BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: EAD/PM-RR/AO/2019-2020/4216-4222)

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

In respect of:

SL. No.	Name of the Entity	PAN/DIN
1	Syncom Healthcare Ltd.	AAKCS3247G
2	Mr. Ajay S. Bankda	ADHPB2851J
3.	Mrs. Jyoti Bankda	ADHPB2855N
4.	Mr. Jagadish Prasad Bagaria	AAEPB0276F
5.	Mr. Bharat Kumar Doshi	ABTPD1004A
6.	Mr. Govinddas Pasari	AAAHG7397A
7.	Mr. Avichal Kasliwal	ADQPK3720J

In the matter of Syncom Healthcare Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an investigation in the matter of Syncom Healthcare Ltd. (hereinafter referred to as "the Company") during August 20, 2010 to September 20, 2010 (hereinafter referred to as "investigation period") and observed the violation of Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") and Section 23E of Securities Contract Regulation Act, 1956 (hereinafter referred to as "SCRA 1956"), various

provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "SEBI PFUTP Regulations, 2003") and provisions of Listing Agreement.

APPOINTMENT OF ADJUDICATING OFFICER

2. I have been appointed as the Adjudicating Officer, vide Order dated July 5, 2017 and communicated vide communique dated September 21, 2017 under Section 15-I of SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') and Section 23 – I of SCRA, 1956 read with Rule 3 of Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as 'SCR Adjudication Rules') to inquire into and adjudge –

   a) under Section 15HA of the SEBI Act and Section 23E of SCRA, 1956, the alleged violation of 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 and Unfair Trade Practices Relating to FUTP) Regulations, 2003 (hereinafter referred to as "SEBI PFUTP Regulations, 2003"), Section 21 of SCRA, 1956 read with Clause 36(7), Clause 32 and Clause 50 of the Listing Agreement by Syncom Healthcare Ltd (hereinafter referred to as "Noticee 1/Syncom/ the Company ")

   b) under Section 15HA of the SEBI Act, the alleged violation of the provisions of Section 12A(a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d), 4(1) of SEBI PFUTP Regulations, by Mr. Ajay S. Bankda (hereinafter referred to as "Noticee 2"), by Mrs. Jyoti Bankda (hereinafter referred to as "Noticee3"), by Mr. Jagadish Prasad Bagaria (hereinafter referred to as "Noticee 4"), by Mr. Bharat Kumar Doshi (hereinafter referred to as "Noticee 5"), Mr. Govinddas Pasari (hereinafter referred to as "Noticee 6") and Mr. Avichal Kasliwal (hereinafter referred to as "Noticee 7").

(The aforesaid Noticees are hereinafter individually referred to by Noticee 1 to Noticee 7 and collectively referred to as the Noticees)

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A common Show Cause Notice dated December 27, 2017 (hereinafter referred to as 'SCN') was issued to the Noticees under the provisions of Rule 4 (1) of the Adjudication Rules and Rule 4 of SCR Adjudication Rules, to show cause as to why an inquiry should not be held against the Noticees and why penalty should not be imposed on Noticee 1 under the provisions of Sections 15HA of the SEBI Act and Section 23E of SCRA, 1956 and on Noticee 2 to Noticee 7 under the provisions of Section 15 HA of SEBI Act, for the aforesaid alleged violations. The aforesaid SCN was served upon the Noticees separately at their latest address available on record.

4. Following are the fact of the case and allegations made in the SCN:

   a) SEBI had conducted investigation during August 20, 2010 to September 20, 2010 regarding the issuance of Global Depository Receipts (hereinafter referred to as "GDRs") by Syncom Healthcare Ltd. It was observed that Syncom issued 45,00,000 GDRs (amounting to US$ 20.74 million, approximately Rs 96 crore) on September 3, 2010. Summary of GDRs issued by Syncom is as under:

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
03-Sep-2010	4.50 (at USD 4.61 each)	20.74	DBS Bank, Mumbai	2,25,00,000 (5 shares per GDR) (at Rs 43 per share)	The Bank of New York Mellon	Prospect Capital Ltd.	EURAM Bank, Austria	Luxembourg Stock Exchange

b) It was observed that Vintage FZE ("Vintage") was the only entity to have subscribed to 4.50 million GDRs (amounting to USD 20.74 million) of Syncom and the subscription amount was paid by Vintage by obtaining loan from European American Investment Bank AG ("EURAM Bank"). Vintage FZE signed a Loan Agreement dated August 20, 2010 with EURAM Bank for payment of subscription amount. It was further observed that Syncom signed a Pledge Agreement dated August 20, 2010 with EURAM Bank (pledged GDR proceeds as collateral against the loan availed by Vintage FZE).

