BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/VV/NK/2022-23/18784-18788]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 & UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT,1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005.

In respect of:

M/s. Soma Textiles & Industries Ltd (PAN No. AADCS0405R)	**Mr. S K Somany (PAN No. AAGPS6467H)**
Mr. A K Somany (PAN No. ACBPS8983M)	**Mr. P Bandopadhyay (PAN No. ACIPB0422B)**
5. Mr. Sunil Patel (PAN No. ARWPP5026A) (Passport No.070138392)	

In the matter of:

Soma Textiles & Industries Ltd. in respect of its GDR issue

Background

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted an investigation against several Indian companies that had issued Global Depository Receipts ("GDR") in overseas markets. In this regard, on an enquiry with Banco Efisa, S.F.E, S.A ("Banco Bank"), a bank based in Lisbon, about the loan taken by initial GDR subscribers, it has been informed that in respect of GDR issue of Soma Textiles & Industries Ltd ('Noticee no. 1'/ 'Soma'/'Company'), M/s. Whiteview Trading Corporation ("Whiteview") had availed loan against the GDR proceeds of SOMA. Accordingly, SEBI had investigated the GDR issue of

SOMA during the issuance of GDR i.e., October 01, 2006 to October 31,2006 (referred to as "Investigation Period ("IP")) to ascertain as to whether:

a) GDRs were issued with the intention of defrauding Indian investors
b) Shares underlying GDRs were issued with proper consideration and
c) appropriate disclosures with respect to Listing Agreement, if any were made

2.During the investigation, it was observed that the following Noticees have violated various provisions of Securities and Exchange Board of India Act, 1992 ("the Act") and section 23I (1) of Securities Contracts (Regulation) Act, 1956 ("SCRA") and thus, pursuant to investigation, Adjudication Proceedings were initiated against the following for the alleged violations, as detailed below:

a) Section 12A(a),(b) and (c) of the Act read with Regulations 3(a),(b),(c) and (d) and 4(1), 4(2)-(f),(k) and (r) of Prohibition of Fraudulent and Unfair trade practices Regulations 2003 ("PFUTP Regulations") and Section 21 of SCRA read with Clauses 35 and 36(7) of Listing Agreement by Soma;

b) Section 12A(a),(b) and (c) of the Act read with Regulations 3(a),(b),(c) and (d) and 4(1) of PFUTP Regulations by S K Somany ("Noticee 2"), A K Somany ("Noticee 3"), P Bandopadhyay ("Noticee 4"), Sunil Patel ("Noticee 5").

Noticees 1,2,3,4 & 5 are collectively referred to as "Noticees".

Appointment of Adjudicating Officer

3.Mr. Sahil Malik was appointed as the Adjudicating Officer (**erstwhile AO**) under section 15I of the SEBI Act,1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**SEBI Adjudication Rules**") and under section 23-I (1) of SCRA, 1956 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 section 15HA of the SEBI Act,1992 and under section 23E of SCRA, 1956 (Noticee no. 1) respectively, for the aforesaid violations alleged to have been committed by the Noticees vide order dated May 23, 2017. Thereafter, upon transfer of Mr. Sahil Malik, undersigned has been appointed as the Adjudicating Officer in the present matter *vide* communication order dated August 13, 2019.

Show Cause Notice & Reply of Noticees

4. A common Show Cause Notice ref. SEBI/HO/EAD-12/SM/PR/OW/1672/2018 dated January 18, 2018 (hereinafter referred to as **"SCN"**) was issued by erstwhile AO to *Inter-alia* Noticee no. 1 to 5 respectively under Rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty not to be imposed under Section 15HA of the SEBI Act, 1992 and Section 23E of SCRA, 1956, as applicable, for the alleged violations specified in the SCN.

5. The allegations levelled against the Noticee no. 1 to 5 in the SCN are summarized as below:

BACKGROUND OF THE COMPANY

4. *The company was incorporated under the name R Bodda & Co. Ltd. on March 29, 1940. In the year 1969, the company purchased New Commercial Mills Co. Ltd. at Ahmedabad, which was under liquidation, and named the unit as "SOMA Textiles." Thereafter, the name of the company was changed to "SOMA Textiles and Industries Ltd." on January 21, 1992 and registered office was situated at No. 2, Red Cross Place, Kolkata -700001. The Company was engaged in the manufacturing and sales of spinned cotton yarn, polyester yarn, denim and cotton shirting and ready –for-dyeing shirt materials, bottom weights etc. The scrip was listed at Bombay Stock Exchange ('BSE') and National Stock Exchange ('NSE').*

5. *The board of directors ('Board/BoD') of SOMA for the financial year ended March 31, 2007 was as follows:*

(Source: Annual Report for financial year ended March 31, 2007)

S no	***Name***	***Designation***
1.	*Mr. S K Somany*	*Promoter, Chairman*

S no	*Name*	*Designation*
2.	*Mr. A K Somany*	*Promoter, Managing Director*
3.	*Mr. P. Bandyopadhyay*	*Executive, Non-Independent Director*
4.	*Mr. Prafull Anubhai Shah*	*Non- Executive Independent Director*
5.	*Mr. Ashok C Gandhi*	*Non- Executive Independent Director*
6.	*Mr. Anupam Verma*	*Non- Executive Independent Director (Nominee of ICICI)*
7.	*Mr. S. Shekar*	*Non- Executive Independent Director (Nominee of ICICI)*

*(Copy of the extract of annual report for the financial year ended March 31, 2007 is placed at **Annexure- 1**)*

SHAREHOLDING PATTERN:

6. *The following is the shareholding pattern of SOMA as per its letter dated February 8, 2016*

Particulars	***QE SEP 2006***		***QE DEC 2006***		***QE MARCH 2007***	
	No. of shares	***%***	***No. of shares***	***%***	***No. of shares***	***%***
Promoter and promoter group holding	*62,62,620*	*43.09*	*63,21,366*	*19.14*	*1,11,21,466*	*33.67*
Public	*82,70,380*	*56.91*	*2,67,11,634*	*80.86*	*2,19,11,534*	*66.33*
Shares held by custodians and against which Depository Receipts have been issued	*-*	*-*	*-*	*-*	*-*	*-*

Total no. of issued shares	***1,45,33,000***	***100.00***	***3,30,33,000***	***100.00***	***3,30,33,000***	***100.00***
Annexure	***2.1***		***2.2***		***2.3***	

(Copies of the shareholding pattern for the quarters ended September 2006, December 2006, March 2007 as downloaded from BSE website are placed at annexure- 2.1, 2.2 & 2.3, BSE's reply dated February 08, 2016 is placed at annexure-2.4)

7. *From the above shareholding pattern, it was observed that the total number of issued shares for the quarter ended December 2006 was increased by 1.85 crore shares as compared to the quarter ended September 2006. The aforesaid increase in total number of shares was due to issue of 1.85 million GDRs representing 1.85 crore shares at US $9.35 per GDR on October 20, 2006.*

8. *With regard to change in promoter shareholding for the quarters ended December 2006 and March 2007, the company vide letter dated February 08, 2016 submitted as follows:*

- *During the quarter ended December 2006, Mr. S. K. Somany has acquired 58,746 equity shares through open market which constitutes 0.18% of total paid up capital.*
- *During the quarter ended March 31, 2007, M/s. Krishnaa Glass P. Ltd has acquired 11,00,000 and 37,00,100 equity shares through open market on January 05, 2007 and February 19, 2007 respectively pursuant to which an open offer was made.*
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9. *As mentioned at para no: 7, SOMA issued 1.85 million GDRs representing 1.85 crore shares of Rs.10 each on October 20, 2006. It was observed from the shareholding pattern submitted under clause 35 of Listing Agreement by SOMA to BSE for the quarters ended December 2006 and March 2007 that the shares underlying of GDRs issued were shown under the category 'public shareholding category' rather than shown under the separate category "Shares held by custodians and against which Depository Receipts have been issued" as prescribed.(Copies of shareholding submitted by SOMA to BSE for quarters ended December 2006 and March 31, 2007 are placed at* ***Annexure- 2.5****) and thereby SOMA has not complied with clause 35 of the Listing Agreement and therefore violated section 21 of SCRA.*

CORPORATE ANNOUNCEMENTS:

10. *The major corporate announcements made by company with regard to GDR issue, from the date of announcement to BSE that board considered raising of funds through GDRs were examined. (Copy of the corporate announcements made by SOMA to BSE and NSE for the period May 01, 2006 to December 31, 2006 as provided by BSE and NSE are placed at Annexure – 2.6).The details of corporate announcements with regard to GDRs made by the company (date and time at which the same was disseminated by BSE on its website) has been tabulated as follows-*

<table>
<tr><th>(Source: bseindia.com)Date of announcement on BSE</th><th>Announcement</th><th>Price movement in the scrip of SOMA</th><th>Impact on price</th></tr>
<tr><td>05-Jun-06 @ 15:56:00 hrs</td><td>Informed BSE that a meeting of the Board of Directors of the Company will be held on June 09, 2006, inter alia, to consider and approve the following: Issue of Securities to Institutional Investors by way of</td><td>BSE:
<table>
<tr><th>Date</th><th>OP</th><th>HP</th><th>LP</th><th>CP</th><th>Vol</th></tr>
<tr><td>05-Jun-06</td><td>34.90</td><td>34.90</td><td>32.00</td><td>32.30</td><td>2,11,960</td></tr>
<tr><td>06-Jun-06</td><td>31.90</td><td>36.05</td><td>30.50</td><td>32.65</td><td>1,97,782</td></tr>
</table>
NSE:
<table>
<tr><th>Date</th><th>OP</th><th>HP</th><th>LP</th><th>CP</th><th>Vol</th></tr>
<tr><td>05-Jun-06</td><td>35.50</td><td>35.50</td><td>32.00</td><td>32.35</td><td>2,45,960</td></tr>
</table>
</td><td>On June 06, 2006, the scrip closed 1.08% above its previous day closing price on BSE and</td></tr>
</table>

<table>
<tr><th>(Source: bseindia.com)Date of announcement on BSE</th><th>Announcement</th><th>Price movement in the scrip of SOMA</th><th>Impact on price</th></tr>
<tr><td></td><td>qualified Institutional placement, as per the SEBI Guidelines. Raising of funds by issuance of GDR and / or any other form of securities, as may be decided by the Board.</td><td><table><tr><td>06-Jun-06</td><td>31.50</td><td>36.05</td><td>30.50</td><td>32.70</td><td>2,49,514</td></tr></table></td><td>1.08% above its previous day closing price on NSE.</td></tr>
<tr><td>09-Jun-06 @ 16:44:00 hrs</td><td>Informed BSE that the Board of Directors of the Company at its meeting held on June 09, 2006, inter alia, has approved the following:</td><td>BSE:<table><tr><th>Date</th><th>OP</th><th>HP</th><th>LP</th><th>CP</th><th>Vol</th></tr><tr><td>09-Jun-06</td><td>26.90</td><td>28.00</td><td>25.55</td><td>27.45</td><td>69,292</td></tr><tr><td>12-Jun-06</td><td>25.10</td><td>27.75</td><td>25.10</td><td>26.50</td><td>49,731</td></tr></table>NSE:</td><td>On June 12, 2006, the scrip closed 3.46%, below its</td></tr>
</table>

<table>
<tr>
<th>(Source: bseindia.com)Date of announcement on BSE</th>
<th>Announcement</th>
<th>Price movement in the scrip of SOMA</th>
<th>Impact on price</th>
</tr>
<tr>
<td></td>
<td>Issue of equity shares and / or securities convertible into equity shares at the option of the Company and / or holders of the Securities equivalent to 1.15 crore equity shares of Rs 10/- each to the Qualified Institutional Buyers by way of Qualified Institutional Placement at price or prices as may be determined by the Board in</td>
<td>
<table>
<tr><th>Date</th><th>OP</th><th>HP</th><th>LP</th><th>CP</th><th>Vol</th></tr>
<tr><td>09-Jun-06</td><td>25.00</td><td>27.50</td><td>25.00</td><td>27.20</td><td>77,566</td></tr>
<tr><td>12-Jun-06</td><td>27.10</td><td>27.50</td><td>25.20</td><td>26.35</td><td>56,836</td></tr>
</table>
</td>
<td>previous day closing price on BSE and 3.12% below its previous day closing price on NSE.</td>
</tr>
</table>

(Source: bseindia.com)***Date of announcement on BSE***	***Announcement***	***Price movement in the scrip of SOMA***	***Impact on price***
	terms of SEBI guidelines. Issue of GDR in the International market or any other Securities convertible into equity shares at the option of the Company and / or holders of the Securities representing upon conversion equivalent to 1.85 crore equity shares of Rs 10/- each to the Foreign Investors at		

*(Source: bseindia.com)**Date of announcement on BSE***	***Announcement***	***Price movement in the scrip of SOMA***	***Impact on price***
	such price or prices at a discount or premium as may be determined by the Board in terms of SEBI Regulations / guidelines. Subject however, to the approval of the members of the Company at the Extra Ordinary General Meeting and such other approvals as may be applicable.		

<table>
<tr><th>(Source: bseindia.com)Date of announcement on BSE</th><th>Announcement</th><th>Price movement in the scrip of SOMA</th><th>Impact on price</th></tr>
<tr><td>21-Aug-06 @ 14:13:00 hrs</td><td>Informed BSE that the members at the Extra-Ordinary General Meeting (EGM) of the Company held on July 06, 2006, have accorded to the following: Authority to the Board to issue and allot, equity shares and/or any securities convertible into equity shares at the option of the Company and/or holder</td><td>BSE:
<table><tr><th>Date</th><th>OP</th><th>HP</th><th>LP</th><th>CP</th><th>Vol</th></tr><tr><td>21-Aug-06</td><td>29.95</td><td>30.00</td><td>28.35</td><td>28.90</td><td>6,373</td></tr><tr><td>22-Aug-06</td><td>29.20</td><td>33.20</td><td>28.50</td><td>31.35</td><td>1,13,366</td></tr></table>
NSE:
<table><tr><th>Date</th><th>OP</th><th>HP</th><th>LP</th><th>CP</th><th>Vol</th></tr><tr><td>21-Aug-06</td><td>28.60</td><td>29.50</td><td>28.00</td><td>28.95</td><td>12,876</td></tr><tr><td>22-Aug-06</td><td>28.70</td><td>33.20</td><td>28.70</td><td>31.25</td><td>1,36,736</td></tr></table></td><td>On August 22, 2006, the scrip closed 2.45% above its previous day closing price on BSE and 8.48% above its previous day closing price on NSE.</td></tr>
</table>

(Source: bseindia.com)***Date of announcement on BSE***	***Announcement***	***Price movement in the scrip of SOMA***	***Impact on price***
	of the securities representing either Equity shares or convertible securities representing either Equity shares or convertible into equity shares ("Securities") to Qualified Institutional Buyers (whether or not such investors are members of the Company), for (or which, upon conversion of		

*(Source: bseindia.com)**Date of announcement on BSE***	***Announcement***	***Price movement in the scrip of SOMA***	***Impact on price***
	all securities so issued or allotted, could give rise to the issue of) an aggregate number of equity shares or such receipts or instruments equivalent to 1.15 Crores equity shares of Rs 10/- each. Authority to the Board to issue and allot, in the course of international offerings in one or more foreign		

(Source: bseindia.com)***Date of announcement on BSE***	***Announcement***	***Price movement in the scrip of SOMA***	***Impact on price***
	markets, in the form and/or name of Global Depository Receipts or otherwise, equity shares and/or any securities convertible into equity shares at the option of the company and/or holder of the securities representing either Equity shares or convertible securities representing either Equity		

*(Source: bseindia.com)**Date of announcement on BSE***	***Announcement***	***Price movement in the scrip of SOMA***	***Impact on price***
	shares or convertible into equity shares ("Securities") subscribed in foreign currency (ies) to foreign investors (Whether institutions and/or incorporated bodies and/or individuals or otherwise, and whether or not such investors are members of the Company), for (or which, upon conversion of		

(Source: bseindia.com)**Date of announcement on BSE**	**Announcement**	**Price movement in the scrip of SOMA**	**Impact on price**
	all securities so issued or allotted, could give rise to the issue of) an aggregate number equity shares or such receipts or instruments equivalent to 1.85 Crores equity shares of Rs 10/- each.		
16-OCt-06 @ 18:52:00 hrs	*Informed BSE that a meeting of the Board of Directors of the Company will be held on October 20, 2006, inter alia, to*	***BSE:***	*On October 17, 2006, the scrip closed 0.17%, below its*

Date	OP	HP	LP	CP	Vol
16-Oct-06	*29.25*	*30.00*	*28.80*	*29.00*	*65,384*
17-Oct-06	*29.00*	*29.55*	*28.80*	*28.95*	*53,689*

NSE:

<table>
<tr><th>(Source: bseindia.com)Date of announcement on BSE</th><th>Announcement</th><th>Price movement in the scrip of SOMA</th><th>Impact on price</th></tr>
<tr><td></td><td>consider the following:
Allotment of 1.85 million Global Depository Receipts (GDRs) representing underlying equity shares of Rs 10/- each, worth US$ 17.2975 million.
Any other relevant matter required in regard to the GDR issue.</td><td><table>
<tr><th>Date</th><th>OP</th><th>HP</th><th>LP</th><th>CP</th><th>Vol</th></tr>
<tr><td>16-Oct-06</td><td>28.80</td><td>29.80</td><td>28.80</td><td>29.00</td><td>63,221</td></tr>
<tr><td>17-Oct-06</td><td>29.00</td><td>29.60</td><td>28.75</td><td>28.90</td><td>56,718</td></tr>
</table></td><td>previous day closing price on BSE and 0.35% below its previous day closing price on NSE.</td></tr>
</table>

<table>
<tr><th>(Source: bseindia.com)Date of announcement on BSE</th><th>Announcement</th><th>Price movement in the scrip of SOMA</th><th>Impact on price</th></tr>
<tr><td>20-Oct-06 @ 14:25:00 hrs</td><td>Informed BSE that the Board of Directors of the Company at its meeting held on October 20, 2006, has approved the issue and allotment of 1,850,000 Global Depository Receipts (GDRs) worth USD 17.2975 million representing 18,500,000 underlying Equity shares of Rs 10/- each to the Depository -</td><td>BSE:
<table>
<tr><th>Date</th><th>OP</th><th>HP</th><th>LP</th><th>CP</th><th>Vol</th></tr>
<tr><td>20-Oct-06</td><td>28.7</td><td>29.25</td><td>27.8</td><td>28.05</td><td>18,293</td></tr>
<tr><td>21-Oct-06</td><td>27.85</td><td>28.9</td><td>27.9</td><td>28.85</td><td>1,405</td></tr>
</table>
NSE:
<table>
<tr><th>Date</th><th>OP</th><th>HP</th><th>LP</th><th>CP</th><th>Vol</th></tr>
<tr><td>20-Oct-06</td><td>28.50</td><td>29.10</td><td>28.00</td><td>28.20</td><td>18,610</td></tr>
<tr><td>21-Oct-06</td><td>28.15</td><td>28.70</td><td>28.10</td><td>28.60</td><td>3,340</td></tr>
</table></td><td>On October 21, 2006, the scrip closed 2.85%, above its previous day closing price on BSE and 1.42% above its previous day closing price on NSE.</td></tr>
</table>

(Source: bseindia.com) ***Date of announcement on BSE***	***Announcement***	***Price movement in the scrip of SOMA***	***Impact on price***
	Deutsche Bank Trust Company Americas.		

11. ***PRICE VOLUME DATA:***

BSE: *(Source: bseindia.com)*

Period	***Dates***	***(FV @Rs.10)***	***Opening Price/ volume on first day of the period***	***High Price/volume during the period***	***Low price/volume during the period***	***Closing price volume on last day of the period***	***Avg. no of shares traded during the period***
Before Investigation Period	***(01/07/2006 30/09/2006)***	***Price***	*Rs.29.50*	*Rs.34.50 (28/08/06)*	*Rs.24.00 (24/07/06)*	*Rs.28.55*	*34,709*
		Volume	*6,654*	*1,97,928 (28/08/06)*	*1,286 (07/08/06)*	*62,441*	
During Investig	***(01/10/2006-***	***Price***	*Rs.29.00*	*Rs.30.15 (06/10/06)*	*Rs.27.80 (20/10/06)*	*Rs.28.85*	*49,052*

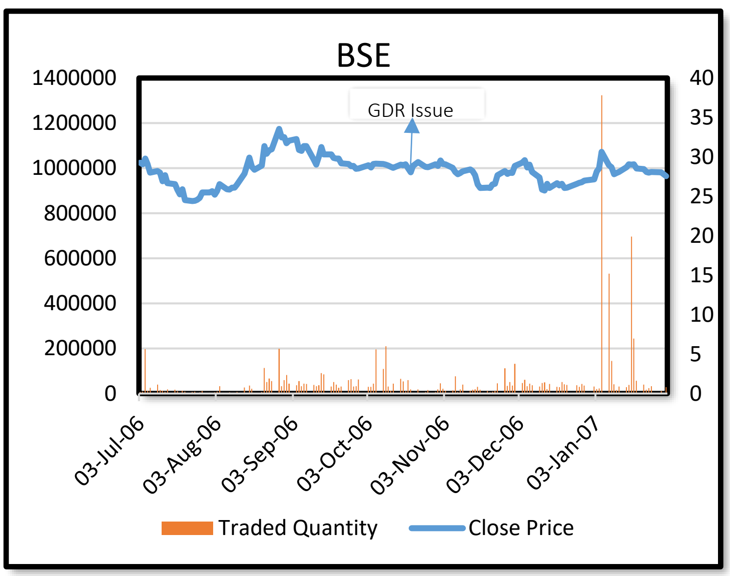
ation Period	***31/10/2006)***	***Volume***	*29,746*	*2,09,530 (10/10/06)*	*1,405 (21/10/06)*	*18,255*	
After Investigation Period	***(01/11/2006 - 31/01/2007)***	***Price***	*Rs.29.00*	*Rs.32.70 (05/01/07)*	*Rs.24.85 (13/12/06)*	*Rs.27.55*	*78,934*
		Volume	*45,857*	*13,23,740 (05/01/07)*	*5,700 (21/11/06)*	*27,944*	

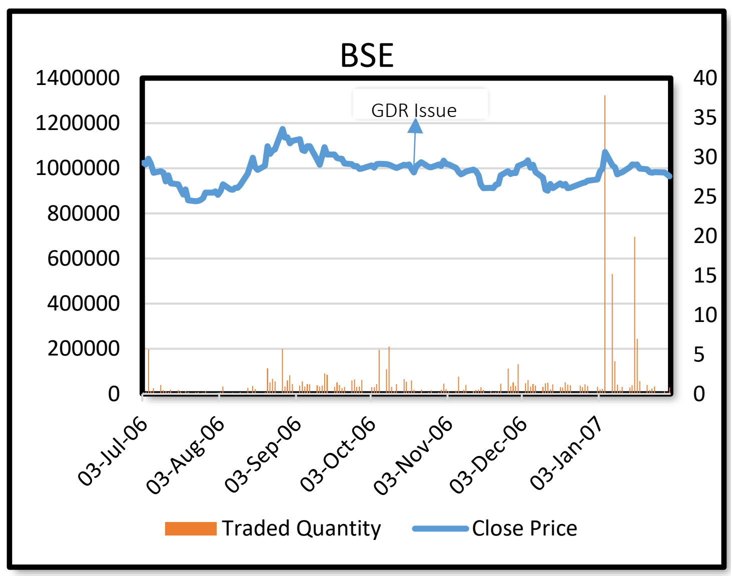
NSE *(Source: nseindia.com)*

Period	***Dates***	***(FV @Rs. 10)***	***Opening Price/ volume on first day of the period***	***High Price/volume during the period***	***Low price/volume during the period***	***Closing price volume on last day of the period***	***Avg. no of shares traded during the period***
Before Investigation Period	***(01/07/2006 30/09/2006)***	***Price***	*Rs.29.15*	*Rs.37.50 (28/08/06)*	*Rs.23.60 (24/07/06)*	*Rs.28.25*	*39,243*
		Volume	*19,483*	*3,02,669 (05/07/06)*	*2,455 (07/08/06)*	*58,344*	

During Investigation Period	***(01/10/2006-31/10/2006)***	***Price***	*Rs.28.55*	*Rs.30.15 (06/10/06)*	*Rs.28.00 (20/10/06)*	*Rs.28.75*	*44.570*
		Volume	*30,237*	*1,77,541 (10/10/06)*	*3,340 (21/10/06)*	*23,825*	
After Investigation Period	***(01/11/2006 - 31/01/2007)***	***Price***	*Rs.28.75*	*Rs.32.30 (05/01/07)*	*Rs.25.00 (13/12/06)*	*Rs.27.70*	*46,268*
		Volume	*37,494*	*4,09,010 (08/01/07)*	*2,972 (14/12/06)*	*17,303*	

12. *The Price volume chart of the scrip (share FV @Rs.10) for the period July 01, 2006 to January 31, 2007 is as follows:*





The scrip closed atRs.12.78 andRs.13.30 at BSE and NSE respectively on March 22, 2017.

ISSUANCE OF GDRs:

13. *The following are observed from the documents, as detailed below, submitted by SOMA vide letter dated June 26, 2015 (copy of letter is placed at annexure-3):*

i. *Copy of Offer document (placed at Annexure- 3.1)*

ii. *Copy of Escrow agreement. (placed at Annexure- 3.2)*

iii. *Copy of Deposit agreement. (placed at Annexure- 3.3)*

iv. *Copy of extract of minutes of the board meeting held on June 09, 2006 wherein consent of the Board has been accorded, subject to the approval of members by passing special resolution in the general meeting, for issue of GDRs wherein underlying aggregate number of equity shares or such receipts or instruments equivalent to 1.85 crore equity shares ofRs.10/- each. (placed at annexure-3.4)*

v. *Copy of extract of the minutes of the proceedings of an EGM held on July 06, 2006, inter-alia, wherein members had authorized board for issue of GDRs or otherwise, for an aggregate number of equity shares or such receipts or instruments equivalent to 1.85 crore equity shares ofRs.10/- each. (placed at annexure-3.4)*

vi. *Copy of the extract of the minutes of the board meeting held on July 27, 2006, wherein, inter-alia, the board has approved for opening of Bank account with Banco Efisa or any branch of Banco Efisa S.A. for the purpose of receiving subscription money in respect of the GDRs, approved and adopted Offering Circular, Deposit Agreement and Escrow Agreement. (placed at annexure-3.4)*

vii. *Copy of extract of minutes of board meeting held on October 20, 2006 allotting the shares underlying the GDRs issued. (Placed at annexure-3.4).*

viii. *Copy of extract from minutes of board meeting dated October 31, 2006, inter-alia, states as follows:*

"RESOLVED THAT a 100% Subsidiary Company of SOMA Textiles & Industries Limited be formed and incorporated under the name and style "SOMA TEXTILE FZE" in Ajman Free Zone and that a person be appointed and / or authorized for the purpose of formation of the above said Subsidiary and to sign and submit requisite papers / documents / writings to the concerned Authority (ies) in UAE as may be felt necessary in regard hereto."

"RESOLVED FURTHER THAT for the purpose, the Board decided to make investment in the Shares of the proposed wholly-owned overseas subsidiary, "SOMA Textile FZE", in Ajman Free Zone, in one or more branches, as may be considered fit and proper, by way of subscription of Shares, for cash at par from time to time, in the Capital of the Subsidiary Company and / or by way of Long Term Loan in the form of quasi equity out of the fund raised

through the issue of GDR and to invest in its business activities to be undertaken by the Company, up to a sum not exceeding USD 18 Million equivalent to Indian Rupees 72 crores approx..”

“RESOLVED FUTHER THAT the certified true copy (ies) of the foregoing Resolution duly signed by any one Director and/or Company Secretary and/or Manager of the Company be submitted to the concerned Authority (ies) and they be requested to act upon the same.”

(Copy of the extract of minutes as submitted by SOMA is placed at annexure- 3.5)

14. *Summary of the aforesaid GDR issue is as follows:*

(Source: Information provided by SOMA vide letter dated June 26, 2015)

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***
20-Oct-2006	*1.85*	*17.2975*	*ICICI Bank Ltd., Mumbai*	*1,85,00,000 equity shares of FVRs.10 (1 GDR=10 equity share)*	*Deutsche Bank Trust Company Americas*	*Pan Asia Advisors Ltd.*	*Banco Efisa*	*Luxembourg Stock Exchange*

15. *The following are the initial allotees/subscribers of GDRs:*

(Source: Information provided by SOMA vide letter dated June 26, 2015)

S no	Name of the GDR subscriber	No Of GDRs subscribed
1.	*Fundabills GMBH*	*3,40,000*
2.	*Contifina SA*	*3,50,000*
3.	*Unicrorn Asset Management*	*3,25,000*
4.	*Investec Bank (Switzerland) AG*	*5,35,000*
5.	*Animar Limited*	*3,00,000*
	Total	***18,50,000***

16. *BSE and NSE vide letters dated November 24, 2006 had given approval for listing and trading of 1,85,00,000 equity shares ofRs.10 each underlying GDRs. (Copy of BSE and NSE letters dated November 24, 2006 are placed at annexure- 4).*

Subscribers and Source of Funds for GDR issue:

17. *The following are observed from Comissãso do Mercado de Valores Mobiliãrios, Portugal (CMVM)'s letter dated March 18, 2016 (copy of letter placed at annexure-6), inter-alia provided the following information received from Banco with regard to GDR issue of SOMA:*

a. *Copy of deposit account application dated September 25, 2006 for opening of deposit account with Banco (Annexure- 6.1)*
b. *Copies of instructions given by SOMA to Banco for transfer of amount from SOMA's bank account with Banco to M/s. Vintage FZE and M/s. SOMA Textile FZE. (Annexure- 6.2)*
c. *Particulars of Mortgage or charge of SOMA's bank account with Banco against loan taken by Whiteview. (Annexure- 6.3)*
d. *Copy of credit agreement dated October 18, 2006 relating to a dollar term loan facility of upto US $18.5 million. (Annexure- 6.4)*
e. *Copy of account charge agreement dated October 18, 2006 entered into between SOMA and Banco securing the obligations of Whiteview View Trading Corporation ("Whiteview") under the above referred credit agreement. (Annexure- 6.5)*
f. *Copy of the extract of the resolution passed in the meeting of BoD of SOMA held on July 27, 2006. (Annexure- 6.1)*

Credit Agreement:

18. *Whiteview, a company incorporated in the British Virgin Islands with registered number 683351, having address Mill Mall Suite 6, Wickhams Cay, PO Box 3085, Road Town, Tortola, British Virgin Islands, entered into a credit agreement with Banco on October 18, 2006 relating to a dollar term loan facility upto US $18.50 million. The aforementioned agreement was signed by M/s. Samuel Ernest Hurley. The said agreement was executed for payment of GDR subscription amount of US $17.29 million. The credit agreement inter-alia states :*

Drawdown Date *means the date on which the advance is made, or proposed to be made.*

Drawdown Notice *means a notice substantially in the form set out in Schedule 2.*

Drawdown Period *means the period starting on the date of this agreement and ending 30 days later.*

Facility *means the Dollar term loan facility granted to the Borrowers under this agreement.*

Facility limit *means a maximum principal amount of upto $18,500,000 as reduced or cancelled in accordance with this agreement.*

Facility period *means the period starting on the date of this agreement and ending on the date on which all the obligations and liabilities of the borrower under the financing documents are discharged in full and the Bank has no continuing obligation in relation to the facility.*

Final Repayment Date means *the date falling six months after the date of this agreement.*

Facility*- Subject to the terms of this agreement, the bank agrees to make available to the borrower a Dollar term loan facility in the maximum principal amount of upto US $18,500,000.*

Purpose- *The borrower shall use the proceeds of the advance to subscribe for global depository receipts to the value of upto US $18,500,000 issued by SOMA on the terms of the Listing particulars to be delivered to the Luxembourg Stock Exchange.*

No monitoring*: The Bank shall not be obliged to investigate or monitor the use or application of the proceeds of the advance.*

Conditions precedent: *Not withstanding any other term of this agreement, the bank shall not be under any obligation to make the facility available to the borrower unless it has notified the borrower that it has received all the documents listed in the schedule 1 (in form and content satisfactory to it.)*

Drawdown

Drawdown period: *Subject to the terms of this agreement, the loan shall be made to the Borrower at any time during the Drawdown period by way of a single advance, when requested by means of a Drawdown notice in accordance with this clause 5.*

Drawdown Notice: *When the Borrower wishes to drawdown under the Facility, it shall give a duly completed Drawdown notice to the Bank to be received not later than 11.00 a.m. on the third business day before the Drawdown Date.*

A drawdown notice shall be irrevocable and the borrower shall be obliged to borrow in accordance with its terms.

19. *The following documents were also formed part of the Credit Agreement:*

a. *Drawdown notice for an amount of US $18,500,000. (placed at annexure- 6.4)*
b. *Copy of the resolution passed by directors of Whiteview inter-alia adopting the content of the credit agreement on behalf of Whiteview and authorising Mr. Samuel E. Hurley to sign the Credit agreement and to sign, execute or seal all such documents and to perform all such acts on behalf of Whiteview in connection with the credit agreement. (placed at annexure- 6.4)*

20. *On analysis of the information submitted by Banco through CVMM and the credit agreement, it was observed that Whiteview signed a Credit Agreement dated October 18, 2006 with Banco for payment of GDR subscription amount of US $17.29 million. It was further observed that SOMA signed Account Charge Agreement dated October 18, 2006 with Banco (pledged GDR proceeds as collateral against the loan availed by Whiteview).*

<u>Deposit account:</u>

21. *From the Deposit Account Application and other client documents (copies placed at annexure-6.1) in respect of SOMA's bank account with Banco, the following were observed:*

i. *Deposit account was opened in the name of SOMA on September 25, 2006.*
ii. *The authorised signatory of the SOMA's deposit account with Banco was Mr. Sunil Patel, Overseas Sales Representative of SOMA.*
iii. *Copy of certified true copy of the resolution passed in the meeting of BoD of SOMA held on July 27, 2006 as annexed to the deposit account application inter-alia states as follows:*

"RESOLVED THAT a bank account to be opened with Banco Efisa, S.A. ("the Bank") or any branch of Banco Efisa S.A., including the off-shore branch ("the bank"), outside India for the purpose of receiving the subscription money in respect of Global Depository Receipt issue of the company.

"RESOLVED FURTHER THAT Mr. Sunil Patel, Oversesas Sales Representative of the Company and Authorised Person be and is hereby authorised 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 Mr. Sunil Patel, Oversesas Sales Representative of the Company and Authorised Person be and is hereby authorized to draw cheques and other documents, and to give instructions from time to time as may be necessary to the said Banco Efisa, S.A. or any branch of Banco Efisa S.A. including off-shore branch, for the purpose of operation of and dealing with the said bank account and carry out other either 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 this 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 for which any charge is granted as well as to enter into any escrow agreement or similar agreements if and when so required."

iv. Further, Mr. Sunil Patel had irrevocably authorised Banco, on behalf of SOMA, to carry out instructions transmitted by Telephone, Telefax and/or email, without waiting for a written confirmation by letter thereof.

22. *SOMA signed Account Charge Agreement dated October 18, 2006 with Banco to pledge GDR proceeds as collateral against the loan availed by Whiteview. The details of the Account Charge Agreement are as under:*

Account Charge Agreement:

23. *An account charge agreement dated October 18, 2006 was signed between SOMA and Banco. The aforesaid agreement was signed by Mr. Sunil Patel, Overseas Sales representative.*

24. *The account charge agreement inter-alia states the following:*

1. ***Loan agreement**: Loan agreement means the Loan agreement signed between Whiteview (as borrower) and the Bank dated on or around the date of this agreement by which the bank agreed to lend to Whiteview the maximum amount of upto US $18,500,000.*

2. ***Account Charge Agreement:***

Subject to the terms of this agreement, SOMA deposited in its designated account with bank (hereinafter the Account) an amount not exceeding US $18,500,000 as security for all the obligations of Whiteview under the Loan Agreement (hereinafter the Secured Obligations) and with full title guarantee hereby assigns to and charges by way of first fixed charge in favour of the Bank all the rights, title, interest and benefit in and to the account as well as the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof. Such assignment and charge shall be a continuing security for the due and punctual payment and discharge of the secured obligations.

Upon payment of all or part of the amounts due under the Loan Agreement, SOMA may withdraw from the Account the equivalent amount.

Upon payment and final discharge in full of all the secured obligations, this agreement and the rights and obligations of the Parties shall automatically cease and terminate and the Bank shall, at the request of SOMA, release the deposit made in the Account.

SOMA covenants with the Bank that it will on demand pay and discharge the secured obligations when due to the bank.

At any time after the bank shall have demanded payment of all or any of the Secured Obligations the Bank may without further notice apply all or any part of the Deposit against the Secured Obligations in such order as the bank in it's discretion determine.

SOMA hereby irrevocably appoints by way of security the Bank as the attorney of SOMA with full power in the name and on behalf of SOMA to sign, seal and deliver any deed, assurance, instrument or act in order to perfect this charge and at any time after an event of default by SOMA to sign, seal and deliver any deed assurance, instrument or act which may be required for the purpose of exercising fully and effectively all or any of the powers hereby conferred to the Bank to take all necessary action whether in the nature of legal proceedings or otherwise *to recover any moneys which may be held in the Account and to give valid receipts for payment of such moneys and also for the purpose of enforcement and of the security hereby created. SOMA hereby warrants and declares that any and all such deeds, instruments and documents executed on its behalf by or on behalf of the Bank by virtue of this Agreement shall be as good, valid and effective, to all intents and purposes whatsoever, as if the same had been duly and properly executed by SOMA itself and SOMA hereby undertakes to ratify and confirm all such deeds, instruments and documents lawfully executed by virtue of the authority and power hereby conferred.*

3. *It is further mentioned that each notice or other communication to be given under this agreement shall be given in writing in English and unless otherwise provided, shall be made by letter or Fax to :*

   SOMA Textiles & Industries Limited

   2 Red Cross Place, Kolkata – 700001. Attention: Mr. Sunil Patel

25. *The aforesaid charge against designated bank account of SOMA with Banco was registered with Companies House (United Kingdom's registrar of companies) and description of the charge is mentioned as follows:*

- *"All obligations of Whiteview Trading Corporation (a company incorporated in the British Virgin Islands with number 683351) under a loan agreement with the Bank dated 18 October 2016 (**the secured Obligations)**.*

  *The Company as a continuing security for the discharge of the Secured Obligations with full title guarantee assigns to and charge by way of first fixed charge in favour of the Bank and all its right, title and interest in and to its designated account with the Bank (**the Account),** the moneys standing to the credit of the Account and all interest payable thereon (**the Deposit**).*

  The Company undertakes that it will not purport to withdraw the Deposit or any part of it or sell, assign, mortgage, charge or otherwise encumber, dispose or deal with or grant or permit third party rights to arise over or against the Deposit or any part thereof or attempt or agree so to do."

<u>Observations on Credit Agreement and Account Charge Agreement:</u>

26. *On examination of the Credit Agreement executed by Whiteview and Account Charge Agreement by SOMA, the following are observed:*

27. *Whiteview had entered into credit agreement dated October 18, 2006 with Banco for subscription of GDRs of SOMA. As per the said credit agreement, Whiteview would be provided a loan only for subscription of GDRs of SOMA. (please refer to para 18.) As mentioned in preceding paragraphs, Whiteview had signed drawdown (which forms part of the Credit agreement) notice which would be required to avail the loan facility. Credit agreement further states that a drawdown notice is irrevocable.*

28. *An account charge agreement was executed between SOMA and Banco and the aforesaid agreement was signed by Mr. Sunil Patel for SOMA. As per Account Charge Agreement, SOMA shall deposit in its designated account with Banco an amount not exceeding loan availed by Whiteview for subscription of GDRs of SOMA as security for all the obligations of Whiteview under the Credit Agreement (which was signed between Banco and Whiteview by which Banco agreed to lend Whiteview for subscription of GDRs of SOMA). Further observed that only upon payment of all or part of the amounts due under the Credit Agreement, SOMA could withdraw an equivalent amount from the bank account with Banco. The Account Charge Agreement contained a clause to the effect that all communications to be given under the Agreement were to be addressed to Mr. Sunil Patel.*

29. *It was observed from the company's deposit account (a/c no: 628288525002) with Banco that an amount of US $15.67 million was transferred to its current account with Banco (a/c no: 6282885.15.001) on January 24, 2007. An amount of US $15.67 million was transferred from current account of SOMA to the bank account of Whiteview as authorised by SOMA. From the above, it is apparent that loan amount of US $15.67 million of Whiteview was repaid by SOMA from its GDR proceeds. It is evident from the above that SOMA is in complete knowledge of arrangement of credit agreement and account charge agreement. In this regard, it is pertinent to refer to the resolution passed in the meeting of BoD of SOMA held on July 27, 2006 as provided by Banco inter-alia states as follows:*

RESOLVED FURTHER THAT Mr. Sunil Patel, Oversesas Sales Representative of the Company and Authorised Person be and is hereby authorised 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 for which any charge is granted as well as to enter into any escrow agreement or similar agreements if and when so required."

