BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: Order/GR/KG/2021-22/14437-14441]

ORDER 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, AGAINST:

In respect of:

S. No.	**Name**
1.	MR. NITIN SANDESARA
2.	MR. CHETAN SANDESARA
3.	MR. RAJBHUSHAN DIXIT
4.	MR. NARENDRA PATEL
5.	MR. VILAS JOSHI
6.	MR. P B MEHTA

In the matter of Issue of GDR by Sterling Biotech Ltd.

BACKGROUND:

1. SEBI had conducted investigation into the GDR issue by M/s.Sterling Biotech Ltd ('hereinafter referred to as '**Sterling /Company'**) for the period September 01, 2003 to October 31, 2003 (hereinafter referred to as 'Investigation Period'). The investigation had *prima facie* observed that Sterling had financed the subscription of its own GDR.

APPOINTMENT OF THE ADJUDICATING OFFICER:

2. Initially, Shri Biju. S was appointed as the Adjudicating Officer (AO) by SEBI, under Section 19 read with Section 15-I (1) of the SEBI Act, 1992 (hereinafter, referred to as "SEBI Act") and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter, referred to as "SEBI Adjudication Rules 1995") and Section 23I of SCRA Act 1956 read with Rule 3 of the SEBI Securities Contract (Regulations) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 ("SCRA Adjudication Rules") to conduct adjudication proceedings inter-alia in respect of the following entities, and if satisfied that penalty is liable, to impose such penalty deemed fit in terms of Rule 5 of the SEBI Adjudication Rules 1995 and SCRA Adjudication Rules:

i. Under Section 15HA of the SEBI Act, 1992, and Section 23E of Securities Contracts (Regulation) Act, 1956 ('SCRA, 1956') the alleged violations of the provisions of Section 12(a), (b) and (c) of SEBI Act, 1992 read with Regulation 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of SEBI (Prohibition of Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations'**), and Section 21 of SCRA, 1956 read with Clauses 32, 36(7) and 50 of Listing Agreement by **Sterling (Noticee No.1).**

ii. Under Section 15HA of the SEBI Act, 1992 the alleged violations of the provisions of Section 12(a), (b) and (c) of SEBI Act, 1992 read with Regulation 3(a), (b), (c), (d), 4(1) of PFUTP Regulations by Mr. Nitin Sandesera (DIN 00255496) (Noticee No.2), Mr. Chetan Sandesara (DIN 00255671) (Noticee No.3), Mr. Rajbhusan Dixit (DIN 00025484)(Noticee No.4), Mr. Narendra Patel (DIN 01624527) (Noticee No.5), Mr. Vilas Joshi (DIN 00507833) (Noticee No.6), and Mr. P B Mehta (DIN 01392227) (Noticee No.7).

iii. Under Section 15A(a) of SEBI Act, 1992, the alleged violation of the provisions of Section 11C(2) of SEBI Act, 1992 by Mr. Nitin Sandesera Noticee No.2

Subsequent to the transfer of Shri Biju S., the case was transferred to Shri Satya Ranjan Prasad, Chief General Manager and upon his transfer, the undersigned was appointed as the AO, vide order dated May 17, 2019.

The aforesaid entities are hereinafter referred to by their respective names/serial numbers or collectively as "the **Noticees**".

FACTS OF THE CASE:

3. Sterling had issued 2.32 million GDRs amounting to US$ 15.37 million, on October 1, 2003. Summary of the GDR issues of Sterling, as provided by the company is tabulated below:

Table 1

GDR issue date	No. of GDRs Issued	Capital raised (US$mn.)	Price per GDR (US$)	Underlying shares per GDR	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
01-Oct-2003	23,28,045	15.37	6.6	6	ICICI Bank Ltd., Mumbai	1,39,68,270	The Bank of New York Mellon, USA	Reliance Corporate Finance Limited, UK	Banco Efisa	Luxembourg Stock Exchange

4. On a perusal of the corporate announcements, it was observed that Sterling has informed Bombay Stock Exchange (hereinafter referred to as "**BSE**") that *"it has on October 01, 2003 closed the issue of 2,250,000 Global Depository Receipts (**GDRs**) each representing 6 underlying shares of Rs.2/- each, Offer Price of US$6.60 each aggregating to US$ 14,850,000/-. The company has by accepting over allotment option allotted total in aggregate 2,328,045 GDRs each representing 6 underlying each shares of Rs.2/- each at an offer price of US$6.60 per GDR. The total number of Underlying shares issued by the company thus has been 1,39,68,270 equity shares of Rs.2/- each*".

5. Fresia Worldwide Limited ('**Fresia'**), a company incorporated in the British Virgin Islands with registered number 530165 (3rd floor Felix House, Joseph Riviere Street, Port Louis Mauritius), entered into a credit agreement dated 29/09/2003 with Banco Efisa, S.F.E.,S.A.,(hereinafter referred to as "**Banco**") a bank based in Lisbon on September 29, 2003 for a dollar term loan facility up to US $15 million.

6. The following was *inter-alia* mentioned in the credit agreement:

> ***"Purpose-*** *The borrower shall use the proceeds of the advance to subscribe for global depository receipts to the value of up to US $15,000,000 issued by SterlingBiotech on the terms of the Listing particulars to be delivered to the Luxembourg Stock Exchange"*

7. A copy of certified true copy of minutes of meeting of Directors of Fresia held on September 24, 2003 authorizing Mr. Sunil Sethia to act on behalf of Fresia in regard to obtaining loan from Banco and approving the content of the credit agreement to avail a loan of up to US$ 15,000,000 was annexed to the above referred credit agreement as per the conditions precedent to the credit agreement.

8. Vide document bearing date April 01, 2004, as agreed upon between Fresia and Banco, the final repayment date of loan taken by Fresia was extended to September 30, 2004.

9. A drawdown notice was given by Fresia to Banco for the purpose of availing the credit facility of US$ 15 million. The drawdown request was signed by Mr. Sunil Sethia on behalf of Fresia.

10. From the above referred credit agreements, drawdown notice and documents providing extension for final repayment date of loans of Fresia, investigation observed that Fresia had availed a loan for subscription of GDRs of Sterling.

11. As per documents provided by Banco, the Board of Directors of Sterling passed a resolution (signed by Mr. Kirtidev Khatri, Company Secretary and Mr. Nitin Sandesara, Chairman of Sterling) in its meeting dated August 09, 2003 authorizing the Banco to use the GDR proceeds as security against loan availed by Fresia.

Relevant extracts of the resolution passed in the aforesaid meeting of Board of Sterling are as under:-

A. *"RESOLVED THAT a bank account to be opened with any Branch of BancoEfisa. … for the purpose of receiving subscription money in respect of the GDR issue of this company.*

B. *RESOLVED FURTHER THAT Mr.Nitin Sandesara, Chairman or Mr. Chetan J. Sandesara, Director be and hereby are individually authorized to sign, execute any application, agreement, escrow agreement, document, undertaking,… and other paper(s) from time to time as may be require by the Bank …*

C. *RESOLVED FURTHER THAT Mr. Nitin J. Sandesara, Chairman or Mr. Chetan J. Sandesara, Director be and are hereby severally authorized to draw cheques and the documents,…and generally to take all such steps and do all such things as may be required from time to time on behalf of this Company.*

D. *RESOLVED FURTHER THAT the Bank be and is hereby authorized to use the funds so deposited in the aforesaid bank account as security in connection with loans if any as well as to enter into any Escrow agreement or similar arrangements if and when so required.*

12. SEBI, vide email dated July 12, 2017, had sought minutes of the Board meeting dated August 09, 2003 from Sterling. Vide its email dated July 27, 2017,Sterling intimated the following to SEBI :

   i. There was no meeting of the Board of Directors of Sterling held on August 09, 2003.

   ii. The meeting of the Board of Sterling was held on August 10, 2003 approving the proposed GDR issue and appointing a GDR Committee of Directors of the Company. Sterling vide letter dated July 09, 2015 had provided extract of the minutes of the Board meeting dated August 10, 2003**.**

13. As per the Annual Report of the company for the year 2003, it is noted that a meeting of the Board of Directors of Sterling was held on August 09, 2003. Further, as per the information obtained from exchange, the company had not intimated stock exchanges regarding outcome of Board meeting dated August 09, 2003 or on August 10, 2003, as stated by Sterling.