c) From the Loan Agreement, Pledge Agreement, loan account statement of Vintage and Syncom's retail bank account statement it was observed that EURAM Bank granted loan to Vintage specifically for subscription of GDRs of Syncom and Vintage repaid the full loan amount by September 14, 2011. Escrow account statement shows that GDR subscription money was received from only one entity i.e. Vintage. Further, Financial Market Authority (FMA) Austria vide email dated March 01, 2016 informed that EURAM Bank has submitted that Vintage was the only subscriber to GDR issue of Syncom. In view of the above it is evident that GDR issue of Syncom (4.50 million GDRs amounting to USD 20.74 million) was subscribed by only one entity, i.e., Vintage.

d) Issuance and subscription of GDRs was done through loan availed by Vintage from EURAM Bank. Further, it was observed that bank account in which GDR proceeds were held, was in the name of the Syncom but the amount deposited in the account was not at the disposal of the company as same was kept as collateral security prior to issuance of GDRs for the loan availed by Vintage. This is also evident from examination of Syncom's retail bank account held with EURAM Bank (where GDR proceeds were deposited) and loan account statement of Vintage (held with EURAM Bank) that only after Vintage repaid loan amount, equal amount of money was transferred from Syncom's EURAM Bank account to 1) Syncom's bank account in India or 2) Syncom's UAE subsidiary's bank account (except on three instances when on one occasion equal amount of money was transferred next day and on the two occasions either more money was transferred to Syncom's account or money was transferred before repayment of loan by Vintage).

e) Further, a copy of Syncom's Board Resolution dated July 07, 2010, provided by EURAM Bank was examined. Board resolution pertains to opening of Bank Account with EURAM Bank, Austria for GDR issue. Resolution states that:

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

Resolution further states that:

"RESOLVED FURTHER THAT Mr. Ajay S Bankda, Managing Director of the Company be and is hereby authorized to sign, execute, any application, agreement, escrow agreement, documents, 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."

Resolution also states that:

"……RESOLVED FURTHER THAT Mr. Ajay S Bankda, Managing Directors of the Company, 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 Euram Bank or any of branch of Euram Bank, including the Offshore Branch, for the purpose of operation of and dealing with the said bank account and carry out other relevant and necessary transactions and generally to take all such steps and to do all such things as may be required from time to time on behalf of the Company"

Resolution further states that:

"……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."

f) On perusal of the copy of minutes of the board meeting dated July 07, 2010 provided by Syncom vide email dated March 22, 2017 it was observed that board of directors of Syncom had authorized Mr. Ajay S. Bankda (Noticee 2), Managing Director of the company to sign, execute, any application, agreement and other paper(s) from time to time as may be required by the EURAM Bank.

g) Subsequently Mr. Ajay S. Bankda (Noticee 2) signed a Pledge Agreement with EURAM Bank on August 20, 2010 and pledged GDR proceeds as collateral security against loan availed by Vintage from EURAM Bank. Further, company's authorization to EURAM Bank to use the funds so deposited in the said bank account as security in connection with loan, if any, depicts that the abovementioned board resolution was to provide security in connection with loan.

h) Corporate announcements made by Syncom during June-September 2010 were examined and it was observed that Syncom did not inform stock exchange (NSE & BSE) about Pledge Agreement/ collateral security.

i) Further, Loan Agreement was integral part of Pledge Agreement and vice versa and both were executed concurrently. It shows that Managing Director Mr. Ajay S. Bankda (Noticee 2) had complete knowledge about the subscriber to GDR issue, as well as source of the funding, Pledge Agreement and the Loan Agreement and had understanding with Vintage but the same had not been informed to the shareholders/ investors of Syncom.

j) Syncom vide letter dated June 30, 2015 submitted that:

   "...there is no loan/ pledge/ account charge agreement or any other agreement that has been signed by the company with any other entity with respect to the aforesaid GDR proceeds.