30. *From the above, it was observed that board of SOMA had authorised Mr. Sunil Patel to sign /execute any agreement and other papers as required by Banco and authorised Banco to use the funds deposited in its bank account as a security in connection with loans. On the basis of authorisation given by the Board, Mr. Sunil Patel signed the agreement which acted as a security to the loan availed by Whiteview for subscription of GDRs. It was observed from the minutes of the board meeting dated July 27, 2006 as submitted by the company (copy is placed at annexure-7) that Mr. S. K. Somany, Mr. A.K. Somany, Mr. Prafull Anubhai and Mr. P. Bandopadhyay have attended the board meeting dated July 27, 2006 and authorised Mr. Sunil Patel to sign the agreement.*

31. *The Account Charge agreement signed by Mr. Sunil Patel with Banco was an integral part of Credit agreement entered into between Whiteview and Banco. These agreements enabled Whiteview to avail a loan from Banco for subscribing GDRs of SOMA. The GDR issue would not have been subscribed had the company not given any such security towards the loan taken by the Whiteview. The company reported to the stock exchange that "the Board of Directors of the Company at its meeting held on October 20, 2006, has approved the issue and allotment of 1,850,000 Global Depository Receipts (GDRs) worth USD 17.2975 million representing 18,500,000 underlying Equity shares of Rs 10/- each to the Depository - Deutsche Bank Trust Company Americas" which made investors believe that the said GDR issue was genuinely subscribed by the foreign investors. The arrangement of credit agreement and account charge agreement resulted in subscription of GDR issue of the company and the aforesaid*

arrangement was not disclosed and also reported misleading news to the stock exchange which contained information in a distorted manner and may influence the decision of investors. Thereby, it is alleged that the scheme of issue of GDR was fraudulent. Hence, SOMA had violated the provisions of sections 12A (a), (b), (c) of the Act read with regulations 3(a), (b), (c), (d), 4(1), 4(2) (f), (k), (r) of PFUTP) Regulations.

32. *Directors of SOMA in its board meeting held on July 27, 2006 had authorized Mr. Sunil Patel to sign the agreement which acted as security in connection with the loan availed by Whiteview and Banco to use funds deposited in SOMA's bank account as security in connection with the loan availed by Whiteview. Hence, directors namely Mr. S.K. Somany, Mr. A.K. Somany, Mr. Prafull Anubhai and Mr. P. Bandopadhyay who approved the board resolution and authorised Mr. Sunil Patel to sign the agreement with Banco and authorised Banco to use funds as a security in connection with loan and Mr. Sunil Patel (Overseas Sales Representative) who signed the agreement had acted as parties to the fraudulen and had violated sections 12A(a), (b), (c) of the Act read with Regulations 3(a), (b), (c), (d), 4(1) of PFUTP Regulations.*

REALIZATION OF GDR PROCEEDS:

33. *It was observed that GDR proceeds of an amount of US $17,297,5000 was credited to bank account (Account no: 6282885.15.001) of SOMA Textiles with Banco on October 30, 2006 and the same has been credited its deposit account no:628288525001 on October 30, 2006. (Copy of bank account statements as submitted by Banco is placed at Annexure-8).*

34. *Details of utilisation of GDR proceeds as observed from the aforementioned bank account statement of SOMA submitted by Banco is tabulated below:*

Date of Instruction by SOMA to Banco	***Date of Debit in Bank Account with Banco***	***USD debited in Bank A/c with Banco***	***Transferee Name***	***Transferee Bank Name***	***Transferee Bank A/c No.***	***Date of Credit in Transferee***	***USD Debited in SOMA FZE Bank***

for Transfer of Funds						***Bank A/c***	***account***
12/07/2006	*12/11/2006*	*496,000*	*M/s. Vintage FZE*	*Placement Fees*			
28/12/2006	*29/12/2006*	*225,000*	*SOMA Textile FZE*	*Mashreq. Bank*	*0448-64532-8*	*02/01/2007*	*224958.00*
01/11/2007	*16/01/2007*	*400,000*	*SOMA Textile FZE*	*Mashreq. Bank*	*0448-64532-8*	*16/01/2007*	*399944.50*
01/12/2007	*16/01/2007*	*500,000*	*SOMA Textile FZE*	*Mashreq. Bank*	*0448-64532-8*	*17/01/2007*	*499949.50*
23/01/2007	*23/01/2007*	*200,000*	*SOMA Textile FZE*	*Mashreq. Bank*	*0448-64532-8*	*24/01/2007*	*199962.00*
*24/01/2007**	*24/01/2007**	*15,676,500*	*Whiteview*				
TOTAL		***17,497,5000***					

*******date was erroneously mentioned as 24/01/2017 in SCN*

35. *Further, SOMA vide letter dated December 01, 2016 had submitted the copy of bank account statement of M/s. SOMA Textile FZE, 100% subsidiary of SOMA ("SOMA FZE'). The details of aforementioned bank account is as follows: SOMA Textile FZE, Account no 04-48-64532-8, Mashreq Bank, Ajman, Dubai. It was observed that an amount of US $1.32 million (US$ 0.22+0.40+.0.50+0.20 million) transferred from SOMA's account with Banco was credited to SOMA FZE's account.*

36. ***I****t was observed that SOMA vide letter dated January 23, 2007 (Copy placed at annexure- 9) had authorised Banco to transfer an amount of US $15.67 million from its account to the account of Whiteview with Banco. SOMA's letter dated January 23, 2007 to Banco states as follows:*

"This is with reference to our deposit account with you presently for USD 15,676,500. We kindly request you to close the same and credit the proceeds to our current account with you. Furthermore we request you to transfer the same amount of USD 15,676,500 from our account towards closure of deposit, to the account of White View Trading Corporation with Banco Efisa S.F.E., S.A.

We hereby also authorise the bank to transfer from our current account the necessary amounts to face payment of interests and fee's due in the referred company account resulting from the loan granted by the bank.

37. *It was observed from the company's deposit account (a/c no: 628288525002) with Banco that an amount of US $15.67 million was transferred to its current account with Banco (a/c no: 6282885.15.001) on January 24, 2007 and the deposit account shown nil balance as on January 24, 2007. An amount of US $15.67 million was transferred from current account of SOMA. With regard to amount paid to Vintage, the company has not provided any plausible explanation. Hence, it is apparent that loan amount of US $15.67 million of Whiteview was repaid by SOMA from its GDR proceeds.*

38. *<u>Other transactions in the Bank accounts of SOMA/SOMA FZE:</u>*
It was also observed that an amount of US $11.20 million (counterparty details not known) was credited to SOMA's current account with Banco during the period February 26, 2007 and October 24, 2007 and the same was transferred to SOMA FZE's account Dubai. Details of amount received and transferred from its current account to SOMA FZE's account is tabulated below:

Date of credit in Current account of SOMA	***Amount Credited in current account (US $)***	***Date of Instruction by SOMA to Banco for***	***Date of Debit in Current Account of SOMA***	***USD debited in Bank A/c with Banco***	***Date of credit in SOMA FZE's account***	***Amount credited in SOMA FZE's account***

		Transfer of Funds				
26/02/2007	*800,000.00*	*23/02/2007*	*26/02/2007*	*800,000*	*27/02/2007*	*7,99,962.00*
27/02/2007	*1,244,750.00*	*26/02/2007*	*27/02/2007*	*700,000*	*28/02/2007*	*6,99,989.50*
		27/02/2007	*27/02/2007*	*544,792*	*28/02/2007*	*5,44,781.50*
		12/03/2007	*12/03//2007*	*35,000*	*13/03/2007*	*34,962.00*
04/07/2007	*290,000.00*	*03/072007*	*05/07/2007*	*290,000*	*07/07/2007*	*2,89,955.00*
11/07/2007	*719,000.00*	*10/07/2007*	*11/07/2007*	*719,000*	*12/07/2007*	*7,18,967.50*
17/07/2007	*750,000.00*	*16/07/2007*	*18/07/2007*	*750,000*	*18/07/2007*	*7,49,950.00*
25/07/2007	*500,000.00*	*20/07/2007*	*25/07/2007*	*500,000*	*26/07/2007*	*4,99,963.50*
31/07/2007	*200,000.00*	*30/07/2007*	*31/07/2007*	*200,000*	*01/08/2007*	*1,99,967.50*
01/08/2007	*880,000.00*	*01/08/2007*	*01/08/2007*	*880,000*	*02/08/2007*	*8,79,967.50*
03/08/2007	*500,000.00*	*03/08/2007*	*03/08/2007*	*500,000*	*04/08/2007*	*4,99,967.50*
07/08/2007	*45,000.00*	*07/08/2007*	*07/08/2007*	*200,000*	*08/08/2007*	*1,99,967.50*
07/08/2007	*128,000.00*					
28/08/2007	*27,500.00*					

28/08/2007	*210,000.00*	*28/08/2007*	*28/08/2007*	*210,000*	*29/08/2007*	*2,09,967.50*
04/09/2007	*140,000.00*	*04/09/2007*	*04/09/2007*	*140,000*	*05/09/2007*	*1,39,967.50*
17/09/2007	*450,000.00*	*17/09/2007*	*17/09/2007*	*450,000*	*18/09/2007*	*4,49,963.50*
24/09/2007	*450,000.00*	*24/09/2007*	*24/09/2007*	*450,000*	*25/09/2007*	*4,49,967.50*
25/09/2007	*1,000,000.00*	*24/09/2007*	*25/09/2007*	*1,000,000*	*26/09/2007*	*9,99,967.50*
02/10/2007	*1,000,000.00*	*01/10/2007*	*02/10//2007*	*1,000,000*	*03/10/2007*	*9,99,967.50*
04/10/2007	*500,000.00*	*08/10/2007*	*09/10/2007*	*500,000*	*10/10/2007*	*4,99,967.50*
10/10/2007	*500,000.00*	*10/10/2007*	*10/10/2007*	*500,000*	*11/10/2007*	*4,99,967.50*
12/10/2007	*370,600.00*	*15/10/2007*	*16/10/2007*	*370,000*	*16/10/2007*	*3,69,967.50*
24/10/2007	*500,000.00*	*23/10/2007*	*24/10/2007*	*500,000*	*25/10/2007*	*4,99,967.50*
Total	***11,204,850.00***			***11,238,792.00***		***11,238,072.00***

From the above, it can be seen that an amount of US $11.24 million was transferred from SOMA's current account to SOMA FZE's account with Dubai during the period February 26, 2007 and October 24, 2007. With regard to receipt of an amount of US $11.24 million, the company has neither provided information nor any plausible explanation. As mentioned at para no:34, an amount of US $1.32 million was transferred to SOMA Textile FZE's account during

December 28, 2006 and January 23, 2007. In total, an amount of US $12.56 million was transferred to SOMA FZE.

39. *The company vide letter dated December 01, 2016 had submitted that an amount of US $2 million repatriated to SOMA's bank accounts in India (copies of certificate of Foreign Inward Remittance provided as proof of receipt) and the balance US $15.2975 was given as loan to SOMA Textile FZE. Details of repatriation of 2 million as submitted by the company is tabulated below:*

Date of receipt into Indian Bank account	***Bank account to which GDR proceeds were credited***	***Amount credited to Indian Bank account (Rs.)***	***Amount credited to Indian Bank account (US $)***
27/12/2007	*HDFC Bank Ltd (0012210000463)*	*3,92,68,311.39*	*9,99,957.00*
21/02/2008	*ICICI Bank Ltd. (000405018348)*	*1,98,31,112.00*	*4,99,965.00*
04/03/2008	*ICICI Bank Ltd. (000405018348)*	*2,00,93,593.00*	*4,99,965.00*

It was observed from HDFC and ICICI bank statements of SOMA sought from banks that an amount of US $2millon (aprox) as referred to in the above table were actually credited to SOMA's bank accounts in India. (Copies of bank statements submitted by HDFC and ICICI bank are placed at annexure-10). It was further observed from the copies of certificate of foreign Inward Remittances that the above referred US $2 million was received by SOMA from SOMA Textile FZE.

40. *As mentioned in preceding paragraphs (para no: 33-38), it is clear that, out of GDR proceeds (including interest/accruals), an amount of US $0. 49 million was paid to Vintage as part of Issue expenditure, an amount of US $2million (approx.) was received into SOMA's bank accounts in India (HDFC Bank and ICICI Bank) during the period December 27, 2007 and March 31, 2008 and an amount of US $15.67 million was transferred by SOMA to Whiteview on January 24, 2007 towards loan repayment of Whiteview. Considering the fact that*

Whiteview was the sole subscriber to the GDR issue and loan amount of US $15.67 million of Whiteview was repaid by SOMA from its GDR proceeds, it is therefore evident that GDRs in turn the underlying equity shares to the extent of US $15.67 million were acquired by Whiteview without proper consideration. Therefore, SOMA and Whiteview acted as parties to fraudulent scheme of issuance of GDRs.

<u>Non-compliance with clause 36 of Listing Agreement by SOMA:</u>

41. ***Clause 36 of the Listing Agreement*** *inter-alia states the following:*

"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."

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(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."

Non-disclosure of account charge agreement:

42. *It was observed from the corporate announcements made by SOMA that SOMA has not informed stock exchange with regard to account charge agreement entered into with Banco for subscription of GDRs which was price sensitive information and would have impacted the price of the scrip and thereby not complied with clause 36(7) of the listing agreement and therefore violated section 21 of SCRA. (Source: Corporate announcements made to BSE and NSE during the period May 01, 2006 to December 31, 2006)*

Change in "Use of GDR proceeds":

43. *It was mentioned in the information memorandum of the GDR Issue that GDR proceeds shall be used for Spinning Plant for denim in Ahmedabad (US$ 8.59 million), Garment manufacture (US$ 7.48 million), contingency provision (US$ 0.71 million), is considered as GDR issue expenses.*

44. *SOMA vide letter dated March 06, 2017 has provided the copy of the minutes of the board meeting dated October 31, 2006 which inter-alia states as follows:*

The Chairman informed that the Fund raised out of the issue of Global Depository Receipt (GDR) be used, and utilised by the Company in order to facilitate investment/give loan to subsidiary Company which may be established in UAE countries. It thus become necessary to modify the clause "Use of Proceeds" in offering memorandum dated 16th October, 2006 filed with the Luxembourg Stock Exchange (LSE). After discussion it was:-

RESOLVED THAT the "USE of Proceeds", contained on pages 14&37 in the Offering Memorandum dated 16th October, 2006 shall be deemed to be deleted and replaced by the following:-

"The aggregate net proceeds received from this Offering, USD$17.259 million, shell be used for Spinning Plant for denim in Ahmedabad, garment manufacturing through its subsidiary in India, establishing subsidiary in Dubai, trading in general merchandise, investing GDR Proceeds for overseas acquisition/ investments and/ or buying cotton (which is the basic raw material), includes contingency provisions and USD 0.51 Million as GDR issue expenses.

45. *It was observed from the minutes of the Board meeting dated October 31, 2006 that the company had changed the intended use of GDR proceeds which inter-alia states establishing subsidiary in Dubai, trading in general merchandise, investing GDR proceeds for overseas acquisition/investments etc. However, the company has not informed stock exchange with regard to change in intended use of GDR proceeds. Change in 'intended use of GDR proceeds' was price sensitive information and would have impacted the price of the scrip and thereby not complied with clause 36(7) of the listing agreement and therefore violated section 21 of SCRA. (Source: Corporate announcements made to BSE and NSE during the period May 01, 2006 to December 31, 2006*

46. *In view of the above, SOMA had not complied with section 21 of SCRA read with clause 36(7) of the Listing Agreement by not informing stock exchange with regard to account charge agreement and change in "Use of GDR proceeds".*

SALE OF SHARES CONVERTED FROM GDRs:

47. ***Cancellation of GDRs (conversion into equity shares):***

Conversion of GDRs into equity share is also termed as cancellation of GDRs. All GDRs issued by the company were subscribed by Whiteview. GDRs were converted into equity shares and these shares were sold in the Indian Capital Market. Cancellation of GDRs started from December 18, 2006 and continued till October 17, 2008. Total 18,50,000 GDRs (100% of total GDRs issued) were converted. Summary of the cancellation of the GDRs is tabulated as follows:

(Source: custodian ICICI Bank)

Date of conversion of GDRs	***No. of GDRs converted***	***No. of outstanding GDRs***	***Date on which shares credited into beneficiary's demat a/c***	***No. of equity shares issued of on conversion***	***Entity becoming holders of equity shares post conversion of GDRs***
		18,50,000		*185,00,000*	
18-Dec-06	*80,000*	*17,70,000*	*18-Dec-06*	*8,00,000*	*KII LIMITED*
21-Dec-06	*2,00,000*	*15,70,000*	*21-Dec-06*	*20,00,000*	*LOTUS GLOBAL INVESTMENTS LTD*
11-Jan-07	*3,00,000*	*12,70,000*	*11-Jan-07*	*30,00,000*	*MAVI INVESTMENT FUND LTD*
06-Feb-07	*5,00,000*	*7,70,000*	*06-Feb-07*	*50,00,000*	*MAVI INVESTMENT FUND LTD*
09-Feb-07	*37,500*	*7,32,500*	*09-Feb-07*	*3,75,000*	*KII LIMITED*
01-Mar-07	*2,00,000*	*5,32,500*	*01-Mar-07*	*20,00,000*	*MAVI INVESTMENT FUND LTD*
01-Mar-07	*2,00,000*	*3,32,500*	*01-Mar-07*	*20,00,000*	*LOTUS GLOBAL INVESTMENTS LTD*
13-Apr-07	*1,00,000*	*2,32,500*	*13-Apr-07*	*10,00,000*	*KII LIMITED*

Date of conversion of GDRs	No. of GDRs converted	No. of outstanding GDRs	Date on which shares credited into beneficiary's demat a/c	No. of equity shares issued of on conversion	Entity becoming holders of equity shares post conversion of GDRs
17-Oct-08	*1,62,500*	*70,000*	*17-Oct-08*	*16,25,000*	*SOPHIA GROWTH A SHARE CLASS OF SOMERSET FUND*
17-Oct-08	*70,000*	*0*	*17-Oct-08*	*7,00,000*	*SOPHIA GROWTH A SHARE CLASS OF SOMERSET FUND*
TOTAL	***18,50,000***			***1,85,00,000***	

Sale of equity shares by entities in India:

48. *KII Limited, a sub account of SEBI registered FII namely Credo Capital plc (CC plc) (reg.no: IN-UK-FA-0795-03), received equity shares post conversion of GDRs during December 18, 2006 and April 13, 2007 and sold all the shares received on conversion of GDRs during February 19, 2007 and October 10, 2008.*

49. *Vide email dated February 16, 2017, KII has been inter-alia requested to provide the following information:*

i. *Details of association/ connection (in any capacity) of KII with the below mentioned entities along with designation and time period:*

M/s. SOMA Textiles & Industries Ltd. or any of its promoters or directors or employees/ M/s. Pan Asia Advisors Limited or any of its directors or employees/ M/s. Vintage FZE /Mr. Arun Panchariya/ M/s. Whiteview Trading Corporation or M/s. Corporate & Chancery Group Ltd. or M/s. Samuel Ernest Hurley/ MAVI Investment Fund Limited or APMS INVESTMENT FUND

LIMITED or any of its directors or employees / LOTUS GLOBAL INVESTMENTS LTD or any of its directors or employees or SOPHIA GROWTH - A SHARE CLASS OF SOMERSET INDIA FUND or any of its directors.

ii. *Details of sale/ purchase of GDRs of SOMA by KII including cancellation of GDRs.*

iii. *Details of consideration paid by KII for purchase of GDRs.*

50. *With regard to the aforesaid SEBI email, KII vide email dated February 28, 2017 (Copy of email is placed at annexure- 11), submitted as follows:*

i. *KII does not appear to have any connection to any of the above referred entities.*

ii. *It appears from our records that some or all of the GDRs were acquired from Banco Efisa after we were notified of the GDR issue by Deutsche Bank. it also appears that some of the GDRs were purchased on behalf of Mr Panchariya and were later converted into shares at his request. Some or all of the proceeds were sent to him. We are still trying to find additional documentation in this regard.*

51. *Lotus Global Investments Ltd. ('Lotus'), a sub account of SEBI registered FII namely M.M. Warburg Bank (Schweiz) AG (reg no: INCHFA060199) received 40,00,000 equity shares post conversion of 4,00,000 GDRs during December 21, 2006 and March 01, 2007 and sold all the shares received on conversion of GDRs during January 09, 2007 and December 19, 2008.*

52. *Vide email dated February 16, 2017, Lotus has been inter-alia requested to provide the following information:*

i. *Details of association/ connection (in any capacity) of LOTUS with the below mentioned entities along with designation and time period:*

M/s. SOMA Textiles & Industries Ltd. or any of its promoters or directors or employees/ M/s. Pan Asia Advisors Limited or any of its directors or employees/ M/s. Vintage FZE /Mr. Arun Panchariya/ M/s. Whiteview Trading Corporation or M/s. Corporate & Chancery Group Ltd. or Mr. Samuel Ernest Hurley/ M/s. KII LIMITED or any of its directors or employees / M/s. MAVI INVESTMENT FUND LTD or APMS INVESTMENT FUND LIMITED OR any of its directors or employees/ M/s. SOPHIA GROWTH - A SHARE CLASS OF SOMERSET INDIA FUND or any of its directors or employees.

ii. *Details of sale/ purchase of GDRs of SOMA by Lotus including cancellation of GDRs.*

iii. *Details of consideration paid by Lotus for purchase of GDRs.*

53. *With regard to the aforesaid SEBI email, Lotus vide email dated February 22, 2017 (Copy of email is placed at annexure- 12), inter-alia submitted as follows:*

i. *The Fund has been a shareholder of SOMA Textiles & Industries Ltd. between December 2006 and December 2008 following the conversion of related GDRs acquired in the said scrip on the dates mentioned in the table above.*

To the best of our knowledge, there is/was no association and/or connection (in any capacity) with the promoters or directors or employees of SOMA Textiles & Industries Ltd. or with M/s. Pan Asia Advisors Limited or any of its directors or employees.

Further, there is no association and/or connection to M/s. Vintage FZE, Mr. Arun Panchariya, M/s. Whiteview Trading Corporation or M/s. Corporate & Chancery Group Ltd. or Mr. Samuel Ernest Hurley, M/s. KII Limited or any of its directors or employees.

Other than the fact that both the Fund and Mavi Investment Fund Ltd (today: APMS Investment Fund Ltd) are both mutual investment funds, licensed and regulated by the Financial Services Commission (FSC) of Mauritius as Collective Investment Schemes Expert Funds and have the same professional administrator, namely Cim Fund Services Ltd, with same registered office address, there is no legal association and/or statutory or corporate connection with and/or equity interest in Mavi Investment Fund Ltd (today: APMS Investment Fund Ltd).

There is no association and/or connection with M/s. Sophia Growth – a share class of Somerset India Ltd or with any of its directors or employees.

ii. *Fund was able to retrieve all the broker confirmations for the sale transaction of the converted shares, we do not hold complete supporting documentation information anymore for the GDR acquisitions and conversions transactions. The said transactions date back more than 10 years and as the statutory safekeeping period as applicable generally elapses after 7 years (applicable for both India as well as Mauritius), the Fund periodically cleans up its archive and storage facilities for good corporate governance, economic and efficiency reasons.*

iii. *All the subject transactions were exclusively performed by market brokers in the name of the Fund and on its own account. As it is part of ordinary market dealing conduct, the names of the counterparties are generally not disclosed when performing on-market transactions on the* *floor of the exchanges through duly empaneled market brokers which is why the Fund is/was not privy to the counterparty information and cannot help any further.*

54. *It was observed from reply of Lotus that 4,00,000 GDRs were purchased for consideration of US $2.68 million. The details of the counterparties were not provided by Lotus. Vide email dated March 08, 2017 (Copy of email is placed at annexure-12.1), Lotus has been asked to provide the copies of contract notes with respect to the acquisition of aforementioned GDRs and name of the stock exchange at which GDRs were purchased. Lotus vide email dated March 16, 2017 (Copy of email is placed at annexure-12.2) submitted has provided the copies of Securities Lodgement Advices dated December 15, 2006 and February 27, 2007 wherein it was observed that Lotus has received the aforementioned GDRs from Banco Efisa.*

55. *APMS Investment Limited ('APMS/MAVI'), (erstwhile Mavi Investment Fund Limited, a sub account of SEBI registered FII namely M.M. Warburg Bank (Schweiz) AG {reg no: INCHFA060199}) received 1,00,00,000 equity shares post conversion of 10,00,000GDRs on January 11, 2007 and March 01, 2007 and sold all the shares received on conversion of GDRs during January 18, 2007 and December 11, 2009.*

56. *Vide email dated February 16, 2017, APMS has been inter-alia requested to provide the following information:*

i. *Details of association/ connection (in any capacity) of MAVI with the below mentioned entities along with designation and time period:*
M/s. SOMA Textiles & Industries Ltd. or any of its promoters or directors or employees/ M/s. Pan Asia Advisors Limited or any of its directors or employees/ M/s. Vintage FZE /Mr. Arun Panchariya/ M/s. Whiteview Trading Corporation or M/s. Corporate & Chancery Group Ltd. or Mr. Samuel Ernest Hurley/ M/s. KII LIMITED or any of its directors or employees / M/s. LOTUS GLOBAL INVESTMENTS LTD or any of its directors or employees/ M/s. SOPHIA GROWTH - A SHARE CLASS OF SOMERSET INDIA FUND or any of its directors or employees.

ii. *Details of sale/ purchase of GDRs of SOMA by APMS including cancellation of GDRs.*

iii. *Details of consideration paid by APMS for purchase of GDRs.*

57. *With regard to the aforesaid SEBI email, APMS vide email dated February 27, 2017 (Copy of email is placed at annexure- 13), submitted as follows:*

i. *APMS Investment Fund Ltd. has been a FII/FPI investor in and as such registered minority shareholder of M/s. SOMA Textiles & Industries Ltd. between January 2007 and July 2016 and to the best of our factual knowledge there were/ are no further association and/ or connection (in any capacity) with the promoters or directors or employees of M/s. SOMA Textiles & Industries Ltd..*

   To the best of our factual knowledge there were/ are no association and/or connection (in any capacity) with M/s. Pan Asia Advisors Limited or any of its directors or employees.

   There is no association and/or connection to M/s. Vintage FZE/ Mr. Arun Panchariya/M/s. Whiteview Trading Corporation or M/s. Corporate & Chancery Group Ltd. or Mr. Samuel Ernest Hurley/ M/s. KII LIMITED or any of its directors or employees / M/s. LOTUS GLOBAL INVESTMENT FUND LTD or any of its directors or employees/ M/s. SOPHIA GROWTH - A SHARE CLASS OF SOMERSET INDIA FUND("SOPHIA") or any of its directors or employees.

   There is no association and/ or statutory or corporate connection with and/ or equity interest in Lotus Global Investments Ltd., other than the fact that both entities are mutual investment fund companies licensed and regulated by the Financial Services Commission (FSC) of Mauritius as Collective Investment Schemes Expert Funds and both funds did appoint the same professional fund administration company (namely CIM Fund Services Ltd.), have the same registered office address and share other common professional service providers like e.g. custodian banks, auditor, stock brokers, tax counsel.

ii. *The names of the counterparty/ -ies from whom the GDRs were acquired are not in the records and data available to APMS Investment Fund Ltd. as the GDRs were purchased on the floor of the stock exchange through and by means of empaneled stock brokers acting for and on the account of the various market participants. Consequently, it is normal practice that the counterparties are not disclosed on an ordinary basis and as such, APMS Investment Fund Ltd. did not get any designated counterparty information reported.*

iii. *We furthermore confirm that all transactions in the captioned GDRs were performed by APMS Investment Fund Ltd. itself and exclusively for its own books and account i.e. its mutual investment portfolio.*

58. *It was observed from reply of APMS that 10,00,000 GDRs were purchased for consideration of US $6.63 million. The details of the counterparties were not provided by APMS. Vide email dated March 08, 2017(Copy of email is placed at annexure-13.1), APMS has been asked to provide the copies of contract notes with respect to the acquisition of aforementioned GDRs and name of the stock exchange at which GDRs were purchased. APMS vide email dated March 17, 2017 (Copy of email is placed at annexure-13. 2) has provided the copies of Transaction Reconciliation statements wherein the counterparties details were not specifically mentioned.*

59. *Vide email dated March 02, 2017 SOPHIA has been inter-alia requested to provide the following information:*

i. *Details of association/ connection (in any capacity) of SOPHIA with the below mentioned entities along with designation and time period:*
M/s. SOMA Textiles & Industries Ltd. or any of its promoters or directors or employees/ M/s. Pan Asia Advisors Limited or any of its directors or employees/ M/s. Vintage FZE /Mr. Arun Panchariya/ M/s. Whiteview Trading Corporation or M/s. Corporate & Chancery Group Ltd. or M/s. Samuel Ernest Hurley/ MAVI Investment Fund Limited or APMS INVESTMENT FUND LIMITED or any of its directors or employees / LOTUS GLOBAL INVESTMENTS LTD or any of its directors or employees or KII Limited or any of its directors or employees.

ii. *Details of sale/ purchase of GDRs of SOMA by SOPHIA including cancellation of GDRs.*

iii. *Details of consideration paid by SOPHIA for purchase of GDRs.*

60. *With regard to the aforesaid SEBI email, Sophia vide email dated March 10, 2017 (Copy of email is placed at annexure- 14), inter-alia submitted as follows:*

i. *We submit that Sophia does not have any association/connection with any of the persons/entities mentioned therein.*

ii. *The details of subscription of GDRs to the GDRs is as follows:*

S No.	***Date***	***Purchase Quantity***	***Purchase Price***	***Counterparty***

1	*09.10.2008*	*70,000 GDR*	*US$ 5.85 per GDR*	*Fortis Banque (Suisse) S.A. Switzerland*
2	*15.10.2008*	*1,62,500 GDR*	*US$ 5.81 per GDR*	*Fortis Banque (Suisse) S.A. Switzerland*

Delivery Advices were also provided.

iii. *Further, stated that 70,000 GDRs of SOMA were purchased by Sophia for US $4,09,500 and 1,62,500 GDRs were purchased for US $9,44,125.*

61. *Details of trades of KII, Lotus, Mavi and Sophia on BSE & NSE are placed at Annexure-15. Summary of sell trades of the aforementioned entities on BSE and NSE is placed below:*

Name of entity	***No. of shares sold***		***Total no. of shares sold***	***Trade value (INR)***		***Total trade value (INR)***
	BSE	***NSE***		***BSE***	***NSE***	
KII LIMITED	*12,45,000*	*9,30,000*	*21,75,000*	*3,57,34,645.00*	*2,66,55,549.55*	*6,23,90,194.55*
LOTUS	*23,50,000*	*16,50,000*	*40,00,000*	*6,90,73,848.15*	*5,27,23,085.20*	*12,17,96,933.35*
MAVI	*49,94,855*	*50,05,145*	*1,00,00,000*	*9,18,18,402.19*	*9,19,24,642.95*	*18,37,43,045.14*
SOPHIA	*16,25,000*	*7,00,000*	*23,25,000*	*4,71,25,000.65*	*2,03,00,000.00*	*6,74,25,000.65*
TOTAL	***10,214855***	***82,85,145***	***1,85,00,000***	***24,37,51,895.99***	***19,16,03,277.70***	***43,53,55,173.69***

From above analysis, it was observed that underlying shares of GDRs were sold to Indian investors (during the period December 18, 2006 to October 17, 2008). The sale of shares on conversion of GDRs taken place during the period January 05, 2007 to December 11, 2009.

DELISTING OF GDRS:

62. *GDRs were listed on Lux w.e.f. October 25, 2006. On the basis of information received from Lux (Annexure-16), it was observed that GDRs of SOMA were delisted on January 02, 2009. On perusal of the corporate announcements made by SOMA to stock exchanges, it was observed that that SOMA did not inform stock exchanges about delisting of GDRs on Lux.*

In a summary, the following are alleged:

63. *SOMA issued 1.85 million GDRs (amounting to US $17.29 million) on October 20, 2006. Whiteview was the only entity to have subscribed to 1.85 million GDRs (amounting to US $ 17.29 million) of SOMA and the subscription amount was paid by Whiteview by obtaining loan (i.e. through credit agreement) from Banco.*

64. *Mr. Sunil Patel, Overseas Sales representative of SOMA signed an account charge agreement with Banco. The aforesaid account charge agreement was an integral part of Credit agreement entered into between Whiteview and Banco. These agreements enabled Whiteview to avail a loan from Banco for subscribing GDRs of SOMA. The GDR issue would not have been subscribed had the company not given any such security towards the loan taken by the Whiteview. The company reported to the stock exchange that "the Board of Directors of the Company at its meeting held on October 20, 2006, has approved the issue and allotment of 1,850,000 Global Depository Receipts (GDRs) worth USD 17.2975 million representing 18,500,000 underlying Equity shares of Rs 10/- each to the Depository - Deutsche Bank Trust Company Americas" which made investors believe that the said GDR issue was genuinely subscribed by the foreign investors. The arrangement of credit agreement and account charge agreement resulted in subscription of GDR issue of the company and the aforesaid arrangement was not disclosed and also reported misleading news to the stock exchange which contained information in a distorted manner and may influence the decision of investors.*

65. *Further, out of GDR proceeds (including interest/accruals), it is clear that an amount of US $0. 49 million was paid to Vintage as part of Issue expenditure, an amount of US $2million (approx.) was received into SOMA's bank accounts in India (HDFC Bank and ICICI Bank) during the period December 27, 2007 and March 31, 2008 and an amount of US $15.67 million was transferred by SOMA to Whiteview on January 24, 2007 towards loan repayment of Whiteview.*

Considering the fact that Whiteview was the sole subscriber to the GDR issue and loan amount of US $15.67 million of Whiteview was repaid by SOMA from its GDR proceeds, it is therefore evident that GDRs in turn the underlying equity shares to the extent of US $15.67 million were acquired by Whiteview without proper consideration. Thereby, the scheme of issue of GDRs was fraudulent. Hence, SOMA had violated the provisions of sections 12A (a), (b), (c) of SEBI Act, 1992 read with regulations 3(a), (b), (c), (d), 4(1), 4(2) (f), (k), (r) of PFUTP Regulations.

66. *Directors of SOMA in its board meeting held on July 27, 2006 had authorized Mr. Sunil Patel to sign the agreement which acted as security in connection with the loan availed by Whiteview and Banco to use funds deposited in SOMA's bank account as security in connection with the loan availed by Whiteview. Hence, directors namely Mr. S.K.Somany, Mr. A.K. Somany, Mr. Prafull Anubhai and Mr. P. Bandopadhyay who approved the board resolution and authorised Mr. Sunil Patel to sign the agreement with Banco and authorised Banco to use funds as a security in connection with loan and Mr. Sunil Patel (Overseas Sales Representative) who signed the agreement had acted as parties to the fraudulent scheme and are in violation of section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4(1) of PFUTP Regulations.*

67. *SOMA has not informed stock exchange with regard to account charge agreement entered into with Banco for subscription of GDRs and a change in intended use of GDR proceeds as modified at Board meeting dated October 31, 2006 and has also informed stock exchange with regard to change in intended use of GDR proceeds. Change in 'intended use of GDR proceeds' and account charge agreement are price sensitive information and could have impacted the price of the scrip and thereby not complied with Section 21 of SCRA read with clause 36 (7) of the listing agreement. Further, SOMA has not filed quarterly shareholding with stock exchange in accordance with clause 35 of the Listing Agreement for the quarters ended December 2006 and March 2007 and thereby violated section 21 of SCRA.*

Service of SCN, Reply to SCN and Hearing-Notices

Noticee no. 1 to 5

6. The SCN alongwith annexures was duly served upon Noticee no. 1,2,3,4 and 5 via Speed Post Acknowledgement Due ("**SPAD**"). Noticees vide letter dated February 05, 2018 submitted that they are in the process of filing an application for settlement in the matter under the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 and requested to keep the instant proceedings in abeyance. Thereafter, Noticee no. 1,2,3, Noticee no. 4 and Noticee no. 5 vide respective letter dated March 10, 2018, March 05, 2018 and March 12, 2018 had filed their settlement applications. In this regard, I note that settlement applications for all the said Noticees were rejected in March 15, 2019.

7. Pursuant to my appointment as Adjudicating Officer in the matter, Noticees were provided opportunity of personal hearing through WebEx platform due to Covid-19 Pandemic in the interest of natural justice and in terms of Rule 4 (3) of Adjudicating Rules on December 02, 2021. However, Noticee no 1,2,3 and 5 vide letter dated November 24, 2021 and Noticee no. 4 vide letter dated November 28, 2021 once again requested to keep the instant proceedings in abeyance till the disposal of appeal filed by them before Hon'ble Securities Appellate Tribunal ('SAT") against the order dated February 08, 2021 passed by Ld. Whole time member of SEBI ("WTM order") under Sections 11, 11(4) and 11B of SEBI Act in the matter having identical facts and circumstances as of the instant adjudication proceedings and also sought time till January 15, 2022 to reply to the SCN. However, no reply to SCN was made by Noticees by January 15, 2022. Noticees were again provided final opportunity of personal hearing on June 22, 2022 vide letter dated June 03, 2022. Thereafter, Noticee no. 1 vide letter dated June 15, 2022, Noticee no. 2, 3 and 5 vide letter dated June 15, 2022 and Noticee no. 4 vide letter dated May 27, 2022 have submitted their respective detailed Replies to SCN. Further, on June 22, 2022 authorised representatives ("AR") of Noticee no. 1,2,3 and 5 appeared for hearing before me through WebEx video conferencing. During hearing, ARs of Noticees reiterated earlier submissions made pursuant to show cause notice on behalf of their respective Noticee and also sought weeks' time to make additional submissions which were made vide letter dated June 29, 2022 and also on July 08, 2022. During hearing, ARs also requested for copy of redacted investigation report citing the judgment of Hon'ble Supreme court in the matter of T. Takano v. Securities and Exchange Board of India. Thereby, a copy of redacted investigation report in the matter was duly emailed to AR of Noticees. Authorised representative of Noticee no. 4 appeared for hearing before me in personal on the scheduled date and time of personal

hearing and reiterated earlier submissions made pursuant to show cause notice on behalf of Noticee no. 4.

SUBMISSIONS OF NOTICEES ARE *INTER-ALIA* AS FOLLOWS:

Noticee no. 1 and 4

1. *This is with reference to the captioned subject wherein inter alia, a Show Cause Notice No. SEBI/HO/EAD-12/SM/PR/OW/1672/2018 dated January 18, 2018 (hereinafter referred to as '**SCN**'/ '**the said notice**') has been issued under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officers) Rules, 1995 (hereinafter referred to as **"SEBI AO Rules"**) and Rule 4(1) of Securities Contracts(Regulation)(Procedure for Holding Inquiry and Imposing penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as **"SCRA AO Rules**") to **"**) to P. Bandhopadhyay, Soma Textiles and Industries Limited (hereinafter referred to as **'STIL'/'Soma'/'Company'**) and its directors Mr. S.K. Somany, Promoter & Chairman; Mr. A.K. Somany, Promoter & Managing Director and Mr. Praful Anubhai, Executive Director. All other noticees together will be referred as to **'Other Noticees'** or by their respective first names.*

Soma:

1. *It has inter-alia been alleged in the SCN that Soma has violated Section 12A (a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4(1), 4(2) (f), (k) and (r) of SEBI (Prohibition of Fraudulent & Unfair trade Practices Relating to Securities market) Regulations, 2003 (hereinafter referred to as **'PFUTP Regulations'**) and Section 21 of SCRA read with Clauses 35 and 36(7) of Listing Agreement by Soma Textile & Industries Ltd.*

P. Bandhopadhyay:

2. *It has inter-alia been alleged in the SCN that I have violated Section 12A (a), (b) and (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act, 1992"**) read with Regulations 3(a), (b), (c), (d) and Regulation 4(1) of SEBI (Prohibition of Fraudulent & Unfair trade Practices Relating to Securities market) Regulations, 2003 (hereinafter referred to as **"PFUTP Regulations"**).*

2. *We have further been called upon to show cause as to why an inquiry should not be held against us in terms of Rule 4 of SEBI Adjudication Rules, 1995 and penalty should not be imposed under section 15 HA of SEBI Act, 1992 and Section 23 E of SCRA (Soma) for the aforesaid alleged contraventions respectively by Noticees.*

P. Bandhopadhyay:

ROLE AS AN EXECUTIVE DIRECTOR

3. *At the outset, I submit that SCN has been addressed to me as Independent Director. In this regard, I wish to clarify that I was never the Independent Director of Soma and I was appointed as Whole Time Director and was designated as Executive Director. I was appointed on January 25, 2001 and resigned from the services of Soma on December 22, 2007. A copy of the Form 32 for Appointment and Resignation of Directors is collectively attached as **Exhibit 1.***
4. *I was a supervisor in New Shorrock Mills Ltd. during the year 1979-1981. I have completed my M. Tech in Engineering in 1984 from M.S. University of Vadodara and my Post Graduate Course in Industrial Management also from M.S. University. I joined the company in the year 1984 as Production Manager in the Unit No. II of the Company and worked in the company till 1994. Then, I resigned from the Company and joined M/s. Mafatlal Industries Ltd. Later on, during 2000, I re-joined the Company as Executive Vice President and was later on appointed as Executive Director in 2001 and I continued in that position till December, 2007.*
5. *At the outset, I submit that I am a professional belonging from the technical field of engineering, I neither have any knowledge nor any experience in the field of finance or securities market. I was an Executive Director in Soma and was looking after the*

operations of the textile business and did not have role to play in the process of the GDR issue. I also did not have any knowledge about the day to day process of the GDR issue. As a technical person having no background in Finance, I acted in a bonafide manner. I, as an Executive Director having technical background and looking after operations of textile business, did not have the reason to raise any doubt regarding the issue of the GDRs.