14. As mentioned herein above, SEBI, vide e-mail dated July 12, 2017, sought minutes of meeting of the Board of directors of Sterling dated August 09, 2003. Since the company had not provided the same, vide letter dated August 24, 2017, Mr. Rajbhushan Dixit and Mr. Chetan Sandesara (Joint MD) were summoned to appear before Investigating Authority on August 30, 2017 and further Mr. Nitin

Sandesara was asked to provide certain information. However, the entities did not appear before Investigating Authority and Mr. Nitin Sandesara failed to provide information sought through the summons. It is observed that despite the efforts made by SEBI as stated above, the company did not provide the copy of minutes of Board meeting dated August 09, 2003**.**

15. From the preceding paragraphs, following is observed :

a. On the strength of the extract of Board meeting dated August 09, 2003, authorizing Banco to use GDR proceeds as security in connection with the loan, the company entered into account charge agreement dated September 29, 2003 with Banco and pledged the GDR proceeds which acted as security against the loan availed by Fresia to subscribe to the GDR of Sterling. Mr. Nitin Sandesara, Chairman of Sterling and Mr. Kirtidev Khatri, Company Secretary signed the extract submitted at Banco.

b. As per the documents available on record, the meeting of the Board of Sterling happened on August 09, 2003 and the company failed to intimate the outcome of the same to stock exchange and thereby Noticee no. 1 is alleged to have violated clause 36 (7) of the Listing Agreement.

c. Despite several reminders, the company did not provide minutes of the Board meeting dated August 09, 2003 but provided only the extract of minutes of

Board meeting dated August 10, 2003. Based on the above, it was alleged that the Board members namely, Mr. Nitin Sandesara (Noticee no. 2) Mr. Chetan Sandesara, (Noticee no. 3), Mr. Rajbhushan Dixit (Noticee no. 4), Mr. Narendra Patel (Noticee no. 5), Mr. Vilas Joshi (Noticee no. 6) and Mr. P B Mehta (Noticee no. 7) who attended meeting dated August 10, 2003, as per company's reply, approved various resolutions as submitted to Banco.

16. As per Account Charge Agreement, Sterling shall deposit in its designated account with Banco an amount not exceeding loan availed by Fresia for subscription of GDRs of Sterling as security for all the obligations of Fresia under the *Credit Agreement.* The *Account Charge Agreement* contained a clause to the effect that all communications to be given under the *Agreement* were to be addressed to Sterling.

17. The account charge agreement inter-alia states the following

1. ***Loan agreement****: Loan agreement means the Loan agreement signed between Fresia (as borrower) and the Bank dated on or around the date of this agreement by which the bank lent to Fresia the amount of up to US$ 15,000,000.*

2. ***Account Charge:***

Upon and Subject to the terms of this agreement, SterlingBiotech deposited in the Bank's account number 6127685 (hereinafter the Account) the amount of US$ 15,000,000 as security for all the obligations of Fresia under the Loan Agreement (hereinafter the Secured Obligations) and with fill 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 all 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 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 Sterling, release the deposit made in the Account.

Sterling Biotech 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 determines.

Sterling Biotech hereby irrevocably appoints by way of security the Bank as the attorney of Sterling Biotech with full power in the name and on behalf of Sterling Biotech 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 Sterling Biotech 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 realization of the security hereby created.*

Sterling Biotech 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 Sterling Biotech itself and Sterling 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 :*

Sterling Biotech:

46, Atlanta Building, Nariman Point, Mumbai-400021

Attention: Company Secretary, Ph : +91 22 2041954

18. As detailed herein above, Fresia had entered into *credit agreement* dated September 29, 2003 with Banco for subscription of GDRs of Sterling. As per the

said credit agreement, Fresia was to be provided the loan only for subscription of GDRs of Sterling. Further, Fresia had given a drawdown notice in the matter.

19. An *account charge agreement* was executed between Sterling and Banco and the aforesaid agreement was signed by Mr. Nitin Sandesara, CMD of Sterling. As per the account charge agreement, Sterling shall deposit in its designated account with Banco an amount not exceeding loan availed by Fresia for subscription of GDRs of Sterling, as security for all the obligations of Fresia under the c*redit agreement.* The *Account Charge Agreement* contained a clause to the effect that all communications to be given under the *Agreement* were to be addressed to Sterling.

20. Investigation had further observed that the aforesaid account charge Agreement was an integral part of Loan Agreement entered into between Fresia and Banco and vice versa and both were executed concurrently. The account charge agreement had the reference to the credit agreement entered into between Fresia and Banco by virtue of which Banco provided loan to Fresia for the purpose of subscribing to the GDR of Sterling. It was thus *prima facie* observed that the GDR issue would not have been subscribed in its entirety had the company not given security towards the loan taken by Fresia through account charge agreement.

21. Further, as per the information obtained from exchange, the company had not intimated stock exchanges regarding outcome of Board meeting dated August 09, 2003 or August 10, 2003.

22. Investigation has therefore observed that Sterling had pledged GDR proceeds to secure the rights of Banco against the loan given to Fresia for subscription to GDR issue.

23. The GDR proceeds to the tune of US$ 15.37 million were deposited in the company's bank account having number 6127685.15.001 maintained with Banco as follows:

Table 2

Date of credit of funds	Credit amount	Bank
30-09-2003	35,102	AarguischeKantonalbank
01-10-2003	14,850,000	ContiFina, S.A.
02-10-2003	480,000	Bank Gutmann
Total	15,365,097	

24. It was observed during the investigation that the amount equal to US$14,850,000 credited into the company's Escrow account was from Fresia since Fresia had availed a loan amount of US$15 million from Banco. Therefore, it was observed in the investigation that Fresia had subscribed to nearly 96.65% of the issued GDR (i.e. 22,50,000 GDRs).

25. From the documents submitted by Banco, following amount was transferred from Sterling's account with Banco to various beneficiaries:-

Table 3

SN	Date	Amount	Beneficiary	Comments*
1	7-Oct-03	2,500	BancoEfisa	Escrow Agent Fees
2	7-Oct-03	3,14,500	BancoEfisa/Fresia	Internal transfer against Fresia
3	7-Oct-03	105,000	Reliance Corporate Finance	Lead Manager Fees
4	8-Oct-03	80,649	Reliance Corporate Finance	Lead Manager Fees (in GBP)
4	02-Feb-04	101,500	Kia International Investments	Advisory Charges
5	06-May-04	12,200,000	Fresia Worldwide Limited	
6	07-May-04	70,000	Fresia Worldwide Limited	
7	11-May-04	2,550,000	American Enterprises	-
	Total	**15,424,149**		

*Comments as available in instructions by Sterling to Banco/ bank statement of Sterling

26. On the basis of documents provided by Banco to SEBI, the following were observed in the investigation:-

a. No amount was transferred from the Banco account of Sterling to any other bank account of Sterling (maintained in India or abroad).

b. On May 06, 2004, an amount to the tune of US$ 12,200,000 was transferred to Fresia (the subscriber to GDR).

c. On May 07, 2004, an amount to the tune of US$ 70,000 was transferred to Fresia (the subscriber to GDR).

d. On May 11, 2004, an amount of US$ 2,550,000 was transferred to American Enterprises. Even though Sterling was advised to provide the details in this regard, no details have been provided for the said transfer.

