)** *"fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—*
>
> *(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*
>
> *(2) a suggestion as to a fact which is not true by one who does not believe it to be true;*
>
> *(3) an active concealment of a fact by a person having knowledge or belief of the fact;*
>
> *(4) a promise made without any intention of performing it;*

*(5) a representation made in a reckless and careless manner whether it be true or false;*

*(6) any such act or omission as any other law specifically declares to be fraudulent,*

*(7) deceptive behaviour by a person depriving another of informed consent or full participation,*

*(8) a false statement made without reasonable ground for believing it to be true.*

*And "fraudulent" shall be construed accordingly*

55. With regards to the above, I note that, there is no allegation against the Noticee regarding non-disclosure of the pledge agreement and the loan agreement to the stock exchange but of devising and structuring the GDR issue in connivance with Edserv.

56. I further note that the obligation of Vintage under the Loan Agreement was secured by Edserv through the Pledge Agreement, and accordingly, the subscription of the GDR issue was facilitated in the above manner by Vintage. I also note that due to such pledging of the GDR proceeds, the funds were not available at Edserv's disposal. In view of the above, it is evident that the GDRs were not issued in a genuine manner, but rather through a fraudulent arrangement. This created a false impression on the minds of investors that the GDRs of Edserv were genuinely subscribed, which was not the case. Hence, the act of Vintage and the company resulted in *'fraud'* as defined

under the PFUTP Regulations, 2003. In this respect, it would be appropriate to refer to the Order of the Hon'ble SAT in ***Pan Asia Advisors Limited vs. SEBI*** (Civil Appeal No. 10560/2013, AIR 2015 SC 2782) wherein, while interpreting the expression of *'fraud'* under the PFUTP Regulations, 2003, it was observed that:

*"From the aforesaid definition (of 'fraud') it is absolutely clear that if a person by his act either directly or indirectly causes the investors in the securities market in India to believe in something which is not true and thereby induces the investors in India to deal in securities, then that person is said to have committed fraud on the investors in India. In such a case, action can be taken under the PFUTP Regulations against the person committing the fraud, irrespective of the fact any investor has actually become a victim of such fraud or not. In other words, under the PFUTP Regulations, SEBI is empowered to take action against any person if his act constitutes fraud on the securities market, even though no investor has actually become a victim of such fraud. In fact, object of framing PFUTP Regulations is to prevent fraud being committed on the investors dealing in the securities market and not to take action only after the investors have become victims of such fraud."*

57. Further, I refer to the Hon'ble SAT Order dated July 14, 2006, in the case of **Ketan Parekh vs. SEBI** (Appeal no. 2/2004), wherein, Hon'ble SAT has observed that:

*"… in order to find out whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism, will depend upon the intention*

*of the parties <u>which could be inferred from the attending circumstances of the cases, because direct evidence in such cases may not be available.”</u>* [Emphasis supplied]

58. I note that the Noticee has submitted that he has not signed the loan agreement and when the loan default occurred he already resigned from Vintage, IFCF etc. He has also contended that he has no connection with Mukesh Chauradiya. I further note that the Noticee has submitted that since Vintage has not been made party in the present proceedings the allegations against the Noticee fall to the ground and cannot be sustained due to lack of legality and fairness.

59. With regard to the above contentions of the Noticee, I note that in the instant case, it is imperative to observe the scheme in entirety rather than observe/mention events in isolation. As seen in previous order in the current matter, there was a chain of events carried out with common understanding and in connivance with each other by various entities to execute this entire scheme of the GDR issue. The fraudulent scheme of GDR issue was formally initiated by entering into the said Loan and Pledge Agreements.

60. I further note that the Noticee was the beneficial owner of Vintage FZE in which Mukesh Chauradiya served as the Managing Director and signed the loan agreement. Therefore, it is apparent that Noticee was connected with Mukesh Chauradiya.

Further, the role played by Vintage in the fraudulent scheme has already been brought out in detail in the preceding paragraphs. It is further observed that Mukesh Chauradiya held key position in Vintage (was Managing Director and authorized signatory of Vintage) and was in the knowledge of Noticee's scheme of subscribing to GDR issues through Loan Agreement and default of repayment of loan in several GDR issues (as Mukesh Chauradiya had signed the Loan Agreements and Vintage's redemption of loan amount requests for repayment of Vintage's loan in the capacity of Authorized Signatory).

61. In view of the above, I note that Mukesh Chauradiya acted as an aide to the Noticee and facilitated the fraudulent scheme by executing the Loan Agreement, Loan Redemption Letters and Extension of date for Loan Repayment Letter addressed to EURAM Bank in capacity of the Managing Director of Vintage.