   Further, as per the information provided by the promoters/ directors of our company, there is no loan/pledge/account charge agreement or any other agreement that has been signed by them with any other entity with respect to the aforesaid GDR proceeds."

k) On showing the copy of the Pledge Agreement dated August 20, 2010, MD of Syncom Mr. Ajay S. Bankda (Noticee 2) admitted in his statement dated May 16, 2017 that *"..It seems to be my signature. After consultation with Accounts department of Syncom, on the basis of the trust on Lead Manager, I signed on the documents/ agreement which Lead Manager asked me to sign."* Location of Pledge Agreement is mentioned as "Mumbai". Mr. Ajay S. Bankda could not provide evidence of mode (letter, email etc.) through which he had received the Pledge Agreement. He stated that *"My staff members/ La Richesse Advisors Private Ltd./ Prospect Capital Ltd. might have given the Pledge Agreement and I would have signed it. I do not remember exactly how did I receive the Pledge Agreement and from whom."*

l) However, the manner in which the funds were transferred/ withdrawn from Syncom's EURAM bank account and the fact that the transfer of funds was dependent on the loan repayment by Vintage, establishes that Syncom was aware of the Pledge Agreement.

m) Mr. Ajay S. Bankda (Noticee 2), Managing Director of Syncom, executed the Pledge Agreement with EURAM Bank (i.e. Syncom provided security for loan availed by Vintage from EURAM Bank for subscription of GDRs of Syncom). The aforesaid Pledge Agreement was an integral part of Loan Agreement entered into between Vintage and EURAM Bank (i.e. Vintage availed loan of USD 20.74 million from EURAM Bank for subscription of GDRs of Syncom). These agreements enabled Vintage to avail the loan from EURAM Bank for subscribing GDRs of Syncom. The GDR issue would not have been subscribed had Syncom not given any such security towards the loan taken by Vintage. The company reported to the stock exchanges on September 03, 2010 that *"... the Board of Directors of the Company at its meeting held on September 03, 2010, inter alia, has transacted the following business: Successfully concluded the placement of 4,500,000 Global Depository Receipts (GDR) at USD 4.61 each underlying 22,500,000 equity shares Rs. 10 (Rupees ten only)...."* which might have made investors believe that the said GDR issue was genuinely subscribed. The arrangement of Pledge Agreement and Loan Agreement which resulted in subscription of

GDR issue of the company, was not disclosed to the stock exchanges and company reported misleading news to the stock exchanges which contained information in a distorted manner and might have influenced decision of investors. Thereby, the scheme of issuance of GDRs was fraudulent. Further, Syncom furnished wrong information to SEBI by providing false list of GDR subscribers.

n) In view of the above, Noticee1 is alleged to have 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 PFUTP Regulations, 2003, Section 21 of SCRA, 1956 read with Clause 36(7), Clause 32 and Clause 50 of the Listing Agreement. Noticee 2 to Noticee 7 are alleged to have violated Section 12A(a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d), 4(1) of SEBI PFUTP Regulations, 2003.

5. In response to the aforesaid SCN dated December 27, 2017, the Noticees filed their replies which, inter-alia, summarised as under:

<u>Reply submitted by Noticee 1, Noticee 2, Noticee 3</u>

a) *Vide letter dated January 15, 2018, requested to grant additional time of 6 weeks i.e., up to February 28, 2018 to reply to the SCN.*
b) *Subsequently, vide reply dated June 7, 2019, intimated that Whole time Member of SEBI, vide Order dated January 15, 2019, passed 11B Order in the matter to which Noticee has made an appeal in the Hon'ble Securities Appellate Tribunal. Further, requested adjournment of hearing and to conduct hearing after one month.*

<u>Reply submitted by Noticee 4</u>

a) *Vide letter dated January 15, 2018, requested to grant additional time of 6 weeks i.e., up to February 28, 2018 to reply to the SCN.*
b) *Vide letter dated July 18, 2019, intimated that Order under Section 11 of SEBI Act has been passed against Syncom and all its Directors on January 15, 2019. Further, Company and all its Directors have filed appeal in the Hon'ble*

Securities Appellate Tribunal. Therefore, requested to keep adjudication proceedings in abeyance till the appeal is decided by Hon'ble SAT.