27. Thus, it was observed in the investigation that of the total GDR proceeds, US$12.27 million (nearly 80% of proceeds) were transferred from the company's Escrow account to the account of Fresia maintained with Banco. Considering the fact that Fresia was one of the subscribers to the GDR issue and the company transferred nearly 80% of GDR proceeds back to Fresia, investigation concluded that GDRs and the underlying equity shares in turn, to the tune of US$ 12.27 million, were effectively issued by Sterling to Fresia without any consideration, at the cost of shareholders / investors of Sterling.

28. **Conversion of GDRs:** With regard to the conversion of GDRs into equity share (cancellation of GDRs), investigation observed that a total of 38,06,968 GDRs were converted (corresponding to 2,32,88,514 equity shares i.e. around 89.04% of total GDRs issued) and remaining GDRs i.e. 2,34,302 GDRs are held by the global depository (The Bank of New York Mellon, USA) post termination of GDR program). A Summary of the cancellation of the GDRs as received from the custodian is given herein below:-

Table 4

Date of conversion of GDRs	No. of GDRs Converted	No. of shares issued on conversion of GDR	No of shares outstanding	Beneficiary Name
			1,39,68,270	
19-Jan-04	22,000	1,32,000	1,38,36,270	TAIB SECURITIES MAURITIUS LIMITED DR
17-Feb-04	8,530	51,180	1,37,85,090	SWISS FINANCE CORPORATION MAURITIUS LTD
01-Apr-04	75,000	4,50,000	1,33,35,090	TAIB SECURITIES MAURITIUS LIMITED DR
19-Apr-04	75,000	4,50,000	1,28,85,090	TAIB SECURITIES MAURITIUS LIMITED DR
29-Apr-04	83,427	5,00,562	1,23,84,528	MORGAN STANLEY & CO INTERNATIONAL LTD
13-May-04	20,000	1,20,000	1,22,64,528	TAIB SECURITIES MAURITIUS LIMITED DR
15-Jul-04	7,280	43,680	1,22,20,848	TAIB SECURITIES MAURITIUS LIMITED DR
23-Jul-04	8,265	49,590	1,21,71,258	TAIB SECURITIES MAURITIUS LIMITED DR
28-Sep-05	6,565	39,390	1,21,31,868	TAIB SECURITIES MAURITIUS LIMITED DR
	0		2,42,63,736	Stock Split (FV changed to `1 from `2)
17-Aug-05	15,515	1,86,180	2,40,77,556	KREDIETBANK SA LUXEMBOURGEOISE
04-Oct-06	43,751	5,25,012	2,35,52,544	CITIGROUP GLOBAL MARKETS LTD
05-Oct-06	15,185	1,82,220	2,33,70,324	LOTUS GLOBAL INV LIMITED
19-Oct-15	10,000	1,20,000	2,32,50,324	BANK J SAFRA SARASIN LTD

20-Oct-15	11,62,359	1,39,48,302	93,02,022	LOTUS GLOBAL INVESTMENTS LTD
09-May-16	2,50,000	30,00,000	63,02,022	BANK J SAFRA SARASIN LTD
03-Jun-16	2,50,000	30,00,000	33,02,022	BANK J SAFRA SARASIN LTD
22-Aug-17	10,200	1,22,400	31,79,622	PAWAN INDER SINGH
12-Sep-17	10,200	1,22,400	30,57,222	VIJAY C KAPASI
13-Sep-17	20,467	2,45,598	28,11,624	NITIN BALWANT VAIDYA
Total	**20,93,743**	**2,32,88,514**	**28,11,624**	

29. With regard to sale of equity shares by entities in India, a summary of the same, as obtained from BSE and NSE were as follows:-

Table 5

Name of the entity	PAN/demat account no.	Date first converted	Shares converted	Net shares sold*	Net Sell Value (Rs.)
TAIB SEC MAURITIUS LTD (Taib)	AAACT5003H	19-Jan-04	12,84,660	6,88,360	1,02,22,885
SWISS FINANCE CORPORATION MAURITIUS LTD (SFC)	AAFCS2799Q	17-Feb-04	51,180	1,14,29,211	1,00,23,93,016
KREDIETBANK SA LUXEMBOURGEOISE (KSL)	AACCK6201A	17-Aug-05	1,86,180	1,86,180	2,23,30,071
CITIGROUP GLOBAL MARKETS LTD (CITI)	AAFCS3274C	04-Oct-06	5,25,012	76,71,961	92,60,64,498
LOTUS GLOBAL INV LIMITED (LOTUS)	AAACL6080E	05-Oct-06	1,41,30,522	1,82,220	2,27,80,887

MORGAN STANLEY & CO INTERNATIONAL LTD (MSCI)	IN300167-10010348	29-Apr-04	5,00,562	-	-
BANK J SAFRA SARASIN LTD(BJSS)	AADCB1716C	19-Oct-15	61,20,000	16,76,000	63,74,082
Total			**2,27,98,116**	**2,18,33,932**	**1,99,01,65,438**

Section 21 of Securities Contract (Regulation) Act, 1956 reads 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 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."

(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."

30. It is observed that Sterling had not intimated stock exchanges with regard to account charge agreement entered into with Banco for pledging the proceeds of GDRs which was indeed a price sensitive information and which could have had an impact on the performance/operations of the company and therefore it is was alleged to have violated section 21 of SCRA, 1956 read with clause 36 (7) of the listing agreement.

31. It was observed that the Board of Directors of Sterling in their meeting dated August 09, 2003 passed resolutions regarding issue of GDRs of the company but did not intimate the stock exchanges regarding outcome of the Board Meeting which could have had an impact on the performance/operations of the company and therefore it is alleged to have violated section 21 of SCRA, 1956 read with clause 36 (7) of the listing agreement.

Clause 50 of the listing agreement reads as follows:

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

Clause 32 of Listing Agreement inter-alia states as follows:

"The Company will also give a Cash Flow Statement along with Balance Sheet and Profit and Loss Account. The Cash Flow Statement will be prepared in accordance

with the Accounting Standard on Cash Flow Statement (AS-3) issued by the Institute of Chartered Accountants of India, and the Cash Flow Statement shall be presented only under the Indirect Method as given in AS-3."

AS- 3 – Cash Flow Statements– inter-alia states the following:

*"**Cash** comprises cash on hand and demand deposits with bank.*

***Cash equivalents** are short term, highly liquid investments that are readily convertible into known amounts of cash and which are subject to an insignificant risk of changes in value."*

32. As mentioned in previous paragraphs, Sterling had entered into account charge agreement with Banco for subscription of its GDR Issue. Sterling in its annual report for financial year 2002-03 has stated that financial statements have been prepared in accordance with the applicable accounting standards. It was observed from the annual report *(relevant pages 28 & 32)* that Sterling had shown Cash & bank Balance as on December 31, 2003 as Rs. 72,04,73,039 (which includes Balance with Banco Efisa) in its Cash flow statement and balance sheet. It was observed that an amount of US $14.70 million was lying in Sterling's deposit account with Banco as on December 31, 2003 (i.e. Rs. 67.05 crore, 1 US $= Rs. 45.61-RBI Reference as on December 31, 2003). As mentioned in preceding paragraphs, Sterling had pledged its GDR proceeds against the loan taken by

Fresia for subscription of GDRs of Sterling and that Sterling could withdraw its GDR proceeds only to the extent of amount of loan repaid by Fresia. Hence, considering the amount lying in deposit account (A/C No: 612768515001) with Banco under Cash and Bank Balance, the withdrawal of which is dependent and contingent on the loan repayment by Fresia (encumbered cash), is not in compliance with AS-3. In view of the above, it is alleged that Sterling has not complied with AS-3.

AS 29 – 'Provisions, Contingent liabilities and Contingent Assets' inter-alia states as follows:

"10.4 A contingent liability is:

a) a possible obligation that arises from past events and the existence of which will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the enterprise; or

b) a present obligation that arises from past events but is not recognized because:

i. it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation;

ii. a reliable estimate of the amount of the obligation cannot be made.