62. In this regard I also rely on the order of Hon'ble SAT in **Mukesh Chauradiya vs. SEBI** (Date of Decision: January 7, 2021 Appeal No. 260 of 2020) which examined the relevance of designations in foreign corporate entities, where it held:

*"It is an undisputed fact that the appellant has signed as Managing Director as we also note at page 94 of the Memo of appeal. It is not that he signed "for managing director" or "on behalf of managing director" etc. Therefore, irrespective of the dispute relating to the designation as contended by the appellant, the appellant was undoubtedly having the power to sign as managing director. In the certificate given*

*by the JAFZA only 3 names [and 4 designations, with the sole Director, being named as the Secretary also] are indicated who are responsible people in Vintage FZE and appellant was one of them. Therefore, the dispute as to what was the exact designation of the appellant is irrelevant in the context that admittedly the appellant signed as Managing Director of Vintage FZE. It is also important to clarify here that using a designation in other jurisdictions, such as UAE in the instant case, or Adjudication Order in the matter of disclosures by Rainbow Papers Ltd. in respect of its GDR issue Page 42 of 49 elsewhere, for comparison to similar designations in India is also not relevant because designations vary widely even with respect to similarly placed officials across multiple jurisdictions. What is relevant is only whether the appellant was holding a position in which he could put his signature, that too in a loan agreement for USD 13.24 million with a bank under the designation of Managing Director. In any case designation of a person and whether a person is "an officer in default" in an organization etc. are irrelevant when the charge is that of aiding and abetting fraud under the PFUTP Regulations, which is the case herein."*

63. Further, it is also pertinent to note that, Noticee has been involved in other similar fraudulent GDR issues, wherein similar modus operandi were employed, and various orders had also been passed against him by SEBI establishing the same. Hence, it can be said that the Noticee is the mastermind behind all these fraudulent schemes and Noticee was acting on behalf of Vintage in furtherance of the common objective. The same was also mentioned in the reply by Mr. Mukesh Chauradiya in the present matter, wherein he submitted that Vintage FZE was fully owned and controlled by the

Noticee and that the Noticee was the beneficial and legal owner of Vintage (directly and indirectly). Mr. Chauradiya further submitted that Vintage was a single member enterprise with Noticee being the owner and that the decisions to subscribe to the GDRs and obtain loan from Euram Bank for subscribing to the GDR issue was taken by the Noticee.

64. Further, with regards to the contention of Vintage not being made party to the case, I note that Vintage, being a separate legal entity, can be proceeded against separately and SEBI had already taken appropriate actions against Vintage. Further, it has not been brought out clearly and specifically by the Noticee as how the absence of Vintage in the present proceedings prejudice his defense and validity of instant proceedings.

65. The concept of 'lifting of corporate veil' is a commonly employed mechanism to apply in such cases to find out the person/s acting for the legal corporate entities or their role in the contraventions committed by the corporate entities. It is sufficiently established in the preceding paragraphs as well in various SEBI orders in other GDR matters that Noticee was the beneficial owner of Vintage and therefore he was acting on behalf of Vintage when this entire fraudulent scheme was designed by Edserv and Vintage through Noticee. The concept of 'lifting of corporate veil' is also incorporated in the SEBI Act, 1992:

***27. Contravention by companies.***

*(1) …*

*(2) Notwithstanding anything contained in sub-section (1), where an contravention under this Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.* (emphasis supplied)

66. In view of the above observations, I note that the whole scheme of arrangement of Edserv of allotting GDR issue to only one entity i.e. Vintage which in turn subscribed the GDR issue by obtaining loan from EURAM Bank and which was secured by Edserv by pledging its GDR proceeds, seen along with the false and misleading corporate announcements made by Edserv and allotment, without disclosing the crucial details pertaining to the aforesaid loan and pledge agreements which were price sensitive information, lead to conclusion that the same were done in a fraudulent manner.

67. Further, I note that the Noticee was the beneficial owner of Vintage and Mukesh Chauradiya acted as an aide to the Noticee and facilitated the fraudulent scheme by executing the loan agreement and Loan Redemption Letters and Extension of date for Loan Repayment Letter addressed to EURAM Bank in capacity of the Managing

Director of Vintage whereby it was stated that the amount shall be utilised by Vintage for subscribing the GDR issue of EDSERV. I further note from the IR that the said pledge agreement was verified by the Noticee affixing vide a stamp named “Signature verified Dir.AP”. The said facts clearly establish that the Noticee is involved in the fraudulent scheme as a sole and whole beneficial owner of the Vintage.