6. *I submit that I was never involved in any discussion, presentation etc. relating to GDR issue except to the extent whatever was discussed during the course of various Board meetings wherein I was present. I have never signed any agreement with any of the entities involved in the alleged fraud, I only attended the meeting wherein the aforesaid agenda was taken up by the board of the company and also not involved in making any kind of alleged corporate announcements to warrant serious allegation of fraudulent and unfair trade practices.*
7. *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. Sunil Patel to execute the necessary formalities in respect of GDR issue. Pursuant to the same, in one of the Board meetings of the Company, I was informed that the GDR issue had been successfully subscribed.*
8. *I was under the rightful impression that the GDR issue was being supervised and overseen by reputed Lead Manager, i.e. Pan Asia Advisors Ltd. (hereinafter referred to as **"PAAL"**) in our case. Owing to the several factors stated above, I had no reason to have any misgivings regarding the said GDR issue. I did not have the expertise or the knowledge required to pursue the matter, as the same related to core finance and I am a technical person from the field of textile.*
9. *I have an impeccable track record in terms of compliances and save and except the matter under reference, no adverse direction has ever been passed against me by any regulatory authority including SEBI.*
10. *I reiterate that I was not involved in any of the day to day activities of Soma pertaining to the GDR issue or the Account charge agreement by the Company or making alleged corporate announcement, which are the core allegations in the notice. Further, except the allegation with respect to attending the Board Meeting of the Company, nothing specific has been attributed to me in the Notice 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 to warrant serious allegation of fraudulent and unfair trade practice. While levelling the allegations in the Notice, it has been ignored and overlooked that I was related to the field of engineering and was mainly supervising the textile operations of the company and does not have any knowledge of finance.*

<u>DOUBLE JEOPARDY</u>

3. *We would also like to bring to your kind attention that along with said SCN, we have also been issued Show Cause Notice No. EFD/DRA1/SM/TVB/SomaTextiles/ OW/P/17128/4/2017 July 21, 2017 under Section 11 B 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. It is further submitted that the proceedings under Section 11 B have been completed vide Order No. WTM/AB/IVD/ID4/10343/2020-21 dated February 08, 2021 passed by Ld. WTM. We have already filed appeal before Hon'ble SAT which has been admitted. We are confident that SAT will take favorable view and upheld the appeal. In view of same, we pray that the instant proceedings may be kept in abeyance, till the time appeal is decided..*

<u>DELAY IN INITIATION OF PROCEEDINGS</u>

4. *Without prejudice to our above submissions and without admitting any violation of SEBI Act or any Regulations whatsoever, on our part, it is humbly submitted that the concerned GDR issue was raised/ undertaken by Soma in 2006 and the instant proceedings against the same were initiation in the year 2018.*

It is to be noted SCN has been issued after a lapse and inordinate delay of nearly 12 long years. It is highly unreasonable for SEBI to expect us to keep all the documents pertaining to the transaction intact even after such a long time. Human memory is fragile and it is nearly impossible to remember the details of a transaction after a long time gap of 12 years.

5. *It is, therefore, requested that the instant proceedings may be kindly be dropped on the ground that there has been inordinate delay of more than 12 years in the initiation of proceedings, as has also been echoed by the Apex Court and Hon'ble SAT, time and again in plethora of cases including the following:-*

   i. *The Hon'ble Tribunal in the case of* ***Morepen Laboratories Ltd. (SAT Appeal No. 62 of 2020, decided on April 15, 2021),*** *has considered the inordinate delay of 14 years and has disposed of the proceedings against the Appellant. The relevant paragraphs of the said order are being again reproduced herein: -*

      "21. The WTM, however, has failed to consider as to what should be the reasonable period of time. In our opinion issuance of a show cause notice after 14 long years is an inordinate delay in initiating the proceedings and such inordinate delay cannot be condoned especially when no satisfactory reasons have been given. The respondent has tried to justify that since the GDR was issued abroad, SEBI had to collect the information from various entities situated abroad which took time. In our opinion, this bald statement cannot be accepted. Nothing has been brought on record to show as to how the process of collection of information was time consuming. The mere fact that SEBI was also investigating 59 other GDR issues during 2002-2014 does not make it a ground to condone this inordinate delay. The respondent is required to justify their action and has to be explain as to why the process took 14 long years. In the absence of any plausible explanation being given we are of the opinion that the initiation of the proceedings was highly belated and for this inordinate delay the proceedings are also liable to be quashed"

      a. *In the order of* ***Bharat J Patel vs SEBI*** *dated September 09, 2020, the Hon'ble SAT had held allowed the Appeal and held as follows –*

      "The facts on record would show that the disputed trades were carried out by the Appellant in the year 2012. The show cause notice was issued to them on July 10, 2019 i.e. after a gap of 7 years. The very first reaction of the Appellant was that the records of the trades were not available as a period of 7 years has passed from the date of theses transactions. It is an admitted fact that the Appellants are brokers as well as traders. The annexures to the reply to the show cause notice would show that in the relevant year itself, the Appellants have traded in 123 shares and turnover was Rs.576 crores."

      b. *The Hon'ble Securities Appellate Tribunal in its decision in the case of* ***ICICI Bank Limited v SEBI (Appeal No. 583 of 2019)*** *dated July 08, 2020 held that undue delay in initiating the proceedings by the Regulatory Authority causes prejudice and would ultimately attach a stigma pursuant to any adverse order that may be passed later on. For ready reference the relevant paragraph, Para 30 of the order is being reproduced hereunder:-*

      "However, we agree with the contentions of the learned Senior Counsel for the appellant on the inordinate delay in issuing the show cause notice and in passing the impugned order by respondent SEBI. The disclosure violations had been noticed by SEBI soon thereafter and a preliminary……"

      "….the delay on the part of SEBI to show cause is 2955 days from the date of the event and about 2130 days from the date of the preliminary investigation report, which is too wide a gap to be ignored. Several years' delay in show-causing and concluding proceedings in such known incidence of violation / alleged violations is a failure in effectively performing the behavior modification function of a market regulator. The orders relied on by SEBI on the ground of delay are distinguishable from the facts of this matter. Therefore, we are of the considered view that issuance of a penalty order against the appellant in September, 2019 for certain disclosure violations in mid-May 2010 by issuing a show cause notice on June 26, 2018 has caused prejudice to the appellant and the order suffers from laches, as held in this Tribunal's Order in the matter of Ashok Rupani (supra)"

   ii. *In the case of* ***Ashok Shivlal Rupani and Ors. Vs Securities and Exchange Board of India (Appeal No. 417 of 2018),*** *wherein there was a delay of eight years in the issuance of the show cause notice after the alleged violation, the Hon'ble SAT held as follows –*

"9. As a result, without going into the merits of the case, we are of the opinion that on account of inordinate delay the initiation of proceedings by issuance of the show cause notice which culminated into a penalty order cannot be sustained. The show cause notice and the impugned orders passed by the AO are quashed. Both the appeals are allowed."
Pursuant to the order passed above, SEBI in the aforesaid case had filed an appeal (CA No: 8444-8445/2019) before the Hon'ble Supreme Court. However, the Hon'ble Supreme Court was pleased to dismiss the appeal. The Hon'ble Supreme Court observed the following –
"1. We find no ground to interfere with the impugned order passed by the Tribunal. The appeals are, accordingly, dismissed."

c. *The Hon'ble Tribunal has in the matter of **Ashlesh Gunvantbhai Shah & Ors. v SEBI (Appeal No. 169 of 2019)** in its order passed on January 31, 2020 held that inordinate delay in the issuance of the show cause notice vitiates the proceedings initiated under it. For ready reference the relevant paragraphs of the order are reproduced hereunder:-*
"6. We have heard the leaned counsel for the parties in the respective appeals. From the material available on record we find that the alleged irregularities was noticed by SEBI in August 2011 and immediately thereafter investigation was launched for the period January 4, 2010 to January 10, 2011. Based on the investigation a show cause notice was issued on November 20, 2017. Thus, there is a delay of 7 years in the issuance of the show cause notice."
"15. In the light of the aforesaid, we are of the opinion that there has been an inordinate delay in the issuance of the show cause notice. Even though there is no period of limitation prescribed in the Act and Regulations in the issuance of a show cause notice or for completion of the adjudication proceedings the authority is required to exercise its powers within a reasonable period as held recently in Bhavesh Pabari (supra). In the instant case, we are of the opinion that the power to adjudicate has not been exercised within a reasonable period and therefore no penalty could be imposed."

iii. *It was observed by Hon'ble SAT in the case of Aditi Dalal that the alleged manipulation in six scrips in question is said to have taken place in the year 1999-2000 and proceedings against the appellants were initiated only in the year 2005. In the instant case also the alleged GDR issue in the case of STIL is said to have taken place in the year 2006 and proceedings have been initiated in the year 2017 i.e. eleven years after the alleged GDR issue. Hence, there has been inordinate delay in the initiation of the proceedings.*

iv. *In the case of **Adjudicating Officer, Securities and Exchange Board of India vs. Bhavesh Pabari** (Civil Appeal No. 11311 of 2013)**,** on February 28, 2019 the Apex Court of the country has observed the following at Para 36 of its Order:*

> *"…………………..There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third party rights had been created etc…......"*

d. *In the case of **Garware Polyster Limited & Ors. vs SEBI** (Appeal No. 187 of 2021), decided on August 09, 2021, the Hon'ble SAT while quoting the decision of the Hon'ble Apex Court in the matter of **Bhavesh Pabari (supra)** held as follows:*
"8. In the light of the aforesaid, we are of the opinion that there has been an inordinate delay in the issuance of the show cause notice and for completion of the adjudication proceedings. Since the power to adjudicate has not been exercised within a reasonable period no penalty could have been imposed for the alleged violations.
…………….

…………….
…………….
14. In view of the aforesaid, the impugned orders passed against the appellants by the AO cannot be sustained and are quashed on account of the inordinate delay in the initiation of the proceedings by issuance of the show cause notice which culminated into a penalty order. The

show cause notice and the impugned orders passed by the AO are quashed. All the appeals are allowed with no order as to costs."

e. *In the case of* ***Rajeev Bhanot & Ors. Vs SEBI*** *(Appeal No. 396 of 2018) the Hon'ble SAT held as follows:*

"25. In our view, considering the long lapse of time in initiating the proceedings, the direction to make an open offer was not appropriate in the circumstances of the case.

26. For the reasons stated aforesaid, the impugned order cannot be sustained and is quashed. The appeals are allowed. In the circumstances of the case, parties shall bear their own costs."

*The Hon'ble Supreme Court while dismissing the appeal filed by SEBI [****SEBI vs Rajeev Bhanot & Ors.*** *(Civil Appeal No. 6441-6443 of 2021)] in the above mentioned case observed as follows*

"We are not inclined to interfere with the impugned order dated 09.07.2021 passed by the Securities Appellate Tribunal, Mumbai in Appeal Nos.396 of 2018, 405 of 2018 and 562 of 2019.Accordingly, the Civil Appeals are dismissed.

Pending application(s), if any, shall stand disposed of."

We submit that the lapse of more than twelve (12) years would gravely prejudice our ability to defend ourselves and we are not be able to retrieve crucial physical and electronic data. Hence, it can be observed that it is a settled law that proceedings initiated after an inordinate delay of 12 long years should not be entertained and ought to be quashed without even going into the merits of the case. In the present case also, the proceedings against us were initiated by SEBI after a long period of almost twelve years. It is hereby submitted that retaining and maintaining records for such long periods is impossible and unreasonable. In view of the above, we submit that all the above observations made by the Hon'ble Supreme Court and the Hon'ble SAT in the above cases are relevant in the present proceedings initiated against the company since already more than twelve long years have passed since the GDR issue of STIL, Damocles' sword has been hanging over us for the last twelve years and it has really affected the moral of our team, the electronic data maintained at our end has been effected due to floods in Ahmedabad, due to cross border nature of transaction it has been a herculean task to collect old records etc.

Soma:

BRIEF BACKGROUND AND CAPITAL STRUCTURE OF COMPANY

6. *A snapshot of background of the Company is as follows:-*

i) *The Company was promoted by Somany brothers in the year 1940. The Company was originally started as a partnership firm under the name and style of M/s. R B Rodda & Co. in the year 1930 and it was converted into a limited Company by incorporating under the name R B Rodda & Co. Ltd. on 29 March, 1940 at Kolkata.*

ii) *Initially, the Company was engaged in trading activities. In the year 1969, the Company purchased new Commercial Mills Co. Limited at Ahmedabad, which was under liquidation and named this unit as "Soma Textiles". In the year 1987, the Company started producing denim fabric.*

iii) *Thereafter, the name of the Company was changed to "Soma Textiles & Industries Limited" from R B Rodda & Co. Ltd. on 21 January 1992. The Company started its 100% Export Oriented Unit at Baramati. District Pune, Maharashtra in the financial year 1993-1994.Company was exporting its finished goods to various countries like USA, Europe, Hong Kong, South Korea, Bangladesh etc.*

iv) *Company's financial position was severely affected due to sudden spurt in cotton price in the year 2008-09 and company failed to repay the instalments to banks and Institutions. Banks and institutions referred the matter to Corporate Debt Restructuring (CDR) Cell for restructuring of the debts. Debts of the Company was duly restructured by the CDR solely on the credibility and the reputation of the Promoters of the Company.*

v) *Company's financial position was again affected due to slow down in the economy, severe competition in the Textile Industries in the year 2015-16 and Company failed to repay the debts. Banks and Institutions assigned the debts to ARC in the year 2016-17 and ARC restructured the debt solely on the credibility and the reputation of the Promoters of the Company. Banks and* *institutions never declared promoters as wilful defaulters. Till date the company is continuously servicing its debts.*

vi) *Till date, no violation of any statutory regulations have been alleged/ carried out except that of minor technical errors. All statutory dues are timely paid even though the Company is facing genuine financial hardship.*

vii) *As on 31st March 2022, net worth of the Company is fully eroded.*

7. *Without prejudice to what has been stated herein above and without admitting any violation whatsoever on our part, we would like to give a brief overview about the capital structure of the company and raising of capital through GDR issue:-*

Date of Allotment	*No. of shares issued*	*% of shares issued*	*Cumulative paid up capital in Rs.*	*Mode of allotment*	*Identity of allotees (promoters/Ex-promoters/others)*
29.03.1940	*17,500*	*0.05*	*175000*	*Original Issue*	*Promoters/Ex-Promoter*
04.03.1949	*47,500*	*0.14*	*650000*	*Rights*	*Promoters/Ex-Promoter*
26.08.1969	*1,30,000*	*0.39*	*1950000*	*Rights*	*Promoters/Ex-Promoter*
24.03.1970	*65,000*	*0.20*	*2600000*	*Preferential*	*Promoters/Ex-Promoter*
03.03.1990	*2,60,000*	*0.79*	*5200000*	*Bonus*	*Promoters/Ex-Promoter*
16.04.1991	*2,60,000*	*0.79*	*7800000*	*Rights*	*Promoters/Ex-Promoter*
04.10.1991	*7,80,000*	*2.36*	*15600000*	*Bonus*	*Promoters/Ex-Promoter*
11.09.1992	*21,45,000*	*6.49*	*37050000*	*Bonus*	*Promoters/Ex-Promoter*
18.01.1994	*25,98,983*	*7.87*	*63039830*	*Public*	*Promoters/Ex-Promoter & others*
01.04.1994	*11,77,667*	*3.57*	*74816500*	*Right & Preferential Issue*	*Promoters/Ex-Promoter & others*
18.07.1994	*25,98,983*	*7.87*	*100806330*	*Public*	*Promoters/Ex-Promoter & others*
01.04.1995	*11,77,667*	*3.57*	*112583000*	*Right & Preferential Issue*	*Promoters/Ex-Promoter & others*
24.01.2004	*36,60,000*	*11.08*	*149183000*	*Preferential*	*Banks & financial Institutions*
20.10.2006	*1,85,00,000$*	*56.00*	*334183000*	*GDR Issue*	*Foreign Banks*
Less	*3,85,300#*	*-1.17*	*3853000*		
TOTAL	*3,30,33,000*	*100*	*33,03,30,000*		
(Add) Amount Forfeited			*19,45,000*		
Total			*33,22,75,000*		

8. *We are a law abiding company and we have always ensured that we follow best corporate governance practices. Our track record in terms of regulatory compliances has been excellent, save and except the SCN under reference. Further we also do not have any pending investor complaints against us. Shareholders and the investors at large are kept regularly informed about the developments in the company by way of disclosures to the exchanges. We have always maintained transparency in our business and affairs and taken care of shareholders interest.*

<u>GDR ISSUE</u>

9. *In the liberalized regime in the nineties, not only the foreign companies could come for investment in Indian market but the Indian companies were also given a chance to tap their potential abroad. A detailed scheme for the issuance of GDRs as well as FCCB's (Foreign Currency Convertible Bonds) was issued by the Ministry of Finance, Government of India in the year 1993, i.e., the GDR Scheme of 1993, with the object of facilitating the issue of FCCBs and GDRs abroad by companies registered in India.*

10. *In the year 2005, Government of India amended the scheme and made it easy for a listed company with a proven track record to go abroad and raise capital. Considering this opportunity, a lot many Indian companies issued GDR's successfully which were listed on exchanges outside India.*

11. *On October 20, 2006, the company issued 18, 50,000 GDR's at USD 9.35 each underlying 1,85,00,000 equity shares totaling to USD 17.2975 million.*

12. *During the time of GDR issue, following were the Directors/key officials of the company:*

SR NO.	***NAME***	***DESIGNATION***
1.	*Mr. S.K.Somany*	*Promoter, Chairman*
2.	*Mr. A.K.Somany*	*Promoter, Managing Director*
3.	*Mr. P Bandyopadhyay*	*Executive, Non-Independent Director*
4.	*Mr. Prafull Anubhai Shah*	*Non-Executive Independent Director*
5.	*Mr. Ashok C Gandhi*	*Non-Executive Independent Director*
6.	*Mr. Anupam Verma*	*Non-Executive Independent Director (Nominee of ICICI)*
7.	*Mr. S. Shekar*	*Non-Executive Independent Director (Nominee of ICICI)*

13. *Presently following are the directors & KMP of the Company.*

SR NO.	***NAME***	***DESIGNATION***
1.	*Shri S.K.Somany*	*Chairman*
2.	*Shri A.K.Somany*	*Managing Director*
3.	*Shri Shrikant B Bhat*	*Whole-time Director (Executive Director)*
4.	*Shri B K Hurkat*	*Non-Executive Independent Director*
5.	*Shri M H Shah*	*Non-Executive Independent Director*
6.	*Mrs. N Singh*	*Non-Executive Independent Director*
7.	*Mr.Abhishek K Mishra*	*Company Secretary & Compliance officer*
8.	*Mr.Meghraj B Parakh*	*Chief financial Officer (CFO)*

14. *The lead manager to the issue was Pan Asia Advisors Ltd. (hereinafter referred to as* ***'LM'/'Merchant Banker'/'PAAL'****) and the Global Depository Bank for the issue was Deutsche Bank Trustee Company Americas (hereinafter referred to as '****DBTCA****'). Pursuant to the issue, the GDR's were listed on Luxembourg Stock Exchange. It is also submitted that PAAL is an entity registered with the regulatory authority of the United Kingdom, i.e. UK Financial Conduct Authority (hereinafter referred to as "****UK-FCA****").*

15. *It may be noted that the above 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 qua the same at that point in time.*

16. *We had also provided a list of subscribers to SEBI vide our letter dated June 26, 2015 which is summarized as under:*

Sr.No.	***Name of the Subscriber***	***Country of subscriber***	***No.of GDR's alloted***	***Amount subscribed (USD)***
1	*Fundabills, GmbH*	*Munstergasse 12, 8001, Zurich*	*3,40,000*	*3179000*
2	*ContiFina SA*	*Rue Albert Gos 2, CH 1206, Geneve*	*3,50,000*	*3272500*
3	*Unicorn Asset Management Ltd.*	*Bellerivestrasse 21, 8008, Zurich*	*3,25,000*	*3038750*
4	*Investec Bank (Switzerland) AG*	*Talacker 41, CH-8039, Zurich*	*5,35,000*	*5002250*
5	*Animar Limited*	*Miguel Bombarda, 42-2D, 1050 Lisbon*	*3,00,000*	*2805000*
			18,50,000	*17297500*

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.

17. *The GDR issue was made bonafide for the legitimate purposes in the ordinary course of business by the company and in the best interests of the company and its shareholders.*

Noticee no. 4:

11. *The lead manager to the issue was PAAL and the Global Depository Bank for the issue was Deutsche Bank Trustee Company Americas (hereinafter referred to as* ***'DBTCA'****). Pursuant to the issue, the GDR's were listed on Luxembourg Stock Exchange. It is also submitted that PAAL is an entity registered with the regulatory authority of the United Kingdom, i.e. UK Financial Conduct Authority (hereinafter referred to as "****UK – FCA****"). It is surprising to note that no action is being taken / proposed to be taken against PAAL who is the main perpetrator of fraud in the instant proceedings. SCN is deficient in that aspect and this in itself is gross violation of principles of equity and good conscience.*
12. *It may be noted that the above action was taken by Soma (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 qua the same at that point in time.*
13. *I submit the GDR issue was made bonafide for the legitimate purposes in the ordinary course of business by the company and in the best interests of the company and its shareholders.*

18. *The major allegations observed in the SCN are as follows:-*
    a. *As per the SCN, the Investigation Report states that Whiteview Trading Corporation was the sole subscriber to 18, 50,000 GDR's issued by Soma.*
    b. *The SCN also alleges that for the purpose of subscription, Soma signed an account charge agreement, which was integral part of a credit agreement entered into between Whiteview and*

Banco. Whiteview was granted a loan by Banco specifically for subscription of GDR's issued by Soma.

c. *Further, it has been alleged that Soma had not informed stock exchanges about the account charge agreement entered with Banco and outcome of the board meeting which were price sensitive information.*

d. *The account charge agreement acted as security in connection with loan availed by Whiteview and Banco to use the funds deposited in Soma's Bank account as security in connection with loan availed by Whiteview.*

e. *Whiteview had defaulted in repayment of loan to Banco to the extent of US $15.67 million and loan amount of US $15.67 million of Whiteview was repaid by SOMA from its GDR proceeds. Considering the fact that Whiteview was the sole subscriber to the GDR issue and loan amount of US $15.67 million of Whiteview was repaid by SOMA from its GDR proceeds, it was therefore concluded that GDRs in turn the underlying equity shares to the extent of US $15.67 million were acquired by Whiteview without proper consideration.*

f. *The Directors of Soma had authorized the GDR issue and also authorised a signatory to sign agreements leading to the alleged fraudulent scheme and that I as a director acted as a party to the alleged fraudulent scheme.*

Soma:

g. *In view of the above, it has been alleged that we have violated provisions of SEBI Act & PFUTP Regulations. It has also been alleged that we have violated Section 21 of SCRA read with Clauses 35 and 36(7) of Listing Agreement.*

Noticee no. 4:

In view of the above, it has been alleged that I being a Director of Soma have violated provisions of SEBI Act & PFUTP Regulations.

Soma:

PROCEEDINGS OF INSPECTION OF DOCUMENTS RELIED UPON BY SEBI

19. *We would also like to bring to your kind attention that we had vide our letter dated November 1, 2019, submitted to SEBI that on October 14, 2019, our authorised representative carried out inspection of documents on our behalf. However, we were only provided with photocopies of the documents which were annexed to the SCN. It is submitted that the originals of the relied upon documents were not at all provided to us for inspection.*

20. *We further submit that after the receipt of the SCN dated July 21, 2017 issued under Section 11B of the SEBI Act we had sought for inspection of documents vide our letter dated December 20, 2017, April 03, 2019 and September 19, 2019, which have not been provided to us till date. We would like to reiterate that **ONLY** photocopies of the documents mentioned in the annexures were provided to us. We have not been provided with the original documents as specifically requested by us.*

21. *We would like to place reliance on the order passed by Hon'ble SC in the case of **T Takano vs Securities and Exchange Board of India & Anr. (Civil Appeal Nos. 487-488 of 2022),** wherein it was held as follows:*

"51 The conclusions are summarised below:

(i) The appellant has a right to disclosure of the material relevant to the proceedings initiated against him. deviation from the general rule of disclosure of relevant information was made in Natwar Singh (supra) based on the stage of the proceedings. It is sufficient to disclose the materials relied on if it is for the purpose of issuing a show cause notice for deciding whether to initiate an inquiry. However, all information that is relevant to the proceedings must be disclosed in adjudication proceedings;

……….

………..

53. The Board shall be duty-bound to provide copies of such parts of the report which concern the specific allegations which have been levelled against the appellant in the notice to show cause………..."

In view of the above, we submit that it has now been settled by Hon'ble SC, that the noticee is entitled to receive all documents relevant for proceedings and not only the documents provided in the SCN.

*22. We hereby submit that the photocopies of the said documents are secondary evidence under Section 63(2) and illustration (b) of The Indian Evidence Act, 1872 (hereinafter "**Evidence Act**"). Section 63 of the Act reads as under-*

*"63. **Secondary evidence**. — Secondary evidence means and includes —*
(1) certified copies given under the provisions hereinafter contained;
(2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;
(3) copies made from or compared with the original;
(4) counterparts of documents as against the parties who did not execute them;
(5) oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations-
(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.
(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.
(d) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original."

23. Further, the photocopies of the above documents fall under the definition of "Secondary Evidence", therefore their admissibility is governed by Section 65 of the Evidence Act. Section 65 reads as under–

***65. "Cases in which secondary evidence relating to documents may be given**.—*
Secondary evidence may be given of the existence, condition or contents of a document in the following cases: —
(a) when the original is shown or appears to be in the possession or power — of the person against whom the document is sought to be proved, of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;
(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;
(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;
(d) when the original is of such a nature as not to be easily movable;
(e) when the original is a public document within the meaning of section 74;
(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India to be given in evidence;
(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.
In case (b), the written admission is admissible. In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.
In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents."

We hereby submit that for the admissibility of secondary evidence, the above conditions must have been fulfilled. In the present case however, none of the conditions have been fulfilled. Therefore, the documents relied upon by SEBI does not have any evidentiary value against us.

24. It may also be pertinent to note that Section 104 of the Evidence Act deals with the burden of proof if secondary evidence is submitted. The Section clearly state that the burden of proof in relation to any evidence is upon the party who wishes to submit that evidence. The section reads as under –
***Burden of proving fact to be proved to make evidence admissible**.—*
the burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.
Illustrations –
(a) A wishes to prove a dying declaration by B. A must prove B's death.
(b) A wishes to prove, by secondary evidence, the contents of a lost document. A must prove that the document has been lost."

In the present case, SEBI has neither provided us with the original documents nor has been able to prove the originality of the photocopies. The burden of proof undeniably lies on SEBI, which has not been fulfilled by it, thereby making the allegations baseless and unfounded.

*25. In the case of **Rakesh Mohindra Vs. Anita Beri (2016) 16 SCC 48),** the above rule was reiterated and the court held the following-*
"13. As a general rule, documents are proved by leading primary evidence. Section 64 of the Evidence Act provides that documents must be proved by the primary evidence except in cases mention in Section 65 of the Evidence Act. In the absence of primary evidence, documents can be proved by secondary evidence as contemplated under Section 63 of the Act….."
"15. The pre-conditions for leading secondary evidence are that such original documents could not be produced by the party relied upon such documents in spite of best efforts, unable to produce the same which is beyond their control. The party sought to produce secondary evidence must establish for the non-production of primary evidence. Unless, it is established that the original documents is lost or destroyed or is being deliberately withheld by the party in respect of that document sought to be used, secondary evidence in respect of that document cannot accepted."

*26. The Hon'ble Supreme Court, in the case of **Smt. J. Yashoda vs. Smt. K. Shobha Rani, AIR 2007 SC 1721 (Civil Appeal 2060 of 2007)**, had made abundantly clear that in order to a secondary evidence to be admitted in court, the party presenting it has to prove the existence and execution of the original document. It was observed as under :-*
"Section 65 deals with the proof of the contents of the documents tendered in evidence. In order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document. Under Section 64, documents are to be provided by primary evidence. Section 65, however permits secondary evidence to be given of the existence, condition or contents of documents under the circumstances mentioned. The conditions laid down in the said Section must be fulfilled before

*secondary evidence can be admitted. Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or other of the cases provided for in this section" (**Emphasis Supplied**)*

27. *In the case of **Sri Ramdas Motor Transport Ltd. vs Karedla Suryanarayana (2002 110 CompCas 193 AP),** the Hon'ble High Court held that the respondents had relied on and produced only on xerox copies and the same were not admissible in court because the respondents could not prove the existence or the original documents. It has been held as under-*

"From the above whatever documents were relied on by the respondents they being only the xerox copies, they are not admissible in evidence. With the result, the respondents did not produce any evidence whatsoever either oral or documentary in support of their pleadings and at the same time the Board did not consider the oral/affidavits/documentary evidence filed by the petitioners.

Even assuming that counsel did not object to the procedure, the respondents having filed xerox copies are bound to prove the authenticity of the documents filed by them in a manner known to law. If such a course is not adopted by the respondents, the Board is expected to eschew the documents filed by the respondents. But the Board acting on such inadmissible evidence dismissed the application."

(Emphasis Supplied)

28. *The Hon'ble High Court of Karnataka in the case of **M/s Himatsingka Seide Ltd. And Ors. Vs. Sri Shambappa S/o Basappa (Criminal Petition No. 4175/2009),** had relied on the judgment in **J. Yashoda** (Supra at 9) and held that the unless and until proved to be an accurate copy of the original, a xerox or photocopy cannot by itself become secondary evidence-*

"In this case, the party has sought to produce Xerox or photocopy of the alleged M.O.U. The Xerox or photocopy by itself will not become secondary evidence, unless it is shown that, it is accurate copy of the original.

In the case of a Xerox or photocopy, section 63 of the Evidence Act requires that, the said copy must itself ensure that it is an accurate copy, such as competent authority certifying the copy as accurate copy of the original. Hence, the photocopy by itself may not be admissible, but if it is proved that it is made from original, it is admissible"

(Emphasis Supplied)

29. *The Hon'ble High Court of Madhya Pradesh, in the case of **Smt. Aneeta Rajpoot vs. Smt. Saraswati Gupta (W.P.No.11990/2012 decided on 16.08.2012),** discussed the scope of Section 65 of Evidence Act and held that A photocopy is not admissible as secondary evidence. It was held as follows-*

"So far as the applicability of Clause (2) of Section 63 Evidence Act placed reliance by the learned counsel for petitioner is concerned, according to me, it can be said that by some mechanical process a photocopy of original receipt was obtained, but, there cannot be any surety of its correctness and accuracy in absence of supporting material on record."

"Even if accurate photocopy is obtained by a mechanical process, it is a matter of common parlance that after inserting some words on a document which is already a photocopy and by interpolating the same, another photocopy of the said interpolated photocopy may be obtained and thus the accuracy of photocopy is always surrounded by dark clouds of doubt."

"According to me, not only the satisfaction of Clause (a) to Section 65 is required, but simultaneously it is also required that the photocopy was compared with the original in terms of section 63(3) of the Evidence Act."

30. *In **Sudhir Engg. v. Nitco Roadways Ltd.(1995 (34) DRJ 86)** Delhi High Court held that, the mere admission of a document in evidence does not amount to its proof. It was held*

that a document filed by a party goes through three stages before it is held proved or disproved: Firstly, the stage in which the document is filed in court, Secondly, the stage in which the party tenders or produces the document in evidence and the court admits the document; and Thirdly, the stage in which the court applies its judicial mind and the document is held proved, disproved and not proved.

31. *We hereby submit that SEBI has failed to prove the existence of the original documents on which it has relied upon. Therefore the evidentiary value of the photocopies of the documents which SEBI has relied upon is absent. The documents are thereby not admissible as evidence against us and thereby leave no ground for SEBI to continue the proceedings against us.*

32. *You are therefore requested to keep the proceedings in abeyance against us and provide us with the copies of the documents and inspection of the original documents, if SEBI wishes to rely on the same. We also submit that the xerox copies of the documents of the purported evidence, being documents that can be relied upon only in a situation when the supposed to be author of the documents are produced for examination/cross examination by the noticees.*

33. *In the view of the above, without providing the noticees with inspection of the original documents, SEBI should not proceed with the proceedings. The proceedings as well as the hearing may be adjourned till any date after 8 weeks of the date of providing the inspection of the original documents. We further reiterate that the inspection and provision of documents in our previous communications as well as this present reply is merely indicative, and we request your goodself to provide certified/ authenticated and legible copies of all or any material / documents relied upon by SEBI in the captioned matter and also may be allowed to inspect the originals of the same.*

PARAWISE REPLY TO THE ALLEGATIONS/ AVERMENTS/ FINDINGS/ ACCUSATIONS AS CONTAINED IN THE SAID NOTICE

34. *At the outset and without prejudice to anything stated hereinafter, we deny all the allegations and findings made against us in the said order except to the extent specifically admitted by us. Nothing contained in the said order may be deemed to be admitted by us by reason of non-traverse or otherwise, save and except what is expressly admitted herein. We deny all the statements, submissions, contentions, allegations and averments contained in the said notice that are contrary to and/or inconsistent with what is stated herein below.*

35. *With regard to Para 1 charges of violation of the provisions of Section 12A of the SEBI Act, 1992 and Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(f), (k) (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003,and Section 21 of SCRA read with Clauses 35 and 36(7) Listing agreement by Soma Textile & Industries Ltd. our reply is as under:*

Noticee no. 4 :

14. *With regard to charges of violation of the provisions of Section 12A of the SEBI Act, 1992 and Regulations 3(a), 3(b), 3(c), 3(d), 4(1) of PFUTP Regulations, my reply is as under:*

Section 12 A reads as follows:
Section 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 recognized 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 recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

36. *With regard to contravention of said Section 12A, it is submitted that we have maintained high standards of integrity, promptitude and fairness in the conduct of all our business. We have neither directly nor indirectly used or employed, 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 the SEBI Act, 1992 or the rules or the regulations made thereunder. It is further submitted that we have neither directly nor indirectly employed 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 recognized stock exchange. It is further submitted that we have neither directly or indirectly engaged in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of the SEBI Act, 1992 or the rules or the regulations made thereunder.*

37. *Regulations 3(a), 3(b), 3(c), 3(d) of PFUTP Regulations reads as follows:*

Reg.3. 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.

38. *With regard to contravention of said Regulations 3(a), 3(b), 3(c), 3(d) of the PFUTP Regulations, it is submitted that we have neither directly nor indirectly bought, sold or otherwise dealt in securities in a fraudulent manner. We have neither directly nor indirectly used or employed, 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. We have neither directly nor indirectly employed 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. We have neither directly nor indirectly engaged 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.*

39. *Regulations 4(1), 4(2)(f), (k) and (r) of PFUTP Regulations, reads as follows:*

Reg. 4(1) Without prejudice to the provisions of Regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

4(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 investors;

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

40. *With regard to contravention of said Regulations 4(1), 4(2)(f) (k), (r) of the PFUTP) Regulations, it is submitted that we have not indulged in a fraudulent or an unfair trade practice in securities. We have not published or caused to publish any information which was not true or which we did not believe to be true. We have not issued any advertisement that was misleading or that contained information in a distorted manner which could have influenced the investors. We have never planted false or misleading news which may induce sale or purchase of securities.*

41. *With regard to contravention Section 21 of SCRA read with Clauses 35 and 36(7) of Listing Agreement ,read as follows*

"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."
Clause 35 of the Listing Agreement reads as follows:
''The company agrees to file the following details with the Exchange on a quarterly basis, within 21 days from the end of each quarter, in the format specified -
I (a) statement showing shareholding pattern
II(a) statement showing details of depository receipts
Clause 36(7) of the Listing Agreement reads as follows:
" ... The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/ operations of the company as well as price sensitive information. The material events may be events such as:
(1) ....
(7) Any other information having bearing en the operation/performance of the company as well as price sensitive information which includes but not restncted to: ... ,
... The above information should be made public immediately."

42. *With regard to contravention Section 21 of SCRA read with Clauses 35 and 36(7) of Listing Agreement, we deny that:*
    i. *We have not complied with the conditions of the listing agreement with the stock exchanges where securities are listed.*
    ii. *We have not filed the details with Exchange on quarterly basis within 21 days from the end of each quarter about statement showing shareholding pattern and statement showing details of depository services.*
    iii. *We have not informed the Exchanges any other information having beraing on the operation/performance of the company as well as price sensitive information.*
43. *We have an impeccable track record as could be seen from the factual position stated herein. We are in the business since decades and there has not even been a single complaint against us in the past. Further till date there has been no action, by SEBI, against us save and except the present proceedings and action for some minor technical errors. We have maintained high standards of integrity, promptitude and fairness in the conduct of all our business.*
44. *It is submitted that to attract the above section and regulations, the following ingredients of law ought to be proved by the SEBI:-*
    (i) *a person should have directly or indirectly affected, taken part in, or entered into transactions in securities*
    (ii) *the transactions must be with an intention*
    (iii) *such transaction must be to artificially raise or depress the prices of securities*
    (iv) *the result of the action must be to induce the sales or purchase of securities by any person.*
    (v) *one should indulge in an act, that act must be calculated to create a false or misleading appearance of trading on the securities market.*
    (vi) *Mere planning is not adequate to attract regulation. Action is the triggering point. But that action should be a calculated one. It should be meant to misguide people.*
    (vii) *As the regulation requires the action to create a false or misleading appearance of trading on the market, it is clear that deliberate intention of the party is implicit. The reference is to positive act. Such positive action by a person cannot be unintentional.*
    (viii) *A person should indulge in any act which results in reflection of prices of securities based on transactions that are not genuine trade transactions.*
    (ix) *It is action based.*
    (x) *a person must enter into a purchase or sale of any securities*
    (xi) *Such purchase or sale must not be intended to effect the transfer of beneficial ownership*
    (xii) *The purchase or sale must be intended to operate only as a device to inflate, depress or cause fluctuations in the market price of securities.*
45. *In reference to the said SCN, we submit that the issue of GDR is a matter of record along with other details like name of the local custodian, lead managers, bank where GDR proceeds deposited & stock exchange where GDR listed on, therefore, we are not offering any comments on the same. It is categorically denied that Soma Textiles & Industries Ltd. has violated Section 12 A (a), (b) and (c) of SEBI*

Act, 1992 read with Regulation 3(a),(b),(c),(d) and Regulation 4(1),(2)(f),(k) and (r) of PFUTP Regulations and Section 21 of SCRA read with Clauses 35 and 36(7) of Listing Agreement.
Noticee no. 4:

15. *It may be noted that no specific allegation has been made against me in the SCN and neither my role has been specifically pointed out or explained in the SCN apart from the fact that I was part of the alleged board meeting wherein the GDR issue was approved and Mr. Sunil was appointed as a person to sign some agreement etc. Notwithstanding the same, I am hereby submitting the paragraph wise reply to the SCN.*
16. *At the outset and without prejudice to anything stated hereinafter, I deny all the allegations and findings made against me in the said Notice except to the extent specifically admitted by me. Nothing contained in the said Notice may be deemed to be admitted by me by reason of non-traverse or otherwise, save and except what is expressly admitted herein. I deny all the statements, submissions, contentions, allegations and averments contained in the said notice that are contrary to and/or inconsistent with what is stated herein below.*
17. *I categorically deny that I have violated Section 12A (a), (b) and (c) of SEBI Act, 1992 read with Regulation 3(a), (b) (c), (d) and Regulation 4(1) of PFUTP Regulations.*
18. *At the further outset, I repeat and reiterate that I am a professional belonging from the technical field of engineering, I neither have any knowledge or any experience in the field of finance or securities market. I was an Executive Director in Soma and was looking after the operations of the textile business and did not have a role to play in the process of the GDR issue. I also did not have any knowledge about the day to day process of the GDR issue. As a technical person having no background in Finance, I acted in a bona fide manner on the basis of general consensus of the board. I as an executive director did not have the reason to raise any doubt regarding the issue of the GDRs.*
19. *Adding to the above, I was under the rightful impression that the GDR issue was being supervised and overseen by reputed Lead Manager, i.e. PAAL in our case. Owing to the several factors stated above, I had no reason to have any doubt regarding the said GDR issue. I did not have the expertise or the knowledge required to pursue the matter, as the same related to core finance and I am a technical person from the field of engineering.*
20. *With regard to para 1 of the said SCN, I categorically deny that I have violated Section 12A (a), (b) and (c) of SEBI Act, 1992 read with Regulation 3(a), (b) (c), (d) and Regulation 4(1) of PFUTP Regulations.*

46. *With regard to Para 2 and Para 3 of the SCN, in so far as initiation of investigation is concerned, we deny that:*
    i. *GDRs were issued with the intention of defrauding Indian investors.*
    ii. *Shares underlying GDRs were issued without proper consideration.*
    iii. *Appropriate disclosures with respect to Listing Agreement were not made.*
47. *With to Para 4 to Para 9 of the said SCN, we submit that the same is matter of record, hence we do not offer any comments upon the same.*
48. *With regard to Para 10 to the said SCN, we submit that the same is a matter of record and hence we are not offering any comments upon the same. This establishes that Soma has informed BSE about GDR issue at each and every stage, and we deny that there has been any non-disclosure on our part. Further, no query was raised by any Stock Exchange or SEBI at that point in time and now to allege non-disclosure after inordinate delay of 12 years is in gross violation of principles of natural justice.*
49. *With regard to Price –Volume Data given at Para 11 and Para 12, it is observed that there is no variation in the price during the Investigation Period as compared to period prior to investigation and after investigation. Further, the average number of shares have increased after Investigation period.*
50. *With regard to Para 13, Para 21 and Para 22 of the SCN, in so far as the allegation that Noticee no. 1 passed a resolution authorizing Banco to use the GDR proceeds as security against loan, it is submitted as follows:-*
    i) *It was never the intention of the Board that the funds which are to be deposited to the GDR proceeds are given as security in connection with the loan to be given for the subscription of the GDR issue itself.*

ii) *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 "if and when so required". Nowhere in the resolution, has it been specifically stated that the proceeds are pledged on account of loan availed by Whiteview to subscribe to the GDR issue. 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 <u>with loans if any</u> as well as to enter into any Escrow Agreement or similar arrangements <u>if and when so required</u>". (Emphasis supplied)

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

iii) *Further admittedly the Board has authorized only one person Mr. Sunil Patel to carry out necessary formalities for which he relied upon the expertise and knowledge of the Lead Manager registered with UK Regulator.*

iv) *We submit that the SCN is misdirected towards the company and its other directors just for being part of the Board Meeting which appointed Mr. Sunil Patel as Authorized Signatory. Further, Mr. Sunil and other directors of the company were dependent upon the Lead Manager considering their experience.*

v) *The account charge agreement was signed between Soma and Banco which allegedly creates obligation on behalf of the company towards the bank under the loan agreement. However, the said conditions of the agreement will not get activated till the time subscription money is received in the account opened for GDR issue. The company would be able to provide security against the subscription proceeds only when subscription is received and not before that. Hence the allegation that we have authorized Banco Bank to use the GDR proceeds as security against loan is devoid of merit and is contrary to material on record.*

vi) *The company and/ or any other person cannot create security against assets which are not in existence. Hence, the agreement is void ab initio and SEBI's charge fails.*

vii) *In this regard, the Noticee would like to refer to and rely upon the following observations of the Hon'ble SAT passed in* ***Adi Cooper v. SEBI (Appeal no. 124 of 2019, decided on November 05, 2019)*** *which is directly pertaining to and* ***with regard to passing the Board Resolution****:*

"8. The finding of the WTM against the appellant Adi Cooper is wholly misconceived, farfetched and cannot be accepted to come to a conclusion that the said appellant was party to a resolution which had an intention to manipulate the market or defeat its mechanism. Admittedly, the appellant Adi Cooper was party to a resolution of the Board of Directors dated January 30, 2008 which only resolved the company to open an account with the EURAM bank for the purpose of deposit of the GDR proceeds. The resolution further authorized the bank to use the proceeds as security in connection with a loan. The resolution did not stipulate that the proceeds would be used as security in connection with a loan taken by another entity. The resolution could also mean that the proceeds would be utilized by the bank as security in connection with a loan taken by the company itself. Thus, from the resolution dated January 30, 2008 one cannot arrive at a conclusion that this was the first step or the starting point of a fraudulent arrangement through which the company could facilitate the financing of the GDR subscription by Vintage. It may be noted here that when the resolution of January 30, 2008 was passed Vintage was nowhere in the picture.