27. A contingent liability is disclosed, as required by paragraph 68, unless the possibility of an outflow of resources embodying economic benefits is remote.

68. *Unless the possibility of any outflow in settlement is remote, an enterprise should disclose for each class of contingent liability at the balance sheet date a brief description of the nature of the contingent liability and, where practicable:*

a) an estimate of its financial effect, measured under paragraphs 35-45

b) an indication of the uncertainties relating to any outflow; and

c) the possibility of any reimbursement.

71. Where any of the information required by paragraph 68 is not disclosed because it is not practicable to do so, that fact should be stated."

33. As mentioned in previous paragraphs, Sterling had pledged its GDR proceeds against the loan taken by Fresia for subscription of GDRs of Sterling. Further, vide

document dated April 01, 2004, the final repayment date of loan taken by Fresia was extended to September 30, 2004 and thus as on December 31, 2003 the loan availed by Fresia was outstanding. Sterling could thus withdraw its GDR proceeds only to the extent of amount of loan repaid by Fresia and there was a possible obligation on Sterling for an amount of US $14.70 million (balance lying in the account no: 612768525001) on the date of balance sheet i.e. December 31, 2003 in the event of default of repayment of loan taken by Fresia which is of contingent liability in nature. It was observed from the annual report for the FY 2002-03 that Sterling has not disclosed an amount of US $14.70 million (as on December 31, 2003) lying in deposit account with Banco as contingent liability in its Financial statements for the FY 2002-03*. (In the notes to the accounts, the company disclosed that the contingent liabilities not provided for on account of letters of credit as on 31st December 2003 are of Rs. 2418.48 Lacs [Previous year Rs. 2482.14 Lacs])*. Therefore, it was alleged that Sterling by not disclosing the amount to the tune of US$ 14.70 million under contingent liability has not complied with AS-29.

34. **AS- 1– Disclosure of Accounting Policies**–deals with the disclosure of significant accounting policies followed in preparing and presenting financial statements.AS -1 inter-alia states the following:

“Considerations in the Selection of Accounting Policies

16. The primary consideration in the selection of accounting policies by an enterprise is that the financial statements prepared and presented on the basis of such accounting policies should represent a true and fair view of the state of affairs of the enterprise as at the balance sheet date and of the profit or loss for the period ended on that date.

17. For this purpose, the major considerations governing the selection and application of accounting policies are:—

a) Prudence

In view of the uncertainty attached to future events, profits are not anticipated but recognized only when realised though not necessarily in cash. Provision is made for all known liabilities and losses even though the amount cannot be determined with certainty and represents only a best estimate in the light of available information.

b) Substance over Form

The accounting treatment and presentation in financial statements of transactions and events should be governed by their substance and not merely by the legal form.

c) Materiality

Financial statements should disclose all "material" items, i.e. items the knowledge of which might influence the decisions of the user of the financial Statements."

From the above, it is clear that AS-1 states that an enterprise (i.e. Sterling) shall consider prudence, substance over form and materiality as major consideration while drafting its accounting policies. Given that Sterling has not followed prudence since it did not provide for the potential liability, did not follow substance over form and presented its encumbered cash balance as free cash available with the company and also did not follow materiality as it did not disclose the fact of account charge agreement and the encumbrance on the cash balance as the same is an item, the knowledge of which might influence the decisions of the user of the financial Statements.

35. From the above, it was observed that Sterling had not complied with Accounting Standards–1,3 and 29 and therefore it was alleged that Sterling has violated section 21 of SCRA read with clauses 32 & 50 of the Listing Agreement.

36. SEBI vide email dated July 12, 2017, had sought the minutes of meeting of the Board of directors of Sterling dated August 09, 2003. Since the company was not

able to provide the same, Mr. Nitin Sandesara vide letter dated July 13, 2017, was summoned under section 11C (5) of SEBI Act, 1992 to appear before the Investigating Authority in person. The company vide email dated July 17, 2017, had sought adjournment of 6 weeks. Vide letter dated August 21, 2017, Mr. Rajbhushan Dixit (Director of Sterling) was summoned to appear before Investigating Authority but vide letter dated August 24, 2017, the entity sought adjournment. Subsequently, vide letters dated August 24, 2017, Mr. Rajbhushan Dixit and Mr. Chetan Sandesara (Joint MD) were summoned to appear before Investigating Authority on August 30, 2017. Mr. Nitin Sandesara was asked to provide certain information through summons and to appear before the Investigating Authority on August 30, 2017. The date to appear in person was rescheduled to September 04, 2017 subsequent to company's request vide email dated August 30, 2017.On September 04, 2017, the company requested SEBI to further adjourn the appearance of aforesaid 3 entities. SEBI vide email dated September 05, 2017 rescheduled the date of appearance for aforesaid 3 entities to September 12, 2017 stating that the same shall be the last opportunity to comply with summons issued against them. However, the entities did not appear before Investigating Authority nor intimated SEBI regarding reasons for failure to comply and Mr. Nitin Sandesara failed to provide information sought through summons. It was therefore alleged that Mr. Nitin Sandesara (Chairman of Sterling) (Noticee no.

2) failed to furnish information sought through summons and thus hindered the investigations and thus violated Section 11C(2) SEBI Act, 1992.

37. Based on the above findings of investigation, it was alleged in the SCN that:-

I. Sterling had issued 23,28,045 GDRs (amounting to approx. US $15.37 million) on October 01, 2003. Fresia was one of the subscribers to the GDRs that subscribed to 96.65% of issued GDR (i.e. 22,50,000 GDRs). The subscription amount was paid by Fresia by obtaining loan (i.e. through credit agreement) from Banco.

II. Mr. Nitin Sandesara, CMD of Sterling signed an account charge agreement with Banco (i.e. Sterling provides security to Banco for loan availed by Fresia from Banco for subscription of GDRs of Sterling). The aforesaid account charge agreement was an integral part of Credit agreement (i.e. Fresia shall be provided a loan by Banco and the same shall be used only to subscribe to GDRs of Sterling) entered between Fresia and Banco. This agreement enabled Fresia to avail a loan from Banco for subscribing GDRs of Sterling. The GDR issue would not have been subscribed had the company not given any such security towards the loan taken by Fresia. The company reported to the stock exchanges that *"..it has on October 01, 2003, closed the issue of*

GDRs... " which made investors believe that the said GDR issue was genuinely subscribed. Therefore, the entire scheme involving entering into Pledge Agreement, making corporate announcement that the GDRs were successfully subscribed without disclosing the arrangement to the investors resulted in publication of misleading news to the stock exchanges which contained information in distorted manner and which might have influenced the decision of the investors or had the potential to do so. Such announcements misled Indian retail investors and could have induced investors to deal in the shares of Sterling. Thereby, the scheme of issuance of GDRs was fraudulent. Hence, Sterling (Noticee no. 1) had violated the provisions of regulations 3 (a), (b), (c), (d) and 4(1), 4(2) (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003 and directors of Sterling namely Mr. Chetan Sandesara, Mr. Rajbhushan Dixit, Mr. Narendra Patel, Mr. Vilas Joshi, Mr. Nitin Sandesara and Mr. P. B. Mehta (i.e Noticee nos. 2 to 7) who authorized Banco to use GDR proceeds as a security in connection with loan and Mr. Nitin Sandesara(Noticee no. 2) who signed the account charge agreement at Banco violated provisions of regulations 3 (a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.

III. Sterling (Noticee no. 1) had not informed stock exchange with regard to account charge agreement entered with Banco for subscription of GDRs and outcome of Board meeting dated August 09, 2003 wherein the Board passed resolutions regarding GDR issue. Both these events were price sensitive information and could have impacted the price of the scrip and thereby Sterling did not comply with clause 36 (7) of the listing agreement.

