BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/KS/AE/2021-22/11566-11574)

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

In respect of:

Noticeee No.	Noticee Name	PAN
1	CAT Technologies Limited	AABCC9026E
2	Dhiraj Kumar Jaiswal	ACLPJ8528K
3	Dinesh Kumar Jaiswal	ABSPJ3747J
4	Dhaduvai Venkatram	AFEPD8264J
5	Kesava Mallikarjuna Prasad Chivukula	ADCPC3929K
6	Namratha Muralidhar	AFNPM5823R
7	Espirit Technologies Pvt Ltd	AACCE0781B
8	Namritha Jaiswal	AINPJ0882E
9	Nisha Jaiswal	AINPJ3959J

(hereinafter collectively referred to as “Noticees”)

In the matter of

GDR Issues of CAT Technologies Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as ‘**SEBI**’), upon receipt of alerts in its surveillance system, started investigation in regards to certain

companies which had come out with their respective issues of Global Depository Receipts (**GDR**). During the course of investigation, it was observed that CAT Technologies Ltd. (hereinafter referred to as '**CAT**'/'**Noticee 1**') had come up with its GDR issues on two different occasions; first on July 27, 2007 and second on November 15, 2009. In this regard, it is observed that one Pan Asia Advisors Ltd (hereinafter referred to as '**Pan Asia**') was the Book Running Lead Manager for both of these said GDR issues of CAT. Further, it was also observed that one Mr. Arun Panchariya (hereinafter referred to as '**AP**') was the founder, director as well as 100% shareholder of Pan Asia. It is alleged in the Investigation Report (**IR**) that the complete process of GDR issuances by CAT was devised and structured by AP in connivance with CAT to the detriment of the Indian investors wherein loans were arranged for the subscription of GDRs of CAT on both these occasions, by Vintage FZE (hereinafter referred to as '**Vintage**'). It is further alleged that AP was Managing Director, 100% shareholder and Authorized Signatory of Vintage. Thereafter, using certain Foreign Institutional Investors (**FIIs**), AP got the GDRs converted into underlying shares and sold them in the Indian securities market with the help of certain domestic entities connected to him.

2. On the basis of the said investigation, it is alleged by SEBI that CAT, and the following entities viz. Shri Dhiraj Kumar Jaiswal, Managing Director of CAT (hereinafter referred to as "**Noticee 2**"), Shri Dinesh Kumar Jaiswal, Director of CAT, (hereinafter referred to as "**Noticee 3**"), Shri Dhaduvai Venkatram, Director of CAT, (hereinafter referred to as "**Noticee 4**"), Shri Kesava Mallikarjuna Prasad Chivukula, Director of CAT, (hereinafter referred to as "**Noticee 5**"), Ms. Namratha Muralidhar, Director of CAT, (hereinafter referred to as "**Noticee 6**"), Espirit Technologies Pvt Ltd, Promoter of

CAT, (hereinafter referred to as "**Noticee 7**"), Ms. Namritha Jaiswal, Promoter of CAT, (hereinafter referred to as "**Noticee 8**"), and Ms. Nisha Jaiswal, Promoter of CAT, (hereinafter referred to as "**Noticee 9**"), Shri Laxmi Pershad Jaiswal Director of CAT, and Shri Ashok Kulkarni, Director of CAT by being part of the abovementioned scheme to defraud Indian investors, have violated the provisions of Section 12A(a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') read with Regulations 3(b), (c), (d), 4(2)(c), (f), (k) & (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'). Further, it is also alleged that Noticee 1 and Noticee 2 had failed to submit certain information demanded by SEBI and also submitted false information and, by doing so, have violated the provisions of Section 11C(3) read with 11C(6) of SEBI Act. Further, it was also observed that CAT funded its promoters i.e Noticee 3, Noticee 7 and Shri Laxmi Pershad Jaiswal for the purchase of its shares by them, and accordingly, CAT, Noticee 3, Noticee 7 and Shri Laxmi Pershad Jaiswal were alleged to have violated the provisions of PFUTP Regulations. Further, it was observed that CAT had transferred funds to Noticee 3 and Shri Laxmi Pershad Jaiswal, however it had not disclosed the same to be related party transactions in its annual report for FY 2008-09, and accordingly CAT was alleged to have violated clause 32 of the Listing Agreement. Further, it was observed that in its annual report for FY 2008-09 and 2009-10, CAT has merely mentioned that related party transactions have occurred between CAT and Noticee 7 without providing the details regarding the nature of transactions and volume of the transactions, and thus, CAT was alleged to have violated Clause 32 of the Listing Agreement.