68. The Noticee has also, in his submission, has stated that in the process of giving out of loans by EURAM Bank to Vintage and then subsequently selling of converted GDRs in Indian market by Vintage through IFCF and others, the Noticee cannot be considered as a party of this arrangement. With regards to the aforesaid contention, I would like to draw attention to the order of Hon’ble SAT dated February 5, 2020 in the matter of **Jindal Cotex Ltd., Vs SEBI** (Appeal No. 376 of 2019), wherein Hon’ble SAT held as under:

*“We do not agree with the submissions made by the learned counsel for the appellants. This Tribunal had passed a number of orders relating to manipulations and fraudulent behaviour from the part of a few companies and several connected entities including Vintage. EURAM Bank has also been one of the entities found to be part of those transactions. Such judgements include PAN Asia Advisors Limited and Anr. vs. SEBI (Appeal No. 126 of 2013 decided on 25.10.2016) and Cals Refineries Limited vs. SEBI (Appeal No. 04 of 2014 decided on 12.10.2017). The modus operandi adopted in all such cases have been similar i.e. the subscriber to the GDR issue (Vintage here) taking a loan from a foreign bank/ investment bank*

*(EURAM Bank here) enabled by a Pledge Agreement signed between the issuer company (JCL here) and the loaner bank. This arrangement itself vitiates the entire issue of GDR as it is through an artificial arrangement supported by the company itself which enables the subscription to the GDR. Therefore, the contention in the order that it is a fraudulent scheme created by the appellants along with some other entities cannot be faulted. In this context, it is relevant to note that in our order in the matter of PAN Asia Advisors Limited (Supra) (Lead Manager) and Vintage (subscriber) whose beneficial was Arun Panchariya were all found to be guilty of the violations of Indian Securities Laws under the PFUTP Regulations. The same has been the modus operandi in respect of Cals Refineries Limited (Supra) though the entities connected therein were different."*

69. Further, with respect to the connection of Noticee with other connected entities and regarding similar fraudulent GDR issues, I note that Hon'ble SAT in **PAN Asia Advisors Limited and Anr. Vs SEBI** (Appeal No. 126 of 2013) has already affirmed with the findings of SEBI wherein Noticee was found to be orchestrating similar GDR issues involving similar modus operandi. The order states:

*"21. Thus, instead of ensuring that the foreign investors subscribe to the GDRs of Asahi, Arun Panchariya (AP) as Managing Director of PAN Asia planned to subscribe to the GDRs of Asahi through Vintage and in fact as Managing Director of Vintage took loan of 5.98 Million USD from Euram Bank for subscribing to the GDRs of Asahi and made Asahi to pledge to the Euram Bank the GDR subscription*

*amount of 5.98 Million USD as security for the loan taken by Vintage. Similar modus operandi was adopted in case of other issuer companies. Thus, the investors in India were made to believe that in the global market the issuer companies have acquired high reputation in terms of investment potential and hence the foreign investors have fully subscribed to the GDRs, when in fact, the GDRs were subscribed by AP through Vintage which was wholly owned by AP. In other words, PAN Asia as a Lead Manager and AP as Managing Director of PAN Asia attempted to mislead the investors in India that the GDRs have been subscribed by foreign investors when in fact the GDRs were subscribed by AP through Vintage. Any attempt to mislead the investors in India constitutes fraud on the investors under the PFUTP Regulations.*

*…*

*25. It is apparent that the appellants knew that if the investors in India come to know that the GDRs of the issuer companies have not been subscribed by foreign investors but by the entities controlled by the Managing Director (AP) of PAN Asia, then it would not generate interest in minds of the investors in India to subscribe to the shares of issuer companies. Therefore, in order to create an artificial impression that global investors have shown keen interest in investing in the issuer companies by subscribing to the GDRs, appellants by a dubious method introduced fictitious and non-existent initial subscribers to the GDRs of the issuer companies so as to mislead the investors in India in believing that the global investors have shown keen interest in investing in the GDRs of issuer companies. In these circumstances,* *decision of SEBI 37 that the appellants attempted to committed fraud on the investors in India by introducing fictitious initial subscribers cannot be faulted."*

70. In the end, regarding the violations by Noticee, I note that the Hon'ble Supreme Court in its judgment in the matter of **Kanaiyalal Baldevbhai Patel v. SEBI** (Civil appeal no. 2595 of 2013) has observed that:

*"if Regulation 2(c) of the 2003 Regulations was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or not, by any person while dealing in securities to induce another person to deal in securities would amount to a fraudulent act. The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities".*

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

72. Further, as already explained above, because of the loan default by Arun Panchariya controlled Vintage, USD 23.29 million were adjusted by EURAM Bank from the GDR proceeds of Edserv. Therefore, effectively, the shares converted from the GDRs equivalent to the value of USD 23.29 million were acquired by Vintage free of cost. Thereafter, sub-accounts IFCF, Cardinal Capital Partners and HBSF who are connected to Arun Panchariya converted GDRs into Equity shares and sold converted equity shares of Edserv in Indian Securities Market through Arun Panchariya connected FIIs for a total of INR 12,85,90,978. From above, it can be easily understood that the shares sold by IFCF, Cardinal Capital Partners and HBSF were the shares which were acquired by Vintage at free of cost as Vintage defaulted on loan repayment. Therefore, I note that Noticee on account of being the sole beneficiary of Vintage and connected entity of sub-accounts (IFCF, Cardinal Capital Partners and HBSF) was the key person in structuring the GDR issue of the Company and devised and structured the entire GDR issue in connivance with the company which misled the Indian investors by concealing the information of entering into Pledge Agreement and therefore has violated the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.

***<u>Issue II</u>: Does the violation, attract monetary penalty under Section 15HA of the SEBI Act, 1992?***

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

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

74. The Noticee had jointly and in close connivance with EDSERV, had acted in concert in the entire fraudulent scheme by arranging for the subscription of the GDRs through Vintage using the pledge agreement signed on behalf of EDSERV to obtain a loan from the EURAM Bank and then to dispose the shares acquired through such GDRs, thereby creating an elaborate façade of demand for the securities of EDSERV.

75. Thus, the violation of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4 (1), of SEBI (PFUTP) Regulations, 2003, by the Noticee make him liable for imposition of penalty under Section 15HA of the SEBI Act, 1992, which reads as below:

***SEBI Act, 1992***

***"Penalty for fraudulent and unfair trade practices.***

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

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

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

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

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

77. In this regard, the provisions of Section 15J of the SEBI Act, 1992 read with Rule 5 (2) of the SEBI Adjudication Rules require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely; -

(a) *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*

*(b) the amount of loss caused to an investor or group of investors as a result of the default;*

*(c) the repetitive nature of the default.*

78. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that the Noticee was the key person in structuring the GDR issue of the Company and devised and structured the entire GDR issue in connivance with the company which misled the Indian investors by concealing the information of entering into Pledge Agreement and informing GDR related news in a distorted manner to stock exchange which made investors believe that GDRs were genuinely subscribed. He was the mastermind behind all these fraudulent schemes and was acting on behalf of Vintage in furtherance of the common objective.Out of the GDR proceeds of USD 23.89 million, an meagre amount of USD 0.6 million was transferred to Edserv and USD 23.29 million were adjusted by EURAM against the loan of Vintage and therefore the shares converted against those GDRs were effectively issued at free of cost to Vintage which was aided by the Noticee, and this had caused a loss to the shareholders to the tune of USD 23.29 million. The magnitude of the fraud committed by the Noticees is enormous as is evident from the issue size of USD 23.89 million. Further, this is just one of many other matters where the Noticee has been found to be involved.

**ORDER**

79. After taking into consideration all the facts and circumstances of the case, gravity of violations and the material on record, and also the factors stipulated in Section 15J of the SEBI Act, 1992, I, in exercise of the powers conferred upon me under Section 15-

I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, hereby impose the following penalty on the Noticee mentioned hereunder –

| Entity | Penal Provisions | Penalty |
|---|---|---|
| **Mr. Arun Pancharia (PAN: AEVPP6125N)** | Penalty imposed under Section 15HA of the SEBI Act, 1992 for violation of the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations | **Rs.20,00,000/- (Rupees Twenty Lakhs only)** |

80. The abovementioned Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link.

**ENFORCEMENT →Orders →Orders of AO →PAY NOW**

81. The Noticee shall forward said confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – 1 of SEBI. The Noticee shall provide the following details while forwarding payment information:

Name and PAN of the entity (Noticee):

Name of the case / matter:

Purpose of Payment – Payment of penalty under AO proceedings:

Bank Name and Account Number:

Transaction Number:

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

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

| | |
|---|---|
| **Place: Mumbai** | **G. Ramar** |
| **Date: July 26, 2023** | **Adjudicating Officer** |