IV. Sterling (Noticee no1) did not follow Accounting Standards 1, 3 and 29 in the preparation of accounts for Financial Year 2002-03 and hence did not comply with clauses 32 & 50 of the Listing Agreement. Hence, Sterling (Noticee no1) is in violation of section 21 of SCRA, 1956 read with clauses 32 & 50 of the Listing Agreement.

V. Mr. Nitin Sandesara (Chairman of Sterling) (Noticee no. 2) failed to furnish information sought through summons and thus hampered the investigations and thus violated Section 11C(2) SEBI Act, 1992.

VI. Thereby, in view of the findings of investigation, the allegations against the Noticees are summarized as under :

Noticee No	**Name of the Noticee**	**Alleged violations**

Noticee No.1	Sterling Biotech Ltd	Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992read with regulations 3 (a), (b), (c), (d) and 4(1), 4(2) (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003 Section 21 of SCRA read with Clauses 32, 36(7) and 50 of the Listing Agreement
Noticee No.2	Mr. Nitin Sandesara	Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 r /w regulations 3 (a), (b), (c), (d) & 4(1) of SEBI (PFUTP) Regulations, 2003. Section 11C(2) of SEBI Act, 1992
Noticee No.3	Mr. ChetanSandesara	Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 r /w regulations 3 (a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.
Noticee No.4	Mr. Rajbhushan Dixit	Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 r /w regulations 3 (a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.

Noticee No.5	Mr. Narendra Patel	Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 r /w regulations 3 (a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.
Noticee No.6	Mr. Vilas Joshi	Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 r /w regulations 3 (a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.
Noticee No.7	Mr. P B Mehta	Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 r /w regulations 3 (a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.

38. The aforesaid allegations, if established, make the Noticees liable for monetary penalty under Sections 15 HA and 15 A(a) of SEBI Act, 1992, and Section 23E of SCRA, 1956.

SEBI Act, 1992

Penalty for failure to furnish information, return, etc.

15A.*If any person, who is required under this Act or any rules or regulations made thereunder,—*

(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

Penalty for fraudulent and unfair trade practices.

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

SCRA, 1956

Penalty for contravention where no separate penalty has been provided.

23E.*If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees*.

SHOW CAUSE NOTICE, REPLY AND HEARING

39. The aforesaid facts and allegations based thereupon where conveyed to the Noticees vide show cause notice ("SCN") dated June 29, 2018. The documents based on which the said allegations were made, have already been provided to the Noticees along with the SCN. The SCN had returned undelivered from the addresses of Mr. Nitin Sandesara and Chetan Sandesara. The SCN was received at the addresses of Mr. Nagendra Patel, Mr. P. B Mehta, Mr. Vilas Joshi and Mr. Raj Bhushan Dixit and they had responded to the same (except Nagendra Patel). However, none of them had submitted on the merits of the SCN. Mr. P. B Mehta, Mr. Vilas Joshi and Mr. Raj Bhushan Dixit had filed for settlement of the present proceedings, however the same were rejected by SEBI. Thereafter, on resumption of the proceedings by the undersigned, vide a public notice dated October 5, 2021, published in Hindusthan Times (Mumbai edition), Maharashtra Times (Mumbai edition) and Navbharat Times (Mumbai edition), the Noticees were informed of the SCN and a copy of the same was *inter alia* asked to be obtained from the office of the undersigned. However, no response to the SCN/ the publication was received from the Noticees. It was clearly mentioned in the aforesaid newspaper publication that if no response is received from the Noticees by October 21, 2021 (the date when the hearing in the matter was scheduled), it shall be presumed that they have no response to make and the present proceedings shall be continued ex-parte. Now, since no reply has been received from the Noticees, despite the passage of sufficient time, I conclude that sufficient compliance with the principles of natural

justice has been done and the present proceedings can be continued ex-parte. I find that all possible steps have been taken to bring the SCN and the hearing notices to the knowledge of said Noticees. Therefore, I conclude that all the process of service of the SCN and the hearing notices as specified under Rule 7 of the SEBI (Adjudication) Rules, 1995 and concomitant provisions under SCRA (adjudication) Rules, 2005 have been exhausted and therefore the principles of natural justice has been complied with qua the said Noticees. I now proceed to deal the case on merits.

CONSIDERATION AND FINDINGS:

40. I have carefully examined the allegations against the Noticees, and the documents / material available on record. The issues that arise for consideration in the present case are :

I. Whether the Noticee No. 1/Sterling has violated the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1), 2(f), (k), (r) of PFUTP Regulations and Section 21 of SCRA 1956, read with Clause 36 (7), Clause 32 and Clause 50 of the Listing Agreement?

II. Whether the rest of the Noticees have violated the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI PFUTP Regulations, 2003?

III. Does the violations, if established, attract monetary penalty under Section 15HA of the SEBI Act, 1992 and Section 23E of SCRA?

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

41. With respect to the issue at paragraph no. 40 (I) above, the same has already been taken up separately and the proceedings qua the Noticee No.1 , i.e, Sterling Biotech Limited has been disposed vide order dated August 3, 2021. Therefore, in the present proceedings, I am dealing with the remaining Noticees.

42. I note that Sterling (Noticee No.1) had issued 2.32 million GDRs amounting to US $ 15.37 million, on October 1, 2003. Summary of the GDR issues of Sterling, as provided by the company vide its letter dated July 9, 2015, is tabulated below:

GDR issue date	No. of GDRs Issued	Capital raised (US$ mn.)	Price per GDR (US$)	Underlying shares per GDR	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
01-Oct-2003	23,28,045	15.37	6.6	6	ICICI Bank Ltd., Mumbai	1,39,68,270	The Bank of New York	Reliance Corporate Finance Limited, UK	Banco Efisa	Luxembourg Stock Exchange

							Mellon, USA			

43. The SCN alleges that the GDRs of Sterling were almost subscribed by only one entity i.e. Fresia Worldwide Limited ("**Fresia**"), who had subscribed to nearly 96.65% of the issued GDR (i.e. 22,50,000 GDRs) by obtaining a loan through a dollar term loan facility of USD $15 million through a loan agreement dated September 29, 2003 from the Banco, which Sterling was aware of. The SCN has alleged that Fresia took a loan from Banco to subscribe to the GDR issue of Sterling and security for this loan was provided by Sterling by pledging its Bank account held with Banco wherein proceeds of GDR issue of Sterling were to be deposited. The SCN alleges that Sterling had opened a bank account with Banco for the purpose of receiving GDR proceeds, and vide an Account Charge Agreement dated September 29, 2003 entered into between Sterling and Banco, Sterling had pledged its GDR proceeds in bank account no. 6127685 against the loan given by Banco to Fresia for subscription to GDR issue of Sterling, even before the GDRs were issued. The SCN also alleges that Sterling was aware of the Loan Agreement and that Fresia was almost the sole subscriber to its GDR issue and that Fresia had subscribed to the GDRs through a loan obtained from Banco and that this was a fraudulent scheme of self financing by Sterling of its own GDR issue by Fresia.

44. In the background of the allegations as mentioned above, I proceed to note in the ensuing paragraphs the scheme of events that took place in respect of the above GDR issue by Sterling.