Reply submitted by Noticee 5

a) *Vide letter dated January 15, 2018, requested to grant additional time of 3 weeks i.e., up to February 10, 2018 to reply to the SCN.*
b) *Vide letter dated June 10, 2019 Noticee intimated that Whole Time Member, SEBI has passed an Order against the Noticee vide Order dated January 15, 2019 and the Noticee has made an appeal with Hon'ble Securities Appellate Tribunal. In the pendency of the appeal, hearing may be rescheduled after four weeks from scheduled date and adjudication proceedings may be kept in abeyance.*
c) *Vide letters dated July 19, 2019 and July 24, 2019, Noticee made additional submissions which are summarised as under:*
    - *I was an independent director of the Company from May 28, 2008 to October 18, 2014. I did not have any relationship with other directors of the Company, nor with the promoters and any of the members of senior management of Syncom.*
    - *The sole basis for the allegation against me is that I, along with other directors, passed the board resolution dated July 7, 2010 wherein we authorised Syncom and on its behalf, Mr. Ajay Bankda, Managing Director, to execute loan agreement with EURAM Bank.*
    - *Authority granting Managing Director to sign and execute any application, agreement was general in nature and was not specific to pledge agreement.*
    - *The Board resolution had given a general authorisation to Mr. Ajay Bankda and I being an Independent Director who is not involved in the day to day working of the Company would never get to know about any alleged fraudulent and manipulative intent of the Managing Director behind the passing of Board Resolution.*
    - *I did not receive the agenda papers for the board meeting and therefore did not get the opportunity to look at the agenda of the meeting*

beforehand and consider the information in order to make well informed decision regarding issuance of GDR.

- *The Board Resolution does not carry specific details about the modus operandi of the issue as the same was not even discussed in the board meeting held on July 7, 2010. In the absence of the agenda papers it cannot be even said that the alleged deceptive and manipulative scheme was even on the agenda before the board of directors for the board meeting held on July 7, 2010.*
- *The minutes of the meeting held on July 7, 2010 nowhere stated that the loan agreement and pledge agreement will be executed after the approval of the Board and me and other directors were not even made acquainted with the such agreements till the SCN was issued.*
- *The loan agreement and pledge agreement was never put before the Board. There was no reason for me to have any suspicion about any third party's involvement in any loan and the pledge agreement.*
- *The Board was never made aware of any kind of arrangement between Syncom, Vintage and EURAM Bank with related to pledging, loan and subscription to the GDR issue.*
- *The Board did not authorise EURAM Bank to use the revenue from the issue of GDRs as security for loan granted to third party, i.e., Vintage.*
- *I have not violated the provisions of regulations 3 and 4 of the PFUTP Regulations as well as Section 12A of SEBI Act.*
- *In view of the above, I should be discharged and the charges as levelled against me be dropped.*

Reply submitted by Noticee 6

a) *Submissions of Noticee vide letter dated December 3, 2018 are summarised below:*

- *I was appointed as a non-executive independent director of Syncom on May 28, 2008 and resigned from Company on November 12, 2014. During my tenure, I had served as member of Audit Committee, Remuneration Committee and Investors and Shareholders Committee.*

- *I was not involved in day to day management and affairs of Syncom. I did not have any kind of materiality/pecuniary relationship as director with Syncom, its promoters, directors, Senior Management or its holding Company, its subsidiaries or associates. I never owned single share in Syncom.*
- *I only attended Board meetings and the agendas of the meeting were also received either a day prior, or on the day of the meeting.*
- *I, as an independent director was not at all involved in any of the day to day activities of Syncom pertaining to the GDR issue or the pledge agreement by the Company, which are the core of allegations in the Notice. Except for making allegation with respect to attending the Board Meeting of the Company, nothing specific has been attributed to me in the Notice in terms of as to how I was aware of it etc. I as an independent director was not even remotely involved in the alleged activities as stated in the Notice carried out by Syncom.*
- *The only allegation levelled against me is that I had attended the said board meeting dated July 7, 2010 in which Syncom had authorised Mr. Ajay S Bankda, MD of Company to carry out necessary formalities for opening and operating the Bank account with EURAM Bank. Therefore, it was his decision to enter into a pledge agreement and hence I deny that I have made any violation.*
- *Company had a separate Secretarial Department which looked after issuing notices, sending agendas, intimating stock exchanges before and after board meetings including the content to be submitted to the stock exchanges. Thus I cannot be alleged for not intimating or misleading the stock exchanges regarding announcements.*
- *I was not part of the procedural aspects of GDR issue for any time from start of the issue, through its execution, till its conclusion either for execution of agreements, receipt of funds, or any other consequential matters.*
- *I participated in the Board meeting of the Company which authorised Mr. Ajay Bankda to execute the necessary formalities in respect of GDR*

issue. In the Board meeting dated September 3, 2010 we were informed that the GDR issue had been successfully subscribed, however, we were not informed about any type of agreement entered into with EURAM Bank.