3. Accordingly, adjudication proceedings was initiated against Noticees 1 to 9, Shri Laxmi Pershad Jaiswal and Shri Ashok Kulkarni, under Section 15HA of the SEBI Act for alleged violations of the provisions of Section 12A(a), (b) & (c) of SEBI Act read with Regulations 3(b), (c), (d), 4(2)(c), (f), (k) & (r) of the PFUTP Regulations. Further, adjudication proceedings was initiated against CAT under Section 15A(a) of SEBI Act for alleged violation of Section 11C(3) read with 11C(6) of SEBI Act, and under Section 23E of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SCRA**') for alleged violation of Clause 32 of Listing Agreement read with Section 23E of SCRA. Subsequently, vide Adjudication Order dated November 24, 2020, the adjudication proceedings against (Late) Shri Laxmi Pershad Jaiswal in the present matter have been abated as the entity had passed away on December 15, 2018, and vide Adjudication Order dated December 01, 2020 the adjudication proceedings against (Late) Shri Ashok Kulkarni in the present matter have been abated as the entity had passed away on August 21, 2014.

<u>APPOINTMENT OF ADJUDICATING OFFICER</u>

4. Shri Suresh Gupta was appointed as the Adjudicating Officer vide Order dated June 15, 2016 under Section 19 read with Section 15-I(1) of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**SEBI Adjudication Rules'**) and Section 23 I of SCRA read with Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as '**SCR Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 15A(a) and Section 15HA of the SEBI Act, and Section 23E of SCRA, as applicable, the aforesaid

violations alleged to have been committed by the Noticees. Subsequently, the undersigned was appointed as the Adjudicating Officer vide order dated July 05, 2018.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

5. A common Show Cause Notice ref. A&E/EAD-8/KS/VB/8171/2019 dated March 28, 2019 (hereinafter referred to as 'SCN') was issued to the Noticees under the provisions of Rule 4(1) of SEBI Adjudication Rules and Rule 4(1) of the SCR Adjudication Rules to show cause as to why an inquiry should not be held against them and why penalty, if any, should not be imposed on them under Sections 15A(a) and 15HA of the SEBI Act, and Section 23E of SCRA, as applicable, for alleged violation of the relevant provisions of law.
6. The relevant part of SCN including details in respect of alleged violations by the Noticees are as given below:
   a. It is observed from the Investigation Report (hereinafter referred to as "IR") that there were two GDR issues by CAT. First GDR issue was of 43,04,348 GDRs (amounting to USD 6.46 Million) and issue closed on July 27, 2007. Second GDR issue was of 15,95,333 GDRs (amounting to USD 10.002 Million) and issue closed on November 06, 2009. Further, Pan Asia Advisors Ltd. (herein after referred to as 'Pan Asia') was the Lead Manager of both GDR issue of CAT. Summary of the GDR issues as provided by CAT is tabulated below:

Table 1

GDR issue close date	No. of GDRs Issued	Capital raised (US mn.)	No. of equity shares underlying GDRs	Lead Manager	Bank where GDR proceeds were deposited
July 27, 2007	43,04,348	6.46	2,58,26,088	Pan Asia Advisors Ltd	EURAM Bank, Austria
November 15, 2009	15,95,333	10.002	4,78,59,990	Pan Asia Advisors Ltd	EURAM Bank, Austria

   b. The following were the investors in the first GDR issue of CAT as submitted by CAT.

Name of Subscriber	GDRs Subscribed	Amount Paid (USD)	% of total GDR issue
Rexflec Ltd (**Rexflec**)	7,00,000	10,50,000	16.26
Trendsetter	8,00,000	12,00,000	18.59
Futura Group Ltd (Futura)	8,00,000	12,00,000	18.59
Tradetec	10,04,348	15,06,522	23.33
Imagination	10,00,000	15,00,000	23.23

c. Further, following were the investors in the Second GDR issue of CAT as submitted by CAT

Name of Subscriber	GDRs Subscribed	Amount Paid (USD)	% of total GDR issue
Futura	4,95,333	31,05,738	31.05
Tradetec	6,00,000	37,62,000	37.61
Trendsetter	5,00,000	31,35,000	31.34

Loan & Pledge Agreement signed among CAT, Vintage & Euram

d. It is alleged that the Loan and Pledge Agreement for its first GDR issue and second GDR Issue were signed among CAT, Vintage and Euram. The same is discussed in detail below:-