45. The Board of Directors of Sterling had passed a resolution (signed *inter alia* by Mr. Nitin Sandesara, Chairman of Sterling) in its meeting dated August 9, 2003 authorizing the Banco to use the GDR proceeds as security against loan availed by Fresia. Relevant extracts of the resolution passed in the aforesaid meeting of Board of Sterling are as under:-

A. *"RESOLVED THAT a bank account to be opened with any Branch of Banco Efisa. … for the purpose of receiving subscription money in respect of the GDR issue of this company..*

B. *RESOLVED FURTHER THAT Mr. Nitin Sandesara, Chairman or Mr. Chetan J. Sandesara, Director be and hereby are individually authorized to sign, execute any application, agreement, escrow agreement, document, undertaking,… and other paper(s) from time to time as may be require by the Bank …*

C. *RESOLVED FURTHER THAT Mr. Nitin J. Sandesara, Chairman or Mr. Chetan J. Sandesara, Director be and are hereby severally authorized to draw cheques and the documents,…and generally to take all such steps and do all such things as may be required from time to time on behalf of this Company.*

D. *RESOLVED FURTHER THAT the Bank be and is hereby authorized to use the funds so deposited in the aforesaid bank account as security in connection with loans if any as well as to enter into any Escrow agreement or similar arrangements if and when so required.* [emphasis supplied]

46. I note from the above resolution that Board of Directors of Sterling had resolved to open a bank account with Banco for its GDR issue and authorized Mr. Nitin J. Sandesara, Chairman or Mr. Chetan J. Sandesara, Director, to sign any document in this regard. I further note that Banco was also authorized to use any funds deposited with it as a security to loans.

47. I further note from the subscriber's side, as part of the GDR scheme that, barely two days prior to the issuance of the aforesaid GDRs, Fresia had entered into a loan agreement dated September 29, 2003 with Banco by virtue of which Banco had advanced loan to the tune of USD 15 million to Fresia expressly for subscribing to the GDRs to be issued by Sterling which observation I note from the covenants of the credit agreement brought out in subsequent paragraph(s).

48. As noted above, on perusal of the Credit Agreement, the purpose of the said Agreement is stated as; ***"Purpose-*** *The borrower shall use the proceeds of the advance to subscribe for global depository receipts to the value of up to US $15,000,000 issued by Sterling Biotech on the terms of the Listing particulars to be*

delivered to the Luxembourg Stock Exchange". From the aforesaid Credit Agreement, I note that Fresia had availed of a loan facility to the extent of approx. USD 15 Million from Banco solely for the purpose of subscribing to the GDRs of Sterling.

49. At the same time, Sterling had opened its account with Banco for the purpose of credit of proceeds of GDR Issue. I also note that, on the same date on which Fresia had signed the loan agreement with Banco, as discussed in pre-paragraphs, Sterling had also entered into an account charge agreement dated September 29, 2003 with Banco which was signed by Mr. Nitin Sandesara, CMD of Sterling. By the said account charge agreement, Sterling had pledged the proceeds of its own GDR issue with Banco as security for the loan given by Banco to Fresia for subscribing to its GDRs. Salient clauses of the account charge agreement is reproduced herein below:

1. ***Loan agreement****: Loan agreement means the Loan agreement signed between Fresia (as borrower)and the Bank dated on or around the date of this agreement by which the bank lent to Fresia the amount of up to US$ 15,000,000.*

2. ***Account Charge:***

   Upon and Subject to the terms of this agreement, Sterling Biotech deposited in the Bank's account number 6127685 (hereinafter the Account) the amount of US$ 15,000,000 as security for all the obligations of Fresia under the Loan Agreement (hereinafter the

Secured Obligations) and with fill 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 all 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 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 Sterling, release the deposit made in the Account.

Sterling Biotech 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 determines.

Sterling Biotech hereby irrevocably appoints by way of security the Bank as the attorney of Sterling Biotech with full power in the name and on behalf of Sterling Biotech 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 Sterling Biotech 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 realization of the security hereby created.*

Sterling Biotech 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 Sterling Biotech itself and Sterling 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 :*

Sterling Biotech:

46, Atlanta Building, Nariman Point, Mumbai-400021

Attention: Company Secretary, Ph : +91 22 2041954

50. I note that though Sterling may not have entered into any credit agreement *per se*, however, I note that the Account Charge Agreement refers to the Credit Agreement signed between the borrower i.e. Fresia and Banco, whereby Fresia was granted a loan of approx. USD 15 Million. As per the account charge agreement, Sterling shall deposit in its designated account with Banco an amount not exceeding the

loan availed by Fresia for subscription of GDRs of Sterling, as security for all the obligations of Fresia under the c*redit agreement.* The *Account Charge Agreement* contained a clause to the effect that all communications to be given under the *Agreement* were to be addressed to Sterling.

51. I also observe that the aforesaid account charge Agreement was an integral part of Loan Agreement entered into between Fresia and Banco and *vice versa* and both were executed concurrently. The account charge agreement had the reference to the credit agreement entered into between Fresia and Banco by virtue of which Banco provided loan to Fresia for the purpose of subscribing to the GDR of Sterling. The GDR issue thus would not have been subscribed in its entirety had the company not given security towards the loan taken by Fresia through account charge agreement.

52. Therefore, I observe that, while signing the Pledge Agreement, Sterling was clearly aware that Banco had acquired a loan of approx. USD 15 Million and the same is being secured by way of money deposited by Sterling in its bank account with Banco. Further, as the account charge agreement was signed by Noticee 2 on behalf of Sterling, in his capacity as the Authorized Representative as well as Chairman of Sterling, I note that he was well aware of the said credit agreement between Fresia and Banco. On perusal of the contents of the Account charge

Agreement, it is noted that Sterling had agreed to pledge all its rights, title and interest in and to the funds deposited in its designated bank account as well as the interest accrued therein so as to secure the present and future obligations of Fresia.

53. I also note that the GDR proceeds of Sterling was not freely held unencumbered fund and further Sterling was not allowed to withdraw the same without prior written approval of Banco. In terms of the Account Charge Agreement, the GDR proceeds of Sterling were provided as security against the loan availed by Fresia, and withdrawal by Sterling was dependent on the loan repayment by Fresia. In this regard I find it relevant to rely upon the observations of the Hon'ble SAT, in its Order dated October 25, 2016 in the matter of *Pan Asia Advisors Limited vs. SEBI* as follows:

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

The only reason the funds remained unemployed was because the same were pledged with Banco and Sterling was not allowed to withdraw the same without prior written approval of Banco only after the repayment being made by Fresia.

54. From the investigation of SEBI, I observe that out of the total GDR proceeds, US$12.27 million (nearly 80% of proceeds) were transferred from the company's Escrow account to the account of Fresia maintained with Banco. Considering the fact that Fresia was one of the subscribers to the GDR issue and the company transferred nearly 80% of GDR proceeds back to Fresia, I conclude that GDRs and the underlying equity shares in turn, to the tune of US$ 12.27 million, were effectively issued by Sterling to Fresia without any consideration, at the cost of shareholders / investors of Sterling.

55. I also note from the disclosures available on Bombay Stock Exchange (BSE) website that the credit agreement and account charge agreement which were instrumental in the whole scheme of GDR issue were not disclosed to the BSE. In this regard, I note that the Hon'ble SAT, in its order dated February 05, 2020, in the matter of *Jindal Cotex Ltd. vs. SEBI*, has clearly delineated the importance of disclosure of credit/loan agreement and account charge/ pledge agreement and the requirement of their disclosures in the following terms:

> "*When the company has lent the entire proceeds of the GDR issue to the tune of US$ 38.75 million as security for a third party abroad to avail a loan on the*

basis of that security and thereby potentially jeopardizing the entire proceeds is not a non-event but an important material information affecting all the stakeholders. We would hold that such events have to be disclosed in bold letters so that the investors of the company as well as those who are subscribing to its GDR issue etc. should be fully aware of those highly material facts.

…… The basic question to be answered is whether the issue was subscribed by a loan taken by Vintage on the basis of pledging the proceeds of the GDR issue as security for the said loan taken by a third party and that too a party located abroad and whether sufficient disclosures of material events associated with the issue was properly done. We are of the considered view that the method adopted by the appellants was vitiated through fraud………"

Therefore, in light of the above observations of Hon'ble SAT, I am of the view that non-disclosure of loan agreements and pledge agreement was done so as to create a fraudulent impression in the minds of the public investors that the said GDR issues were genuine in nature and the company had received the funds and the same were available for the free use of Sterling.