………………...

9. We further find that the resolution of January 30, 2008 authorizing the bank to utilize the proceeds as security in connection with a loan cannot be inferred as loan given to Vintage. Such presumption is farfetched and cannot hold that the appellant had intention to manipulate the market or play a fraud. Therefore, the finding of the WTM that the appellant had violated Section 12A of the SEBI Act read with Regulations 3 and 4 of the PFUTP Regulations is misconceived and not acceptable."

viii) *Pursuant to above, SEBI had filed an appeal before the Supreme Court [****SEBI v Adi Cooper (Civil Appeal No. 380 of 2020)]*** *against the Order passed by the Hon'ble SAT in the matter of Adi Cooper (supra). In the said order though the Supreme Court has allowed the said Appeal, however, the Hon'ble Apex Court has not delved into the opinion of the Hon'ble Tribunal so far as the interpretation of the Board Resolution is concerned. However, on the contrary the Apex Court has upheld the interpretation of the Board Resolution provided by the Hon'ble Tribunal. The*

Supreme Court instead of deliberating/commenting upon the interpretation of the Board Resolution by this bench of the Hon'ble Tribunal has held that aspect relating to disclosure of arrangement or the Resolution to the shareholders of the Company or the investors has not been reckoned by the Hon'ble Tribunal.

The Hon'ble Tribunal has observed that the Board Resolution authorizing the Bank to utilize the proceeds as security in connection with a loan cannot be inferred as loan given to Whiteview. Hence, any adverse view taken by SEBI at this stage would amount to judicial insubordination.

ix) Without prejudice, even if the company has secured the GDR proceeds, the conditions under the account charge agreement would trigger only after the GDR issue is subscribed. In view of the above, we vehemently deny that Soma authorized Banco Bank to use the GDR proceeds as security against loan.

In view of the above, we reiterate and deny that we have violated any of the provisions of SEBI Act, 1992 and PFUTP Regulations, 2003.

51. With regard to Para 14 of the SCN, we submit that the same is matter of record, hence we do not offer any comments upon the same.

Soma:

52. With regard to Para 15 of the SCN, in so far as the list of subscribers to GDR is concerned, it is submitted that the list of subscribers to GDR is concerned, it is submitted that the list of subscribers to the issue is true and correct to the best of our knowledge and nothing has been concealed or suppressed by us. The list of subscribers was provided to us by the Lead Manager PAAL and we relied upon them which has been the practice over the years. 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. The company relied upon the Merchant Banker, considering the cross border nature of transactions and registration of merchant banker with reputed foreign regulatory authority.

Noticee no. 4:

*21. With regard to Para 15 of the SCN, it is submitted that the list of subscribers was provided to Soma by the Lead Manager and the same was available with Soma. The information was furnished to SEBI in 2015 and I resigned from Soma on December 22, 2007. I, therefore, submit that I cannot be held responsible for furnishing wrong information to SEBI and deny everything contrary thereto. A copy of the Form 32 for Appointment and Resignation of Directors is hereby attached as **Exhibit 1** to the Reply.*

53. With regard to Para 16 of the SCN, it is submitted that Stock Exchanges had given approval for listing and the issue was fully subscribed and no objection was raised by any stock exchange.

54. With regard to Para 15 and Para 17 to 20 of the said SCN, in so far as list of subscribers is concerned it is submitted as follows: -

Soma:

i. It is reiterated that we were provided with a list of subscribers by our Merchant Banker PAAL and the same was forwarded to BSE after completion of the issue. We did not have any independent mechanism to verify the subscribers to the issue and we had to rely upon the details given by the Merchant Banker. <u>Further, as per the secrecy laws applicable in other jurisdictions, it was also not possible for us to verify the same.</u>

Noticee no. 4:

(i) No specific allegation of fraudulent and unfair trade practice has been levelled against me. Soma was provided with list of subscribers by the Merchant Banker PAAL and the same was forwarded to BSE after completion of the issue. I did not have any independent mechanism to verify the subscribers to the issue and I had to rely upon the details given by the Merchant Banker. Further, as per the secrecy laws applicable in other jurisdictions, it was also not possible for me to verify the same.

ii. Being a Securities Market Regulator in India and a member of IOSCO, SEBI would be very well aware of the system of owning shares in other jurisdictions. In other jurisdictions, the shares are held in the name of the Depository, as in the present case it was DBTCA, and the company is not aware of the ultimate beneficial owners. The said system is completely at contrast with what is being followed in India. This holds good for all the companies carrying out GDR issues and the *same can be observed in the shareholding pattern of all big companies also viz. Tatas, Reliance Industries Ltd. etc. Similarly, in our case the shareholding pattern being filed by us was showing the Depository as a shareholder and no objection of any sort was raised by SEBI and stock exchanges at that point in time.*

iii. *The Noticee submits that the Board of Directors have authorized Mr. Sunil with the task of carrying out the process of GDR issue and sign any agreement pursuant to GDR issue. Soma, its directors and Mr. Sunil were sensitive of the fact that this is a cross border financial transaction and therefore we appointed a Merchant Banker registered with a foreign regulatory authority viz. UK- FCA to carry out said transaction. An entity which is registered with a regulatory authority has to have in-depth knowledge of the legal issues and has to be aware of the intricacies and nuances of the process of transaction which they are carrying out. Needless to say that all these conditions need to be fulfilled for being registered with any regulatory authority and UK-FCA being one of the most reputed regulator in the world would have registered PAAL after having fulfilled the criteria for the same.*

iv. *We are also now shocked, surprised & disturbed on getting to know that GDR was subscribed by only one entity by the name of Whiteview and not by five entities as informed to us by PAAL. This establishes that PAAL has devised the scheme, artifice etc. of a farce GDR, we have been made the scapegoat and have been wrongly accused of a fraud which we have not committed. We are also very much disturbed with the fact that no further action has been taken/ initiated against PAAL except debarring them for a period of 10 years that too in Indian securities market although SEBI has got powers to levy financial penalty, disgorge the proceeds etc.. However, we are being subjected to multiple actions under Section 11 of SEBI Act and also under Adjudication for imposition of Monetary Penalty, as well.*

Hence, the SCN is totally flawed, misconceived and is untenable in fact and law.

Noticee no. 4:

I repeat and reiterate that I am a professional belonging from the technical field of engineering and neither had any knowledge nor any experience in the field of finance or securities market. I did not have a role to play in the process of the GDR issue, neither had I had any knowledge about the day to day process of the GDR issue. As a technical person having no background in Finance, I acted in a bona fide manner on basis of general consensus of the board.

55. *With regard to Para 20, Para 22 to Para 28 of the SCN, stating the Account charge Agreement dated October 18, 2006 signed between company and Banco; we submit as follows:-*

i) *That the same was signed in the routine course of business relying on PAAL, which was at that point in time well reputed lead manager globally, assuming that they would be well aware of the policies/ procedures in other jurisdictions.*

ii) *It is reiterated that the Board Resolution dated July 27, 2006 wherein SEBI has alleged that the GDR proceeds were used as security against the loan 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 Whiteview. 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 for which any charge is granted as well as to enter into any Escrow Agreement or similar arrangements <u>if and when so required</u>". (Emphasis supplied)

iii) *The Hon'ble SAT has also concluded the same vide its Order in the case of Adi Cooper which has been discussed in previous paragraphs.*

iv) *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.*

v) *To take this analogy further, if an entity wishes to acquire loan from a bank, it is very well known that the bank prescribes a specific format for completion of the paperwork and other formalities and the entity acquiring the loan acts as per the requirements of the bank. Likewise, Soma relied* *upon and acted as per the instructions and requirements of the Merchant Banker while dealing with various regulators*

Noticee no. 4:

(i) *I as a part of the Board of Directors 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.*

(ii) *To take this analogy further, if an entity wishes to acquire loan from a bank, it is very well known that the bank prescribes a specific format for completion of the paper work and other formalities and the entity acquiring the loan acts as per the requirements of the bank. Likewise, Soma relied upon and acted as per the instructions and requirements of PAAL while dealing with various regulators. Hence, no adverse inference ought to be drawn against me in this regard.*

(iii) *I repeat and reiterate that I am a professional belonging from the technical field of engineering and neither had any knowledge nor any experience in the field of finance or securities market. I did not have a role to play in the process of the GDR issue, neither had I had any knowledge about the day to day process of the GDR issue. As a technical person having no background in Finance, I acted in a bona fide manner on the basis of general consensus of the board.*

It is evident from the above that nowhere Soma has agreed to deposit an amount equivalent to GDR issue and its intention was not to give any security for the GDR issue, hence, the allegation is misplaced, flawed and misconceived. Further, Soma was not a signatory to the credit agreement entered into between Whiteview and Banco, hence, the allegation that I was aware of the loan agreement is baseless, flawed and misconceived.

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

56. *With regard to Para 28 of the SCN, in so far as the observation that Soma could withdraw an equivalent amount from the bank account with Banco only upon part payment of all or part of the amounts due under the Credit agreement, it is submitted as follows:-*

i) *STIL transferred the sums of money kept with Banco to our account in Dubai as and when we required it. Keeping the money idle at Dubai would not make business sense since we were earning interest on the amount kept with Banco.*

ii) *The said observation is only figment of imagination of the issuing authority since no evidence has been adduced either documentary or otherwise to support the observation.*

iii) *The issuing authority is trying to show close proximity between two independent events and holding us liable for violation, if any, carried out by others. There is no requirement to utilise the funds immediately after being deposited into the account.*

iv) *The proximity, if any, between the repayment of loan and transfer of GDR proceeds could be by chance and not by design. We utilized the GDR proceeds according to the prevailing market conditions and as per the company's requirement.*

v) *The credit agreement was signed by Mr. Sameul E. Hurley on behalf of Whiteview, as its Managing Director for subscription of GDRs of Soma.*

vi) *We submit that since we are not signatories to the agreement, hence we cannot be held liable for any averments /declaration /statements /conditions mentioned in the agreement.*

Noticee no. 4 :

22. *With regard to Para 29 to Para 32 of the SCN, in so far as allegation that I had acted as party to fraudulent scheme and had violated Section 12A(a), (b), (c) of the SEBI Act read with Regulations 3(a), (b), (c), (d), 4(1) of PFUTP Regulations, I submit as follows -*

i. *It is reiterated that the Board Resolution dated July 27, 2006 wherein SEBI has alleged that the GDR proceeds were used as security against the loan, only states that the proceeds so deposited in the bank account can be used as security if and when so required. Nowhere in the resolution it has been specifically stated that the proceeds are pledged on account of loan availed by Whiteview. 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 for which

any charge is granted as well as to enter into any Escrow Agreement or similar arrangements if and when so required". (Emphasis supplied)

ii. *The Hon'ble SAT has also concluded the same vide its Order in the case of Adi Cooper which has been discussed in previous paragraphs.*

iii. *I as a part of the Board of Directors 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.*

iv. *To take this analogy further, if an entity wishes to acquire loan from a bank, it is very well known that the bank prescribes a specific format for completion of the paper work and other formalities and the entity acquiring the loan acts as per the requirements of the bank. Likewise, Soma relied upon and acted as per the instructions and requirements of PAAL while dealing with various regulators. Hence, no adverse inference ought to be drawn against me in this regard.*

v. *I repeat and reiterate that I am a professional belonging from the technical field of engineering and neither had any knowledge nor any experience in the field of finance or securities market. I did not have a role to play in the process of the GDR issue, neither had I had any knowledge about the day to day process of the GDR issue. As a technical person having no background in Finance, I acted in a bona fide manner on the basis of general consensus of the board.*

Hence, no adverse inference ought to be drawn against me in this regard. In view of the same, I reiterate and deny that I have violated Section 12A(a), (b), (c) of the SEBI Act read with Regulations 3(a), (b), (c), (d), 4(1) of PFUTP Regulations, 2003.

57. *With regard to Para 29, Para 30 and Para 33 to Para 38 of the SCN,in so far as the allegation that the loan amount of US $ 15.67 million of Whiteview was repaid by Soma from its GDR Proceeds, we submit as under:*

i) *Soma issued GDR of 18.5 million amounting to USD 17.2975 million. The subscription amount was received in our account with Banco Efisa Bank and subsequently transferred to our bank account opened in Dubai to be utilised as per objects of the issue.*

ii) *As alleged, the amount of USD 15,676,500 was adjusted vide our letter dated January 23, 2007 by the bank. The said letter was signed by Mr Sunil Patel in good faith on the basis of trust reposed in PAAL. He only informed us after couple of days about the said letter and immediately taking note of the same, we got in touch with Whiteview.*

iii) *We expressed the grave prejudice that the said act of Whiteview has caused to us and also impressed upon them the immediate & urgent need to return the funds.*

iv) *Thereafter, we vigorously pursued with White View to repay the amount of USD 15,676,500 <u>along with interest</u> of USD 442,704 and the company successfully recovered the the amount in tranches. The said amount was returned by Whiteview on multiple dates spread over the period from 26.2.2007 to 8.3.2008 . Factum of receipt of said alleged loan default amount of 15.6700 USD is also borne out by Company's bank statement (bearing A/c No 628288515001 with Banco Efisa Bank). A copy of the bank account statement of bank account No. 628288515001 of Soma with Banco is annexed hereto as **Exhibit 1.***

v) *It may be noted that the amounts lying in the bank account (bearing A/c No 628288515001 with Banco) have been utilized by the Company by inter alia transferring the funds to its subsidiary company viz. Soma Textiles FZE (based out of Ajman/ Sharjah), which is engaged in the business of Textile and other trading. Soma Textiles FZE had utilized the amounts received from the Company inter alia for the purposes of textile and other trading etc. Factum of transfer of amounts by the Company to its subsidiary is also borne out by the bank account statement of the Company(bearing A/c No 628288515001 with Banco Efisa Bank, Portugal) and the bank statement of Soma Textiles FZE (bearing A/c No 0448645328 & A/c No 0448645288 with Mashreq Bank Dubai). A copy of the statement of the Bank bearing Bank A/c no. 0448645328 & A/c No 0448645288 is annexed hereto at **Exhibit 2**.*

vi) *Since the bank statements involving receipt of funds by the Company and the onward transfers made by the Company to its subsidiary , are in foreign language, the Company had engaged the services of M/s Silver Oak , Auditing and Accounting Firm based out of Dubai-UAE ,to provide* *the English translation of the bank statements and to certify the receipt of funds by the Company and onward transfer to Soma Textiles FZE. Accordingly, M/s Silver Oak have vide their letter November 19, 2019 ,inter alia, certified, based on the examination of the bank statements, that the Company has received back amount of 15,676,500 USD alongwith interest of 442,704 USD from Whiteview and that the Company had transferred the amounts received from Whiteview to Soma Textiles FZE. Copy of the letter dated November 19, 2019 issued by M/s Silver Oak is annexed hereto at* ***Exhibit 3****. It is also submitted that the said interest has been accounted for in two Financial years viz. 2006-07 & 2007-08 on accrual basis.*

vii) Additionally, it may be noted that the amounts arising from GDR issue , which were transferred by the Company to its subsidiary viz. Soma Textiles FZE, were given for the purposes of its business, including for textile trading etc.. Over a period of time , Soma Textiles FZE has returned an amount of USD 87,98,860.84 to the Company on multiple dates as follows:

Inward Remittance Certificate No.	Date	Inward Remittance (USD)	BANK NAME	AMOUNT IN INR
551997	27/12/2007	999957	HDFC BANK A/C NO 00012210000463	39268311.39
393SXr4599208	21/02/2008	499965	ICICI BANK A/C NO 000405018348	19831112.00
393SX5563008	04/03/2008	499965	ICICI BANK A/C NO 000405018348	20093593.00
1609161049900988	19/09/2016	50000	HDFC BANK A/C NO 00012210000463	3307000.00
0111161049901898	02/11/2016	136017	----- do ---------	9019287.27
0411161049900045	04/11/2016	91592	----- do ---------	6069801.84
1105171049900081	12/05/2017	265127	----- do ---------	16994628.52
2006171049900119	20/06/2017	261118	----- do ---------	16784690.75
0607171049905295	07/07/2017	615565	----- do ---------	39722409.45
2007171049900017	20/07/2017	404665	----- do ---------	25963306.40
8108171049900035	31/08/2017	156645	----- do ---------	10009615.50
3110171049900080	30/10/2017	91365	----- do ---------	5904006.30
0802191049900186	08/02/2019	66957	----- do ---------	4763990.55
1804191049904618	18/04/2019	4970	----- do ---------	344172.50
0108191049900306	02/08/2019	39960	----- do ---------	2749647.60
0908191049900228	09/08/2019	49960	----- do ---------	3516684.40
2808191049900318	28/08/2019	49960	----- do ---------	3571140.80
1109191049901909	11/09/2019	49995	----- do ---------	3581641.80
1010191049900214	10/10/2019	49960	----- do ---------	3538167.20
0901201049902594	09/01/2020	49960	----- do ---------	3562148.00
0602201049900203	06/02/2020	15360	----- do ---------	1091788.80
041120I049900118	04/11/2020	124957.00	----- do ---------	9306797.36
291020I049900610	04/11/2020	32860.00	----- do ---------	2419153.20
101120I049900152	10/11/2020	124965.00	----- do ---------	9228665.25
101120I049900153	10/11/2020	124965.00	----- do ---------	9228665.25
131120I049903342	13/11/2020	400965.00	----- do ---------	29771651.25
181120I049903825	18/11/2020	399965.00	----- do ---------	29657404.75
181220I049900120	21/11/2020	149965.00	----- do ---------	10999932.75
291220I049900250	30/12/2020	151965.00	----- do ---------	11090405.70
200121I049900114	20/01/2021	324965.00	----- do ---------	23702947.10

200221I049902288	*23/02/2021*	*274965.00*	*----- do ---------*	*19896467.40*
260221I049905817	*26/02/2021*	*279965.00*	*----- do ---------*	*20381452.00*
260221I049905815	*26/02/2021*	*299965.00*	*----- do ---------*	*21837452.00*
040321I049900030	*05/03/2021*	*406965.00*	*----- do ---------*	*29496823.20*
051021I049904426	*05/10/2021*	*56983.60*	*----- do ---------*	*4233881.48*
181021I049900067	*18/10/2021*	*140492.00*	*----- do ---------*	*10560783.64*
281021I049904372	*27/10/2021*	*139992.00*	*----- do ---------*	*10446203.04*
011221I049906225	*03/12/2021*	*144992.00*	*----- do ---------*	*10846851.52*
291221I049904308	*29/12/2021*	*149992.00*	*----- do ---------*	*11198402.72*
2701221049910126	*28/01/2022*	*164983.60*	*----- do ---------*	*12373769.18*
230222I049918383	*23/02/2022*	*129963.44*	*----- do ---------*	*9664081.04*
090322I049904007	*10/03/2022*	*164983.60*	*----- do ---------*	*12647642.78*
110522I049905345	*12/05/2022*	*159983.60*	*----- do ---------*	*12329936.05*
Total		***87,98,860.84***		***561006513.09***

Factum of receipt of said amount of USD 87,98,860.84 by the Company form Soma Textiles FZE, is borne out by the Foreign Inward Remittance Certificates received from the respective bank as stated in the above table. Foreign Inward Remittance Certificates state that the equivalent Indian rupees credited to the current account no 00012210000463 maintained by the Company in HDFC Bank and current account no 000405018348 maintained by the Company in ICICI Bank. Compilation of Inward Remittance Certificates is annexed hereto at ***Exhibit 4.***

viii) *From the aforesaid sequence of events , it is amply clear that there was no loan default as alleged . The penalty proposed to be levied vide the said SCN is premised on the erroneous basis that there was loan default. The said premise, as demonstrated aforesaid, is contrary to factual position on record. From the SCN, it appears that the Investigation department has not examined the events which transpired post 24.1.2007 (i.e. date of letter at Annexure-9 to SCN), otherwise no such SCN would have been issued.*

ix) *Since there was no loan default as erroneously alleged in the SCN, as all the funds 15,676,500 USD alongwith interest of 442,707 USD have been recovered by the Company from Whiteview, during 26.2.2007 to 8.3.2008, one of basis for imposing penalty as contemplated vide SCN does not survive. Under the circu mstances, it is prayed that the SCN be withdrawn and the proceedings be dropped.*

The Ld. WTM has accepted the contention raised by Soma during the course of proceedings under Section 11 and has not given directions to bring back funds. In view of the same, no penalty ought to be levied upon us.

58. *With regard to allegations at Para 31 of the SCN, we deny :*

i. *That the GDR issue would not have been subscribed had the company not given any such security towards the loan taken by the Whiteview.*

ii. *That the arrangement of credit agreement and account charge agreement resulted in subscription of GDR issue of the company and the aforesaid arrangement was not disclosed and also reported misleading news to the stock exchange which contained information in a distorted manner and may influence the decision of investors.*

iii. *That we have violated provisions of Sections 12A (a), (b), (c) of the Act read with regulations 3(a), (b), (c), (d), 4(1), 4(2) (f), (k), (r) of PFUTP Regulations*

59. *With regard to the other transactions in Bank accounts at Para 38 of the SCN, it is submitted that the funds have been transferred to Soma Textiles FZE in Dubai and/or brought into India the same funds were used for business purpose.*

60. *With regard to Para 39 of the SCN, we submit that it is a matter of record, hence, we do not offer any comments upon the same.*

Soma:

61. With regard to Para 40,wherein it has been alleged that the GDR proceeds was transferred by Soma to Whiteview towards loan repayment of Whiteview, we deny that:

i. Whiteview was not the sole subscriber to the GDR proceeds

ii. Soma acted as party to the fraudulent scheme of issuance of GDRs.

Noticee no. 4:

23. With regard to further allegation at Para 40 of the SCN, in so far as information regarding subscribers to GDR provided by Soma to SEBI is concerned, I submit that the said details have been provided by Soma to SEBI vide its letter dated June 26, 2015 and I resigned from Soma way back in December 2007. Hence, I am not concerned with that. Without prejudice, it is submitted that the list of subscribers to the issue was provided by PAAL at that point in time and I relied upon them which has been the practice over the years. The Company 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 me to verify the same. The Company relied upon the Merchant Banker, considering the cross border nature of transactions and registration of Merchant Banker with reputed foreign regulatory authority. I repeat and reiterate that I am an engineering professional and not very well versed with financial/ secretarial matters. I neither have any knowledge or any experience in the field of finance or securities market. I did not have a role to play in the process of the GDR issue, neither had I any knowledge about the day to day process of the GDR issue. As a technical person having no background in Finance, I acted in a bonafide manner. I, as an Executive Director having technical background and looking after operations of textile business, did not have the reason to raise any doubt regarding the issue of the GDRs.

62. With regard to Para 41 to Para 46, in so far as the allegation that Soma has not complied with Clause 36(7) of Listing Agreement and therefore, violated Section 21 of SCRA, we submit as follows:

a) Clause 36(7) of the Listing Agreement stipulates as under:-

"Any other information having bearing on the operation /performance of the company as well as price sensitive information, which includes but not restricted to;

i) Issue of any class of securities.

ii) Acquisition, merger, de-merger, amalgamation, restructuring, scheme of arrangement, spin off or selling divisions of the company, etc.

iii) Change in market lot of the company's shares, sub-division of equity shares of company.

iv) Voluntary delisting by the company from the stock exchange(s).

v) Forfeiture of shares.

vi) Any action, which will result in alteration in, the terms regarding redemption/cancellation/retirement in whole or in part of any securities issued by the company.

vii) Information regarding opening, closing of status of ADR, GDR, or any other class of securities to be issued abroad.

viii) Cancellation of dividend/rights/bonus, etc.

The above information should be made public immediately".

b) It has been rightly pointed out in the SCN that we have disclosed all events related to GDR issue of Soma to Stock Exchange and no queries were raised by BSE/SEBI. Therefore, we submit that there is no non-disclosure on our part and we deny that we have violated Clause 36(7) read with Section 21 of SCRA.

c) As is observed from the above, non-disclosure of account charge agreement has not been categorized as a material event, hence, no disclosure was made. In view of above, we deny that we have violated section 21 of SCRA, 1956 read with clause 36(7) of the listing agreement.

d) That the same was signed in the routine course of business relying on PAAL, which was at that point in time well reputed lead manager globally, assuming that they would be well aware of the policies/ procedures in other jurisdictions.

e) It is reiterated that the Board Resolution dated July 27, 2006 wherein SEBI has alleged that the GDR proceeds were used as security against the loan 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 Whiteview.*

63. *With regard to Para 41 to Para 46 of the SCN, in so far as the allegation that Soma has not informed the Stock Exchange about the change in intended use of GDR proceeds, we submit as follows:*

a. *Disclosure regarding change in use of GDR proceeds was incorporated in offering memorandum by adding erratum to offering memorandum, wherein it was stated as follows:*
"The "use of Proceeds", contained on Pages 14 & 37 in the Offering Memorandum dated October 16, 2006 shall deemed to be deleted and replaced by the following:
"The aggregate net proceeds received from this Offering, USD$17.259 million, shall be used for: Spinning Plant for denim in Ahmedabad, garment manufacture through its subsidiary in India, establishing subsidiary in Dubai, investing GDR proceeds for overseas acquisition/investments and/or to buy cotton (which is the basic raw material), contingency provision, US$0.51 million is considered as GDR issue Expenses."
The issuer accepts responsibility for the information contained in this Erratum."
A copy of the relevant page of the offering memorandum is annexed as ***Exhibit 5.***

b. *During the course of investigation, after realizing that the said disclosure was not made to Stock Exchanges, we have ratified the intended change in use of GDR from Shareholders through Special Resolution passed through Postal ballot, the result of which was announced on June 12, 2017. We submit that the shareholders were pleased to ratify and confirm variation/ alteration/ amendment/ substitution as was felt necessary or expedient in the original terms and conditions. A copy of the extract of minutes of announcement of result of the postal ballot is annexed as* ***Exhibit 6.***

In view of the above we deny that there was non-disclosure with regard to change in use of GDR proceeds and further deny that we have violated Section 21 of SCRA and Clause 36(7) of Listing Agreement.

Noticee no.4:

24. *With regard to Para 41 to Para 46 and Para 62 of the SCN, I submit that no allegations has been made against me, therefore, I am not offering any comments.*

64. *With regard to Para 47 to Para 61 of the SCN, the same relates to the other entities to the GDR issue. Hence, we do not offer any comments upon the same.*

65. *We submit that no action has been taken against PAAL, Mr. Arun Panchariya and other entities involved in the GDR issue which is against principles of equity and good conscience and also against established legal jurisprudence as detailed in subsequent paragraph. In view of the same no action ought to lie against us.*

66. *We submit that our case is completely covered in the following judgements passed by the Hon'ble Tribunal and Ld. Adjudicating Officers: -*

a. ***HB Stockholdings Limited vs. SEBI (Appeal No. 114 of 2012)*** *– The Hon'ble Tribunal had in this matter held as follows –*
"It is actionable only if it is illegitimate and is the outcome of a mischievous meeting of minds among certain parties. For this purpose, the counter party, namely, Gloria Investment Limited has already been exonerated by the Respondent. Moreover, no cogent and convincing reasons are forthcoming from a reading of the SCN or the impugned order to sustain such a charge of synchronization or creation of artificial volumes against the Appellants. ………"

b. ***Jayeshkumar Narottamdas Gandhi & Ors. v. Securities & Exchange Board of India (Appeal No. 225 of 2019 along with Appeal No. 503 of 2019 and Appeal No. 347 of 2019)****, the Hon'ble Tribunal held as under: -*
"In the instant case, we find that the investigation report itself indicates that there is no connection between the appellants, with the buyer, promoter or with the company. In the absence of any connection between the seller and the buyer, the appellants could not be charged with manipulating the scrips nor the trading pattern of the appellants could infer manipulating the price of the scrip. <u>Further, unless the buyer is charged with violation of PFUTP Regulations, the seller alone cannot be charged of collusion in manipulation of the price of scrip</u>." (emphasis supplied)

c. *The Hon'ble Tribunal has in the matter of* ***Rajesh Jivan Patel vs SEBI (Appeal No. 222 of 2020)****, held as follows: -*

"19. In the light of the decision in the case of M/s. Nishith M. Shah HUF (supra), we are of the opinion that in the absence of any connection between the appellant and other sellers and in the absence of any connection being found between the appellant with that of the buyer, the charge of collusion, manipulation or fraudulent transaction cannot be proved. It is reiterated that connection between buyer and seller is sine qua non for levy of charge of price manipulation which in the instant case is lacking especially when a specific finding has been given by the WTM that the main charge of connection with the company throug Mr. Shailesh Parab and M/s. Mittal Share Brokers Private Limited did not exist. Thus, there cannot be any manipulation nor can the charge be levied solely against the appellant as a seller."

d. ***Manish Suresh Joshi Versus SEBI (SAT Order dated 13.01.2020, Appeal No. 2 of 2020)*** –
In the aforesaid case the Hon'ble SAT has recorded in para 6 that "……. We are of the view that in view of exoneration of Ganatra of the charge of violation of PFUTP Regulations, the connection with the PPG Entities gets broken. Once the link in the chain is broken, there was no other connection between the appellant with that of the PPG Entities. The only link through which the appellant was found guilty was that the appellant was connected with Ganatra who, in turn, was connected with the 28 entities of PP Group. Once the Ganatra link is broken, there was no evidence to show that the appellant was in any way connected directly or indirectly with the PPG Entities ……."

The Hon'ble SAT has observed in para 7 that "……. In the light of the aforesaid, the charge of connivance of the appellant with the counter party, namely, PPG Entities cannot be proved. The principals involved in the Ajmera case cannot be made applicable to the facts and circumstances of the present case……."

e. *In the matter of* ***Narendra Ganatra v/s SEBI (Appeal No 47 of 2011 decided on 29.07.2011)****, Hon'ble Securities Appellate Tribunal observed as under:*

"…We should not lose sight of the fact that the charge against the appellant is of conniving with the group entities in creating false and misleading appearance of trading in the market and artificially raising the price of the scrip and for such a serious charge, higher degree of probability is required. Such a charge cannot stand on surmises and conjectures…"

f. *Adjudication Order in respect of* ***Mukut Behari Agarwal and others in the matter of Pincon Lifestyle Ltd. [Order No. Order/MC/VS/2020-21/11154-11162 dated March 26, 2021]****. The Adjudicating Officer held that since there was no connection between the buyer and the seller, the charge of price manipulation cannot be saddled on to the parties. The relevant paragraph is reproduced hereunder:-*

" 10. It was observed that 19 entities out of the aforesaid 20 preferential allottees had transferred Pincon shares to 912 entities in off-market through physical and/or demat mode. Out of the aforesaid 912 entities, 304 entities were observed to have sold the shares on BSE in the scrip of Pincon during the investigation period.

11. Further, 28 buyers in the scrip during the investigation period were observed to be connected to the preferential allottees and the company. It was also observed that a director of Pincon had traded in the scrip during the investigation period.

12. The aforesaid 356 (304 plus 20 plus 2 plus 1 plus 28 plus 1) entities are referred to as "group entities"…………………..

………………

53. ………………In terms of observations made by the Hon'ble Tribunal in its order dated 13-01-2020 in the matter of ***Manish Suresh Joshi vs. SEBI (Appeal No. 2 of 2020)****, <u>the connivance with a counterparty cannot be established once the link in the chain connecting it to the counterparty has been broken.</u>*

54. In view of the above, I find that the allegation that Noticees 1-9 violated Section 12A (a), (b) and (c), and Regulations 3(a), (b), (c) and (d), and 4 (1) and 2 (a) and (e) of the PFUTP Regulations by creating misleading appearance of trading and causing price fall in the scrip in a manipulative manner, is not established." (Emphasis Supplied)

Following similar orders were passed by the Ld. Adjudicating Officer in the same scrip exonerating the parties:-

i. Archana Bansal and 11 others in the matter of Pincon Lifestyle Ltd. [Order No. Order/MC/VS/2020-21/10256-10267 dated January 29, 2021].

ii. Mausumi Pyne in the matter of Pincon Lifestyle Ltd. [Order No. Order/MC/VS/2020-21/10189 dated January 28, 2021].

67. With regard to Para 62 of the SCN, we submit that Soma has admittedly informed BSE about GDR issue at each and every stage, and we deny that there has been any non-disclosure on our part. Further, no query was raised by any Stock Exchange or SEBI at that point in time and now to allege non-disclosure after inordinate delay of 12 years is in gross violation of principles of natural justice, equity and fair play

Noticee no.4:

68. With regard to further allegation at Para 47 to Para 61 of the SCN I submit that the same contains about details of shares converted into GDRs and its sale in the Indian market with which I am not concerned, therefore, I am not offering any comments on the same

69. In reference to the allegations at Para 63 to Para 69 said SCN, it is submitted as follows –

i) That the issue of GDRs is a matter of record and we offer no comments on the same. As regards the finding relating to the subscriber being only one entity, i.e. Whiteview, it is submitted that the information was provided to us by our Lead Manager i.e. PAAL and we had no role in the same. The elaborate submissions are already made by us in the preceding paragraphs.

ii) We deny that the subscription to GDRs issue was obtained through the fraudulent agreement and further deny that the same was not disclosed to the Stock Exchanges.

iii) We deny that the GDR issue would not have been subscribed had Soma not given the security towards the said loan.

iv) It is hereby submitted and reiterated that the disclosure which ought to have been filed with the Stock Exchange were given by Soma and we deny that there was any non-disclosure on our part.

v) We deny that the account charge agreement acted as security in connection with the loan availed by Whiteview.

vi) We have submitted evidentiary proofs like CA Certificate and bank account statements proving that the money was brought back to the Bank account of Soma and utilized for the purposes as given in the objects of the issue. The same have been enclosed with this reply as Exhibits. The elaborate submissions are already made by us in the previous paragraphs.

vii) We deny to have violated the provisions of Section 12A (a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4(1), 4(2) (f), (k) and (r) of SEBI (Prohibition of Fraudulent & Unfair trade Practices Relating to Securities market) Regulations, 2003 and Clauses 35 and 36(7) of the Listing Agreement.

Noticee no. 4:

25. With regard to Para 63 to Para 68 of the SCN, in view of the aforesaid submissions, I deny that:

i. The arrangement of credit agreement and account charge agreement rsulted in subscription of GDR issue of the company was not disclosed and also reported misleading news to stock exchange which contained information in a distorted manner.

ii. Whiteview was the sole subscriber to the GDR issue.

iii. The loan amount of US $ 15.67 million of Whiteview was repaid by Soma from its GDR proceeds.

iv. GDRs in turn the underlying equity shares to the extent to US $ 15.67 million were acquired by Whiteview without proper consideration.

v. The scheme of GDR issue was fraudulent.

vi. The resolution passed in Board Meeting had authorized Banco to use funds as a security in connection with loan.

vii. I was the party to the fraudulent scheme.

In view of the foregoing submissions, I deny that I have violated Section 12A (a), (b) & (c) of SEBI Act; Regulation 3(a) to (d) and Regulation 4 (1) of PFUTP Regulations to warrant issuance of any direction.

26. In the facts and circumstances of the case, any action on me would be unjustified and unwarranted. In view of the foregoing submissions, it is most respectfully and humbly submitted that the allegations in the Notice be dropped

SUBMISSIONS REGARDING THE ROLE OF THE LEAD MANAGER - PAAL

70. We submit that in case any entity wants to make an initial public offering in the market, the Merchant Banker has a specific format for completion of the paperwork, documentation as per SEBI regulations. The Merchant Banker provides the format of the Board resolution and further formalities for completion of the documentation as required under the checklist. We submit that an entity has to follow the same since the Merchant Banker is registered with SEBI and takes full responsibility for any non-disclosure or wrong disclosure in the offer document. Same has been the case in case of GDR issue also and Mr. Sunil Patel relied upon the expertise of Lead Manager, registered with overseas regulators.

Noticee no. 4:

27. In this connection, I wish to rely upon the orders passed by Hon'ble SAT and SEBI itself wherein onerous responsibility has been cast upon the Merchant Bankers and Hon'ble SAT has held that in case of any irregularity, SEBI should first call the Merchant Bankers since they are the professionals in this field and also registered with the Board. In the instant case, the said Merchant Banker PAAL is registered with overseas regulatory body. The following are the judgements:-

a) In the case of ***DLF Limited & Ors. Vs SEBI (Appeal No. 331 of 2014, decided on 13.03.2015)****, the Hon'ble SAT held that:-*

"……………………...

……………………...

48. The present case is not one where the Statutory Auditors or Merchant Bankers, on whose shoulders lie the primary responsibility of making true and adequate disclosures, are sought to be proceeded against by the Respondent. The Appellant was bound by law to engage/hire their professional services for drafting and presenting the Offer Documents to Sebi for finalisation before the IPO could be actually opened up for public subscription after registering the same with the ROC. This is how the shares are finally listed on Stock Exchanges. In fact, Merchant Bankers and Auditors are mandatorily required to be engaged by a company to prepare and present Offer Documents to Sebi. They discharge their respective functions in bringing out an IPO on behalf of a company under the parameters statutorily prescribed by the Respondent itself and in case of default, they are amenable to the jurisdiction of Sebi for action since the primary responsibility for true and adequate disclosure lies with them. In fact, Merchant Bankers are responsible for laying down the foundation of an IPO as per the DIP Guidelines, 2000. An IPO can be filed only through a Merchant Banker on whom an onus is cast to independently assess the capability of other intermediaries prior to recommending them to the Issuer company.

49. It has been held by this Tribunal in the case of ***HSBC Securities (India) Pvt. Ltd. Vs. SEBI [Appeal No. 99/2007]*** *by its order dated 20th February, 2008 that it is the fundamental responsibility of the Merchant Bankers or a Lead Manager appointed from amongst the Merchant Bankers to ensure the truthfulness and adequacy of disclosures contained in the Offer Document. This onerous duty is cast upon the Merchant Bankers and becomes important for the protection of investors' interest by due disclosure by an Issuer Company because Sebi itself seeks to distance itself from the correctness of the disclosures in an IPO and perhaps rightly so. Therefore, in today's disclosure regime, the role of Merchant Bankers has become crucial. Merchant Bankers are also required to certify to the effect that disclosures in the Offer Documents are true, fair and adequate to enable the prospective investors to make an informed investment decision. The Merchant Bankers are registered under the regulations framed by Sebi in exercise of powers conferred upon it by Section 30 of the Sebi Act, 1992, with the previous approval of the*

Government. A Merchant Banker is, thus, a person who is directly concerned with the management of the IPO by acting as a Manager/Consultant/Advisor to the Issuer Company. It renders corporate advice before and after the issuance of the IPO. The Merchant Bankers are, thus, loaded with the obligation of ensuring compliance with the statutory requirement regarding disclosure because of their expertise in the securities market. They are expected to know the statutory requirements to be complied with in the matters relating to public issue of shares, etc. Therefore, to our minds, their certification as to the true nature of the disclosures and their fairness and adequacy cannot normally be undermined and bypassed even by the Sebi unless there are strong reasons for doing so. Such reasons should emanate from the manifest exhibition of the incorrectness of the findings of the Accountants and Merchant Bankers, which can be done only by investigating the conclusions arrived at by these entities and the procedures undertaken by them in arriving at such conclusions. Records clearly reveal that the Appellant had engaged the professional and specialized services of 8 to 10 Merchant Bankers and Auditors of national and international repute to advice, draft and float the Offer Documents. None of them has been proceeded against by the Respondent. Auditors can be said to be akin to gatekeepers. If the conclusions reached by them are liable to be ignored in such a callous manner, without at first finding any fault with the Auditors'/ Merchant Bankers' conduct, one wonders whether any purpose is served by having the Offer Documents audited to begin with.