ISSUE 2 (in 2009)

e. It is observed that a loan agreement (Loan Agreement No. K271009-002) dated October 27,2009 was signed between Euram and Vintage. The agreement was signed by Arun Panchariya (hereinafter referred to as AP) as Managing Director on behalf of Vintage. The Loan agreement states that Euram has agreed to make available a loan of USD 1,00,02,737.91 to Vintage (referred to as "the Borrower"). The nature and purpose of the loan facility is to provide funding enabling Vintage to take down GDR issue of CAT and may only be transferred to Euram account no: 540013 for CAT. The following is stated in the Loan Agreement;

"6.1 In order to secure all and any of the Bank's claims and entitlements against the Borrower, arising now or in the future out of or in connection with the Loan or any other obligation or liability of the Borrower to the Bank, including without limitation other loans granted in the future , it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be demanded by the Bank

•Pledge of certain securities held from time to time in the Borrower's account no. 540 013 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.

•Pledge of the account no. 540 013 of the Borrower held with the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement."

f. Further, a Pledge Agreement dated October 27, 2009 is also signed between CAT and Euram Bank. The agreement was signed by Noticee 2 on behalf of CAT as Managing Director of CAT. He and his other family members are promoters of CAT. The following Resolution was passed by the Board of Directors of CAT at its meeting dated April 30, 2007 and August 28, 2009:-

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

RESOLVED FURTHER THAT Mr. Dhiraj Kumar Jaiswal, Managing Director of the company be and is hereby authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.

RESOLVED FURTHER THAT Mr. Dhiraj Kumar Jaiswal, Managing Director of the company be and are 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.

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."

"RESOLVED THAT the Company do re-open Retail banking Account No. 5400130101 maintained with European American Investment Bank Ag (Euram Bank Ag) Vienna, Austra.
"FURTHER RESOLVED THAT Mr. Dhiraj Kumar Jaiswal, Managing Director of the company be and is hereby authorised to make application to the Bank and further authorized to operate the aforesaid account and to do all such acts and deeds as may be necessary to give effect to this resolution.""

g. According to the Pledge Agreement, CAT has been referred as "Pledgor" and Euram has been referred to as "Bank". The preamble of the Pledge Agreement states

"By loan agreement K271009-002(hereinafter referred to as "Loan Agreement") dated October 27,2009, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates ("the Borrower") in the amount of $ USD 1,00,02,737.91. The Pledgor has received a copy of the Loan Agreement and acknowledges and agrees to its terms and conditions."

h. From the above preamble of Pledge Agreement, it is clear that Noticee-2 and CAT were also the party to the Loan Agreement. Further, the pledge created in the Pledge Agreement is stated below:-

" 2. <u>Pledge</u>

2.1 In order to secure any and all obligations, Present and future, whether conditional or unconditional of the **<u>Borrower</u>** towards the bank under the Loan Agreement and any and all respective amendments thereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the Loan Agreement – including those limited as to condition or time or not yet due – irrespective of whether such claims have originated from the account relationship, from bills of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations") **the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank**:

2.1.1 all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount of $ USD 1,00,02,737.91 existing from time to time at present or hereafter on the **securities account(s) no. 540 013** held with the Bank (hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein.

2.1.2 all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 540 013 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account ") and all amounts credited at any particular time therein. The interest rate on deposit in the amount of the facility amount of the loan will be fixed at 2.5% p.a

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

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

i. Further, following condition have been put in the Pledge agreement for the realization of the pledge.

"6. Realization of the Pledge

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

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

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

j. It is noted that the bank account no. 540013 is the account which CAT has maintained with Euram Bank to keep the proceeds of GDRs, thus it is alleged that CAT has pledged money received through issuance of GDRs to secure rights of Euram Bank against the loan given by Euram Bank to Vintage for subscription of GDR issue (as mentioned in Loan agreement of Vintage).This account (540013) is also mentioned as the borrower in the Loan Agreement. It is alleged that the common ownership of a bank account which belongs to both the borrower/subscriber and the Issuer Company in which the GDR proceeds are received added to a guarantee by Issuer Company for the loan taken by subscriber to its GDRs, are the central and determining features of this scheme to fraudulently raise capital by the Issuer Company. It is alleged that these agreements enabled Vintage to avail the loan from Euram Bank for subscribing GDRs of CAT and the GDR issue would not have been subscribed had CAT not given such security towards the loan taken by Vintage. It is also alleged that the Noticees did not inform Bombay Stock Exchange or shareholders of the company about signing the Pledge Agreement and Loan Agreement.