56. On a consideration of the factual observations made in the preceding paragraphs, it is clear that the credit agreement between Fresia and Banco enabled the former to obtain funds from the latter for the express and soul purpose of subscribing to the GDR issue of Sterling. The said credit agreement could not have been entered

into if not for the account charge agreement entered into between Sterling and Banco on the same day when the credit agreement was entered into. The account charge agreement made Sterling a guarantor for the loan which was obtained by Fresia. The said account charge agreement was signed on behalf of Sterling by the then Chairman of Sterling. Therefore, the said account charge agreement when seen in its totality along with the resolution dated August 9, 2003, of the Board of Sterling enabling its authorized representatives to open bank account with Banco for the purpose of receiving GDR proceeds and using the said account for the purpose of securing loans, gives a clear and unmistakable conclusion that Sterling and its Directors knew of the entire scheme of self financing of the GDR issue of Sterling. I note that the communications from Banco to Sterling pursuant to the account charge agreement were being addressed to the office of Sterling as clearly provided for in the said agreement (reproduced in the preceding paragraphs). Further, the fact that the availability of the GDR proceeds to Sterling was dependent upon the repayment from Fresia to Banco and the subsequent transfer of almost 80% of the GDR proceeds to Fresia by Sterling, were events too conspicuous for any of the then Directors of Sterling to overlook or be unaware of. Moreover, the Noticee No.2 being the then Chairman of Sterling had himself signed the account charge agreement being clearly in the knowledge of the fraudulent scheme of self financing. Further, the letter from Sterling requesting Banco to transfer an amount of USD 12,200,000 from its account to Fresia have also been signed by Mr. Nitin Sandesara. It is also seen that many of the Board Resolutions and letters of instruction to Banco in respect of account(s) of Sterling have either been signed by Mr. Nitin Sandesara or mr. Chetan Sandesara. By way of the Board Resolution dated August 09, 2003, Mr. Nitin Sandesara was authorized to sign, execute any application, agreement, escrow agreement, document, undertaking etc. as may be required by the Bank, i.e. Banco. He was also authorized to draw cheques and generally to take all such steps and do all such things as may be required from time to time on behalf of this Company. By way of the said Board Resolution, Mr. Chetan Sandesara was also provided with similar powers. Similarly, by way of the Board Resolution dated August 10, 2003, a committee of executive directors, comprising of Mr. Nitin Sandesara, Chairman and Mr. Chetan Sandesara, to be called the “International Offerings Committee”, was formed to exercise powers conferred on the Board by the special resolution in respect of the Company’s proposed issue of GDRs, FCCBs or any other international offerings.

57. In this context, it is pertinent to rely upon the provisions of Section 5 of the Companies Act, 1956 (section 2(60) of the Companies Act, 2013) read with Section 27 of the SEBI Act. Additionally, I would also like to cite the observations of the Hon'ble Supreme Court of India in the matter of *Shri N. Narayanan vs. SEBI* decided on 26.04.2013, wherein it was *inter alia* observed that –

"... 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.”.

Further, Hon’ble High Court of Madras in *Madhavan Nambiar vs Registrar of Companies* (2002 108 CompCas 1 Mad) has held that –

“… Section 5 of the Companies Act defines the expression "officer who is in default". The expression means either (a) the managing director or managing directors ; (b) the whole-time director or whole-time directors ; (c) the manager ; (d) the secretary ; (e) any person in accordance with whose directions or instructions the board of directors of the company is accustomed to act; (f) any person charged by the board with the Page 122 of 139 responsibility of complying with that provision ; (g) any director or directors who may be specified by the board in this behalf or where no director is so specified, all the directors. … Section 29 of the Companies Act provides the general power of the board….Therefore it follows there cannot be a blanket direction or a blanket indemnity in favour of the petitioner or other directors who have been nominated by the Government either ex officio or otherwise. Hence the second point deserves to be answered against the petitioner…. There may be a delegation, but ultimately it comes before the board and it is the board and the general body of the company which are responsible...”

58. Further, I note that Section 27 of SEBI Act also deals with offences by Companies. In the said provision, Section 27(1) says that, in case of a default by a company, every person who at the time the offence 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 offence and shall be liable to be proceeded against and punished accordingly. Therefore, in view of the position of law and the conduct of the Directors of Sterlings, I hold that all the directors of Sterling are liable for the fraudulent scheme of self financing of GDR issue undertaken by Sterling.

59. I note that the facts of the present matter and the *modus operandi* employed in the present GDR issues are similar to facts and modus operandi in the *GDR issue of Cals Refineries Ltd.* wherein the Hon'ble SAT vide its order dated October 12, 2017 has made the following observations:

> *"In these circumstances, the conclusion drawn by SEBI that opening a bank account with Banco and executing the Account Charge Agreement were the acts done by Cals through its directors to finance Honor for subscribing the GDRs issued by Cals in gross violation of Section 77(2) of the Companies Act, 1956 and the provisions contained in the SEBI Act and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for convenience), cannot be faulted."*

60. In this regards, the following observations made by the Hon'ble SAT in matter of *V. Natarajan vs. SEBI* (Order dated June 29, 2011 in Appeal No.104 of 2011) are worth mentioning:

> *"... we are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 were violated. These regulations, among others, prohibit any person from employing 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 an exchange. They also prohibit persons from engaging 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 that are listed on stock exchanges. These regulations also prohibit persons from indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true. Any advertisement that is misleading or contains information in a distorted manner which may influence the decision of the investors is also an unfair trade practice in securities which is prohibited. The regulations also make it clear that planting false or misleading news which may induce the public for selling or*

purchasing securities would also come within the ambit of unfair trade practice in securities.”

61. I observe that Mr. Nitin Sandesara and Mr Chetan Sandesara have also been declared as Fugitive Economic Offenders under the Fugitive Economic Offenders Act, 2018 vide order dated September 28, 2020 in CC No. 22/2017 of Case No. 32/2017 by the Addl. Sessions Judge-02, New Delhi District. So, on the basis of the information and documents available on record, I find that Mr. Nitin Sandesara and Mr. Chetan Sandesara were fully involved in the day-today activities of the Company, and had complete knowledge of the activities of Company during the process of issuance of GDRs, which were patently illegal. Accordingly, I find that Nitin Sandesara and Chetan Sandesara have violated Section 12A (a), 12A (b), 12A(c) of the SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

62. The other Noticees, namely Mr. Vilas Joshi, Mr. P.B. Mehta, Mr. Narendra Patel and Mr. Rajbhushan Dixit, although did no reply to the SCN in the present proceedings on its merits, I observe that in their submissions during the proceedings before the Ld. Whole Time Member, SEBI, under section 11B of the SEBI Act, have in their replies *inter alia* emphasized that as Non-executive Independent Directors they did not doubt the credibility and legality of the pledge and loan agreements and they were under a *bona fide* belief that laws of the

countries including India, involved in the process of issue of GDRs, allowed Sterling to guarantee the security for the loan taken by Fresia towards subscription money for the GDRs. It was also submitted that Mr Narendra Patel has passed away and in this respect, a copy of his death certificate has been submitted to SEBI during the proceedings under section 11B of the SEBI Act.