- *In view of the above, I deny that I authorised EURAM Bank to use the Syncom's GDR proceeds deposited with EURAM Bank as security in connection with loan and was party to the fraudulent scheme. I deny that I have violated PFUTP Regulations as alleged.*
- *There is nothing in the Notice to indicate that I have made any gains. I have also not caused loss to the investors or group of investors. Therefore, the allegations in the Notice against me be dropped.*
- *I would request you to keep the present proceedings in abeyance till the time Hon'ble WTM completes the proceedings initiated u/s 11B of the SEBI Act.*

Reply submitted by Noticee 7

a) *Vide letter dated January 16, 2018, requested to grant additional time of one month to reply to the SCN.*

b) *Subsequently, vide reply dated February 9, 2018, Noticee submitted additional reply which is similar to that of reply submitted by Noticee 6 vide letter dated December 3, 2018. In the letter dated February 9, 2018, Noticee had stated that he was appointed on Board as a non-executive independent director of Syncom on May 28, 2008 and resigned from Company on October 16, 2014. In the said reply Noticee denied all allegations levelled against him in the SCN.*

6. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules and Rule 4(3) of SCR Adjudication Rules, vide hearing Notices were issued to the Noticees. While hearing Notices were successfully delivered, except Noticee 5, none of the Noticees appeared for hearing before me.

7. Taking into account the aforesaid facts, I am of the view that principles of natural justice have been followed in the matter by granting the Noticees opportunity of being heard. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record including the replies of the Noticees.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

8. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Noticees is that they have violated various provisions of SEBI Act, SCRA 1956, SEBI PFUTP Regulations, 2003 and Listing Agreement.

   After perusal of the material available on record, I have the following issues for consideration, viz.

   I. *Whether Noticee1 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 PFUTP Regulations, 2003, Section 21 of SCRA, 1956 read with Clause 36(7), Clause 32 and Clause 50 of the Listing Agreement ?*

      Whether Noticee 2 to Noticee 7 are alleged to have violated Section 12A(a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d), 4(1) of SEBI PFUTP Regulations, 2003?

   II. *Does the violation, if any, attract monetary penalty under Section 15 HA of SEBI Act and Section 23E of SCRA, 1956 for Noticee 1 and monetary penalty under Section 15 HA of SEBI Act for Noticee 2 to Noticee 7?*

   III. *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

9. Before moving forward, it is pertinent to refer to the relevant regulatory provisions which reads as under:

<u>Relevant provisions of SEBI PFUTP Regulations, 2003:</u>

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.

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

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

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

Relevant provisions of SEBI Act 1992:

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

12A.No person shall directly or indirectly—

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

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a 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 recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

Relevant provisions of SCRA 1956:

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

Relevant provisions of Listing Agreement

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."

Clause 32 *of Listing Agreement inter-alia reads 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."

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."

<u>Relevant provisions of Accounting Standards</u>

Accounting Standard (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 realized 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."

Accounting Standard ('AS') -3 – Cash Flow Statements – *inter-alia reads as follows:*

"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."

AS 29 – 'Provisions, Contingent liabilities and Contingent Assets' *inter-alia reads 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 recognised 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."

Issue I: Whether Noticee1 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 PFUTP Regulations, 2003, Section 21 of SCRA, 1956 read with Clause 36(7), Clause 32 and Clause 50 of the Listing Agreement?

Whether Noticee 2 to Noticee 7 are alleged to have violated Section 12A(a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d), 4(1) of SEBI PFUTP Regulations, 2003?