50. The Respondent, if convinced that the information in the second DRHP was, in any manner, inadequate or untrue, in all fairness should have called upon the Merchant Bankers to incorporate additional facts about the three companies in question, in the second DRHP dated 2nd January, 2007, when it directed them vide letter dated 7th May, 2007, to include several other facts in the Offer Document. The Respondent failed to do the needful at that stage even after brooding over the second DRHP from 2nd January, 2007 to 7th May, 2007. The Respondent could have, at the threshold, issued show cause notices to the Merchant Bankers, etc., as well, so as to hold a comprehensive enquiry. This has not been done for years together and there is no explanation from the Respondent for this indifferent attitude and inaction. It appears from the records that the Respondent did seek some clarification/explanation, etc. from the Merchant Bankers before issuing the show cause notice to the Appellant. The Merchant Bankers of the Appellant had duly certified the accuracy of the disclosures in the Offer Documents, confirming firstly, that the offer document forwarded to SEBI was in conformity with the documents, materials and papers relevant to the Issue; secondly, that all the legal requirements connected with the said Issue as also the guidelines, instructions, etc. issued by SEBI, the government or any other competent authority in this behalf, were duly complied with; and thirdly, that the disclosures made in the DRHP were true, fair and adequate to enable the investors to make a well informed decision as to the investment in the proposed Issue. A copy of the correspondence, despite repeated requests by the Appellant, was not provided to the Appellant so as to enable it to effectively defend its case. This correspondence, undoubtedly, pertained to the Appellant's case and, as such, supplying copies of relevant correspondence or part thereof, would have added a certain degree of credibility and transparency to the matter, particularly when quite a long time had already elapsed between the date of filing of the second DRHP, i.e., 2nd January, 2007 and issuance of the SCN by the Respondent on 25th June, 2013".

*71. In this connection, we would like to draw your kind attention to the order No. WTM/GM/EFD/99/2018-19 dated March 12, 2019 passed by Ld. Whole Time Member of SEBI in the matter of Ravi Kumar Distilleries Ltd. (hereinafter referred to as **'RKDL'**) wherein he has accepted the contention of RKDL that they were not aware of the procedures and intricacies involved in an IPO and that the BRLM, taking advantage of their naivety, had misappropriated the proceeds of the IPO. At Para 69 of the order, it has been observed by Ld. WTM that "the main plea of RKDL and Ravi Kumar is that they were not aware of the procedures and intricacies involved in an IPO and that the BRLM, taking advantage of their naivety, had misappropriated the proceeds of the IPO. It is their case that Mr. Ravikumar was induced by Mr. Anil*

Agrawal to part with several blank signed papers and cheques of a newly opened bank account of RKDL and that it was these blank signed papers and cheques which Mr. Anil Agrawal has used to defraud the company and its promoters". Considering the above contention, the promoters of RKDL have been given less punishment vis-à-vis directors/ key managerial personnel of merchant bankers.

72. We are of the view that facts of our case are similar to the aforesaid order passed by Ld. WTM of SEBI and similarly no adverse direction ought to be issued against us.

Noticee no. 4:

28. Surprisingly, no action has been taken/ initiated and/ or proposed to be taken against PAAL in the present proceedings of Soma although it is the main perpetrator of the fraud in itself is gross violation of principles of natural justice, equity and fair play.

*73. **<u>LEGAL SUBMISSIONS :</u>***

Soma:

In addition the aforesaid judgments relied upon by us, we would like to draw your attention to observations made by various Hon'ble Courts over a period of time:

Noticee no. 4:

In the furtherance of my above contentions and in addition the aforesaid judgments relied upon by me, I would also humbly submit the following judgements and order passed by Hon'ble Supreme Court/ Hon'ble Securities Appellate Tribunal and wish to rely upon the same:

*a. **As regards Role of Directors***

i. *In the case of **Pritha Baig v SEBI (Appeal No. 291 of 2017, decided on 14.02.2019)** the Hon'ble SAT held as under:*

"The appellant further submitted that she was not involved in the management of the company, in any manner, and that the managing director, Mr. Indranath Daw who was known to her had requested her to become a director on account of resignation of two directors from the company….

…………

……………

Unless and until a finding is given that the appellant is an officer in default, the mandate provided under Section 73(2) cannot be invoked against the appellant. In the instant case, the appellant has annexed documents to indicate that the company had a managing director, namely, Mr. Indranath Daw and, therefore, as per the provisions of Section 5 the managing director would be an officer in default. We also find that there is no finding given by the WTM that the appellant was the managing director or whole time director or was a person charged by the Board with the responsibility of compliance with the provisions of the Companies Act and, consequently, could not be made responsible for refunding the amount under Section 73(2)."

ii. *In the matter of **Sayanti Sen Vs. SEBI (Appeal No. 163 of 2018 decided on August 09, 2019),** the Hon'ble SAT held that –*

"The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status."

iii. *SEBI vide order No. **WTM/GM/EFD/38/2017-18 dated August 03, 2017** has taken following position with regard to vicarious liability of directors for the acts of the company:-*

"…… In this connection, I note that there are a number of judicial pronouncements on the liability of directors including K.K Ahuja vs. V.K Vora (2009) 10 SCC 48; National Small Industries … vs. Harmeet Singh Paintal (2010) 3 SCC 330 and S.M.S. Pharmaceuticals

Ltd. vs. Neeta Bhalla and Anr (2005) 8 SCC 89 generally upholding the position that the liability of any director in a company is restricted to actions of omission or commission committed by the company which had taken place with the knowledge and consent, whether explicit or implied, of such director. The array of judicial pronouncements emphasise the need to examine the role and conduct of the directors before fixing the liability on them in respect of any violation committed by the company. I, therefore, am of the view that the broad principle that the liability of a director should flow out of knowledge and consent or connivance in the alleged act is apt to be applied in these situations, to test their liability."

iv. *SEBI vide its* ***ADJUDICATION ORDER NO: AO/SBM/EAD-3/57/2017)*** *in the matter of* ***M/s Brooks Laboratories Ltd*** *has held that:*

"Although it is amply clear from the above facts that Sunshine was instrumental in the fraudulent act of round tripping in connivance with other entities/BLL, I do not find any corroborative evidence, either in the IR or in the material made available along with the IR to establish the fact that Noticee was a director on the Board of Sunshine during the relevant period i.e during June to September 2011. Apart from the snapshot extracted from the website of MCA and a copy of Form 32 submitted by the Noticee, which only contains information about the Noticee's appointment as additional director of Sunshine, there is no other evidence in support of the charge that Noticee was a director on the Board of Sunshine during the relevant period. It is therefore, not established that Noticee was a director on Sunshine during the relevant period when the impugned transactions involving round tripping etc in collusion with BLL took place. Hence, the charges against the Noticee cannot be sustained on the basis of mere probability."

v. *SEBI vide one of the Order of Adjudication No.* ***ADJUDICATION ORDER/SS/AS/2019-20/4025-4038*** *dated August 21, 2019 in the matter of Action Financial Services Ltd. absolved some of the directors of any violation and held that:*

"In this case, nothing specific has been brought on records regarding the involvement/ roles of the Noticees No. 3, 8, 9 and 10. The documents such as the AGM/ board meeting notes dated September 29, 2012, EGM dated November 19, 2012 and general meeting of boards dated December 04, 2012 or any other document related to preferential allotment duly signed/ endorsed by them or document showing their active role in the Company in managing day to day affairs or any other role assigned to them by the Company etc. are not available on record. Nothing has been alleged with regard to their individual role, responsibilities in respect of the decisions taken with regard to fund transfer by the Company to conduits in this case. Therefore, I am inclined to give benefit of doubt to Noticee No. 3, 8, 9 and 10."

vi. *The Hon'ble SAT in the matter of* ***S.N.Sharma v SEBI (Appeal No. 472 of 2020)*** *decided on September 09, 2021, held as follows:*

"4. The only charge against the appellant in the show cause notice was that he was a signatory to the resolution dated 19th October, 2007 by which the first resolution was passed by the Board of Directors for issuance of the GDR and for opening an account with Banco.

…….

…….

……

8. Having heard the learned counsel for the parties, we are of the opinion that the controversy involved in the present appeal is squarely covered by the decision of this Tribunal in ***Adi Cooper v. SEBI, appeal no.124 of 2019 decided on 5.11.2019, Adesh Jain vs. SEBI, Appeal No. 217 of 2020 decided on 19.11.2020****,* ***Rajesh Shah& Ors. v. SEBI, appeal no.433 of 2021 decided on 5th July, 2021, Prafull Anubhai Shah v. SEBI, appeal no.389 of 2021 decided on 28th June, 2021 and Govind Das Pasari v. SEBI, appeal no.201 of 2019 decided on 30th April, 2021.***

9. For the reasons stated aforesaid, the impugned order in so far as it relates to the appellant cannot be sustained and is quashed. The appeal is allowed."

vii. *The Hon'ble SAT recently in the matter of **Jai Prakash Kabra & Ors. v SEBI** (Appeal No. 58 of 2021 decided on September 02, 2021, held as follows:"13. In **Govind Das Pasari (supra),** this Tribunal held that apart from being a signatory to the resolution of the board of directors, the said appellant did not participate in the issuance of the GDRs and, therefore, no fraud was played by him. The said decision is squarely applicable to all these three appellants and the finding that a fraudulent scheme was initiated pursuant to the resolution cannot be allowed to stand.*

viii. *The Hon'ble SAT in the matter of **Gurmeet Singh & Ors. v SEBI (Appeal No. 406 of 2020)** on September 20, 2021, held as follows:*

"14. For the reasons stated aforesaid, the impugned orders insofar as it relates to the appellants in Appeal no. 408 of 2020 (Mr. I.S. Sukhija vs. SEBI), Appeal no. 491 of 2020 (Mr. I.S. Sukhija vs SEBI), Appeal no. 101 of 2021 (Mr. I.S. Sukhija vs SEBI), Appeal no. 102 of 2021 (Mr. H.S. Anand vs SEBI), Appeal no. 337 of 2021 (Mr. I.S. Sukhija vs SEBI) and Appeal no. 338 of 2021 (Mr. H.S. Anand) are quashed and appeals are allowed. Appeal no. 406 of 2020 (Mr. Gurmeet Singh vs SEBI) and Appeal no. 339 of 2021 (Mr.Gurmeet Singh) insofar as it relates to Mr. Gurmeet Singh are partly allowed. While affirming the finding against the said appellant, the penalty of Rs. 1 crore is reduced to Rs. 20 lakh to be paid by the appellants in each GDR issue. Insofar as Appeal no. 483 of 2020 (Mr. Gurmeet Singh vs SEBI) and Appeal no. 100 of 2021 (Mr. Gurmeet Singh vs SEBI) the said appeals are dismissed with no order as to costs."

Soma:

In addition the aforesaid judgments relied upon by us, we would like to draw your attention to observations made by various Hon'ble Courts over a period of time b.

As regards violation of PFUTP Regulations

a. *In the case of **Nandkishore Prasad vs. State of Bihar [(1978) 3 SCC 366]**, the Hon'ble Supreme Court while considering the appeal against the removal of an employee from service based on the findings of a departmental enquiry observed the following –*

"Before dealing with the contentions canvassed, I may remind ourselves of the principles in point crystallized by judicial decisions. The first of these principles is that disciplinary proceedings before a domestic tribunal are of a quasi-judicial character; therefore, the minimum requirement of the rules of natural justice is that tribunal should arrive at its conclusion on the basis of some evidence, i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charges against him. Suspicion cannot be allowed to take the place of proof even in domestic inquiries. As pointed out by this Court in Union of India v. H. C. Geol (AIR 1964 SC 364) 'the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary inquiries held under the statutory rules".

b. *In **H. D. Jaisinghani vs. Naraindas N Punjabi [(1976) 1 SCC 354]**:- wherein Ray, CJ speaking for the Hon'ble Supreme Court has observed the following –*

"In any case I am left in doubt whether the complainant's version with which he had come forward with considerable delay was really truthful. I think that in a case of this nature, involving possible debarring of the advocate concerned the evidence should be of a character, which should leave no reasonable doubt about guilt. The Disciplinary Committee had not only found the Appellant guilty but had disbarred him permanently. (In Re An advocate AIR 1989 SC 245)."

c. *The Hon'ble Securities Appellate Tribunal on the issue of stating and establishing a charge has in the matter of **M/s. Vintel Securities Private Limited vs. The Adjudicating officer, Appeal no. 219 of** 2009 has clearly stated the following –*

"A serious charge of fraudulent and unfair trade practice has been established against the Appellant without even dealing with the trades executed by it. The Adjudicating officer has no reasons whatsoever in support of his conclusions. He has found the Appellant guilty in para 14 of the impugned order which is as general as it could be without referring to the details of the trades executed by the Appellant and without showing as to how it was acting in tandem with others. This is not the way in which charges are established. It is not enough to say that the Appellant is guilty of the charge. The impugned order must show how the charge stands established. The least that was required was that the adjudicating officer should have dealt with the trades executed by Appellant and demonstrated as to how the scrip in question was manipulated and the role which the Appellant played in that manipulation."

d. *With regard to the nature of evidence required to sustain the charge, your attention is invited to the Order dated October 22, 2001 of Hon'ble Securities Appellate Tribunal in the case of* ***Sterlite Industries Limited vs. SEBI (2001) 34 SCL 485(SAT-Mumbai),*** *in which the following was observed –*

"Evidence merely probalising and endeavoring to prove the fact on the basis of preponderance of probability is not sufficient to establish such a serious offence of market manipulation. When such a serious offence is investigated and the charge is established, the fall out of the same is multifarious. The impact of such an adverse finding is wide especially in the case of a large public company having a large number of investors. The stigma sticks and it also hurts, not the company alone, but its shareholders as well. 'Not all the King's horses and all the King's men' can ever salvage the situation. Mere conjectures and surmises are not adequate to hold a person guilty of such a serious offence."

e. *Further the Hon'ble SAT in the matter of* ***Videocon International vs. SEBI (2002)4 CLJ 402 (SAT)*** *has inter-alia held the following –*

"In the absence of reasonably good evidence to support, charge of market manipulation. Which is a very serious charge, cannot stick on the Appellant Company merely on surmises and conjectures."

f. *Hon'ble Securities Appellate Tribunal in the case* ***Parsoli Corporation Vs. SEBI (Appeal No 146/2011 order dated 12.08.2011****) observed the following –*

"...a serious charge like fraud has to be established on preponderance of probabilities and since this charge is serious, higher has to be the degree of probability to establish the same."

g. *Hon'ble Securities Appellate Tribunal In the case of* ***Narendra Ganatra v/s SEBI*** *(Appeal No 47 of 2011 decided on 29.07.2011), Hon'ble Securities Appellate Tribunal observed as under:*

"…We should not lose sight of the fact that the charge against the appellant is of conniving with the group entities in creating false and misleading appearance of trading in the market and artificially raising the price of the scrip and for such a serious charge, higher degree of probability is required. Such a charge cannot stand on surmises and conjectures…"

h. *In the matter of* ***M/s Milkyways Mercantiles Private Limited and M/s SPFL Securities Limited*** *decided on 16.03.2017, the learned Adjudicating Officer has observed as under:*

"18. The necessity of 'Intent' and the element of "fraud" appears to be a pre-requisite in all the parts of Regulations 3 and 4 of the PFUTP Regulations. 'Fraud' has been principally defined under Regulation 2(c), though inclusively, to mean such trades which are entered into in order to 'induce others'. Regulation 4(2) is very specific in nature. The test laid down in the regulation demand a manipulative intent to affect market information. Even clause (a) as a strict liability clause, the test is to prove 'misleading appearance of trading'"

Noticee no. 4:

Hence, it is humbly submitted that the stand of SEBI against me has been discriminatory and has not followed the legal jurisprudence already established by the Hon'ble Supreme Court, Hon'ble SAT and orders passed by SEBI itself.

74. *In light of the aforesaid submissions made regarding the findings against Soma and the role of the Lead Manager PAAL, we hereby submit that considering 59 GDR issues being investigated by SEBI, including ours, it has been alleged that similar modus operandi has been followed. This establishes that the mind controlling the GDR issues was one; and Mr. Arun Panchariya and PAAL were main perpetrators of fraud.*

Further, we were misguided by him to sign certain papers/ documents which were a part of the procedures outside India and no adverse inference may be drawn against us in this regard.

75. It is pointed out that aforesaid alleged violations, if any would attract the penalty under Section 15 HA of the SEBI Act and Section 23E of SCRA. As per Section 15 HA if any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to penalty which shall not be less than five lakhs rupees but which may extend to twenty five crore rupees or three times the amount of profits made out of such practice or higher. As per Section 23E of SCRA, in case a company etc. fails to comply with listing conditions or delisting conditions etc., it shall be liable for penalty not exceeding Rs. Twenty five crore. We invite your kind attention to Sec. 15J of the SEBI Act and Sec. 23J of the SCRA, which lay down the factors that have to be taken into account while deciding on the quantum of penalty. The Sections reads as follows –

> *"15-J. Factors to be taken into account by the Adjudicating Officer: - While adjudging the 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,*
>
> *Explanation - for the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15-A to 15-E, clauses (b) and (c) of section 15-F, 15-G, 15-H and 15-HA shall be and shall always be deemed to have been exercised under the provisions of this section."*

AND

> *"23J. While adjudging the quantum of penalty under section 23-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."*

Noticee no. 4:

29. I submit that the facts of this case are similar to the case in which the order dated March 12, 2019 has been passed by the Whole- Time Member, SEBI in the case of RKDL and other orders passed by Hon'ble SAT and SEBI itself. In view of the same no action ought to lie against me.

30. It is further submitted that SCN has not brought out any concrete figure of the loss incurred by the Indian investors due to the announcement made by Soma. SCN is repeating the same allegation again and again & only general allegation has been made without adducing any documentary evidence. This shows that the SCN is based on surmises and conjectures. In view of the same, I submit that I have been roped in wrongfully to broaden the ambit of investigation.

31. It is reiterated that I have always maintained transparency in my conduct and affairs and observed ethical behaviour in the Company's operations. I have conformed to the standards of transparency and ethical behaviour prescribed in the various regulations and statutes. It is submitted that the facts of the case do not warrant any action.

32. I repeat and reiterate that I am a professional belonging from the technical field of engineering, I neither have any knowledge nor any experience in the field of finance or securities market. I was an Executive Director in Soma and was looking after the operations of the textile business and did not have a role to play in the process of the GDR issue. I also did not have any knowledge about the day to day process of the GDR issue. As a technical person having no background in Finance, I acted in a bona fide manner on the basis of general consensus of the board and as an executive director did not have the reason to raise any doubt regarding the issue of the GDRs.

33. *In view of the foregoing submissions, I vehemently deny that I have violated Section 12A (a), (b) & (c) of SEBI Act; Regulation 3(a) to (d), 4 (1) of PFUTP Regulations to warrant issuance of any direction.*

34. *In the facts and circumstances of the case, any action on me would be unjustified and unwarranted. In view of foregoing submissions, it is most respectfully and humbly submitted that the allegations in the Notice be dropped.*

35. *While considering my submissions it may be noted that I have not made any gains or gained any unfair advantage and further the SCN has also not quantified the alleged profit made by me and/ or loss averted by me. It is further submitted that no harm or loss has been caused to any investor. Further, the violation is not repetitive to warrant any kind of directions proposed and/ or warrant any kind of imposition of monetary penalty under SEBI Act. In view of the foregoing submissions, it is respectfully submitted that the allegations in the Show Cause Notice do not flow out of the factual position on record and cannot be legally sustained.*

36. *It is further submitted as follows:-*
    a. *That I have neither earned any disproportionate gain nor gained any unfair advantage;*
    b. *That no harm has been caused to any investor nor any loss has occurred to any investor; and*
    c. *That the default, if any, is not repetitive.*

It is submitted that SEBI has failed to take into consideration any of the factors stipulated by Sec 15J of SEBI Act.

While levying penalty apart, from the factors enumerated in the aforesaid sections, the Board has to consider other factors also as per the judgment of Hon'ble Supreme Court in the matter of ***Adjudicating Officer, SEBI vs. Bhavesh Pabari (CIVIL APPEAL Nos. 11311 OF 2013),*** *wherein the Hon'ble Apex Court had held as follows –*

"11. Therefore, to understand the conditions stipulated in clauses (a), (b) and (c) of Section 15-J to be exhaustive and admitting of no exception or vesting any discretion in the Adjudicating Officer would be virtually to admit/concede that in adjudications involving penalties under Sections 15-A, 15-B and 15-C, Section 15-J will have no application. Such a result could not have been intended by the legislature. We, therefore, hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15- J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15-J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty."

It is thereby abundantly clear that the provisions of Sec. 15J would automatically apply while levying of penalty under section 15HA of the SEBI Act & Section 23E of SCRA and the Ld. AO has to also consider other factors which are not stated.

76. *We also pray that repetitive nature of offence may also be considered as one of the factors while levying the penalty. The same is also held by Hon'ble Supreme Court. The alleged fraud, if any, by no means falls under the category of repetitive offence. We rely upon the judgment of Bhavesh Pabari (Supra), wherein the Hon'ble Apex Court had specifically elaborated on the nature of 'repetitive offences' as under section 15J and distinguished the same from 'continuing offences'. The Hon'ble Supreme Court held as follows –*

> *"13. There is a distinction between a continuing offence and a repeat offence. The continuing offence is a one which is of a continuous nature as distinguished from one which is committed once and for all. The term "continuing offence" was explained and elucidated by giving several illustrations in* ***State of Bihar vs. Deokaran Nenshi & Ors****. In case of continuing offence, the liability continues until the rule or its requirement is obeyed or complied with. On every occasion when disobedience or non-compliance occurs and reoccurs, there is an offence committed. Continuing offence constitutes a fresh offence every time or occasion it occurs. In* ***Union of India & Anr. Vs. Tarsem Singh****, continuing offence or default in service law was explained as a single wrongful act which causes a continuing injury. A recurring or successive wrong, on the other hand, are those which occur periodically with each wrong giving rise to a distinct and separate cause of action. We have made reference to this legal position in view of clause (c) of Section 15-J of the SEBI Act which refers to repetitive nature of default and not a*

continuing default. The word "repetitive" as used therein would refer to a recurring or successive default. This factum has to be taken into consideration while deciding upon the quantum of penalty. …………...."

Section 15J of SEBI Act and Section 23J of SCRA are pari materia to each other and the factors enumerated in Section 15J of SEBI Act for levy of penalty are pari materia to Section 23J of SCRA. In view of the above, we submit that the factors elucidated under Section 15J of SEBI Act and Section 23J of SCRA ought to be considered while levying the penalty. Further, as held by the Hon'ble Supreme Court that other factors not stated & stipulated in Section 15J of SEBI Act and Section 23J of SCRA ought to be considered before levying penalty. Therefore, it is prayed that no penalty be levied and the proceedings be dropped.

77. It is further submitted that SCN has not brought out any concrete figure of the loss incurred by the Indian investors due to the announcement made by the company. SCN is repeating the same allegation again and again & only general allegation has been made without adducing any documentary evidence. This shows that 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.

78. 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 listing at a 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 and PFUTP Regulations

79. We submit that and say that we always follow all the procedures, as stipulated by any regulatory authority, follow all rules/ regulations/ instructions etc. issued by any government agency, and our intention has never been to conceal any information. We have never been penalized by any regulatory authority and have got clean track record till date.

80. In view of the foregoing submissions, we vehemently deny that we have violated Section 12A (a), (b) & (c) of SEBI Act; Regulation 3(a) to (d), 4 (1), 4(2)(f), (k) and (r) of PFUTP Regulations and Section 21 of SCRA read with Clauses 35 and 36(7) of Listing Agreement to warrant levy of penalty.

PRAYER

81. In view of the above submissions, we pray as under: -

a) Not to levy any monetary penalty under Section 15 HA of SEBI Act and Section 23E of SCRA as we are the victim and not the culprit and take a lenient view in the matter

b) To provide certified/ authenticated and legible copies of all or any material / documents relied upon by SEBI for inspection and stay the proceedings until the inspection is allowed,

c) Drop the proceedings initiated vide SCN dated January 18, 2018; we may be discharged from the same and an appropriate order may be passed.

d) Not to impose penalty under Section 15HA and Section 23E of SCRA for the alleged violations of provisions of law, if any.

Noticee no. 2 & 3: S. K. SOMANY and ARVINDKUMAR SOMANY

1. *This is with reference to the captioned subject wherein, inter alia, a Show Cause Notice No. SEB1/HO/EAD-12/SM/PR/OW/1672/2018 dated January 18, 2018 (hereinafter referred to as "SCN"/ "the said notice") has been issued under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules,1995 (hereinafter referred to as "SEBI AO Rules") and Rule 4(1) of SecuritiesContracts (Regulation) (Procedure for Holding Inquiry and Imposing penalties) Rules, 2005 (hereinafter referred to as "SCRA AO Rules") to me in the captioned matter.*

2. *It has inter-alia been alleged in the SCN that I have violated Section 12A (a), (b) and (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act, 1992") read with Regulations 3(a), (b), (c), (d) and Regulation4(1) of SEBI (Prohibition of Fraudulent & Unfair trade Practices Relating to Securities market) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations").*

3. *With respect to the above allegations, I am hereby called upon to show cause as to why an inquiry should not be held against me in terms of Rule 4 of SEBI AO Rules read with Section 15 1 of the SEBI Act, 1992 and why penalty, if any should not be imposed on me under the provision of Section 15 HA of the SEBI Act, 1992.*

4. *At the outset, without prejudice to anything stated hereinafter, I deny all the allegations and findings made against me in the said notice, except to the extent specifically admitted by me. Nothing contained in the said notice may be deemed to be admitted by me by reason of non-traverse or otherwise, save and except what is expressly admitted herein. I deny all the allegations and averments contained in the said notice that are contrary to and/or inconsistent with what is stated herein below.*

5. *It is categorically denied that I have violated Section 12A (a), (b) and (c) of SEBI Act, 1992 and Regulations 3(a), (b), (c), (d) and Regulation 4(1) of PFUTP Regulations.*

Noticee no. 2:

6. *I would like to place on record that I am the Chairman of Soma since April 01, 1949. I have more than seven decades' experience in administration and management. My foresightedness, experience and business acumen has contributed in the progress of the Soma. I am well versed and technically well experienced in the textile industry.*

7. *I have also been associated with Bombay Mill Owners' Association, Ahmedabad Textile Mill Owners' Associations and Bombay Textile Research Association and have been working on various technical sub- committees formed by these institutions.*

Noticee no. 3:

6. I would like to place on record that I am the Managing Director of Soma since January 22, 1988. I am a science graduate from Bombay University and completed the same in the year 1976. I have been associated with Soma as its Managing Director since 1988. My foresight, planning and hard work has contributed to the consistent growth of Soma. I was the chairman of the Ahmedabad Mill Owners' Association during the year 2003-2004 and have been a member of the Indian Cotton Mills' Federation and several other committees constituted by government bodies. I have a good understanding of global business issues.

8. *I have an impeccable track record in terms of compliances and save and except the matter under reference, no adverse direction has ever been passed against me by any regulatory authority including SEBI.*

9. *With regard to the specific allegations in the Notice against the Company, it is submitted that Soma filed a detailed reply dated 15/06/2022 to the captioned Show Cause Notice inter alia dealing with each of the allegations and denying all the allegations levelled against it and placing on record the correct factual position on record. I adopt the submissions made by Soma in its reply dated 15/06/2022, in support of my contentions that I have acted bonafide in consonance with the applicable provisions of law.*

10. *With regard to Para 30 of the SCN, it is submitted that the Board of Directors of Soma, including me had authorized Mr. Sunil, Overseas Sales Representative of Soma to execute any application/ agreement/ documents/ forms/ papers if and when required. This authority was given to authorised signatory prior to any GDR issue or any other fund issuance carried out by the company in the ordinary course of business. Hence, I deny any specific allegation against me this regard.*

11. *With regard to Para 32 and Para 66 of the SCN, so far as the allegation I was one of the Directors who approved the Board Resolution and authorized Mr. Sunil Patel to sign the agreement with Banco and authorized Banco to use funds as a security in connection with loan, it is submitted as follows: -*

   a. *It was never intention of the Board that the funds which are to be deposited to the GDR proceeds are given as security in connection with the loan to be given for the subscription of the GDR issue itself.*

   b. *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 "if and when so required". Nowhere in the resolution, it has been specifically stated that the proceeds are pledged on account of loan availed by Whiteview to subscribe to the GDR issue. 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 <u>with loans if ant/</u> as (Vell as to enter into any Escrotl' Agreement or. similar arrangements <u>if and (Phen so required</u>". (emphasis supplied)

c. *Further admittedly the Board has authorized only one person Mr. Sunil Patel to carry out necessary formalities for which he relied upon the expertise and knowledge of the Lead Manager registered with UK Regulator.*

d. *I submit that the SCN is misdirected towards me just for being part of the Board Meeting which appointed Mr. Sunil Patel as Authorized Signatory. Further, Mr. Sunil and other directors of the company were dependent upon the Lead Manager considering their experience.*

e. *The account charge agreement was signed between Soma and Banco which allegedly creates obligation on behalf of the company towards the bank under the loan agreement. However, the said conditions of the agreement will not get activated till the time subscription money is received in the account opened for GDR issue. The company would be able to provide security against the subscription proceeds only when subscription is received and not before that. Hence the allegation that Soma has authorised Banco Bank to use the GDR proceeds as security against loan is devoid of merit and is contrary to material on record.*

f. *In this regard, I would like to refer to and rely upon the following observations of the Hon'ble SAT passed in Adi Cooper v. SEBI (Appeal no. 124 of 2019, decided on November 05, 2019) which is directly pertaining to and with regard to passing the Board Resolution:*

"8. The finding of the WPM against the appellant Adi Cooper is wholly misconceived, farfetched and cannot be accepted to come to a conclusion that the said appellant was party to a resolution (0hich had an intention to manipulate the market or defeat its mechanism. Admittedly, the appellant Adi Cooper was party to a resolution of the Board of Directors dated January 30, 2008 which only resolved the company to open an account with the ELIRAM bank for the purpose of deposit of the GDR proceeds. The resolution further authorized the bank to use the proceeds as security in connection with a loan. The resolution did not stipulate that the proceeds would be used as security in connection with a loan taken by another entity. The resolution could also mean that the proceeds zoould be utilized by the bank as security in connection toith a loan taken by the company itself. Thus, from the resolution dated January 30, 2008 one cannot arrive at a conclusion that this was the first step or the starting point of a fraudulent arrangement through which the company could facilitate the financing of the GDR subscription by Vintage. It may be noted here that when the resolution of January 30, 2008 was passed Vintage was notohere in the picture.

9. We further find that the resolution of January 30, 2008 authorizing the bank to utilize the proceeds as security in connection with a loan cannot be inferred as loan given to Vintage. Such presumption is farfetched and cannot hold that the appellant had intention to manipulate the market or play a fraud. Therefore, the finding of the WPM that the appellant had violated Section 12A of the SEBI Act read with Regulations 3 and 4 of the PFLITP Regulations is misconceived and not acceptable. "

g. *Pursuant to above, SEBI had filed an appeal before the Supreme Court [SEBI v Adi Cooper (Civil Appeal No. 380 of 2020)1 against the Order passed by the Hon'ble SAT in the matter of Adi Cooper (supra). In the said order though the Supreme Court has allowed the said Appeal, however, the Hon'ble Apex Court has not delved into the opinion of the Hon'ble Tribunal so far as the interpretation of the Board Resolution is concerned. However, on the contrary the Apex Court has upheld the interpretation of the Board Resolution provided by the Hon 'ble Tribunal. The Supreme Court instead of deliberating/commenting upon the interpretation of the Board Resolution by this bench of the Hon'ble Tribunal has held that aspect relating to disclosure of arrangement or the Resolution to the shareholders of the Company or the investors has not been reckoned by the Hon'ble Tribunal.*

The Hon'ble Tribunal has observed that the Board Resolution authorizing the Bank to utilize the proceeds as security in connection with a loan cannot be inferred as loan given to Whiteview. Hence, any adverse view taken by SEBI at this stage would amount to judicial insubordination.

In view of the aforesaid submissions, I deny that:

i. *I have acted as a party to the fraudulent scheme.*

ii. *I have violated Section 12A (a), (b) and (c) of SEBI Act, 1992 and Regulations 3(a), (b), (c), (d) and Regulation 4(1) of PFUTP Regulations.*

12. *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 SCN that I have made any gains. I have also not caused any loss to the investors or group of investors.*
13. *In the facts and circumstances of the case, any action on me would be unjustified and unwarranted. In view of the foregoing submissions it is most respectfully and humbly submitted that the allegations in the SCN be dropped.*
14. *In view of the above arguments and contentions advanced by me, I would kindly request your goodself to:-*
    a. *Not to impose any penalty under Section 15HA of the SEBI Act, 1992.*
    b. *Drop the proceedings initiated vide SCN dated January 18, 2018, I may be discharged from the same and pass an appropriate order.*

Noticee no. 5:

2. *This is with reference to the captioned subject wherein inter alia, a Show Cause Notice No. SEBI/HO/EAD-12/SM/PR/OW/1672/2018 (hereinafter referred to as '**SCN**'/ '**the said notice**') has been issued under Rule 4 (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officers) Rules, 1995 (hereinafter referred to as "SEBI AO Rules") and Rule 4(1) of Securities Contracts(Regulation)(Procedure for Holding Inquiry and Imposing penalties by Adjudicating Officer) Rules, 2005(hereinafter referred to as "SCRA AO Rules") (hereinafter referred to as the '**SEBI Act**') to Sunil Patel (hereinafter referred to as "**I**"/ "**Me**"/ "**My**"), Soma Textiles & Industries Ltd. (hereinafter referred to as '**STIL**'/'**Soma'/ 'Company'**) and its directors Mr. S.K. Somany, Promoter & Chairman; Mr. A.K. Somany, Promoter and Managing Director; Mr. P Anubhai and Mr. P. Bandopadhyay. All the other noticees together will be referred as to "**Other Noticees**" or by their respective first names.*
3. *It has inter-alia been alleged in the SCN that I have violated Section 12A (a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4(1) of SEBI (Prohibition of Fraudulent & Unfair trade Practices Relating to Securities market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations')*
4. *Further, I have been advised to show cause as to why suitable directions should not be issued against me under Rule 4 of AO Rules, SCRA AO Rules and Penalty not be imposed under Section 15HA of the Act and Section 23 E of SCRA*

<u>MY ROLE IN THE GDR ISSUE OF SOMA</u>

5. *I submit that I am a British Citizen and at present, I am engaged in lawful business in London. I have never been convicted of any offense involving moral turpitude, or fraud in the past, and I am an honest and innocent citizen, has a clean track record and good reputation.*
6. *My role in the whole GDR issue was very limited and restricted to being a facilitator for the same. I was present in London at the time of the GDR issue and Lead Manager Pan Asia Advisors Ltd. (hereinafter referred to as **'PAAL'**) was also registered with UK-FCA. Due to logistical and practical reasons, it was very difficult for the directors or any representative of Soma to frequently travel outside India for facilitating the process of the GDR issue. I was thereby given authority by Soma for the said GDR issue for signing the documents related to the GDR as and when required. My role was never to oversee or supervise the process of GDR but limited to acting as a nodal point outside India for Soma just for the limited purpose of signing the documents given by PAAL. The documents were signed by me as per authorization given by the Board of Directors, in good faith on the basis of trust reposed in PAAL and no adverse inference ought to be drawn against me due to the same.*
7. *I submit that I have at all points of the issue and otherwise acted well within the authority given to me by STIL. The Account Charge Agreement that I had allegedly signed was done in my capacity as the authorised signatory of Soma, in good faith and trust in PAAL. The signing of the agreement was not a result of my decision or understanding of the GDR issue, but just a procedural fulfillment since Soma relied upon PAAL for their expertise in GDR issue and their registration with UK Regulatory authority.*

8. *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, STIL had through a Board resolution, authorized me to sign*

certain agreements etc. in respect of GDR issue. Pursuant to the same, I acted in the manner as authorised me to facilitate the GDR issue.

9. *I have an impeccable track record in terms of compliances and save and except the matter under reference, no adverse direction has ever been passed against me by any regulatory authority including SEBI. I have maintained high standards of integrity, promptitude and fairness in the conduct of all my endeavours.*

10. *As an authorised representative I was not at all involved in any of the day-to-day activities of Soma pertaining to the GDR issue or the Account charge agreement by the Company, which are the core allegations in the notice. Further, nothing specific has been attributed to me in the Notice 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. I reiterate that as an overseas sales representative I was not even remotely involved in the alleged activities as stated in the said Notice.*

11. *The Lead Manager to the issue was PAAL and the Global Depository Bank for the issue was Deutsche Bank Trustee Company Americas (hereinafter referred to as* ***'DBTCA'****). Pursuant to the issue, the GDRs were listed on Luxembourg Stock Exchange. It is also submitted that PAAL is an entity registered with the regulatory authority of the United Kingdom, i.e., UK Financial Conduct Authority (hereinafter referred to as "****UK – FCA****").*

12. *On perusal of the SCN, the only allegation levelled against me is that I was authorised 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 in consequence of this I had signed the Account Charge Agreement on behalf of Soma. It is submitted that neither any specific allegation has been levelled against me nor my role has been elaborated or elucidated in the SCN.*

13. *References have been made against me in Para 21 to Para 23, Para 28 to Para 30, Para 31, Para 32, Para 64 and Para 66 wherein certain allegations regarding signing the Account Charge Agreement have been levelled. I am therefore giving my reply to the aforesaid paragraphs only.*

REPLY TO THE ALLEGATIONS/ AVERMENTS/ FINDINGS/ ACCUSATIONS AS CONTAINED IN THE SAID NOTICE

14. *At the outset and without prejudice to anything stated hereinafter, I deny all the allegations and findings made against me in the said order except to the extent specifically admitted by me. Nothing contained in the said order may be deemed to be admitted by me by reason of non-traverse or otherwise, save and except what is expressly admitted herein. I deny all the statements, submissions, contentions, allegations and averments contained in the said notice that are contrary to and/or inconsistent with what is stated herein below.*

15. *I categorically deny that I have violated Section 12A (a), (b) and (c) of SEBI Act, 1992 read with Regulation 3(a), (b) (c), (d) and Regulation 4(1) of PFUTP Regulations.*

16. *I was under the rightful impression that the GDR issue was being supervised and overseen by a reputed Lead Manager, i.e., PAAL in the present case. Owing to the several factors stated above, I had no reason to have any doubt regarding the said GDR issue. I did not have the expertise or the knowledge required to pursue the matter, as the same related to core finance and I am a person who has no financial background or experience.*

17. *With regard to Para 21 to Para 24 of the said SCN, in so far as the observation that I signed the said account charge agreement, I submit that the company had authorized me 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. I submit that the same was signed in the routine course of business based on the authority given to me through the resolution passed by Soma and the reliance placed on PAAL, which was at that point in time well reputed lead manager globally and assuming that they would be well aware of the policies/ procedures in other jurisdictions. I further submit that I was not required to carry out any due diligence on my part as my role was limited to signing the documents related to the GDR issue based on the authority given to me through the resolution passed by Soma and provided to me by PAAL. Hence, I deny any specific allegation against me in this regard.*

18. *With regard to in Para 28 and Para 30 of the said SCN, in so far as the observation that Soma had authorized me to sign/ execute any agreement and other papers, I hereby submit that, I was not present in the meeting and I had no role in taking decision in the same. I had diligently forwarded all the communications made to me under the alleged Account Agreement or otherwise related to the GDR, to Soma as and when I received the same. I had no role in the interpretation or execution of those communications. As stated above, my role was*

limited to acting as a facilitator to the GDR Issue and nothing more. I had no role in decision making or any other aspect related to the GDR.