63. With respect to the argument that being non-executive directors, the aforesaid Noticees did not have reasons to doubt the *bona fide* of the account charge agreement, I consider it untenable. Even if the said Noticees had known nothing specifically about the Credit Agreement signed between Fresia and Banco, the peculiar nature of the said account charge agreement signed between Sterling and Banco could not have evaded their notice, whereby a deposit of USD 15 million made by Sterling in an account maintained with Banco, was used as security for all the obligations of a purportedly unrelated party, i.e., Fresia under the credit agreement, for financing its own GDR subscription through Fresia. This is because the consideration paid by Fresia for the subscription of the GDRs was procured through a loan from Banco, and this loan was secured by a deposit of USD 15 million made by Sterling. This peculiarity could not have occurred in the ordinary course of raising funds through issue of any securities by any company, unless there was premeditation of self financing the issue of such securities, through a front entity, which to the knowledge of any person even nominally conversant with

the functioning of a listed company, would appear to be illegal and a fraud played upon the *bona fide* shareholders of such listed entity and to the securities market at large. The aforesaid Noticees, who had acted as the Directors of Sterling, then a listed entity, at the relevant point in time cannot feign ignorance of this elementary understanding of the norms of raising capital from the market, when admittedly they knew that Sterling had stood as guarantor for the loan availed by Fresia and had pledged its own GDR proceeds as security for such loan availed by Fresia. .

64. In this context, it is imperative to note that it is an established principle of law that *"an independent director shall be held liable only in respect of such acts of omission or commission by a company which had occurred with his knowledge, consent or connivance or where the independent director had not acted diligently.*" [Order dated November 27, 2019 of the Hon'ble SAT in *G. Unnikrishnan Nair and Others V. SEBI* (Appeal No. 05 of 2018)]. The said principle was reiterated by the Hon'ble SAT also in its Order dated February 07, 2020 in *Dr. Venkadasamy Venkataramanujan V. SEBI* (Appeal No. 254 of 2019). The role of an independent Director is important as he is entrusted to watch over the actions of a listed company in order to safeguard the interests of the shareholders at large. On a bare perusal of the Account Charge Agreement, no reasonable person could have held a *bona fide* belief that the laws of India would allow Sterling to guarantee the security for the loan taken by Fresia towards subscription money for the GDRs

issued by Sterling. In other words, it would have been extremely unreasonable for the said Noticees to have even assumed that self financing by a company of the subscription to its own issue of securities was legal as the same is *per se* prejudicial to the interests of the shareholders of such a company. From the submissions made during the 11B proceedings, it is clear that the said Noticees had clear knowledge of the Credit Agreement and the Account Charge Agreement. Having the said knowledge, the Noticees should have acted with diligence and due care so as to safeguard the interests of the shareholders. Neither in the material available in this proceedings nor during the 11B proceedings any document/ evidence has been produced which shows that any of the said Noticees had raised any objection to the self financing of the GDR issue by Sterling. Accordingly, I find that Mr. Vilas Joshi, Mr. P.B. Mehta, Mr. Narendra Patel and Mr. Rajbhushan Dixit have also violated Section 12A(a), 12A(b), 12A(c) of the SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003. Therefore, I hold that all the Directors of Sterling at the relevant point in time when the GDRs in question and subscribed to, i.e, the Noticees No. 2-7 in the instant proceedings, have violated Regulations 12A (a), (b) and (c) of the SEBI Act read with Regulations 3 (a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.

65. I note from the records that SEBI vide email dated July 12, 2017, had sought minutes of meeting of the Board of directors of Sterling dated August 09, 2003.

Since the company was not able to provide the same, Mr. Nitin Sandesara vide letter dated July 13, 2017, was summoned u/s 11C (5) of SEBI Act, 1992 to appear before the Investigating Authority in person. The company vide email dated July 17, 2017, sought adjournment of 6 weeks. Subsequently, vide letter dated August 24, 2017, Mr. Chetan Sandesara was again summoned to appear before Investigating Authority on August 30, 2017. Mr. Nitin Sandesara was asked to provide certain information through summons and to appear before the Investigating Authority on August 30, 2017. The date to appear in person was rescheduled to September 04, 2017 subsequent to company's request vide email dated August 30, 2017.On September 04, 2017, the company requested SEBI to further adjourn the appearance. SEBI vide email dated September 05, 2017 rescheduled the date of appearance to September 12, 2017, stating that the same shall be the last opportunity to comply with summons. However, he did not appear before Investigating Authority nor intimated SEBI regarding reasons for failure to comply and also failed to provide information sought through summons. It is thus established that Mr. Nitin Sandesara (Noticee no. 2) had failed to furnish information sought through summons and thus hampered the investigations and thus violated Section 11C (2) SEBI Act, 1992 in addition to his role in execution of the fraudulent scheme of self financing of the GDR issue by Sterling, which has already been detailed in the preceding paragraphs.

66. As established in the pre-paragraphs, the Noticees No. 2, 3, 4, 5, 6 and 7 have violated the provisions of Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 r /w regulations 3 (a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003. Therefore, they are liable for a penalty under Section 15HA of SEBI Act. The text of the said provision of law is being reproduced below:

SEBI Act

Penalty for fraudulent and unfair trade practices.

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

It has further been established that Noticee No. 2 has violated the provisions of Section 11C(2) of SEBI Act. Therefore, the said Noticee is liable for penalty under Section 15A(a) of SEBI Act. The text of the said provision of law is being reproduced below:

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made there under,—*

(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

67. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the SEBI Adjudication Rules require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely; -

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

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

(c) the repetitive nature of the default.

68. With regard to the above factors, it may be noted that the investigation report has not quantified the profit made or the loss caused to general investors on account of the violations committed by Sterling and its directors and promoters. Further, in the order dated June 22, 2021, the Ld. Whole Time Member of SEBI has debarred the directors of Sterling from accessing the securities market for a period of three to five years. The whole scheme of self financing of the GDR issue of Sterling executed by the Noticees No. 2 to 7 was an elaborate fraud played with respect to

the securities market at large involving an amount of USD 15 million. Thus, the gravity of the fraudulent conduct of the Noticees Nos. 2-7 cannot be overlooked.

ORDER

69. After taking into consideration the facts and circumstances of the case, material/facts on record and also the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of SEBI Adjudication Rules, hereby impose the following penalty on the Noticees nos. 2 to 7 (as referred to in the SCN) under Section 15A(a) & 15HA of the SEBI Act for their violation of the provisions of SEBI Act and PFUTP Regulations, as discussed in this order:

Sl. No	**Name of the Noticee**	**Provisions violated**	**Amount of penalty**
1	Mr. Nitin Sandesara	Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 r /w regulations 3 (a), (b), (c), (d) & 4(1) of SEBI (PFUTP) Regulations, 2003. Section 11C(2) of SEBI Act, 1992	**Rs. 50,00,000/- (Rupees Fifty Lacs)**

2	Mr. Chetan Sandesara	Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 r /w regulations 3 (a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.	**Rs. 20,00,000/- (Rupees Twenty Lacs)**
3	Mr. Rajbhushan Dixit	Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 r /w regulations 3 (a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.	**Rs. 20,00,000/- (Rupees Twenty Lacs)**
4	Mr. Vilas Joshi	Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 r /w regulations 3 (a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.	**Rs. 20,00,000/- (Rupees Twenty Lacs)**
5	Mr. P B Mehta	Section 12A(a), 12A(b), 12A(c) of SEBI Act 1992 r /w regulations 3 (a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.	**Rs. 20,00,000/- (Rupees Twenty Lacs)**

Since Mr. Narendra Patel, Noticee No. 5 has passed away (In this respect, a copy of the death certificate has been submitted to SEBI), I, therefore, dispose of the proceedings against Noticee No. 5, without passing any directions.

I am of the view that the aforesaid penalty is commensurate with the lapse/omission on the part of the directors of Sterling Biotech Limited.

70. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order in either of the way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticees may contact the support at portalhelp@sebi.gov.inIn 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.

71. The Demand Draft or details and confirmation of e-payment made in the format as given in table below shall be sent to "The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.” and also to e-mail id:-tad@sebi.gov.in:

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

72. In terms of the provisions of Rule 6 of the SEBI Adjudication Rules and Rule 6 of the SCR Adjudication Rules, a copy of this order is being sent to Noticees and also to the Securities and Exchange Board of India.

Place: Mumbai **G. RAMAR**

Date: December 8, 2021 **ADJUDICATING OFFICER**