10. I have perused the facts of the case, gist of allegations made against the Noticees as per the SCN, summary of the submissions made by the Noticees, documents available on record my findings thereof are specified below:

    a) Noticees, in their replies, have cited proceedings initiated against them in Syncom Healthcare Ltd. under Section 11 of SEBI Act wherein Order has been passed against the Noticees vide WTM Order dated January 15, 2019.

    b) I observe that Noticee 1, Noticee 2, Noticee 3, vide their preliminary reply dated January 15, 2018 requested to grant additional time of 6 week for submitting their reply to the SCN. Subsequent to receipt of the hearing Notice, the above mentioned Noticees, vide letter dated June 7, 2019, requested adjournment of hearing for one month. From the material available on record, I find that, till date, the Noticees have neither sought further hearing opportunity in the matter nor submitted their detailed reply refuting the allegations labelled against them in the SCN.

    c) I observe that Noticee 4, vide his preliminary reply dated January 15, 2018 requested to grant additional time of 6 week for submitting their reply to the SCN. Subsequent to receipt of the hearing Notice, the Noticee, vide letter dated July 18, 2019, stated that he has made an appeal before Hon'ble SAT against WTM Order dated January 15, 2019. From the material available on record, I find that, till date, the Noticee has neither intimated the status of appeal nor submitted his detailed reply refuting the allegations levelled against him in the SCN.

d) Noticee 5 and Noticee 6, in their replies have stated that they were independent director and non-executive independent directors respectively. They were not involved in day to day working of the Company and were not aware about any alleged fraudulent and manipulative intent of the Managing Director behind passing Board resolution. Noticee 5 further stated that he had not received agenda papers so could not make informed decision regarding issuance of GDRs. Both Noticee 5 and Noticee 6 have stated that Board did not authorize EURAM Bank to use the revenue from the issue of GRDs as security for the loan granted to third party. Noticee 6 further stated that he was not part of the procedural aspects of GDR issue for any time.

I observe that the Companies Act 1956 does not differentiate between the liability of an independent director and other directors. I note that as per the secretarial practice, all the directors are given the agenda papers for a meeting. Further, the Board Resolution dated July 07, 2010 shows that the Noticee was party to the decision making process relating to GDR issue. In addition, I find that the Board resolution clearly states that the bank account with EURAM bank is opened for the purpose of receiving subscription money in respect of the GDR issue of the Company. Further the resolution also authorizes EURAM Bank to use the GDR proceeds as security in connection with any loan. Therefore, I am unable to accept the contention of the Noticee.

e) I observe that Noticee 7, vide its preliminary reply dated January 16, 2018 requested to grant additional time of 6 week for submitting their reply to the SCN. Subsequent to receipt of the hearing Notice, the Noticee, vide letter dated February 9, 2018, stated that he has made an appeal before Hon'ble

SAT against WTM Order dated January 15, 2019. From the material available on record, I find that, till date, the Noticee has neither intimated the status of appeal nor submitted his detailed reply refuting the allegations levelled against him in the SCN.

f) Further, I observe that the Pledge Agreement was integral part of Loan Agreement and vice versa and both were executed concurrently. The Pledge Agreement was signed by Mr. Ajay Bankda (Noticee No. 2) on behalf of the pledgor i.e., Syncom in the capacity of its Managing Director. Therefore, I note that Syncom and the directors facilitated the subscription of the GDR issue. I also note that these agreements enabled Vintage to avail loan from EURAM for subscription of GDR of Syncom by providing GDR proceeds as collateral for the loan extended by EURAM to Vintage. The GDR issue would not have been subscribed if Syncom had not given such security towards the loan taken by Vintage. By authorizing the company to enter into a pledge agreement, the directors of the company have facilitated the GDR issue which led the investors in India to believe that the issuer company i.e. Syncom has acquired a good reputation in terms of investment potential and hence, foreign investors have successfully subscribed to the GDRs when in fact the GDRs were subscribed by Vintage only. Therefore, I note that Syncom along with Directors facilitated the whole scheme of GDR issue by pledging the GDR proceeds.

g) In addition to the above observations, I notice that based on the same set of facts and allegations specified in the SCN issued by me to the Noticees, WTM of SEBI vide Order dated January 15, 2019 passed directions against the Noticees under Sections 11, 11(4) and 11B of the SEBI Act, 1992. In this regard, I refer to the para 57 of WTM Order which is reproduced below:

*"**CONCLUSION***

57. In view of the above, I hold that the Noticee no. 1 has violated the provisions of Section 12A (a) to (c) of the SEBI Act read with Regulations 3 (a) to (d) and 4 (1), 4(2) (f), (k) and (r) of the SEBI PFUTP Regulations. I *further hold that Noticee nos. 2, 3, 4, 5, 6 and 7 have violated the provisions of Section 12A (a) to (c) of the SEBI Act read with Regulations 3 (a) to (d) and 4 (1) of the SEBI PFUTP Regulations. Accordingly, I am inclined to pass orders against Noticees".*

I do not find any reason to disagree with the above view taken by WTM of SEBI.

h) Based on the aforesaid findings, I conclude that Noticee1 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 PFUTP Regulations, 2003, Section 21 of SCRA, 1956 read with Clause 36(7), Clause 32 and Clause 50 of the Listing Agreement. Further, Noticee 2 to Noticee 7 have violated Section 12A(a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d), 4(1) of SEBI PFUTP Regulations, 2003.