19. *With regard to Para 31 and Para 32, in so far as the allegation that I had signed the Account Charge Agreement on behalf of Soma which was executed between Soma and Banco, I submit and reiterate that the same was signed in the routine course of business on the basis of the authority given to me through the resolution passed by Soma and the reliance placed on PAAL, which was at that point in time well reputed lead manager globally, assuming that they would be well aware of the policies/ procedures in other jurisdictions. I further submit that I was not required to carry out any due diligence on my part as my role was limited to signing the documents related to the GDR issue based on the authority given to me through the resolution passed by Soma and provided to me by PAAL. Hence, I deny any specific allegation against me in this regard.*
20. *Further I submit that I was not present in the meeting and I had no role in taking decision in the same. I was only 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. It is SEBI's own case that the Directors of Soma attended the meeting and passed the resolution. The decisions and consequences of the Board Meeting were totally out of my control and I had no role in the same. In view of the same, no adverse inference ought to be drawn against me and the charges may be dropped.*
21. *With regard to Para 29 and Para 36 of the said Notice, I submit that I had signed the letter dated January 23, 2007 in good faith and the trust I and other directors of Soma reposed in PAAL. I was earlier authorised to sign the documents etc. provided to me by PAAL and I signed the said letter by following that authorisation only. I was just acting in the capacity of the facilitator and I signed the letter based on the authority given to me through the resolution passed by Soma and trust reposed in PAAL. Pursuant to signing the letter, whenever I met the directors of Soma, I informed them regarding the said letter. I was thereafter informed that Soma has taken steps to recover the money from White view and same has been recovered with interest.*
22. *With regard to Para 64 and Para 66 of the said Notice, I submit that I signed the letter on the basis of trust reposed in PAAL and since earlier based on the authority given to me through the resolution passed by Soma to sign the documents forwarded by PAAL. I have not obtained any material/ pecuniary benefit out of the above. I am informed that the said amount has been brought back by Soma with interest. I deny that I have violated the provisions of Section 12A (a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (Prohibition of Fraudulent & Unfair trade Practices Relating to Securities market) Regulations, 2003.*
23. *It is reiterated that I have always maintained transparency in my conduct and affairs and observed ethical behaviour in the Company's operations. I have conformed to the standards of transparency and ethical behaviour prescribed in the various regulations and statutes. It is submitted that the facts of the case do not warrant any action.*
24. *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.*
25. *It is submitted that, as your goodself could see, that I have not committed any wrong and no charge has been established against me to warrant any action. In the facts and circumstances any action on me would be unjustified and unwarranted. In view of foregoing submissions, it is most respectfully and humbly submitted that the allegations in the Notice be dropped.*
26. *In view of the foregoing submissions, I vehemently deny that I have violated Section 12A (a), (b) & (c) of SEBI Act; Regulation 3 (a), (b), (c), (d) and Regulation 4 (1) of PFUTP Regulations to warrant issuance of any direction.*
27. *In the facts and circumstances of the case, any action on me would be unjustified and unwarranted. In view of foregoing submissions, it is most respectfully and humbly submitted that the allegations in the Notice be dropped.*
28. *In view of the above arguments and contentions advanced by me, I would kindly request your goodself to: -*
    - *a) Not to impose any penalty under Section 15 HA of the SEBI Act as I am the victim and not the culprit and take a lenient view in the matter.*
    - *b) Drop the proceedings initiated vide SCN dated January 18, 2018, I may be discharged from the same and pass an appropriate order.*

Post hearing vide letter dated June 29,2022 and July 08,2022, Noticee 1, 2 and 3 have reiterated their earlier submissions and inter-alia made the following additional written submissions

Letter dated June 29, 2022

Underlying issues are sub-judice and pending consideration of Hon'ble SAT

<u>……….</u>

Non-compliances of Listing Agreement

1. *As regards Para 9 of the SCN, it has been alleged that the shares underlying of GDRs issued were shown under the category 'public shareholding category' rather than shown under the separate category "Shares held by custodians and against which Depository Receipts have been issued". In this regard we submit as under:*
   - *a. The GDR holders were public shareholders only and no promoters and/or any part of Persons Acting in Concern were holding any GDR.*
   - *b. All these disclosures were made at the relevant time as advised by the Lead Manager in the applicable format in force at that time.*
   - *c. Thus, shares held by GDRs were shown in public shareholders.*
2. *In view of the same, we deny that we have not complied with Clause 35 of the Listing Agreement and further deny that we have violated Section 21 of SCRA.*

Monetary penalty not warranted

3. *As a matter of law, it is important to note that these proceedings have become barred by principle of "cause of action estoppel", particularly in light of the insertion of Section 11(4A) and Section 11B(2) in the SEBI Act. We submit that w.e.f. March 8, 2019 the Ld. WTM has been empowered to impose monetary penalty in addition to its existing power to issue directions. The relevant provisions are extracted below:*

   *"**Functions of Board.***

   11. (1) …

   *(4A) **<u>Without prejudice to the provisions contained in sub-sections (1), (2), (2A), (3) and (4), section 11B and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.</u>***

   …

   Power to issue directions and levy penalty.

   11B. (1) Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,—

   (i) in the interest of investors, or orderly development of securities market; or

   (ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or

   (iii) to secure the proper management of any such intermediary or person,

   it may issue such directions,—

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

Explanation.—For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

(2) ***Without prejudice to the provisions contained in sub-section (1), sub-section (4A) of section 11 and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.****"*

*[**Emphasis Supplied**]*

4. *Since SEBI had issued a notice under Sections 11 and 11B, without specifying any specific course of action intended to be covered and without differentiating among sub-sections, the said notice already covered the power to impose monetary penalty along with the issuance of directions. Therefore, proceedings to impose monetary penalty under Chapter VI-A of the SEBI Act have effectively merged into the proceedings already conducted under Sections 11 and 11B and therefore, these proceedings abate.*
5. *The entire intent of the provision was to prevent multiplicity of proceedings. Unless and until adjudication is intended to be undertaken on a standalone basis without the need for considering any directions under Sections 11 and 11B, the resort to Chapter VI-A in addition to Sections 11 and 11B have been rendered redundant.*

6. *The notes on clauses to the Finance Bill, 2018 pursuant to which the aforesaid amendments to the SEBI Act were proposed, also make the position abundantly clear and are extracted below:*

   "Clauses 176 and 177 of the Bill ***seek to amend sections 11 and 11B*** *of the Securities and Exchange Board of India Act, 1992* ***to empower the Board to levy monetary penalty under the said Act after holding an inquiry in the prescribed manner****."*

   *[**Emphasis Supplied**]*

7. *Thus, by Finance Act, 2018, with effect from March 8, 2019, under Sections 11(4A) and 11B(2) of the SEBI Act, SEBI was expressly empowered to impose a penalty under Chapter IV of SEBI Act and has chosen not to impose any penalty.* ***Therefore, by February 8, 2021 i.e. the date on which the WTM Order was passed, such provision was already in force and thus, such power was vested in SEBI and SEBI has chosen not to impose penalty****.*
8. *These proceedings are on the very same cause of action and the very same facts and issues, and would therefore stand merged and therefore now infructuous. It is now not open to conduct multiple proceedings already having exercised the power to impose penalty and having chosen not to impose penalty.*

9. *The issue of initiating parallel proceedings were discussed before the Standing Committee of Finance in its Tenth Report dated April 15, 2020, where the views of the Hon'ble SAT and SEBI on the issue of*

parallel proceedings, were considered, which shed light on the context and purpose of the amendment. The relevant extracts of the deliberations before the committee are reproduced below:

> *"24. In their written memorandum furnished to the Committee, the Securities Appellate Tribunal (SAT) sought to draw the attention of the Committee **to the existing procedural hurdle under the SEBI Act, 1992, which allows parallel proceedings under same set of facts which results in increasing the number of cases before SAT and thus delay the disposal of cases.** The views expressed by SAT reads as under:- "The Securities and Exchange Board of India **enables the Board to initiate parallel proceedings under same set of facts against the delinquent under the enquiry regulations framed by the Securities and Exchange Board of India u/s. 11B or u/s** 11D as the case may be, **on the one hand and adjudication proceedings under Chapter VIA for the imposition of monetary penalties on the other**. Orders under the enquiry regulations, directions u/s 11B of an order u/s 11D are passed by the Board whereas the proceedings under Chapter VIA are conducted by an Adjudicating Officer who is a subordinate officer of the Board and it is he who passes the final order. **Since the two sets of proceedings are independent of each other, the possibility of conflicting views on the same set of facts cannot be ruled out and that would not be in the public interest. If only one inquiry is held against the delinquent and on the basis of that enquiry the same body is given the power to impose penalties under both sets of proceedings, it would not only expedite matters but also avoid conflicting views and multiple proceedings**."*
>
> *25. Questioned on the lacuna in the procedure, as pointed out by SAT, the Ministry of Finance (Department of Economic Affairs) in a written reply, submitted as follows:- "**… The government is aware of this issue and this, inter alia, will be addressed while moving another round of comprehensive amendments to the SEBI Act**."*
>
> *26. On this issue, **the Chairman, SEBI submitted as follows before the Committee:**- "S**ir, I think, it has been correctly pointed out that the SEBI Act has these two parallel provisions – one for inquiry and one for adjudication**. I would submit to the Committee that this is probably because the SEBI Act was amended at different points of time. What has happened is that under the inquiry proceedings, there is the power to suspend or cancel the registration of an intermediary whereas under the adjudication procedure, the power is only to impose the fine. **I am entirely in agreement with the Committee's view or the view that you read out just now that we should not have two parallel proceedings against any entity for the same set of facts…You are right that earlier there have been instances like that, but we are now not initiating two parallel proceedings against the same entity on the basis of same facts…in the amendments that we have proposed, this is one of the things that both adjudication and inquiry can be brought under one section whereby there will be the ability to decide as to what is the gravity of the offence committed and then accordingly either cancel or suspend registration or impose a fine. So, we would be entirely in agreement with this proposal**."*

.

> *"33. The Committee also wish to point out in this regard that **they find merit in the suggestion given by SAT and as also agreed to by both the Ministry of Finance (Department of Economic Affairs) and SEBI that the existing provisions of the SEBI Act, 1992 which provide for initiating parallel proceedings by the SEBI Board and the investigating officer concerned under the same set of facts needs to be rectified. The Committee expect that this issue would be addressed suitably by bringing in appropriate amendments.**"*
>
> *[**Emphasis Supplied**]*

10. *In fact, Courts have quashed orders passed in a subsequent proceeding for the same cause of action as the earlier proceeding, if the earlier proceeding was taken to its logical conclusion and attained finality. The Hon'ble Punjab and Haryana High Court in Omax Engineering Works v. State of Harayana & Ors., 2016 SCCOnline P&H 1768, observed:*

*"**24.** In our view, in a case such as this, **<u>where the second show cause notice is identical in every respect to the first show cause notice and where the first show cause notice was taken to its logical conclusion and the decision taken therein has attained finality, a second show cause notice is impermissible on the principle embodied in the Latin maxim 'interest reipublicae ut sit finis litium' and on the principle of cause of action/estoppel</u>**. These principles in turn are based on an important aspect of public policy…*

***27.** A view to the contrary is potentially dangerous and inherently unfair to a party. **<u>It would keep the complaint against a party open in perpetuity, although it had been dealt with finally and the decision had attained finality</u>**. **It would expose a party to arbitrary action in perpetuity depending upon the whims and fancies of the very incumbent as well as his successors in office.** It would require a party to defend himself even after lapse of years and that too repeatedly.*

***32.** The contention that the second impugned order is nothing but an additional order in respect of the first show cause notice requires merely to be stated to be rejected. **<u>The proceedings relating to the first show cause notice did not indicate that the issue of black listing was not to be taken up or considered</u>. <u>Nor do the proceedings indicate any intention to deal with the issue of black listing separately and/or subsequently</u>. <u>The record reveals that the first show cause notice was dealt with, considered and disposed of in its entirety without reserving any part or aspect thereof for further and/or separate consideration</u>.**"*

*[**<u>Emphasis Supplied</u>**]*

11. *Therefore, the SCN is infructuous and ought to be disposed of without imposition of any penalty.*

12. *Despite the fact that under Section 11B(2), the Ld. WTM has been empowered to impose monetary penalty, vide the WTM Order no monetary penalty was imposed on us. In other words, the **<u>learned WTM deemed it sufficient to impose restraint of three years on us, and a restraint of two years on Mr. A.K. Somany and Mr. S.K. Somany and did not think it appropriate to impose any monetary penalty in facts of present case</u>**. In fact, the WTM Order notes,*

*"63. … **<u>Unlike other GDR matters</u>** wherein the amount was transferred by the subsidiary to other entities and never received by the company, **<u>I note that in the present case, the subsidiary has received the proceeds of the GDR and has also returned an amount of USD 4,449,063 to SOMA over a period of time</u>**…"*

*[**<u>Emphasis Supplied</u>**]*

13. *Thus, in our humble submission, same recourse be adopted by the learned Adjudicating Officer and no monetary penalty be imposed on us.*

Restraint of over 1 year already suffered

14. *In any case, a lenient view be taken considering the fact that we are <u>already undergoing a</u> restraint <u>of three years and Mr A.K. Somany and Mr. S.K. Somany are undergoing a restraint of two years</u> under the WTM Order. From the regulatory perspective the ends of justice have been met which is a strong mitigating factor for non-imposition of additional monetary penalty on us.*

15. *In the **Utsav Pathak case** (decided on August 30, 2019) taking cognisance of the fact that no profit was derived by the Noticee, the learned adjudicating officer deemed fit to not impose any monetary penalty on said Noticee. We submit that a similar yardstick be applied to our case.*

Victim of fraud, not perpetrator

16. *We humbly submit that we had absolutely no knowledge of any fraudulent schemes. As in the process of undertaking an IPO, the Noticees appointed well known expert, i.e. PAAL, registered with UKFCA, as Lead Manager to help and guide the Noticees through the process of issuance of GDR. At the relevant*

time, there was no way of the Noticees becoming aware of web of entities and associates working for Mr. Panchariya behind the façade of PAAL.

17. *Since PAAL was the Lead Manager and an expert, the Noticees relied fully on information and guidance provided by PAAL. The Noticees were not in a position to conduct investigations into Mr. Panchariya, his associates, including PAAL, and even the authorised representatives. The Noticees' knowledge was limited to the information brought to the Noticees and the Board by the Lead Manager, as detailed in the Replies. In fact, the Noticees, to their utter shock, discovered many facts only on receiving the SCN.*

18. *Thus, the Noticees too are victims of the alleged fraud perpetrated by Mr. Panchariya along with his associates behind the façade of PAAL, and the Noticees are not perpetrators of any alleged fraud. In fact, this is noted by the SCN as well, as it has not placed on record any allegations or evidence whatsoever to support its allegation of fraud against the Noticees.*

Ratification in the terms of Use of proceeds, in the Offering Circular for Issuance of GDRs

19. *As regards Para 43- Para 46 of the SCN, it is submitted that the change in intended use of GDR proceeds were informed to the investors through the Offering Circular for Issuance of GDRs which was ratified by Board of Directors of Soma on June 12, 2017. The shareholders were pleased to ratify and confirm/variation/ alteration/ amendment/ substitution as was felt necessary or expedient in the original terms and conditions. In this regard we wish to place reliance upon the judgement of the Hon'ble Supreme Court in the case of* ***National Institute of Technology and Another vs Pannalal Choudhury and Another (2005) 11 Supreme Court Cases 669,*** *wherein it was observed as follows:*

"28. That apart, the issue in question could be examined from yet another angle by applying the law relating to "ratification" which was not taken note of by the High Court.

29. ***The expression "ratification" means "the making valid of an act already done". This principle is derived from the Latin maxim "ratihabitio mandato aequiparatur" meaning thereby "a subsequent ratification of an act is equivalent to a prior authority to perform such act"****. It is for this reason, the ratification assumes an invalid act which is retrospectively validated.*

30. The expression "ratification" was succinctly defined by the English Court in one old case, Hartman v Hornsby[3] as under:

"'Ratification' is the approval by act, word, or conduct, of that which was attempted (of accomplishment), but which was improperly or unauthorisedly performed in the first instance.*"*

31. The law of ratification was applied by this Court in Parmeshwari Prasad Gupta v. Union of India[4]. In that case, the Chairman of the Board of Directors had terminated the services of the General Manager of a Company pursuant to a resolution taken by the Board at a meeting. It was not in dispute that the meeting had been improperly held and consequently the resolution passed in the said meeting terminating the services of the General Manager was invalid. However, the Board of Directors then convened subsequent meeting and in this meeting affirmed the earlier resolution, which had been passed in improper meeting. On these facts, the Court held: (SCC pp. 546-47, para 14)

"14…..even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance of the invalid resolution of the Board of Directors passed on 16-12-1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorized to terminate the services of the appellant, he was acting on behalf of the company in doing so, because, he purpoted to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorised, was done on behalf of the Company. Ratification would always relate back to the date of

the act ratified and so it must be held that the services of the appellant were validly terminated on 17-12-1953".
This view was approved by this Court in High Court of Judicature of Rajasthan v. P.P. Singh[5].
32. The aforesaid principle of law of ratification was again applied by this Court in Maharashtra State Mining Corpn. V. Sunil[6]. In this case, the respondent was an employee of the appellant Corporation. Consequent to a departmental enquiry, he was dismissed by the Managing Director of the appellant. The respondent then filed a writ petition before the High Court. During the pendency of the writ petition, the Board of Directors of the appellant Corporation passed a resolution ratifying the impugned action of the Managing Director and also empowering him to take decision in respect of the officers and staff in the grade of pay the maximum of which did not exceed Rs 4700 p.m. Earlier, the managing Director had powers only in respect of those poets where the maximum pay did not exceed Rs. 1900 p.m. The respondent at the relevant time was drawing more than Rs. 1800 p.m. Therefore, at the relevant time, the Managing Director was incompetent to dismiss the respondent. Accordingly, the High Court held[7] the order of dismissal to be invalid. The High Court further held that the said defect could not be rectified subsequently by the resolution of the Board of Directors. The High Court set aside the dismissal order and granted consequential relief. The appellant then filed the appeal in this Court by special leave. Ruma Pal, J. speaking for the three-Judge Bench, while allowing the appeal and setting aside the order of the High Court held as under: (Sunil case[6], SCC pp. 96g-h & 97a-b)

"The High Court rightly held that an act by a legally incompetent authority is invalid But is was entirely wrong in holding that such an invalid act cloud not be subsequently rectified by ratification of the competent authority. Ratification by definition means the making valid of an act already done. ***<u>The principle is derived from the Latin maxim ratihabitio mandato aequiparatur, namely,'a subsequent ratification of an act is equivalent to a prior authority to perform such act'. Therefore ratification assumes an invalid act which is retrospectively validated.</u>***

In the present case, the Managing Director's order dismissing the respondent from the service was admittedly ratified by the board of Directors unquestionably had the power to terminate the service of the responded since the order of the managing Directors had been ratified by the board of Directors such ratification related back to the date of the order and validated it."

33. Applying the aforementioned law of ratification to the facts at hand, even if we assume for the sake of argument that the order of dismissal dated 16-08-1996 was passed by the Principal and Secretary who had neither any authority to pass such order under the rules not was there any authorization given by the BoG in his favour to pass such order yet in our considered view when the BoG in their meeting held on 22-08-1996 approved the previous actions of the Principal and Secretary in passing the responded the dismissal order dated 16-08-1996, all the irregularities complained of by the respondent in the proceeding including the authority exercised by the principal and secretary to dismiss him stood ratified by the competent authority (Board Of Governors) themselves with retrospective effect from 16-08-1996 thereby making an invalid act a lawful one in conformity with the procedure prescribed in the rules."

(Emphasis supplied)

20. *Applying the above, in the present case, the Noticees submit that inadvertently the change in intended use of GDR proceeds was done without shareholder approval. However, when this was discovered by the Company, Soma immediately put the issue to vote vide postal ballot and duly received shareholder ratification on June 12, 2017 .*

Letter dated July 08, 2022

1. *We would like to place reliance on the order passed by Hon'ble SAT in the matter of* ***P.F. Sundesha & ors vs Securities and Exchange Board of India (Appeal No. 534 of 2019, decided on June 27, 2022)*** *and other connected Appeals**,** wherein it has been held as follows:*

"28. Undoubtedly, the doctrine of proportionality is now well established in our jurisprudence and is a recognised facet of Article 14 of the Constitution of India. In ***Andhra Pradesh Dairy Development Corporation Federation vs. B. Narasimha Reddy and Others (2011) 9 SCC 286,*** *the Supreme Court held:*

"29. It is a settled legal proposition that Article 14 of the Constitution strikes at arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. This doctrine of arbitrariness is not restricted only to executive actions, but also applies to legislature. Thus, a party has to satisfy that the action was reasonable, not done in unreasonable manner or capriciously or at pleasure without adequate determining principle, rational, and has been done according to reason or judgment, and certainly does not depend on the will alone. However, the action of legislature, violative of Article 14 of the Constitution, should ordinarily be manifestly arbitrary. There must be a case of substantive unreasonableness in the statute itself for declaring the act ultra vires of Article 14 of the Constitution. (Vide: Ajay Hasia etc. v. Khalid Mujib Sehravardi, Reliance Airport Developers (P) Ltd. v. Airports Authority of India, Bidhannagar (Salt Lake) Welfare Assn. v. Central Valuation Board, Grand Kakatiya Sheraton Hotel and Towers Employees and Workers Union v. Srinivasa Resorts Limited, and State of T.N. v. K. Shyam Sunder.)"

29. In matters relating to punitive measures the emphasis has shifted from the wednesbury principle of unreasonable to one of proportionality. A disproportionate punitive measure which does not commensurate with the offence would be violative of Article 14 of the Constitution of India. We are of the opinion that in the rapid growth of administrative law it has become the need and necessity to control possible abuse of discriminatory power by administrative authorities. In this regard, certain principles have been evolved by Courts, namely, that if an action is taken by an authority which is contrary to law or which is improper or where the action taken is unreasonable then the Court of law is duty bound to interfere with such action and one such mode of exercising power is to exercise the doctrine of proportionality. Where the punitive measure is harsh or disproportionate to the offence which shocks the conscience it is within the discretion of the Court to exercise the doctrine of proportionality and reduce the quantum of punishment to ensure that some rationality is brought to make unequals equal.

…….

…….

32. Similarly, the AO penalised the appellant Company of Rs.10,15,00,000/-, the Managing Director Rs.20,00,000/- and other Directors Rs.10,00,000/-. In similar matters lesser penalty has been awarded. For facility, a comparative table is given hereunder:

Penalty Orders

Sr. No.	***Name of the GDR issuer company***	***Date of Issue***	***GDR size (million $)***	***Subscriber***	***Combined Penalty***	***Date of the Order***
1.	*ABL Biotechnologies Ltd.*	*June 2008*	*6.68*	*Clifford Capital Partners*	*Rs.50,00,000/- (Rupees Fifty Lakhs)*	*23rd April, 2018*
2.	*Syncom Healthcare Ltd.*	*September 2010*	*20.74*	*Vintage*	*Rs.25,00,000/- (Rupees Twenty Five Lakhs)*	*30th August, 2019*
3.	*Visu International Ltd.*	*April 2006*	*9.66*	*Seazun*	*Rs.1,25,00,000/- (Rupees 1 Crore Twenty-Five Lakhs)*	*18th March, 2021*
4.	*GV Films Ltd.*	*April 2007*	*40*	*Whiteview*	*Rs.25,00,000/- (Rupees Twenty-Five Lakhs)*	*29th January, 2020*

5.	*Aksh Opti-Fibre Ltd.*	*Sept 2010*	*25*	*Vintage*	*Rs.10,15,00,000/- (Rupees Rupees Ten Crore Fifteen Lakhs)*	*28th February, 2020*

33.A perusal of the aforesaid table indicates that G.V. Films Ltd. had raised 40 million USD and the Company was only awarded a penalty of Rs.25,00,000/-. Another Company Syncom Healthcare Ltd., raised 20.74 million USD and was awarded a penalty of Rs.25 lakhs whereas in the case of the appellant who raised 25 million USD has been awarded Rs.10,15,00,000/-. This, in our opinion, is again excessive and disproportionate to the violations and is also discriminatory.
34. We find that such excessive penalty imposed upon the Company does not make any sense. In the instant case, there are 70,000 public shareholders. Penalising the Company with such heavy penalty is infact penalising the shareholders which is not justifiable especially for a running company. Further, the money raised through GDRs has been received by the Company and has not been misappropriated. The same has been utilitised for the purpose for which the GDR was issued, namely, for the Company's subsidiary which fact has not been disputed. Thus, it is not a case of defalcation of the funds.
35……

36. However, the directions so issued under Section 11 and 11B of the SEBI Act and the penalty so imposed under Section 15HA are disproportionate and does not commensurate with the violation in view of the directions given in similar matters by the respondent.
37. A penalty of Rs.10,00,000/- has been imposed on the Directors only on the strength that they were signatories to the board resolution. In Mr. Gurmeet Singh vs. SEBI, Appeal no.406 of 2020 and other connected appeals decided on 20th September, 2021, this Tribunal has held that merely being a signatory to a resolution does not mean that these Directors were part of the fraudulent scheme that the respondent was required to show some other evidence to show that these Directors were also part of the fraudulent scheme. Thus the imposition of penalty is excessive.
38. Consequently, while affirming the order of the WTM and AO of the aforesaid violations committed by the appellants we reduce the debarment period of the Company and the Managing Director from five years to three years. The other Directors have already undergone the debarment period and, therefore, no further order is required to be passed. In so far as the penalty imposed by the AO is concerned, the penalty against the Company is reduced to Rs.25 lakhs. The penalty against the Managing Director is affirmed. The penalty imposed against the remaining Directors is reduced from Rs.10,00,000/- to Rs.2,00,000/-. The appeals are partly allowed. In the circumstances of the case, parties shall bear their own costs."

(Emphasis supplied)

2. *As is observed from the aforesaid judgment,*
   - *i) In the case of Aksh Optifibre Ltd., one of the Appellants in the connected Appeal* ***(Appeal No. 535 of 2019),*** *the size of GDR issue was USD 25 Million and the penalty has been reduced by Hon'ble SAT from Rs. 10.15 Crores to RS. 25 lakhs based on the size of GDR issue. Further, in some earlier cases viz. Syncom Healthcare Ltd. and GV Films Ltd., a penalty of only Rs. 25 lakhs was imposed by the Ld. AO. Similarly, we have raised USD 17.29 Million which is much lesser amount as compared to amount of GDR raised by Syncom Healthcare Ltd., GV Films Ltd. and Aksh Optifibre Ltd..*
   - *ii) The penalty in the case of directors is also reduced substantially from Rs. 10 lakh to Rs. 2 lakh*

   In view of the aforesaid, even assuming that if violations are upheld, the amount of penalty in the present proceedings against the company and its directors ought to be lesser as compared to aforesaid three issues viz. Syncom Healthcare Ltd., GV Films Ltd. and Aksh Optifibre Ltd.
3. *We further submit that we are having around 14,500 public shareholders and penalizing company with heavy penalties will be penalizing the shareholders. In view of the same, we pray that the penalty ought to be commensurate with the size of the GDR issue and considering the fact that heavy penalty will ultimately penalize the shareholders.*

Issues for Consideration and Findings

8. I have carefully perused the charges levelled against Noticees, replies of Noticees to the SCN and other documents/ evidence available on record. The following issues are before me for consideration in this case:

Issue No. I: Whether:

a) Noticee no. 1 has violated Section 12A (a), (b), (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4(1) , 4(2) (f), (k), (r) of PFUTP Regulations, 2003 and section 21 of SCRA read with Clauses 35 and 36(7) of the listing agreement?

b) Noticee no. 2 to 5 have violated Section 12A (a), (b), (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations, 2003?

Issue No. II: If the answer to Issue No. I is in affirmative do the violations, if any on the part of the Noticees would attract monetary penalty under :

a) Sections 15HA of SEBI Act and for the alleged violations by Noticees?

b) Section 23E of the SCRA for the alleged violations by Noticee 1?

Issue No. III: If the answer to Issue No. II is in affirmative, what would be quantum of the monetary penalty that should be imposed upon the Noticees taking into consideration the factors stipulated in section 15J of the SEBI Act with Rule 5 (2) of the SEBI Adjudication Rules and the factors stipulate in section 23J of the SCRA with Rule 5 (2) of the SCRA Adjudication Rules, as applicable?

9. Before moving forward, it is pertinent to refer to the relevant provision of law which are alleged to have been violated. The said provisions are reproduced hereunder-

SEBI Act

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 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.

[Explanation.– For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate

the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.][1]

(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:-

(a) ………

(b) ……….

…………….

(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

SCRA, 1956

21. Conditions for listing.

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

Clause 35 of the listing agreement *inter-alia* states as follows:

"The company agrees to file the following details with the Exchange on a quarterly basis, within 21 days from the end of each quarter, in the format specified –

I (a) statement showing shareholding pattern

II(a) statement showing details of depository receipts

Clause 36 of the listing agreement

[1] *Inserted vide Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Second Amendment) Regulations, 2020 w.e.f. October 19, 2020.*

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

(1)…

(7) any other information having bearing on the operation/ performance of the company as well as price sensitive information which includes but not restricted to:…,

…..the above information should be made public immediately.

Findings

10. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticees, I record my findings hereunder:

Issue No. I: Whether:

c) Noticee no. 1 has violated Section 12A (a), (b), (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4(1) , 4(2) (f), (k), (r) of PFUTP Regulations, 2003 and section 21 of SCRA read with Clauses 35 and 36(7) of the listing agreement?

d) Noticee no. 2 to 5 have violated Section 12A (a), (b), (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations, 2003?

11. Before proceeding with the merits of the matter, it would be first appropriate to deal with certain preliminary objections raised by Noticees in the matter.

Delay in issuance of SCN:

12. The Noticees have submitted that the SCN pertains to issuance of GDR by the company in 2006 and the instant proceedings against the same were initiation in the year 2018, which is more than 12 years old and it is highly unreasonable for SEBI to expect them to keep all the documents pertaining to the transaction intact after such a long time. The Noticees have relied upon the observations of the *Hon'ble SAT in the case of Morepen Laboratories Ltd. (SAT Appeal No. 62 of 2020, decided on April 15, 2021), Bharat J Patel vs. SEBI (Order dated September 09, 2020), ICICI Bank Ltd. vs. SEBI (Order dated July 08, 2020 in SAT Appeal no. 583 of 2019), Ashok Shivlal Rupani & Ors vs. SEBI (Appeal no. 417 of 2018), Ashlesh*

Gunvantbhai Shah & Ors vs. SEBI (Order dated Jan 31, 2020 in Appeal no. 169 of 2019),Aditi Dalal vs SEBI (Order dated November 28, 2011 in SAT Appeal no. 143 of 2011), Order dated Feb 28, 2019 of the Supreme Court in Adjudicating Officer, SEBI vs. Bhavesh Pabari (Civil Appeal No. 11311 of 2013), Garware Polyster Limited & Ors. vs SEBI (Appeal No. 187 of 2021), decided on August 09, 2021, order of Hon'ble SAT In the case of Rajeev Bhanot & Ors. Vs SEBI (Appeal No. 396 of 2018) and Hon'ble Supreme Court while dismissing the appeal filed by SEBI [SEBI vs Rajeev Bhanot & Ors. (Civil Appeal No. 6441-6443 of 2021) to contend that there has been inordinate delay in the initiation of the proceedings. 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, where such *modus operandi* was *prima facie* observed such GDR issues made before the year 2009 were examined. SEBI initiated investigation as soon as SEBI came to know that such companies have adopted the *modus operandi* as referred to above. Since, the GDRs are issued abroad and related transactions were carried out outside India, SEBI had to call information from the various entities situated abroad in such large number of fraudulent GDR issues. Such information *inter alia* included seeking information on diversion of funds and subsequent tracing of proceeds from large number of entities and the details of (a) GDR issuer companies, (b) custodian of securities, (c) overseas depository, (d) overseas banks, (e) subscribers of GDR issue (mostly overseas), (f) lead manager, (g) various layers of transactions, etc. These all information were not readily forthcoming. Therefore, SEBI had to collect information and documents from various sources including approaching the foreign regulators for assistance in procuring information and documents from the concerned entities situated outside India from many jurisdictions. The foreign regulators had also to collect this information from the concerned entities and then to furnish to SEBI. Thus, the process of collection of information in the matter was complex, tedious and time consuming and various dots were to be connected. 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. Soma Textiles and Industries Limited (Noticee No. 1) was one such GDR issuer where such *modus operandi* was also observed and the investigation was completed in March 31, 2017. I note that after completion of the Investigation, adjudication proceedings were initiated with appointment of Shri Sahil Malik as Adjudicating Officer on May 23, 2017 and the SCN was issued to the Noticees on January 18, 2018. I also note that, SCN was also issued to the Noticees under parallel 11B proceedings on July 21, 2017.

13. Thus, from the above facts and circumstances of the case, it cannot be said that there was inordinate and unnecessary delay in the matter as contended by the Noticees. It is further noted that there is no provision in the SEBI Act, 1992 which provides limitation period for taking action for the violation of the provisions of the Act or the Regulations made thereunder. In terms of Section 24(1) of the SEBI Act, 1992, any contravention to the provisions of SEBI Act and the Rules and Regulations framed thereunder is punishable with imprisonment for a term which may extend to the period of ten years and thus there is no limitation for initiating action for the same.

14. In the facts and circumstances of the present matter, I note that the investigation has been conducted and proceedings have been initiated in reasonable time. Further, I note that the facts and circumstances of the present case is clearly distinguishable from those of the aforementioned decisions and therefore not applicable to the present matter as none of the cases referred to by the Noticees deals with GDR issue which involved complex investigation where numerous entities involved were situated outside India and information had to be collected with the help of overseas regulators, whereas, in *Jindal Cotex Ltd. and others Vs. SEBI (Appeal No. 376 of 2019 decided on 05.02.2020)* 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 Securities Appellate Tribunal held that *".............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 (Supra) and Cals Refineries Limited (Supra) etc................"

15.Again, in the matter of *G.V. Films Ltd. Vs. SEBI* (Date of Decision: February 15, 2021, SAT Appeal No. 168 of 2020), the Hon'ble SAT opined on the issue of delay in a similar matter pertaining to issue of GDR's as follows:

"Having heard the learned counsel for the parties on this issue, we find that there is no doubt that there has been a delay in the issuance of the show cause notice after 10 years from the date of the GDRs issue. However, on this ground of delay, the proceedings cannot be quashed for the reasons that we find that an investigation was required to be done beyond the borders of India which took time."

16.Thus, keeping reliance on the aforementioned judgments of Hon'ble SAT and the above facts and circumstances of the case, I am of the view that the time taken in the matter is reasonable and explained by the course of proceedings as described above. Thus, it cannot be said that there was inordinate and unnecessary delay in issuance of SCN in the matter as contended by the Noticees.

Inspection/supply of documents

17.I note that the Noticee no. 1 in reply has claimed that, SEBI did not provide any of the original documents as sought by it during inspection that was granted to it on October 14, 2019 during parallel 11B proceedings under section 11B read with 11(1) and 11(4) of the SEBI Act, 1992 and were provided only photocopies of the documents which were annexed to the SCN. Noticees during hearing proceedings also requested for copy of redacted investigation report citing the judgment of Hon'ble Supreme court in the matter of T. Takano v. Securities and Exchange Board of India. Pursuant to which, redacted investigation report was duly emailed to AR of Noticees.

18.Further, with respect to seeking original documents, it may be noted that copies of all documents which were relied upon by SEBI in making allegations in the SCN have been provided to the Noticees along with the SCN. I also note from the order of Hon'ble WTM in parallel 11B proceedings that inspection of all these documents have been given to AR of Noticees on October 14, 2019 by the office of Hon'ble WTM. Further following has been stated in the WTM order:

"*I find that it satisfies the requirement of principles of natural justice. However, Noticee no.1 has requested for inspection of various other documents and my observations on the request for such various other documents sought by the Noticee no. 1 are as under:*

Annexure No.	***Document sought by the Noticee for inspection***	***Observations***
1.	*Copy of investigation report along with relevant annexures*	*The relevant findings of the investigation have been broughtout in the SCN and the copies of documents relied upon in the SCN have already been provided to the Noticee along with the SCN as mentioned in para 1 above. The request made by the Noticee is untenable. Further, I note that inspection was granted for all the annexures to the SCN during the inspection undertaken by the Company on October 14, 2019.*
2.	*Statements and documents forming part of the Investigation Report*	*No recorded statement has been relied or referred to in the SCN. The request made by the Noticee is untenable.*
3.	*Rationale for selecting the period of investigation from 1st October, 2006 to 31st October, 2006*	*The request is in the form of a question without reference to a specific or particular document. The request made by the Noticee is untenable.*

4.	*All correspondences exchanged between SEBI and ICICI Bank Ltd, Deutsche Bank Trust Company Americas, PAN Asia Advisors Ltd, Banco Efisa*	*The request is omnibus and roving and without reference to a specific or particular document. The relevant findings of the investigation have been brought out in the SCN and the copies of documents relied upon in the SCN have also been provided to the Noticees. The request made by the Noticee is untenable.*
5	*Correspondences exchanged between SEBI and Whiteview Trading Corporation*	*No correspondences exchanged between SEBI and Whiteview have been relied upon in the SCN. The request made by the Noticee is untenable.*
6	*Copy of all statements recorded of Samual Ernest Hurley*	*No statement of Samuel Ernest Hurley has been relied upon in the SCN. The request made by the Noticee is irrelevant and is untenable.*
7.	*Correspondences exchanged between SEBI and United Kingdom's Registrar of Companies*	*The request is omnibus and roving and without reference to a specific or particular document. No correspondences exchanged between SEBI and United Kingdom's Registrar of Companies have been relied upon in the SCN. The request made by the Noticee is untenable.*

	Documentary Evidence/basis of alleging that Whiteview was the only entity to have subscribed to	*Whiteview had entered into a loan agreement with Banco on October 18, 2006 for USD 18.50 million for subscribing to the GDR issue of SOMA and the same was transferred to the account of SOMA with Banco for subscription of the GDR issue. Further, SOMA entered into an account charge agreement with Banco to secure the loan taken by Whiteview. Upon the failure of Whiteview to repay the loan, SOMA vide its letter dated January 23, 2007 had authorized Banco to transfer an amount of USD 15.67 million (proceeds from the GDR issue) from its account to the account of Whiteview with Banco. The loan agreement dated October 18, 2006, the account charge agreement dated October 18, 2006, the*

9.	*Documentary evidence/basis of alleging that we furnished wrong information to SEBI by providing*	*The same observation as in respect of Sr. no.* *8 above may be referred to, to show that only one entity i.e. Whiteview, had subscribed to the 1.85 million GDRs of SOMA. The letter dated June 26, 2015 submitted by Noticee no.* *1 to SEBI with a list of 5 subscribers to the GDR issue is wrong information. The loan agreement dated October 18, 2006, the*
		have been provided as Annexures to the SCN. *Further, inspection of the said documents have been granted to the Noticee no. 1 on October 14, 2019.*
10.	*Documentary evidence/basis of alleging that the loan amount of*	*Noticee no. 1 vide its letter dated January 23,* *2007 had authorized Banco to transfer an amount of USD 15.67 million from its account to the account of Whiteview with Banco. Copy of the said letter dated January 23, 2007 has been provided as Annexure-9 to the SCN. Further, the said transfer of USD 15.67 million to the account of Whiteview with Banco is also evident from the bank account statement of Noticee no. 1 with Banco, which has also been provided as*

	US$ 15.67 million of Whiteview was repaid by us from GDR proceeds.	*Annexure-8 to the SCN. Inspection of the said documents have also been provided to the Noticee no. 1 on October 14, 2019.*
11.	*A copy of English translation of the bank account statement of account no.628288525002, 6282855.15.001 and 628288525001.*	*These bank accounts pertain to Noticee no. 1and the bank account statement of Noticee no. 1 with Banco have been provided as Annexure-8 with the SCN. Inspection of the said document has also been provided to the Noticee no. 1 on October 14, 2019.*
12.	*Documentary evidence/basis of alleging that GDRs and underlying equity shares to the extent of US$ 15.67 million were acquired by Whiteview without proper consideration.*	*Whiteview had entered into a loan agreement with Banco on October 18, 2006 for USD 18.50 million for subscribing to the GDR issue of SOMA and the same was transferred to the account of SOMA with Banco for subscription of the GDR issue. Further, SOMA entered into an account charge agreement with Banco to secure the loan taken by Whiteview. Upon the failure of Whiteview to repay the loan, SOMA vide its letter dated January 23, 2007 had*

		authorized Banco to transfer an amount of USD 15.67 million (proceeds from the GDR issue) from its account to the account of Whiteview with Banco. The loan agreement dated October 18, 2006, the account charge agreement dated October 18, 2006, the bank account statements of SOMA and the letter dated January 23, 2007 of SOMA have been provided as
13.	*Copies of all correspondences exchanged between SEBI and those entities who were holders of equity shares post-conversion of GDRs.*	*The request is omnibus and roving and without reference to a specific or particular document. No such correspondence or communication has been relied upon in the SCN. The request made by the Noticee no. 1 is untenable.*

14.	*Documentary evidence/basis of alleging that the credit agreement and account charge agreement were fraudulent in nature.*	*The cumulative inference drawn from all th documents which have been provided to the Noticee no. 1 as Annexures to the SCN has been dealt with in detail in the subsequent paras of the present order. Further, inspection of these documents have been provided to the Noticee no. 1 on October 14, 2019. Hence, the request made by the Noticee is untenable.*
15.	*Documentary evidence/basis of alleging that the loan amount of US$ 15.67 million of Whiteview was repaid by us.*	*The request is identical to the request made at Sr. no. 10. Hence, the same observation in Sr. no. 10 may be referred to here.*
16.	*Copy of statement of Shri. A. K. Somany recorded during the course of investigation.*	*The said statements of Shri A. K. Somany have not been relied upon or referred to in the SCN. The request made by the Noticee is untenable.*
17	*Copy of statement of all other entities/person recorded during the course of investigation*	*The request is omnibus and roving and without reference to a specific or particular document. No recorded statement of any entity/person has been relied upon or referred to in the SCN.* *The request made by the Noticee is untenable*

19.*From the SCN and its Annexures, I find that all the relevant and relied upon documents in support of the SCN and also the findings of the investigation captured in the SCN have been forwarded to the Noticees. Therefore, the contention of the Noticee no. 1 that SEBI has not provided complete documents is untenable. Further, regarding, inspection of original copy of the Annexures, sought by the Noticee no. 1, my observations are as under:*

Annexure No.	***Document for which contention for inspection of Original is made and certified copies required***	***Observations***
1.	*Copy & inspection of the file notings and order thereof wherein the Investigating Authority was appointed.*	*Findings of the investigation report have been provided in the SCN. No other file notings have been relied upon in the SCN. The request is roving and irrelevant. Therefore, the request is untenable.*
2.	*Memorandum of Association, Articles of Association, Share Certificates and Ownership documents of Whiteview Trading Corporation*	*The said documents have not been relied upon or referred to in the SCN. Hence, the request for inspection of such original documents is untenable.*
		The relevant data/documents provided by

3.	*Letters sent by SEBI to Financial Regulator of Portugal and Documents received from them.*	*the Financial Regulator of Portugal as relied upon in the SCN are annexures to the SCN and have been provided to the Noticees along with the SCN as mentioned in para 1 above. Further, Noticee has not specified the particular data/documents or subject.*

		Noticee has made an omnibus request without specifying the particular data/documents required. Such requests are roving and cannot be entertained. Further, documents or correspondences with foreign regulators are under agreement of confidentiality and also pertain to correspondences on other matters and entities. Hence, the request made by the Noticee is

4.	*Documents showing allotment of GDR's to Whiteview*	*No such document or letter of allotment of GDRs by SOMA to Whiteview has been relied upon or referred to in the SCN. The allotment of GDR's to Whiteview by SOMA has been established from the loan agreement between Whiteview and Banco for subscribing to the GDR issue of SOMA, the account charge agreement between SOMA and Banco for securing the said loan of Whiteview and the letter dated January 23, 2007 wherein SOMA has authorized Banco to transfer USD 15.67 million from its account to Whiteview and this is evident from the bank account statements of SOMA. All the aforesaid documents have been provided as Annexures to the SCN, as mentioned in para 1 above. Further, inspection of these documents have been*
5	*Documents to show that SEBI has complied with Clause 11 of the IOSCO MMOU*	*No such documents have been relied upon or referred to in the SCN in the present proceedings. Further, the IOSCO MMOU is available to the public on the SEBI website and the MMOU does not envisage any embargo/restriction with regard to the use of information when the same is obtained for conducting enforcement proceedings. Hence, the request made by the Noticee is untenable.*

6	*All documents received from Financial Regulator of Portugal or any other Regulator during the course of the investigation in the matter.*	*The relevant data/documents provided by the Financial Regulator of Portugal as relied upon in the SCN have been provided to the Noticees as Annexures along with the SCN as mentioned in para 1 above. Further, Noticee has not specified the particular data/documents. Noticee has made an omnibus request without specifying the particular data/documents required. Such requests are roving and cannot be entertained. The request made by the Noticee is untenable.*

19. Thus, I find that the Noticees were provided with all the relevant documents as relied upon in the SCN as mentioned above not only during instant adjudication proceedings but also alongwith the SCN issued in parallel 11B proceedings as Annexures. I note that the Noticee No. 1 has filed detailed replies to the SCN. I also note that the Noticee no. 1 has referred to provisions of the Indian Evidence Act, 1872 to contend that for the admissibility of secondary evidence, the conditions in Section 65 of the Indian Evidence Act, 1872 must be fulfilled, however, that none of the conditions have been fulfilled in the present case. In this regard, I note that the proceedings initiated under Section 11(4) and 11B of the SEBI Act, 1992 are in the nature of quasi- judicial proceedings, as held by the Hon'ble Supreme Court in ***NSDL Vs. SEBI (2017) 5 SCC 517*.** As such the provisions of Indian Evidence Act, 1872 are not strictly applicable to these proceedings. Further, Section 65 (a) of the said Act, itself allows admissibility of a document as secondary evidence when the original is in possession of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court. I, further, note that the copies of some of the documents relied upon, were obtained by SEBI during investigation, through overseas regulators. The contents of these documents have been corroborated from various other

documents and transactions, which have been provided as annexures to the SCN. Many of these documents pertain to the Company itself, such as the Board Resolution dated July 27, 2006 of the Company, the Account Charge Agreement dated October 18, 2006 signed between the Company with Banco, the bank account statements of the Company with Banco and the Company letter dated January 23, 2006, the originals of which should be in possession of the company. Copies of the said documents have been provided as Annexures to the SCN, as mentioned in para 1 above, and I note that the Company has not disputed the contents of these documents for which inspection was also provided to the Company on October 14, 2019 during parallel 11B proceedings.