Issue II: Does the violation, if any, attract monetary penalty under Section 15 HA of SEBI Act and Section 23E of SCRA, 1956 for Noticee 1 and monetary penalty under Section 15 HA of SEBI Act for Noticee 2 to Noticee 7?

The provisions of Section 15HA of the SEBI Act, 1992 read as under:

SEBI Act 15HA - "Penalty for fraudulent and unfair trade practices-

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."

The provisions of Section 23E of SCRA, 1956 read as under:

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

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

11. In view of the foregoing, I am convinced that the Noticee1 is liable for monetary penalty under Section 15HA of SEBI Act and Section 23E of SCRA, 1956 for violation 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 PFUTP Regulations, 2003, Section 21 of SCRA, 1956 read with Clause 36(7), Clause 32 and Clause 50 of the Listing Agreement. Further, Noticee 2 to Noticee 7 are liable for monetary penalty under Section 15HA of SEBI Act for violation of Section 12A(a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d), 4(1) of SEBI PFUTP Regulations, 2003.

Issue III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

12. The provisions of Section 15J of the SEBI 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.

13. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticees and the loss, if any, suffered by the investors as a result of the Noticee's failure. I note that Noticee1 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 PFUTP Regulations, 2003, Section 21 of SCRA, 1956 read with Clause 36(7), Clause 32 and Clause 50 of the Listing Agreement. Noticee 2 to Noticee 7 have violated

Section 12A(a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d), 4(1) of SEBI PFUTP Regulations, 2003.

ORDER

14. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-I of the SEBI Act, 1992 read with Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 and Section 23 – I of SCRA, 1956 read with Rule 5 of Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005, I hereby impose the penalty on the Noticees as detailed below:

<table>
<tr><th>Name of the Noticee</th><th>Provisions of law violated</th><th>Penalty levied under Section</th><th>Quantum of Penalty in Rs.</th></tr>
<tr><td>Syncom Healthcare Ltd.</td><td>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 PFUTP Regulations, 2003, Section 21 of SCRA, 1956 read with Clause 36(7), Clause 32 and Clause 50 of the Listing Agreement</td><td>Section 15 HA of the SEBI Act, 1992 and Section 23E of SCRA, 1956</td><td>25,00,000/- (Rupees Twenty Five Lakh Only)</td></tr>
<tr><td>Mr. Ajay S. Bankda</td><td rowspan="2">Section 12A(a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c) & (d), 4(1) of</td><td rowspan="2">Section 15 HA of the SEBI Act, 1992</td><td>15,00,000/- (Rupees Fifteen Lakh Only)</td></tr>
<tr><td>Mrs. Jyoti Bankda</td><td>15,00,000/- (Rupees Fifteen Lakh Only)</td></tr>
</table>

Mr. Jagadish Prasad Bagaria	SEBI PFUTP Regulations, 2003		15,00,000/- (Rupees Fifteen Lakh Only)
Mr. Bharat Kumar Doshi			15,00,000/- (Rupees Fifteen Lakh Only)
Mr. Govinddas Pasari			15,00,000/- (Rupees Fifteen Lakh Only)
Mr. Avichal Kasliwal			15,00,000/- (Rupees Fifteen Lakh Only)

In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the default committed by the Noticees.

15. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either

Through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

ENFORCEMENT → Orders → Orders of AO → PAY NOW

OR

Through e-payment facility into Bank Account, the details of which are given below:

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

OR

By way of demand draft in favour of "SEBI-Penalties Remittable to Government of India", payable at Mumbai.

16. The Noticees shall forward the following details / confirmation of penalty so paid to the Chief General Manager, Enforcement Department, SEBI, Mumbai.

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:	Penalty

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

Date: August 30, 2019
Place: Mumbai

PRASANTA MAHAPATRA
ADJUDICATING OFFICER