20. As redacted investigation report in the matter and copies of all the documents relied upon by SEBI in the SCNs were already provided to the Noticees in response thereto Noticees have filed detailed replies, I find that no prejudice has been caused to any of the Noticees in defending their interest and contesting the allegation made against them in the SCN. I find that the contention made by the Noticee no. 1 that SEBI has failed to provide inspection of all documents and inspection of original documents on which it has relied upon is untenable.

Having decided the preliminary objections raised by the Noticees, now I proceed to deal with the merits of the matter:

21. On the merits of the case, I note that it has been alleged in the SCN that SOMA issued GDR on October 20, 2006, the details of which are as under:

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**	**GDRs listed on**

							deposited	
20-Oct-2006	1.85	17.2975	ICICI Bank Ltd., Mumbai	1,85,00,000 equity shares of FV `10 (1 GDR=10 equity share)	Deutsche Bank Trust Company Americas	Pan Asia Advisors Ltd.	Banco Efisa	Luxembourg Stock Exchange

22.It is alleged in the SCN that Whiteview entered into a Loan Agreement on October 18, 2006 with Banco for payment of subscription amount of USD 18.50 million for the GDR issue of SOMA. Simultaneously, an Account Charge Agreement dated October 18, 2006 was entered into between SOMA and Banco for providing security towards the said loan obtained by Whiteview from Banco and the Account Charge Agreement was signed by Mr. Sunil Patel (Noticee No. 5), the Overseas Sale Representative, as authorized in the Board Meeting of SOMA dated July 27, 2006, wherein, a resolution was also passed authorizing the Banco to use the GDR proceeds as security against loan for which any charge is granted as well as to enter into any escrow agreement or similar agreements if and when so required. Thereafter, SOMA in its Board Meeting dated October 20, 2006, approved the aforesaid GDR issue and in its letter dated June 26, 2015 to SEBI, SOMA had submitted that there were 5 allottees/subscribers to the said GDR issue, the details of which are mentioned in above paras. However, during investigation, it was found that the GDR subscription money (1.85 million GDRs amounting to USD 17.29 million) was received from only one entity i.e. Whiteview. Further, it was observed that SOMA vide its letter dated July 23, 2007, had authorized Banco to transfer an amount of USD 15.67 million from its account to the account of Whiteview with Banco as Whiteview had failed to repay the loan taken from Banco for the subscription of GDR issue of SOMA. Hence, it has been alleged in the SCN that Whiteview subscribed to the GDR issue of SOMA without consideration, as the subscription money was funded by SOMA. The SCN further alleges that SOMA failed to inform BSE about the account charge agreement dated October 18, 2006 and that the GDR issue of SOMA was subscribed by only one entity, i.e., Whiteview and it is alleged that SOMA has provided incorrect information to SEBI about the list of subscribers to the issue. Further, it is alleged that this misleading information had the potential to influence the decision of investors into believing that the GDRs were fully subscribed, when in fact it was funded by SOMA itself. Based on the above, it has been alleged in the SCN that the above acts of concealing and suppressing material facts about the fraudulent arrangement of the Loan and Account Charge Agreements by SOMA and its Board of Directors are in violation of provision of SEBI Act, 1992 and PFUTP Regulations.

23. In this regard I note that SOMA in its Board Meeting dated July 27, 2006 had *inter alia* resolved to open a bank account with Banco for the purpose of receiving the subscription money in respect of GDRs issued by the company and authorized Mr. Sunil Patel, an Overseas Sales Representative of the Company, to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration etc. as may be required by the bank. Further, it was resolved to authorize the bank to use the funds so deposited in the aforesaid bank account as security in connection with loans for which any charge is granted as well as to enter into any escrow agreement or similar agreements if and when so required. Thereafter, I note that a loan agreement dated October 18, 2006 was signed between Whiteview and Banco for loan of USD 18.50 million and it was *inter alia* stated in the loan agreement that the purpose of the loan was "*The borrower shall use the proceeds of the advance to subscribe for global depository receipts to the value of upto USD 18,500,000 issued by SOMA on the terms of the listing particulars to be delivered to the Luxembourg Stock Exchange*". Hence, it is clear that the loan taken by Whiteview from Banco was for the purpose of subscribing to the GDR issue of SOMA. Simultaneously, Noticee no. 5,

the authorized agent of SOMA, signed an Account Charge Agreement dated October 18, 2006 to secure the loan taken by Whiteview for subscribing to the GDR issue of SOMA. I note that it is clearly stated in the Account Charge Agreement that the "*SOMA deposited in its designated account with bank an amount not exceeding US$ 18,500,000 as security for all the obligations of Whiteview under the loan agreement….*" I also note that the loan agreement has been defined in the Account Charge Agreement as "*Loan agreement means the Loan agreement signed between Whiteview (as borrower) and the bank dated on or around the date of this agreement by which the bank agreed to lend to Whitevew the maximum amount of upto US$ 18,500,000*". Hence, it is clear that the Account Charge Agreement was entered into between SOMA and Banco for the purpose of securing the loan taken by Whiteview on October 18, 2006 with Banco for the purpose of subscribing to the GDR issue of SOMA. I also find that SOMA was aware of the said loan agreement and Account Charge Agreement as Noticee no. 5, who was the authorized representative that signed the Account Charge Agreement on behalf of SOMA, has submitted in his reply to the SCN that "….*I had diligently forwarded all the communications made to me under the alleged Account Agreement or otherwise related to the GDR, to Soma as and when I received the same".* Therefore, since the Account Charge Agreement was signed on October 18, 2006 and the GDR issue of SOMA took place on October 20, 2006, it is evident that SOMA was aware of the loan agreement and Account Charge Agreement during the time of issue of GDR. Hence, it is clear that SOMA had proceeded with the GDR issue on October 20, 2006 and did not informed BSE of the same with the knowledge that Whiteview would be the sole subscriber to the GDR issue. However, I find that SOMA failed to inform BSE about the Account Charge Agreement or that Whiteview was the sole subscriber to the GDR issue. This fact that SOMA was aware of the loan agreement, Account Charge Agreement and that Whiteview was the sole subscriber to the GDR issue is evident from the letter dated January 23, 2007 issued by SOMA to Banco authorizing Banco to transfer an amount of USD 15.67 million from its account to the account of Whiteview with Banco in furtherance of the loan taken by Whiteview which it failed to repay. Therefore, I find that the allegations in the SCN that the above acts of concealing and suppressing material facts about the fraudulent arrangement of the Loan and Account Charge Agreements by SOMA and its Board of Directors are tenable.

24. At the outset, I note that the Noticees have contended that, *SEBI has, without going into the merits of the case and without any documentary evidence*. In this regard, I find that the following relevant documentary evidence have been provided to the Noticees along with the SCN:

a) **Company Resolution dated July 27, 2006:** I find that in the Board Meeting dated July 27, 2006, the company had resolved that a bank account will be opened with Banco for the purpose of receiving subscription money in respect of the GDR issue. It was also resolved to authorize the bank to use the funds so deposited in the aforesaid bank account as security in connection with loans for which any charge is granted as well as to enter into any escrow agreement or similar agreements if and when so required. Further, the Board resolved to authorize Mr. Sunil Patel (Noticee no. 5) 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. Copy of the said Resolution dated July 27, 2006 has been provided to the Noticees as **Annexure t**o the SCN

b) **Minutes of Board Meeting dated July 27, 2006:** The above resolutions passed by the Company on July 27, 2006, was signed by Noticees 2,3 and 4 and was sent as July 27, 2006. Copy of the said minutes has been provided to the Noticees along with the SCN as **Annexure.**

c) **Account Charge Agreement dated October 18, 2006:** The Account Charge Agreement was signed between Banco and SOMA pursuant to the decision taken by SOMA during the Board Meeting held on July 27, 2006. It is through this meeting, that authorization was granted to Mr. Sunil Patel to sign the Account Charge Agreement dated October 18, 2006 for securing the loan taken by Whiteview from Banco for subscribing the GDR issue of SOMA. I note that the said Account Charge Agreement dated October 18, 2006 has also been provided to the Noticees as **Annexure to** the SCN.

d) **Loan Agreement dated October 18, 2006:** Whiteview had taken a loan from Banco for the amount of USD 18.50 million for subscribing to the GDR issue of SOMA. The loan agreement dated October 18, 2006 between Whiteview (and Banco has been provided to Noticees as **Annexure** to the SCN.

e) **SOMA letter dated January 23, 2007**: SOMA through its authorized representative Mr. Sunil Patel had vide letter dated January 23, 2007, authorized Banco to transfer an amount of USD 15.67 million from its account to the account of Whiteview Banco as Whiteview had failed to repay the loan taken from Banco for the subscription of GDR issue of SOMA. I note that the said letter dated January 23, 2007 has also been provided to the Noticees as **Annexure** to the SCN.

f) **Bank Account Statements:** These are the bank account statements of SOMA where the GDR proceeds were deposited and also from where money was transferred to the account of Whiteview with Banco pursuant to the Company letter dated January 23, 2007, and have been provided to the Noticees as **Annexure** to the SCN.

25. Hence, I find that allegations in the SCN are clear and the relevant documentary evidence, *inter alia* as listed above, have been provided to the Noticees. Further, from the said documents, I find that the Company had facilitated subscription of its own GDR issue by entering into an arrangement where Whiteview , the only subscriber to the GDR's issued by SOMA, obtained loan from Banco for subscribing the GDR issue of SOMA, and SOMA pledged the GDR proceeds with Banco for securing the loan taken by Whiteview from Banco.

25. With regard to the allegations in the SCN, SOMA has submitted that the GDR issue was done by seeking requisite approvals, complying with the applicable provisions of the law and after making proper disclosures through Pan Asia Advisors Limited (hereinafter referred to as "**PAAL**"), a UK based entity who was the Lead Manager of the GDR issue of SOMA. SOMA has submitted that the Board of Directors had decided that a Bank Account would be opened with Banco for the purpose of receiving money in respect of GDR issue and Noticee no. 5 was authorized to sign and execute any application, agreement, escrow agreement etc. from time to time. SOMA has submitted that PAAL has devised the scheme, artifice etc. of a farce GDR, and they have been made a scapegoat and have been wrongly accused of a fraud which they have not committed. SOMA has further submitted that the Board had authorized only one person i.e. Mr. Sunil Patel to carry out necessary formalities for which he relied upon the expertise and knowledge of the Lead Manager registered with UK Regulator. That Noticee no. 5 and other directors of the company were dependent upon the Lead Manager considering their experience.

26. In this regard, I note that the Account Charge Agreement signed by Whiteview *inter alia* states as under:

"1) ***Loan agreement****: Loan agreement means the Loan agreement signed between Whiteview (as borrower) and the Bank dated on or around the date of this agreement by which the bank agreed to lend to Whiteview the maximum amount of upto US $18,500,000.*

2) ***Account Charge Agreement:***

Subject to the terms of this agreement, SOMA deposited in its designated account with bank (hereinafter the Account) an amount not exceeding US $18,500,000 as security for all the obligations of Whiteview under the Loan Agreement (hereinafter the Secured Obligations) and with full title guarantee hereby assigns to and charges by way of first fixed charge in favour of the Bank all the rights, title, interest and benefit in and to the account as well as the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof. Such assignment and charge shall *be a continuing security for the due and punctual payment and discharge of the secured obligations.*

……………..”

27. Hence, I note that it has been expressly given in the Account Charge Agreement that SOMA would be depositing in its account an amount not exceeding USD $18,500,000 as security for all the obligations of Whiteview under the loan agreement. I also note that this “loan agreement” has been defined in the Account Charge Agreement as the Loan agreement signed between Whiteview (as borrower) and the Bank dated on or around the date of this agreement by which the bank agreed to lend to Whiteview the maximum amount of upto US $18,500,000. Further, I note that this loan agreement between Whiteview and the Bank states that “*Purpose - The borrower shall use the proceeds of the advance to subscribe for global depository receipts to the value of upto US $18,500,000 issued by SOMA on the terms of the Listing particulars to be delivered to the Luxembourg Stock Exchange”.* Hence, it is clear that SOMA who had authorised and instructed Noticee no. 5 to sign the Account Charge Agreement, as submitted by Noticee no. 5, was well aware of the Account Charge Agreement and the loan agreement. I note that SOMA have not denied that Noticee no. 5 was authorized to sign the Account Charge Agreement or taken the stand that they are not responsible for the actions of Noticee no. 5 in signing the Account Charge Agreement or that Noticee no. 5 has gone beyond the role or responsibility that he was authorized for in the said Board meeting dated July 27, 2006. In this regard, I note that Noticee no. 5 in his reply has *interalia* submitted as under:

“I was thereby given authority by Soma for the said GDR issue for signing the documents related to the GDR as and when required. <u>My role was never to oversee or supervise the process of GDR but limited to acting</u> <u>as a nodal point outside India for Soma just for the limited purpose of signing the documents given by PAAL.</u> <u>The documents were signed by me as per instructions of the Board of Directors</u>, in good faith on the basis of trust reposed in PAAL and no adverse inference ought to be drawn against me due to the same.

………in so far as the allegation that I had signed the Account Charge Agreement on behalf of Soma which was executed between Soma and Banco, <u>I submit and reiterate that the same was signed in the routine</u> <u>course of business on the basis of authority given to me through the resolution passed by Soma</u> and the reliance placed on PAAL, which was at that point in time well reputed lead manager globally, assuming that they would be well aware of the policies/procedures in other jurisdictions. <u>I further submit that I was not</u> <u>required to carry out any due diligence on my part as my role was limited to signing the documents related</u> <u>to the GDR issue as instructed by Soma and provided to me by PAAL</u>."

(Emphasis added)

28. From the aforesaid statement of Noticee no. 5, I note that Noticee no. 5 has submitted that he has signed the Account Charge Agreement as per the instructions of the Board of Directors of SOMA and that he was not required to carry out any due diligence on his part as his part was only limited to signing the documents related to the GDR issue as instructed by SOMA and provided to him by PAAL. I find that Noticee no. 5, as submitted by him, has acted and signed the Account Charge Agreement on the basis of the instructions and authority given by SOMA. I find that a company has to be held responsible for all resolutions passed by the board of directors of the Company for actions taken to implement such decisions and the company also reaped the benefit of such GDR issue/subscription money. A company cannot wriggle out of its obligations with respect to resolutions passed by it in its board meetings, agreements entered into by it with banks and transactions made by them pursuant to such agreements, and simply throw the entire obligation and liability of the company and its directors on the Merchant Banker/Lead Manager.

29. Further, I find that Noticee no. 5 is an authorized Representative of SOMA and has acted in the capacity authorized by the Company to him through the resolution dated July 27, 2006. I note that SOMA has not made any contention that Noticee no. 5 has acted in a fraudulent manner. Even if for argument's sake if it was PAAL who provided

the Account Charge Agreement to Noticee no. 5, it was the responsibility of Noticee no. 5 as the authorized representative to know what he was signing and he cannot have blindly signed every document given to it by PAAL. Further, SOMA in its capacity as a principal to its agent Noticee no. 5 is responsible for the actions of Noticee no. 5. I note that the Account Charge Agreement was signed between SOMA and Banco on October 18, 2006, which is before the date of approval of the Board in its meeting held on October 20, 2006 for the issue and allotment of 18,50,000 GDRs worth USD 17.29 million representing 1,85,00,000 underlying equity shares of Rs. 10/- each, as informed to BSE. Since, the Account charge agreement which was signed by Noticee no. 5 (the authorized representative of the company) as per the instructions of the Board, on October 18, 2006 i.e. before the Board Meeting approval for issue of GDRs on October 20, 2006, it is evident that SOMA was aware of the loan agreement of USD 18.50 million from Banco by Whiteview for subscription of GDRs of SOMA. This is clear from the fact that Noticee no 5 has submitted in his reply to the SCN that *"I hereby submit that I had diligently forwarded all the communications made to me under the alleged Account Agreement or otherwise related to the GDR, to Soma as and when I received the same".* In view of the above, I find the submissions of SOMA that the Lead Manager was wholly responsible as untenable, as it is established that SOMA was aware of the loan agreement and Account Charge Agreement prior to the issue of GDRs itself and also find the ratio of orders, judgements, circulars and clarifications cited by Noticee no. 1 and 4(*DLF Limited & Ors. Vs SEBI (Appeal No. 331 of 2014, decided on 13.03.2015, HSBC Securities (India) Pvt. Ltd. Vs. SEBI [Appeal No. 99/2007, order No. WTM/GM/EFD/99/2018-19 dated March 12, 2019 passed by Ld. Whole Time Member of SEBI in the matter of Ravi Kumar Distilleries Ltd*) clearly distinguishable from the facts and circumstances of the instant case. I also note that in view of the above, the contentions of Noticee no. 1 and 4 that, "*The company would be able to provide security against the subscription proceeds only when subscription is received and not before that. Hence the allegation that we have authorized Banco Bank to use the GDR proceeds as security against loan is devoid of merit and is contrary to material on record.*

The Company and/ or any other person cannot create security against assets which are not in existence. Hence, the agreement is void ab initio and SEBI's charge fails." Also stands untenable

30. I note that Noticees has also relied upon the Order dated November 05, 2019 of Hon'ble SAT in the matter of ***Adi Cooper & Anr. Vs. SEBI (SAT Appeal No. 124 of 2019)*** **and order dated September 21, 2021 of Supreme court *[SEBI v Adi Cooper (Civil Appeal No. 380 of 2020)*** to contend the resolution dated July 27, 2006 passed by the Company cannot be inferred to mean that it was passed to authorize Banco to utilize the GDR proceeds as security in connection with a loan given to Whiteview. In this regard, I note that SOMA have quoted certain paras of the said order passed by the Hon'ble SAT without properly appreciating the complete facts and circumstances under which the said order came to be passed. I note that the Hon'ble SAT while dealing with the interpretation of the board resolution, observed that "*the resolution could also mean that the proceeds would be utilized by the bank as security in connection with a loan taken by the company itself".* Thus, as per Hon'ble SAT also, the interpretation canvassed by the Noticees is a possible interpretation and it is not the only interpretation and the expression "*with loans for which any charge is granted*" in the resolution, is open to interpretation. the Hon'ble SAT has also found another Independent Director guilty of the violations as alleged in the same SCN. Subsequently, Hon'ble SAT has upheld the orders passed by SEBI in Transgene Biotek Ltd. and Jindal Cortex matters involving similar resolutions and proceeded with the similar interpretation on which the present SCN is premised. It is also noted that, Hon'ble Supreme Court, vide order dated September 21, 2021, has reversed the order of the Hon'ble SAT in *Adi Cooper Vs. SEB*I and held that such a resolution facilitated the transaction with Vintage, and was a fraudulent transaction considering the fact that neither the arrangement nor the resolution was ever disclosed to the shareholders of the Company or the investors of the securities market through the stock exchange(s). Accordingly, the Hon'ble Supreme Court upheld the view taken by SEBI in the matter. Further, vide an order of the same date, i.e., September 21, 2021, the

Hon'ble Supreme Court also set aside the order dated November 16, 2020 of the Hon'ble Tribunal in *Adesh Jain Vs. SEBI*. The Hon'ble Supreme Court inter alia observed that the Tribunal's order in *Adesh Jain Vs. SEBI* had relied upon Tribunal's order in *Adi Cooper Vs. SEBI*. Since the latter has been reversed, the Hon'ble Supreme Court relegated the parties before the Hon'ble SAT for reconsideration of the appeal afresh. Further, in the present case, I note that Board Resolution states 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 for which any charge is granted..".* I further note that, the Account Charge Agreement dated October 18, 2006, signed by the Authorized Representative (Noticee no. 5) on behalf of SOMA, was for the purpose of securing the loan taken by Whiteview from Banco. In this regard, I also note that, Noticee no. 5, the authorized representative who had signed the Account charge agreement dated October 18, 2006 on behalf of SOMA, had *inter alia* submitted in his reply to the SCN that *"I hereby submit that I had diligently forwarded all the communications made to me under the alleged Account Agreement or otherwise related to the GDR, to Soma as and when I received the same"* and "*I had signed the Account Charge Agreement on behalf of Soma which was executed between Soma and Banco, I submit and reiterate that the same was signed in the routine course of business on the basis of authority given to me through the resolution passed by Soma…".* Hence, it is evident that Noticee no. 5 has acted as per the authorization given to him in the Board Resolution dated July 27, 2006 and signed the Account Charge Agreement dated October 18, 2020, prior to the issue of GDRs on October 20, 2006. It shows that SOMA was well aware of the Account Charge Agreement and the loan agreement. Therefore, from the said act and submissions of Noticee no. 5, the interpretation of the Board Resolution dated July 27, 2006 becomes clear. I also note that SOMA has not made any contention that Noticee no. 5 acted beyond the authorization given to him or that he acted in a fraudulent manner in this regard. Thus, ratio sought to be derived by Noticees from the aforesaid orders passed by Hon'ble Supreme Court and Hon'ble SAT to the present case is not correct.

31. With regard to the allegations on submitting the incorrect list of subscribers to the GDR issue to the Investigating Authority of SEBI, SOMA has contended that PAAL, a very reputable firm in UK, was the lead manager of the GDR Issue and as per their advice, they carried out all the procedure of GDR issue. Hence, they deny that they were having knowledge that GDR Issue was subscribed by only one entity. In this regard, on perusal of the bank account statement of SOMA with Banco, I note that the entire GDR proceeds were received by SOMA on October 30, 2006 in its bank account bearing A/c. no. 6282855.15.001 held with Banco from only one entity for USD 17,297,500/-. I also note that vide letter dated January 23, 2007, SOMA had authorized Banco to transfer an amount of USD 15.67 million from its account to the account of Whiteview with Banco, as Whiteview had failed to reply the loan taken from Banco for the subscription of GDR issue of SOMA. Further, since it is established in the aforesaid paras that SOMA was aware of the loan agreement of USD 18.50 million from Banco by Whiteview for subscription of GDRs of SOMA before the issue of GDR's on October 20, 2006, I find the submissions of SOMA that they had no knowledge that the GDR issue was subscribed by only one entity as untenable, and I also find that the only corporate announcement made by the Company on the GDR Issue on October 20, 2006 on BSE, which stated "*"…Soma Textiles & Industries Ltd has informed BSE that the Board of Directors of the Company at its meeting held on October 20, 2006, has approved the issue and allotment of 1,850,000 Global Depository Receipts (GDRs) worth USD 17.2975 million representing 18,500,000 underlying Equity shares of Rs 10/- each to the Depository - Deutsche Bank Trust Company Americas."* was misleading as it gave the false impression of a successful GDR issue.

32. SOMA has also contended that the credit agreement entered between Whiteview and Banco was signed by one Mr. Samuel E. Hurley on behalf of Whiteview for subscription of GDR's of SOMA. That their name is not there in the agreement and therefore they cannot be held liable for any averments/ declaration/ statements/ conditions mentioned in the agreement since they are not party to the agreement. Hence, any liability of Whiteview and Banco cannot be lumbered upon them. In this regard, I find

that the allegations in the SCN are not based solely on the said loan agreement between Whiteview and Banco. I note that the credit agreement dated October 18, 2006 *inter alia* states that:

"a) Facility*- Subject to the terms of this agreement, the bank agrees to make available to the borrower a Dollar term loan facility in the maximum principal amount of upto US 18,500,000.*

b) Purpose- *The borrower shall use the proceeds of the advance to subscribe for global depository receipts to the value of upto US $18,500,000 issued by SOMA on the terms of the Listing particulars to be delivered to the Luxembourg Stock Exchange."*

33. From the above excerpts of the credit agreement, it is clear that the purpose of the loan is for subscribing to the GDR issued by SOMA. The credit agreement dated October 18, 2006 is being read along with the Account Charge agreement dated October 18, 2006 signed between SOMA and Banco (provided as **Annexure to SCN**). In this regard, I note that the Account Charge Agreement *inter alia* states as under:
"Loan agreement*: Loan agreement means the Loan agreement signed between Whiteview (as borrower) and the Bank dated on or around the date of this agreement by which the bank agreed to lend to Whiteview the maximum amount of upto US $18,500,000.*

Account Charge Agreement:
Subject to the terms of this agreement, SOMA deposited in its designated account with bank (hereinafter the Account) an amount not exceeding US $18,500,000 as security for all the obligations of Whiteview under the Loan Agreement (hereinafter the Secured Obligations) and with full title guarantee hereby assigns to and charges by way of first fixed charge in favour of the Bank all the rights, title, interest and benefit in and to the account as well as the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof. Such assignment and charge

shall be a continuing security for the due and punctual payment and discharge of the secured obligations.

Upon payment of all or part of the amounts due under the Loan Agreement, SOMA may withdraw from the Account the equivalent amount.

Upon payment and final discharge in full of all the secured obligations, this agreement and the rights and obligations of the Parties shall automatically cease and terminate and the Bank shall, at the request of SOMA, release the deposit made in the Account."

34. From the above excerpts of the Account Charge Agreement between SOMA and Banco, I note that there is reference to the Loan agreement of Whiteview with Banco and it also clearly states that SOMA shall deposit an amount of USD 18,500,000 as security for all the obligations of Whiteview under the said Loan agreement and with full title guarantee has assigned and charged by way of first fixed charge in favour of the Bank all the rights, title, interest and benefit in and to the account as well as the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof. Therefore, the bank account in which GDR proceeds were deposited was in the name of SOMA but the amount deposited in the account was not at the free disposal of the SOMA as the same was kept as collateral prior to issuance of GDRs for the loan availed by Whiteview for subscribing to the GDR issue. Hence, I note that SOMA had pledged the GDR proceeds of USD 17.29 million with Banco before issuance of the GDRs to secure the rights of Banco against the loan of USD 18.50 million given by Banco to Whiteview for subscription of GDR issue of SOMA. In view the above, I find the contention of SOMA that they are not party to the loan agreement between Whiteview and Banco and any liability of Whiteview and Banco cannot be lumbered upon them as erroneous and untenable. At the time of passing the board resolution dated July 27, 2006, SOMA was aware that a bank account would be opened with Banco for the purpose of receiving subscription money in respect of the GDR issue and that the bank is authorized to use the funds deposited in the said bank account as security in connection with loans, if any. Further, the Noticees had authorized Mr. Sunil Patel (Noticee no. 5) to sign, execute, any application, agreement,

escrow agreement, document, undertaking, confirmation, declaration etc. as maybe required by the bank. From the above, it is abundantly clear that the liability of Whiteview in the event that it is unable to repay its loan with Banco, is being secured by SOMA through the said Account Charge Agreement.

35. In view of the above, again as observed in the previous paragraphs and the reasoning provided therein, I also find the plea of Noticees that they are ***Victim of fraud and not perpetrator as untenable and facts and circumstances of judgments stated by Noticees different from the facts and circumstances of instant case as*** it was duty bound to take stringent legal action against the Lead Managers for such criminal breach of trust as and when they come to know about the account charge agreement and credit agreement However, as per the records available, no action has been initiated by the Company or other Noticees against any of the intermediaries/consultants so far.

36. Noticee 1 to 4 has further submitted that the SCN has not brought out any concrete figure of the loss incurred by the Indian investors due to the announcement made by the company or earned any disproportionate gain nor gained any unfair advantage. In this regard, I note that the disclosure made by SOMA to the BSE vide its corporate announcement dated October 20, 2006 did not mention about execution of 'Account Charge Agreement' dated October 18, 2006 by SOMA securing the loan availed by Whiteview for subscribing of its GDR issue or that the GDR issue was subscribed by only one entity. Instead, SOMA in its corporate announcement dated October 20, 2006 stated that, *"…Soma Textiles & Industries Ltd has informed BSE that the Board of Directors of the Company at its meeting held on October 20, 2006, has approved the issue and allotment of 1,850,000 Global Depository Receipts (GDRs) worth USD 17.2975 million representing 18,500,000 underlying Equity shares of Rs 10/- each to the Depository - Deutsche Bank Trust Company Americas."* This announcement conveys that there was considerable demand for its GDR in the overseas market and the same were successfully subscribed. Thus, the investors in India were made to believe that the issuer company i.e. SOMA has acquired a good reputation in terms of

investment potential and, therefore, foreign investors have successfully subscribed to the GDR issue. Such statements had the potential to induce the investors in India to remain invested in the company or to invest in the shares of the company. In fact there was only one subscriber i.e. Whiteview which had subscribed to the GDR issue of SOMA by obtaining loan from Banco and that loan was further secured by the SOMA itself by securing the GDR proceeds. I find that all these events were price sensitive information and could have impacted the scrip price of SOMA. Thus, I find that the corporate announcements made by SOMA on October 20, 2006 regarding allotment of GDR issues may have misled the investors and/ or created a false impression in the minds of the investors that the GDR issue was fully subscribed and that the GDRs will be infused in the Company and utilized for the growth of the Company and also that many foreign investors have subscribed the shares and therefore, it is a good Company to remain invested or to invest in the Company.

37. In this regard, it would be appropriate to refer to the Order of the Hon'ble SAT dated October 25, 2016 in ***Pan Asia Advisors Limited vs. SEBI (Appeal No. 126 of 2013)*** 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."

38. Further, Hon'ble SAT in ***Jindal Cortex Ltd. Vs. SEBI (Appeal No. 376 of 2019 decided on February 05, 2020)*** observed as under:

9…………… 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 (Whiteview here) taking a loan from a foreign bank/ investment bank (Banco 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……..*

Similarly, in the matter of ***SEBI v. Kanaiyalal Baldevbhai Patel (2017) 15 SCC 1***, the Hon'ble Supreme Court has observed as under:

"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".

39. In view of the above, I find that the act of SOMA in making misleading announcements regarding its GDR issue has resulted in 'fraud' as defined under the PFUTP Regulations, 2003 and SEBI is empowered to take action against any person if his act constitutes fraud on the securities market, even though it may not be possible to identity individual investors who have become the victim of such fraud. Hence, I find the submissions of SOMA that the SCN has not brought out any concrete figure of the loss

incurred by the Indian investors due to the announcement made by the company as untenable.

40. Further, upon examining the bank account statement of SOMA held with Banco (where GDR proceeds were deposited) it was observed that GDR proceeds of an amount of USD 17,297,5000 was credited to bank account (Account no: 6282885.15.001) of SOMA Textiles with Banco on October 30, 2006 and the same has been credited to its deposit account no: 628288525001 on October 30, 2006. Further, it was observed that SOMA vide letter dated January 23, 2007 had authorized Banco to transfer an amount of USD 15.67 million from its account to the account of Whiteview with Banco. SOMA's letter dated January 23, 2007 to Banco *inter alia* states as follows:

"*This is with reference to our deposit account with you presently for USD 15,676,500. We kindly request you to close the same and credit the proceeds to our current account with you.*

Furthermore we request you to transfer the same amount of USD 15,676,500 from our account towards closure of deposit, to the account of White View Trading Corporation with Banco Efisa S.F.E., S.A.

We hereby also authorise the bank to transfer from our current account the necessary amounts to face payment of interests and fee's due in the referred company account resulting from the loan granted by the bank."

41. It was observed from the company's deposit account (a/c no: 628288525002) with Banco that an amount of USD 15.67 million was transferred to its current account with Banco (a/c no: 6282885.15.001) on January 24, 2007 and the deposit account showed nil balance as on January 24, 2007. Thereafter the amount of USD 15.67 million was transferred from current account of SOMA to the account of Whiteview with Banco. From the above, it was alleged that loan amount of USD 15.67 million of Whiteview was repaid by SOMA from its GDR proceeds. Considering the fact that Whiteview was the sole subscriber to the GDR issue and loan amount of USD 15.67 million of Whiteview

was repaid by SOMA from its GDR proceeds, it was therefore alleged that GDRs and in turn the underlying equity shares to the extent of USD 15.67 million were acquired by Whiteview without proper consideration.

42. In this regard, SOMA has submitted that the amount of USD 15,676,500 was adjusted by the Bank vide their letter dated January 23, 2007. That the said letter was signed by Mr. Sunil Patel (Noticee no. 5) in good faith on the basis of trust reposed in PAAL and that Noticee no. 5 only informed them after couple of days about the said letter and immediately taking note of the same, they got in touch with Whiteview. SOMA has submitted that they expressed great prejudice that the said act of Whiteview had caused them and impressed upon them the immediate and urgent need to return the funds. That thereafter, they vigorously pursued with Whiteview to repay the amount of USD 15,676,500 along with interest of USD 442,704 and the company successfully recovered the amount in tranches. SOMA has submitted that the said amount was returned by Whiteview on multiple dates spread over the period from February 26, 2007 to March 08,2008. Further, SOMA has submitted that they had engaged the services of M/s Silver Oak, Auditing and Accounting Firm based out of Dubai-UAE to provide English translation of the bank statements and to certify the receipt of the funds by the company and onward transfer of funds to its subsidiary company viz Soma Textiles FZE (based out of Ajman/Sharjah). That M/s Silver Oak, have vide their letter dated November 19, 2019 inter alia certified, based on the examination of the bank statements that the company has received back the amount of USD 15,676,500 alongwith interest of USD 442,704 from Whiteview and that the company had transferred the amounts received from Whiteview to its subsidiary Soma Textiles FZE. Further, that the said interest has been accounted for in two financial years viz. 2006-07 and 2007-08 on accrual basis.

43. With regard to these submissions made by SOMA, I note that SOMA vide their Board Resolution dated July 27, 2006 had authorized Mr. Sunil Patel (Noticee no. 5) 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". I note that SOMA was already aware of the Account Charge Agreement dated October 18, 2006 signed by the authorized representative Mr. Sunil Patel (Noticee no. 5). Further, Noticee no. 5 has submitted that he has signed the letter dated January 23, 2007 pursuant to the authorization given to him by the Board Resolution dated July 27, 2006 and in good faith and the trust he and other directors of Soma reposed in PAAL. Hence, I note that upon Whiteview defaulting in the repayment of its loan to Banco, Noticee no. 5 on behalf of SOMA, had vide letter dated January 23, 2007 authorized Banco to transfer an amount of USD 15.67 million from its account to the account of Whiteview with Banco. I find that Whiteview had defaulted in repayment of loan to Banco to the extent of USD 15,676,500 and the said amount was repaid by SOMA from its GDR proceeds as stipulated in its Account Charge Agreement with Banco. Further, considering the fact that Whiteview was the sole subscriber to the GDR issue and loan amount of USD 15.67 million of Whiteview was repaid by SOMA from its GDR proceeds, I find that the GDRs to the extent of USD 15.67 million were acquired by Whiteview without proper consideration at that point of time and Noticees were very well aware of the arrangments made as, they have the knowledge of Account charge agreement which was signed by Noticee no. 5 and credit agreement.Thus,in view of the same, plea of Soma that it has recovered the amount from Whiteview is not acceptable.

44. I note that Soma did not inform stock exchange with regard to account charge agreement entered into with Banco for subscription of GDRs which was price sensitive information and would have impacted the price of the scrip and thereby not complied with clause 36(7) of the listing agreement and therefore violated section 21 of SCRA. (Source: Corporate announcements made to BSE and NSE during the period May 01, 2006 to December 31, 2006) while it was aware of the same before the GDR issue

Further, I note that there was Change in "Use of GDR proceeds" as follows:

a) It was mentioned in the information memorandum of the GDR Issue that GDR proceeds shall be used for Spinning Plant for denim in Ahmedabad (US$ 8.59 million), Garment manufacture (US$ 7.48 million), contingency provision (US$ 0.71 million), is considered as GDR issue expenses.

b) SOMA vide letter dated March 06, 2017 has provided the copy of the minutes of the board meeting dated October 31, 2006 which inter-alia states as follows:
The Chairman informed that the Fund raised out of the issue of Global Depository Receipt (GDR) be used, and utilised by the Company in order to facilitate investment/give loan to subsidiary Company which may be established in UAE countries. It thus become necessary to modify the clause "Use of Proceeds" in offering memorandum dated 16th October, 2006 filed with the Luxembourg Stock Exchange (LSE). After discussion it was:-
RESOLVED THAT the "USE of Proceeds", contained on pages 14&37 in the Offering Memorandum dated 16th October, 2006 shall be deemed to be deleted and replaced by the following:-
"The aggregate net proceeds received from this Offering, USD$17.259 million, shell be used for Spinning Plant for denim in Ahmedabad, garment manufacturing through its subsidiary in India, establishing subsidiary in Dubai, trading in general merchandise, investing GDR Proceeds for overseas acquisition/ investments and/ or buying cotton (which is the basic raw material), includes contingency provisions and USD 0.51 Million as GDR issue expenses.

45. From the minutes of the Board meeting dated October 31, 2006, I note that the company had changed the intended use of GDR proceeds which inter-alia states establishing subsidiary in Dubai, trading in general merchandise, investing GDR proceeds for overseas acquisition/investments etc. However, the company has not informed stock exchange with regard to change in intended use of GDR proceeds. Change in 'intended use of GDR proceeds' was price sensitive information and would have impacted the price of the scrip and thereby not complied with clause 36(7) of the listing agreement

and therefore violated section 21 of SCRA. *(Source: Corporate announcements made to BSE and NSE during the period May 01, 2006 to December 31, 2006.* Further, SOMA has not filed quarterly shareholding with stock exchange in accordance with clause 35 of the Listing Agreement for the quarters ended December 2006 and March 2007 and thereby violated section 21 of SCRA.

46. I find that the artificial arrangement of credit and account charge agreements, which resulted in the subscription of GDR issues of the Company and change in use of proceeds, were not disclosed to the stock exchange in a true and complete manner but was reported as misleading news to the stock exchange which contained information in a distorted manner. Thus, I find that the corporate announcements made by the SOMA were false and misleading and the material information was suppressed. I find that all these events were critical information for the investors to take an informed decision regarding their investment in the securities of SOMA. I also find that Clause 36 of the erstwhile Equity Listing Agreement mandated that a listed company will also immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company. In the present matter, I note that GDRs are issued by any company for fund raising purposes and the proceeds of such GDR issue has to be used by the company for the specific business and operational purposes as disclosed by the issuing company in the offer documents. Therefore, if the proceeds of the issue are not received then it will affect the operations of the issuer company. The fact that SOMA had not received USD 15.67 million from its GDR proceeds for stated objective/utilisation was an important fact had an impact on the operations of SOMA at that time. Therefore, I find that SOMA had failed to disclose the Account charge Agreement to exchange in violation of Clause 36 of the erstwhile Equity Listing Agreement read with Section 21 of the SCRA, 1956. I, further find that the corporate announcements made by SOMA to BSE and NSE for the period May 01, 2006 to December 31, 2006 regarding allotment of GDR issues without disclosing the actual scheme of GDR issue had the potential to mislead the investors and/or influence the price of the scrip of SOMA and/ or created a false impression in the minds of the

investors that the GDR issue was fully subscribed. SOMA itself had facilitated subscription of its GDR issue wherein the subscriber i.e. Whiteview obtained loan for subscribing to the GDR issue of Soma, and Soma secured that loan by pledging the GDR proceeds with Banco and, in this connection, Soma did not receive GDR proceeds to the extent of USD 15.69 million from Banco at the point of time as the Whiteview defaulted on the repayment of loan as a consequence of which Banco invoked its pledge on the remaining GDR proceeds of Soma. Therefore, I conclude that Soma failed to comply with clause 36(7) of the Equity Listing Agreement and therefore violated Section 21 of SCRA read with Clause 36(7) of Listing Agreement.

47. From the minutes of the Board meeting dated October 31, 2006, I note that the company had changed the intended use of GDR proceeds which inter-alia states establishing subsidiary in Dubai, trading in general merchandise, investing GDR proceeds for overseas acquisition/investments etc. However, the company has not informed stock exchange with regard to change in intended use of GDR proceeds. I note from the submission of Noticee that, *it inadvertently the change in intended use of GDR proceeds was done without shareholder approval. However, when this was discovered by the Company, Soma immediately put the issue to vote vide postal ballot and duly received shareholder ratification on June 12, 2017*. In this regard, I note that, Change in 'intended use of GDR proceeds' was price sensitive information and would have impacted the price of the scrip.Further being a listed company, Noticee cannot term it as an inadvertent error and shrug of the liability towards its shareholders.Thus, I conclude that, Soma has not complied with clause 36(7) of the listing agreement and therefore violated section 21 of SCRA. *(Source: Corporate announcements made to BSE and NSE during the period May 01, 2006 to December 31, 2006.*

48. I further note that, SOMA issued 1.85 million GDRs representing 1.85 crore shares of Rs.10 each on October 20, 2006. It was observed from the shareholding pattern submitted under clause 35 of Listing Agreement by SOMA to BSE for the quarters ended December 2006 and March 2007 that the shares underlying of GDRs issued

were shown under the category 'public shareholding category' rather than shown under the separate category "*Shares held by custodians and against which Depository Receipts have been issued" as prescribed.* In this regard, I note that, Soma has contended that*, GDR holders were public shareholders only and no promoters and/or any part of Persons Acting in Concern were holding any GDR, All these disclosures were made at the relevant time as advised by the Lead Manager in the applicable format in force at that time*. I note that, the Shares underlying GDRs are held by Custodians. in light of the same, I don't find the contentions of Noticee untenable, considering it to be a listed company and thereby, I conclude that SOMA has not complied with clause 35 of the Listing Agreement and therefore violated section 21 of SCRA

49. In view of the above, I find that the SOMA being aware of the arrangement in allotting GDR issue to only one entity i.e. Whiteview which subscribed to the GDR issue of SOMA by obtaining loan from Banco and the same again secured by SOMA by pledging its GDR proceeds, concealing and suppressing of material facts seen along with the misleading corporate announcements made by SOMA on October 20, 2006, lead to conclusion that the same is nothing but fraud committed upon the innocent investors of the securities market which had the potential to mislead or induce the investors to sale or purchase of its scrip and therefore such acts of company are in violation of provisions of 12A (a), (b), (c) of SEBI Act, 1992 read with regulations 3(a), (b), (c), (d), 4(1), 4(2) (f), (k), (r) of PFUTP Regulations and violation of section 21 of SCRA read with clause 35 and 36(7) of the Listing Agreement.

50. It is pertinent to mention Section 27 of the SEBI Act, 1992 which talks about 'Contravention by Companies', as per the said provision:

"(1) Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the

company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

(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."

51. During the investigation period, as seen from the Annual Report for FY ending March 31, 2007 , Mr. S K Somany iss Promoter, Chairman, Mr. A K Somani is Promoter, Managing Director and Mr. P. Bandyopadhyay is Executive, Non-Independent Director. I note that Noticee No. 2 in his reply has submitted that he is the Chairman of SOMA since April 01, 1949, Noticee no. 3 in his reply in his reply has submitted that he is the Managing Director of SOMA since January 22, 1988.

52. Noticee no. 4 in his reply has submitted that the SCN has addressed him as the Independent Director, however, he has clarified that he was never the Independent Director of SOMA and as was appointed as Whole Time Director and was designated as Executive Director. he joined the company in the year 1984 as Production Manager in the Unit No. II of the Company and worked in the company till 1994. Then, he resigned from the Company and joined M/s. Mafatlal Industries Ltd. Later on, during 2000, and re-joined the Company as Executive Vice President and was later on appointed as Executive Director in 2001 and resigned from the services of SOMA on December 22, 2007.

53. With regard to the liability of Noticees no. 2, 3, and 4, I note that the directors of the Company i.e. Mr. S. K. Somany (Noticee No. 2), Mr. A. K. Somany (Noticee No. 3), and Mr. P. Bandyopadhyay (Noticee No. 4), during the Board Meeting dated July 27, 2006, had *inter alia* passed the following resolutions:

"RESOLVED THAT a bank account to be opened with Banco Efisa, S.A. ("the Bank") or any branch of Banco Efisa S.A., including the off-shore branch ("the bank"), outside India for the purpose of receiving the subscription money in respect of Global Depository Receipt issue of the company.

"RESOLVED FURTHER THAT Mr. Sunil Patel, Oversesas Sales Representative of the Company and Authorised Person be and is hereby authorised 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 Mr. Sunil Patel, Oversesas Sales Representative of the Company and Authorised Person be and is hereby authorized to draw cheques and other documents, and to give instructions from time to time as may be necessary to the said Banco Efisa, S.A. or any branch of Banco Efisa S.A. including off-shore branch, for the purpose of operation of and dealing with the said bank account and carry out other either 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 this 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 for which any charge is granted as well as to enter into any escrow agreement or similar agreements if and when so required."

54. I note that pursuant to the above Board Resolution dated July 27, 2007, Mr. Sunil Patel (Noticee no. 5), as the authorized representative, had signed the Account Charge Agreement dated October 18, 2006 for the purpose of securing the loan taken by Whiteview with Banco for subscribing to the GDR issue of SOMA. Further, Mr. Sunil Patel, had also signed the Company letter dated January 23, 2007, authorizing Banco to transfer an amount of USD 15.67 million from its account to the account of Whiteview with Banco, pursuant to the authorization granted to him by the Board Resolution dated July 27, 2006. Hence, it is alleged that the Noticees no. 2 to 4, by signing the Board Resolution dated July 27, 2006 have acted as party to the fraudulent scheme of SOMA in violation of the provisions of the SEBI Act and PFUTP Regulations.

55. Noticees no. 2 to 4 have submitted that the Board has authorized only one person Mr. Sunil Patel (Noticee no. 5) to carry out necessary formalities for which they relied upon the expertise and knowledge of the Lead Manager registered with UK Regulator. Further, they have submitted that there is no separate violation of any SEBI Act or of the Regulations of whatsoever nature, committed by them independently, i.e. other than the aforesaid contraventions alleged to have been committed by the Company.

56. In this regard, I note that none of the Directors (Noticees no. 2 to 4) of SOMA have denied that they were part of the Board Meeting on July 27, 2006 when the resolution was passed for opening of Bank account with Banco, authorizing Banco to use the GDR proceeds as security against loan if and when so required and also authorizing Mr. Sunil Patel (Noticee no. 5) to sign, execute any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other papers from time to time as may be required by the Bank and to carry and affix common seal of the company therein, if and when so required. In this regard, I note that the Board of directors play a key role in balancing the interests of managements and shareholders and the directors including independent directors are expected to, inter alia, ensure fairness and transparency in dealings of the Company. Where an act or omission occurs through board processes, then directors including such non-executive directors can be held

liable for such acts/omissions of company, if such directors had participated in the relevant board meetings and did not act diligently. In the present case, I note that Noticees No. 2 to 4 had attended the board meeting dated July 27, 2006 of the Company wherein resolution was passed for opening a bank account with Banco and authorizing Banco to use the GDR proceeds as security against loan, if any. Thus, Noticees No. 2 to 4 were aware of authorization for pledge as the board resolution dated July 27, 2006 clearly mentioned 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*…" and the Noticees no. 2 to 4 did not raise any question as to whether any loan had been taken or proposed to be taken by the Company as the resolution authorised pledging of the funds kept in the bank account of the Company as a security in connections with loans. On the contrary, the Noticees had authorized the opening of bank account with Banco for the purpose of receiving subscription money in respect of the GDR issue and also authorized the bank to use the funds deposited in the said bank account as security in connection with loans. Further, the Noticees had authorized Mr. Sunil Patel (Noticee no. 5) to sign, execute any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other papers from time to time as may be required by the Bank and to carry and affix common seal of the company therein, if and when so required. Thus, I find that Mr. Sunil Patel (Noticee no. 5) had acted in furtherance of the resolution passed by the Noticees no. 2 to 4 and the contention of the Noticees no. 2 to 4 that it was entirely the responsibility of the Lead Manager is erroneous and untenable.

57. I noted that Noticee no. 4 has submitted that he is a professional belonging from the technical field of engineering and neither does he has any knowledge nor any experience in the field of finance or securities market. That he was an Executive Director in Soma and was looking after the operations of the textile manufacturing and did not have a role to play in the process of the GDR Issue. In this regard, I note from the copy of Annual report that, Noticee no. 4 was also member of Audit Committee. I observe that in terms of Section 177(4) (viii) of the Companies Act, 2013, the audit

committee has to monitor the end use of funds raised through public offers and, therefore, the audit committee of the Company was supposed to look into the correctness of information submitted by the Noticee no. 1 with respect to GDR issue and proceeds received thereof. Further, in accordance with Clause 49(II)(D) of the then applicable Listing Agreement, it is also inter-alia the responsibility of the Audit Committee to review the financial reporting process of the Company, review the annual and quarterly financial statements of the Company before being presented to the board of the Company and to review the Statement of Use/ Application of funds raised through public issue. Thus, being audit committee member, Noticee no. 4 should have analysed the proceeds of GDR issue. However, I note that nothing has been brought on record to show that, Noticee no. 4 has raised any query or sought any clarifications regarding the GDR proceeds. Further, being signatory to certified true copy of board resolution dated July 27, 2006 he should have raised any objection or query regarding the Board Resolution which proposed to pledge the entire GDR proceeds as a security for any loan. Thus, considering the role of Noticee no. 4 being executive director, member of audit committee during the period of GDR Issue and also associated with the company for longer period of time, I am unable to accept the contention of Noticee no. 4. Nevertheless, there is lot of evidence mentioned in pre-paras which indicates that, Noticee no. 4 was very well aware of impugned GDR issue and the arrangements of the Company in this regard and being audit committee member he should have taken all possible and expected steps to clarify himself about all the aspects of the proposed GDR issue by asking the management all pertinent questions. When the relevant board resolutions were placed before the audit committee, why he did not ask pertinent questions, such as – a) to whom the GDR were allotted; b) why the GDR proceeds did not reach the Company; c) how were the proceeds utilize; d) whether the proceeds were used as security against any loan; etc. I note that, as per the information memorandum of the GDR Issue, it was mentioned that GDR proceeds shall be used for Spinning Plant for denim in Ahmedabad (US$ 8.59 million), Garment manufacture (US$ 7.48 million), contingency provision (US$ 0.71 million), is considered as GDR issue expenses which was later on changed in the Board meeting dated October 31,

2006. However, no records have been submitted/ produced by the Noticee no. 4 to show any steps taken by him to verify the utilization of such proceeds and ask question for change in utilisation of proceeds. By remaining mute and not raising any query at any point during his tenure as a member of Audit Committee and as an executive director, Noticee no. 4 has failed to do justice with the duty casted upon him by statute, wherein, he was supposed to act diligently and raise his voice with regard to the practices and fraudulent act of the Company, which has jeopardised the interests of shareholders and stakeholders of the Company and investors in the securities market. Thus, I find the contention of Noticees untenable and also find the ratio of orders and judgements of Hon'ble SAT, cited by Noticee no. 4 with respect to role of Directors (***Pritha Baig v SEBI (Appeal No. 291 of 2017***, *decided on 14.02.2019,* ***Sayanti Sen Vs. SEBI*** *(Appeal No. 163 of 2018 decided on August 09, 2019), order No.* ***WTM/GM/EFD/38/2017-18 dated August 03, 2017, ADJUDICATION ORDER NO: AO/SBM/EAD-3/57/2017)*** *in the matter of* ***M/s Brooks Laboratories Ltd,*** *of Adjudication No.* ***ADJUDICATION ORDER/SS/AS/2019-20/4025-4038*** *dated August 21, 2019 in the matter of Action Financial Services Ltd,* ***S.N.Sharma v SEBI (Appeal No. 472 of 2020)*** *decided on September 09, 2021,* ***Jai Prakash Kabra & Ors. v SEBI*** *(Appeal No. 58 of 2021 decided on September 02, 2021,* ***Gurmeet Singh & Ors. v SEBI (Appeal No. 406 of 2020)*** *on September 20, 2021*) clearly distinguishable from the facts and circumstances of the instant case

58. Admittedly, Noticee No. 2 was chairman and Noticee 3 was the Managing Director and was in-charge of the day to day management of the affairs of the Company. As such, it is abundantly clear that as October 18, 2006, when the account charge agreement was signed. Th Noticees 2-4 being in charge of the day to day affairs of the Company, knew very well that the GDR subscription amount was liable to be kept as a security against the loan taken by the sole subscriber of the GDR (Whiteview) from BANCO Bank. Hence, contrary to the submissions made by the Noticee No.2-4, they were having prior knowledge about the fraudulent scheme of the GDR issue and thus, the question of them being innocent and not guilty of the violation alleged made in the SCN does not

survive. , it was certainly their primary duty to come out completely clean before the Board with all the facts, strategy, steps to be followed and compliances to be made with respect to the proposed GDR issue, before moving a Resolution before the Board. Being Noticee no. 2- the Chairman, Noticee no. 3-the Managing Director and Noticee no. 4-executive director, it was them, who were statutorily required to manage the affairs of the Company, to take care of the proposed GDR issuance and therefore ought to have clarified to the stakeholders about prearrangement with the subscriber and about the Account charge and Credit Agreement that was devised to be executed with the BANCO Bank.

59. With regard to the Noticees no. 2 to 4 contentions that they have not made any gains or gained any unfair advantage or caused any loss to the investors, I note that there is no allegation in the SCN that the said Noticees have gained from the said fraud and hence the contention is irrelevant. Further, with regard to the loss caused to any investors, as already discussed in the foregoing paras, reference has been made to the Order of the Hon'ble SAT dated October 25, 2016 *in Appeal No. 126 of 2013 (Pan Asia Advisors Limited vs. SEBI)* wherein, while interpreting the expression of 'fraud' under the PFUTP Regulations, 2003, it was held that "*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"*. Further, Hon'ble Supreme Court in *SEBI Vs. Rakhi Trading & Others (2018) 13 SCC 753* observed as under:

"…………….36. Respondent-Rakhi Trading and Kasam Holding on facts are found to have been engaged in non-genuine transactions creating appearance of trading. If the factum of manipulation is established, it will necessarily follow that the investors in the market have been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so widespread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and the Board cannot be imposed with a burden which is impossible to be discharged…………"

Hence, I find the above contention of the Noticees no. 2 to 4 that they have not caused any loss to investors is untenable.

60. Further, the Noticees no. 2 to 4 have also relied upon the SEBI order dated March 12, 2019 in the matter of Ravi Kumar Distilleries Ltd. (hereinafter referred to as "RKDL") wherein the contention of RKDL has been accepted that they were not aware of the procedures and intricacies involved in an IPO and that the BRLM, taking advantage of their naivety, had misappropriated the proceeds of the IPO. That at Para 69 of the order, it has been observed that "*the main plea of RKDL and Ravi Kumar is that they were not ……..that it was these blank signed papers and cheques which Mr. Anil Agrawal used to defraud the company and its promoters*". The Noticees have submitted that considering the above contention, the promoters of RKDL have been given less punishment vis-à-vis directors/key managerial personnel of merchant bankers and hence, they submit that the facts of the present case are similar to the case in which the order dated March 12, 2019 has been passed by SEBI and in view of the same no action may be taken against them. In this regard, I note that the facts of the present case are different from the facts of the case in the matter of RKDL in SEBI Order dated March 12, 2019. I note that Noticee no. 5, who was authorized by SOMA had submitted that he signed the Account Charge Agreement and the SOMA Letter dated January 23, 2007 transferring money from the account of SOMA to Whiteview as per the instructions of SOMA. Further, Noticee no. 5 has submitted in his reply that "*I hereby submit that I had diligently forwarded all the communications made to me under the alleged Account Agreement or otherwise related to the GDR, to Soma as and when I received the same".* Hence, it is clear that SOMA and its directors were aware of the alleged loan agreement and account charge agreements. I also note that SOMA nor the directors (Noticees no. 2 to 4) or Noticee no. 5 (authorized representative of SOMA) have made any contentions or allegations that Noticee no. 5 was induced to part with blank signed papers or cheques etc. by the Lead Managers. Further, SOMA nor the directors (Noticees no. 2 to 4) have submitted any documents/letters of any proof of communication to prove that the Lead Manager had misled them. In view of the

above, I find the reliance placed by the Noticees on the matter of Ravi Kumar Distilleries Ltd in SEBI Order dated March 12, 2019 as erroneous and untenable, as being actually distinguishable.

61. I note that Noticee no. 5 in his reply has submitted that he is a British Citizen and at present, engaged in lawful business in London. He has submitted that his role was never to oversee or supervise the process of GDR but limited to acting as a nodal point outside India for SOMA just for the limited purpose of signing the documents given by PAAL. That the documents were signed by him as per instructions of the Board of Directors, in good faith on the basis of trust reposed in PAAL and no adverse inference ought to be drawn against him due to the same. The Noticee has submitted that the Account Charge Agreement signed by him was done in his capacity as the authorized signatory of Soma in good faith and trust in PAAL. Further, that the only allegation levelled against him is that he was authorized to sign, execute any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other papers from time to time as may be required by the Bank and to carry and affix common seal of the company therein, if and when so required and in consequence of this he had singed the Account Charge Agreement given by PAAL to him in good faith. Further, that it is SEBI's own case that the Directors of Soma attended the meeting and passed the resolution and that the decisions and consequences of the Board Meeting was totally out of his control and he had no role in the same.

62. With regard to the submissions of Noticee no. 5 who has primarily contended that he has signed documents and acted purely on the instructions of SOMA, I note that Noticee no.5 has not denied that he had signed the Account Charge Agreement dated October 18, 2006 and the SOMA letter dated January 23, 2007. Hence, I find the submissions of the Noticee No. 5 that, he is not liable as untenable as he was the signatory to the said agreement and letter,which specifically mentions the Fraudulent arrangement made for the GDR issue and hence cannot escape liability merely on the basis that he has acted as an authorized representative. Accordingly, I find that Noticee

No. 5 is liable for the violations of Section 12A(a), (b), (c) of the Act read with Regulations 3(a), (b), (c), (d), 4(1) of PFUTP Regulations.

63. I note that the Noticees no. 1 to 4 have also contended that along with the SCN, they have been issued a Show Cause Notice No. EFD/DRA1/SM/TVB/SomaTextiles/ OW/P/17128/4/2017 July 21, 2017 under Section 11 B of SEBI Act, 1992 and 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. It is further submitted that the proceedings under Section 11 B have been completed vide Order No. WTM/AB/IVD /ID4/10343/2020-21 dated February 08, 2021 passed by Ld. WTM. they have already filed appeal before Hon'ble SAT which has been admitted. They also requested to keep the instant proceedings may be kept in abeyance, till the time appeal is decided.. In this regard, it may be noted that admittedly, the two proceedings initiated against the Noticees, viz: the one before the Whole Time Member and the present proceedings before me, are based on the same facts and allegations. However, it is pertinent to acknowledge here that the outcome /consequences desired under law from these two separate proceedings are different. While the Adjudication Proceedings are initiated under relevant provisions of SEBI Act, 1992 to levy monetary penalty for violation of securities law, the proceedings under section 11 of SEBI Act, 1992 aim at issuing disciplinary directions like debarment, warning, etc. in the interest of investors and securities market (prior to the 2018 amendment which came in force from 08-03-2019). Further, the scheme of SEBI Act, 1992 envisages initiation of multiple proceedings and there is no prohibition in initiating an adjudication proceeding as well as proceedings under section 11 of the SEBI Act,1992 for the same set of offence/ breach of Securities Laws. It is a settled principle of law that each proceeding warrants to be adjudicated on its own merit.

64. Further, in additional submissions, Noticee no.1,2 and 3 have also mentioned the Finance Act, 2018, with effect from March 8, 2019, under Sections

11(4A) and 11B(2) of the SEBI Act, which empowers Board to impose a penalty under Chapter IV of SEBI Act. In this regard, it may also be noted that, the Parallel 11B proceedings and instant adjudication proceedings were initiated prior the amendment which came into effect from 08-03-2019. Instant Adjudicating proceedings initiated vide show cause notice dated January 18, 2018, although borne out of the same set of facts, have been initiated *inter alia* under provisions of Chapter VIA of the SEBI Act. The SEBI Act enables the Board to initiate under Chapter VIA for the imposition of monetary penalties. Further, directions under Sections 11 and Section 11B or an Order under Section 11D are passed by the Board whereas, the proceedings under Chapter VIA are conducted by an Adjudicating Officer who adjudicates and imposes monetary penalty. Thus, being different proceedings initiated against Noticees need not require undersign to keep instant adjudication proceedings in abeyance due to appeal filed by Noticees before Hon'ble SAT against order dated February 08, 2021 passed by Ld. WTM under 11B proceedings.

65. I would also like to place Reliance on the Order of the Hon'ble SAT in the matter of ***G.V. Films Ltd. Vs. SEBI (Date of Decision: February 15, 2021, SAT Appeal No. 168 of 2020)***, wherein, Hon'ble SAT has held as follows:

"*In our view, this submission cannot be accepted for the reasons that the principles of double jeopardy as stated aforesaid is in relation to the service laws which is distinguishable and is not acceptable in the instant case. We find that under Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act'), powers have been given to the WTM to issue direction under Section 11 and 11B of the SEBI Act. While exercising these powers, directions were issued debarring the company from accessing the securities market for a period of five years. The SEBI Act further provides powers to the AO to levy penalty for violation of SEBI Act and its regulations. Thus, the powers are of the authorities are different and distinct and does not overlap. The law permits the authorities to impose different penalties and, therefore, it is not the case of double jeopardy."*

Reliance is also placed on the Order of the Hon'ble SAT in the matter of ***Dipak J. Panchal vs. SEBI,*** *Appeal No. 198 of 2011 (Order dated November 12, 2012)*, wherein, it had observed: "*There is no bar under the Act in taking all the three actions (under Chapter IV, Chapter VIA and Section 24 of the SEBI Act) simultaneously or taking only one of the actions as the Board may deem fit…*"

66. Thus, In view of the aforesaid, I find the contention raised by Noticees in this regard as untenable and facts and circumstances of judgments of The Hon'ble Punjab and Haryana High Court in the matter of *Omax Engineering Works v. State of Harayana & Ors*., 2016 SCCOnline P&H 1768 different from the instant case.

67. Noticees have contended that no action has been taken against PAAL, Mr. Arun Panchariya and other entities involved in the GDR issue.In this regard, I would like to mention that, The limited purpose of these proceedings against Noticees is to determine if Noticees has violated provisions of SEBI ACT, PFUTP Regulation and clauses of listing agreement (Noticee no. 1)and if so, determine whether penalty should be imposed and assess the quantum of such penalty. Further, it may be noted that ,SEBI has already taken action against Pan Asia Advisors, now known as Global Finance and Capital and its promoter Arun Panchariya in the GDR issues. Thus, I find the Contention of Noticees untenable and Judgments cited by Noticees in this regard different from facts and circumstances of the instant case.

68. I note that Noticees have also referred to orders passed by the Hon'ble Supreme Court Hon'ble SAT and Adjudicating officer of SEBI to substantiate their arguments on the violation of PFUTP Regulations. Judgment of Hon'ble Supreme Court in ***Nandkishore Prasad vs. State of Bihar*** *(1978) 3 SCC 366 and in H. D. Jaisinghani vs. Naraindas N Punjabi [(1976) 1 SCC 354* and judgments of Hon'ble SAT in ***M/s Vintel Securities Pvt. Ltd. vs The Adjudicating Officer*** *(SAT Appeal no.219/2009),* ***Sterlite Industries (India) Ltd. Vs. SEBI*** *(2001) 34 SCL 485 (SAT),* ***Videocon International vs. SEBI*** *(2002) 4 CLJ 402 (SAT)* ***Parsoli***

Corporation Vs. SEBI *(Order dated August 12, 2011 in Appeal No. 146/2011)* and ***Narender Ganatra Vs. SEBI*** *(Order dated July 29, 2011 in Appeal No. 47/2011)* order of Adjudicating officer of SEBI in ***M/s Milkyways Mercantiles Private Limited and M/s SPFL Securities Limited decided on 16.03.2017*** have *inter alia* been relied upon by the Noticees to contend that fraud is a serious charge and hence, must be supported by higher degree of proof. Regarding the higher degree of proof, as observed in the aforesaid orders, I would like to refer to order of Supreme Court in ***SEBI Vs. Kanaiyalal Baldevbhai Patel (2017) 15 SCC 1***, wherein it was observed, "…….*the definition of fraud which is an inclusive definition and therefore has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly the definition expands beyond what can be normally understood to be a fraudulent act or a conduct amounting to fraud……."* In the Kanaiyalal matter, Hon'ble Supreme Court further observed that *"……….the difference between inducement in criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient. No element of dishonesty or bad faith in the making of the inducement would be required………."* In the present case, in the board meeting dated July 27, 2006 of the Company attended by the Noticees No. 2 to 4, the opening of account with Banco was approved along with authorization to pledge the GDR proceeds to be deposited in it to secure the loans taken, if any. The said account charge agreement was not disclosed to the investors and a wrong disclosure was made to the stock exchanges regarding subscription of GDRs. This arrangement had the potential to "induce" or to mislead the investors to remain invested or to invest in the securities of the Company. I note that the evidence available on record in the form of board resolutions, account charge agreement, loan agreement, disclosure made to the stock exchanges by the Company, bank statements of the company, etc. shows higher degree of probability, of bringing out of such inducement or misleading investors to deal or abstain from dealing in the securities of the company and consequential fraud committed, in the present matter. Therefore, I find that evidence available on record and inferences drawn from such evidence show higher degree of probabilities and is in accordance with observations made by the Hon'ble Supreme Court, Hon'ble SAT and Adjudicating officer of SEBI, in the cases, relied upon by the Noticees.

69. In light of the above, I note that the Noticees no. 2 to 4 had attended the Board meeting dated July 27, 2006, wherein, the Noticees no. 2 to 4 had authorized the opening of bank account with Banco for the purpose of receiving subscription money in respect of the GDR issue and also authorized the bank to use the funds deposited in the said bank account as security in connection with loans, if any. Further, the Noticees had authorized Mr. Sunil Patel (Noticee no. 5) to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration etc. as maybe required by the bank. Further, none of the Noticee Nos. 2 to 4 have produced any material or record reflecting objections raised by them on the proposal that Banco will use the amounts deposited in its bank account as security to loan which ultimately facilitated Whiteview to obtain loan from Banco for subscribing the GDR issue of the Company. In respect of allegation against the Noticee No. 5 who had signed the 'Account Charge Agreement' dated October 18, 2006 on behalf of SOMA, I note that he was not only having the knowledge but also played an active role and by execution of said 'Account Charge Agreement' dated October 18, 2006, actually facilitated the subscription of GDR issue of SOMA and also authorized Banco to use the GDR proceeds of SOMA as security to the loan obtained by Whiteview.

70. Further, in respect of liability of the directors for the fraud committed by a Company, the Hon'ble Supreme Court, in the matter of ***N Narayanan v. Adjudicating Officer, SEBI (2013) 12 SCC 152*** has observed a sunder:

"33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed *and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."*

71. In view of the above, I find that the Noticees No. 2 to 4 had participated in the Board meeting of SOMA on July 27, 2006, wherein, approvals were made to, among others, authorizing the Banco to use the GDR proceeds as security in connection with the loan signed and executed the account charge agreement dated October 18, 2006 on behalf of SOMA (Noticee No.1). Thus, the Noticees No. 2 to 4 were part of the arrangement which resulted in facilitating the subscription of GDR issue of SOMA wherein Whiteview obtained loan from Banco for subscribing the GDR issue of SOMA and, SOMA pledged the GDR proceeds with the Banco securing the loan taken by Whiteview . Further, I note that the Noticees No. 2 to 4 were directors of the SOMA during the period when the corporate announcement were made by SOMA, which were false and misleading to the extent that its GDR issue was successfully allotted whereas the same was subscribed by only one entity i.e. Whiteview by obtaining loan from the Banco which was again secured by the SOMA (Noticee No.1) by pledging the GDR proceeds. Thus, I find that the directors of SOMA (Noticee No. 1) namely; Mr. S. K. Somany (Noticee No. 2), Mr. A. K. Somany (Noticee No. 3) and Mr. P. Bandopadhyay (Noticee No. 4) have violated the provisions of Section 12A (a) of SEBI Act, 1992 read with 3(a), (b), (c),

(d) and 4(1) of PFUTP Regulations, 2003. Further, I find that Mr. Sunil Patel (Noticee no. 5) who had signed the account charge agreement as the authorized representative of SOMA (Noticee no. 1) has violated the provisions of Section 12A (a) of SEBI Act, 1992 read with 3(a), (b), (c), (d)) and 4(1) of PFUTP Regulations, 2003.

72.

73. I also note the submission made by SOMA that M/s Silver Oak, Auditing and Accounting Firm based out of Dubai-UAE, have vide their letter dated November 19, 2019 *inter alia* certified, based on the examination of the bank statements that the company has received back the amount of USD 15,676,500 alongwith interest of USD 442,704 from Whiteview and that the company had transferred the amounts received from Whiteview to its subsidiary Soma Textiles FZE (based out of Ajman/Sharjah) and that the said interest has been accounted for in two financial years viz. 2006-07 and 2007-08 on accrual basis. Further, I note that SOMA has submitted that the amounts arising from GDR issue, which were transferred by the company to its subsidiary viz. Soma Textiles FZE, were given for the purposes of its business, including for textile trading etc. and over a period of time, Soma Textiles FZE has returned an amount of USD 87,98,860.84 to the company on multiple dates to the current account no. 00012210000463 maintained by the company in HDFC Bank and current account no. 000405018348 maintained by the company in ICICI Bank as mentioned in the aforesaid table.

74. Though, I acknowledge the fact that, Unlike other GDR matters wherein the amount was transferred by the subsidiary to other entities and and never received by the company and also wherein the money was not recovered from subscriber, I note that in the present case, the subsidiary has received the proceeds of the GDR and has also returned an amount of USD 87,98,860.84 to SOMA over a period of time and also company has recovered the amount from Whiteview the correctness of which shall be looked by the Audit committee of company In terms of Section 177(4) (viii) of the Companies Act, 2013 as directed by Hon'ble WTM in WTM order. i cannot lose sight of the fact that, the Noticees were very well aware of the

Fraudulent scheme of arrangement of GDR issue as mentioned in pre paras and at that point of time, out of GDR proceeds (including interest/accruals), an amount of US $0. 49 million was paid to Vintage as part of Issue expenditure, an amount of US $2million (approx.) was received into SOMA's bank accounts in India (HDFC Bank and ICICI Bank) during the period December 27, 2007 and March 31, 2008 and an amount of US $15.67 million was transferred by SOMA to Whiteview on January 24, 2007 towards loan repayment of Whiteview. it is therefore evident that GDRs in turn the underlying equity shares to the extent of US $15.67 million were acquired by Whiteview without proper consideration. Further, All GDRs subscribed by Whiteview were converted into equity shares during the period December 18, 2006 to October 17, 2008 and these shares were sold in the Indian Capital Market during the period January 05, 2007 to December 11, 2009.

Issue No. II: If the answer to Issue No. I is in affirmative do the violations, if any on the part of the Noticees would attract monetary penalty under :

a) Sections 15HA of SEBI Act and for the alleged violations by Noticees?

b) Section 23E of the SCRA for the alleged violations by Noticee 1?

75. The violations committed by the Noticees no. 1 to 5 as detailed in previous paras wherein a fraudulent scheme of GDR issue was carried out jointly and in close connivance with each other, had acted as one part of the entire fraudulent scheme by arranging for the subscription of the GDRs through Whiteview using the account charge agreement dated October 18, 2006 with Banco to pledge GDR proceeds as collateral against the loan availed by Whiteview and then to dispose the shares acquired through such GDRs, routing of the monies received from GDR proceeds of Soma, thereby creating an elaborate façade of demand for the securities of soma and mislead the Indian investors, which was prejudicial to the interest of the investors and the securities market, calls for imposition of Monetary penalty as contemplated under the SEBI Act, 1992 against Noticee no. 1 to 5 and for contravention of listing conditions, Noticee no. 1 is liable for imposition of penalty under section 23E of SCRA.

76. Reliance is placed on the order of Hon'ble Supreme Court of India in the matter of *SEBI vs. Shri Ram Mutual Fund*, wherein it is held that: "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention n of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow*."

77. I note that, Section 15HA of the SEBI Act, 1992 provides for imposition of penalty in case of fraudulent and unfair trade practices committed by any person. As in the present case, it has been found that Noticee no. 1 have violated Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1), (2)(f), (k) & (r) of PFUTP Regulations, 2003 and Noticee no. 2 to 5 have violated Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations. therefore, penalty under Section 15HA of SEBI Act, 1992 is attracted against Noticee no. 1 to 5 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 of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher."

78. Further, with reference to the violations of Section 21 of SCRA read with Clauses 35 and 36(7) of Listing Agreement by Soma Textile & Industries Ltd makes Noticee no. 1 liable for monetary penalty under section 23E of SCRA. In this regard, I note that, the Hon'ble SAT in the matter of ***Suzlon Energy Ltd. and Anr. vs. SEBI*** (Appeal No. 201 of 2018) dated May 03, 2021 has held the following:

"<u>Section 23E provides that where a Company fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof then penalty would be a minimum of Rs. 5 lakh upto maximum of Rs. 25 crore. The words "fails to comply with the listing conditions" cannot mean failure to comply with the conditions in the Listing</u>

Agreement. One of the requirements in the Listing Agreement which is required to be complied with is Clause 36 *whereas Section 23E refers to the conditions which are imposed upon a Company when it is applying for its shares to be listed on the stock exchange platform. Section 23E has to be read along with Rule 19 of the Securities Contracts (Regulation) Rules, 1957 ('SCRR' for short).* *Rule 19 of the SCRR provides certain requirements with respect to a listing of securities on a recognized stock exchange.* *Rule 19A provides that a Company has to continuously maintain listing requirements. Rule 21 provides conditions for delisting of securities.* *Failure to comply with the listing conditions which are stated in Rule 19 would entail a penalty as provided under Section 23E. Thus, in our view violation of Clause 36 of the Listing Agreement will attract Section 23A(a) of the SCRA and will not attract Section 23E…..." (emphasis supplied)*

79. Further, I note that an appeal has been filed before the Hon'ble Supreme Court against the aforesaid order *vide* civil appeal no. 4741 of 2021. Also, a stay application has been filed before the Hon'ble Supreme Court by SEBI with respect to the findings of Hon'ble SAT in paragraphs 19 of the aforesaid order. In the view of the above, I note that the aforesaid stay application and the appeal is pending. It is important to highlight that *vide* orders in the matter of ***M/s NDTV vs. SEBI*** (Appeal no. 358 of 2015) dated August 07, 2019, and ***Oasis Securities Ltd. & Ors. Vs. SEBI*** (Appeal no. 316 of 2018), dated March 17, 2020, the Hon'ble SAT has upheld the imposition of penalty under section 23E of SCRA on the appellant companies therein for the violation of clauses of the listing agreement. The limited purpose of going into the issue of violation of listing agreement by the Company is to determine if the Company has violated the provisions of the listing agreement, and if yes, to impose penalty, however, the enforcement of penalty with respect to the violation under section 23E of SCRA shall be subject to the outcome of the aforesaid appeal before the Hon'ble Supreme Court.

Issue No. III: If the answer to Issue No. II is in affirmative, what would be quantum of the monetary penalty that should be imposed upon the Noticees taking into consideration the factors stipulated in section 15J of the SEBI Act with Rule 5 (2) of the SEBI Adjudication Rules and section 23J of the SCRA with Rule 5 (2) of the SCRA Adjudication Rules, as applicable?

80. For imposition of penalty under the provisions of the SEBI Act, 1992, Section 15J of the SEBI Act, 1992 provides as follows:

*"**Factors to be taken into account while adjudging quantum of penalty.***

15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —

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

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

(c) the repetitive nature of the default.

Explanation. — For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

I note that, Section 23 J of the SCRA, 1956 is also similarly worded.

81. Having regard to the factors listed in section 15J of SEBI Act, Noticees submissions with regard to impositions of quantum of penalty and order passed by Hon'ble SAT in the matter of **P.F. Sundesha & ors vs Securities and Exchange Board of India (Appeal No. 534 of 2019, decided on June 27, 2022**) **and other connected Appeals** and in the light of Supreme Court judgement in the matter of *SEBI vs Bhavesh Pabari* (2019) 18 SCC 246, I note that, SCN does not mention the amount of disproportionate gain or unfair advantage made as a result of the violations *or the amount of loss caused to an investor or group of investors as a result of the default*. However, it would be appropriate to once again refer to the order of the Hon'ble SAT in *Pan Asia Advisors*

Limited vs. SEBI, cited above wherein, while interpreting the expression of 'fraud' under the PFUTP Regulations, 2003, it was observed that *"…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."*

82. As submitted by Soma, I note that, Unlike other GDR matters wherein the amount was transferred by the subsidiary to other entities and never received by the company, I note that in the present case, the subsidiary has received the proceeds of the GDR and has also returned an amount of USD 87,98,860.84 to SOMA over a period of time. The same has also been considered by Hon'ble WTM in its order dated Feb 08, 2021 in parallel 11B proceedings and also stated that, "*In terms of Section 177(4) (viii) of the Companies Act, 2013, the audit committee has to monitor the end use of funds raised through public offers and, therefore, the audit committee of the Company may look into the correctness of information submitted by the Noticees and report the same to the Board of Directors of SOMA for taking appropriate corrective action, if any.".* I also note from the submissions of Soma that it has also recovered money from Whiteview along with interest. Further, I note that a considerable amount of time has lapsed since the act of the Noticees took place. However, I cannot ignore the fact that, Soma and its directors (Noticees 2-4), authorised signatory of the SOMA's deposit account with Banco (Noticee no. 5) orchestrated the fraudulent scheme of GDR issue discussed in the previous paras in 2006 and thus, have misled the Indian investors by concealing the information of entering into Credit Agreement and Account Charge Agreement, Change in 'intended use of GDR proceeds', not disclosing and also reporting misleading news to the stock exchange which contained information in a distorted manner and influencing the decision of investors and thereby fraudulently issuing shares underlying the GDRs and then selling those converted shares in Indian market by for an approximate amount of Rs.43,53,55,173.69. Further, no information was provided to

Stock Exchanges and in annual reports of company about Credit Agreement, Account Charge Agreement and Change in 'intended use of GDR proceeds'. Moreover, Soma made false announcement that its GDRs were genuinely subscribed thus causing a fraud on the innocent investors.

Order

83. After taking into consideration all the facts and circumstances, replies of the Noticee no. 1,2,3,4 and 5 material /facts available on record and also the factors mentioned in the preceding paragraphs, I, in the exercise of the powers conferred upon me under section 15-I of SEBI Act read with Rule 5 of SEBI Adjudication Rule and in the exercise of powers conferred upon me under section 23-I of SCRA,1956 read 5 of the SCRA Adjudication Rules, hereby impose the following penalty on the Noticees for the aforementioned violations, as discussed in this order:

S.NO	Noticee	Provisions	Penalty (Indian Rupees)
1	M/s. Soma Textiles & Industries Ltd	Section 15HA of SEBI Act	Rs. 20,00,000/- (Rs. Twenty Lakhs only)
		Section 23E of SCRA*****	Rs. 5,00,000/- (Rs. Five Lakhs only)
2	Mr. S K Somany	Section 15HA of SEBI Act	Rs. 5,00,000/- (Rs. Five Lakhs only)
3	Mr. A K Somany	Section 15HA of SEBI Act	Rs. 5,00,000/- (Rs. Five Lakhs only)
4	Mr. P Bandopadhyay	Section 15HA of SEBI Act	Rs. 5,00,000/- (Rs. Five Lakhs only)
5	Mr. Sunil Patel	Section 15HA of SEBI Act	Rs. 5,00,000/- (Rs. Five Lakhs only)

***** *As noted above, in light of the fact that an appeal has been before the Hon'ble Supreme Court in the Suzlon Energy (supra) matter, the monetary penalty imposed on* *the Company under section 23E of the SCRA shall be payable depending upon the outcome of the aforesaid appeal before the Hon'ble Supreme Court.*

84. I am of the view that the above penalty is commensurate with the violations committed by the Noticees in this case.

85. The aforesaid Noticees shall remit/pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI-Penalties Remittable to Government of India", payable at Mumbai, or, through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

86. The Noticees may also forward the said Demand Draft or the details/confirmation of penalty so paid to "The Division Chief (Enforcement Department-DRA1), Securities and Exchange Board of India, SEBI Bhavan-II, Plot No. C7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai-400051.". The Noticees shall also provide the following details while forwarding the Demand Draft/ payment information:
    1. Name and PAN of the Noticee
    2. Name of the case/matter
    3. Purpose of payment- payment of penalty under AO proceedings
    4. Bank Name and Account Number
    5. Transaction Number

87. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter-alia, by attachment and sale of movable and immovable properties.

88. In terms of the provisions of Rule 6 of the SEBI Adjudication Rules and Rule 6 of the SCRA Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Place: Mumbai	**VIJAYANT KUMAR VERMA**
Date: August 30, 2022	**ADJUDICATING OFFICER**