ISSUE 1 (in 2007)

k. It is observed that a Loan agreement was also signed between Vintage and Euram bank previously on July 23, 2007 in relation to first GDR issue of CAT. Similarly, a Pledge Agreement was signed between CAT and Euram on July 20, 2007. The Loan agreement and Pledge Agreement signed 1st time were exactly similar to the 2nd Loan Agreement and Pledge Agreement except following differences:

- The loan agreement mentions the name of Kohinoor Broadcasting Corporation Ltd's (Kohinoor) as the issuer company for which the loan is provided. The nature and purpose of the Loan Agreement states that,

  " to provide funding enabling Vintage to take down GDR issue of Kohinoor Broadcasting Corporation Ltd's (Kohinoor) Luxemburg public offering and may only be transferred to Euram account no: 540013 for CAT Technologies Ltd..."
- Thus the Loan and Pledge Agreement were signed for the subscription of 1st GDR issue of 43,04,348 GDRs of CAT Technologies Ltd which closed on July 27, 2007 but mentioned the name of Kohinoor, presumably due to a typographical error.
- The Loan amount was USD 64,56,522.00, as was the size of GDR issue.

Acquisition, Cancellation and Sale of GDRs:-

l. It is noted that pursuant to the issuance of GDRs, Vintage became the sole holder of the GDRs issued, thereby becoming the majority share holder of CAT. These GDRs were transferred to FIIs mostly through over the counter transactions. The following table gives the detail of transfer of GDRs of CAT to the FIIs in 1st GDR Issue.

Issue 1 (2007)

Date of Acquisition	Name of Acquirer	Name of Seller	Quantity of GDRs acquired	Value of GDR Acquired ($)	Trading platform	Value per GDR($)
11-Dec-07	Sophia	Euram Via Kas Bank Netherland	8,00,000	10,01,801	Exchange	1.25
03-Jan-08	Rhodes	Euram via Athena	7,00,000	10,02,702	Exchange	1.43
08-Jan-08	Rhodes	Euram via Athena	5,00,000	9,01,401	Exchange	1.80
24-Jan-08	Mavi	Not Available	2,25,000	2,59,459	Exchange	1.15
04-Apr-08	Rhodes	Euram via Athena	10,00,000	7,52,502	Exchange	0.75
16-Nov-09	IFCF	Euram Bank	1,00,000	1,55,000	OTC	1.55
16-Nov-09	KII	Euram Bank	75,000	1,17,180	OTC	1.56
20-Nov-09	IFCF	Euram Bank	20,000	24,000	OTC	1.20
		Total	**34,20,000**	**42,14,045**		

Issue 2 (2009)

Date of Acquisition	Name of Acquirer	Name of Seller	Quantity of GDRs acquired	Value of GDR Acquired ($)	Trading platform	Value per GDR($)
10-11-2009	IFCF	Euram Bank	13,685	1,30,008	OTC	9.5

m. The cancellation of the GDRs of CAT for the first GDR issue started from December 20, 2007 and continued till November 20, 2009. Following are the details of cancellation requests that were completed by Overseas Depository Bank till June 30, 2012.

Transaction Date	Entities cancelling GDRs on behalf of FIIs/Sub-Accounts	GDRs Cancelled	Shares Released
20-12-2007	Brown Brothers Harriman	2,50,000	15,00,000
28-12-2007	Brown Brothers Harriman	2,00,000	12,00,000
02-01-2008	Brown Brothers Harriman	50,000	3,00,000
04-01-2008	Brown Brothers Harriman	2,50,000	15,00,000
04-01-2008	Brown Brothers Harriman	50,000	3,00,000
07-01-2008	Brown Brothers Harriman	2,00,000	12,00,000
09-01-2008	Brown Brothers Harriman	1,25,000	7,50,000
09-01-2008	Brown Brothers Harriman	50,000	3,00,000
10-01-2008	Brown Brothers Harriman	1,25,000	7,50,000
10-01-2008	Brown Brothers Harriman	1,25,000	7,50,000
18-01-2008	Brown Brothers Harriman	75,000	4,50,000
18-01-2008	Brown Brothers Harriman	75,000	4,50,000
28-01-2008	Investec Bank (Switzerland) AG	2,10,000	12,60,000
08-02-2008	Brown Brothers Harriman	1,00,000	6,00,000
08-02-2008	Brown Brothers Harriman	50,000	3,00,000
14-04-2008	Brown Brothers Harriman	75,000	4,50,000
20-05-2008	Brown Brothers Harriman	1,25,000	7,50,000
22-05-2009	KAS Depository Trust Company	2,50,000	15,00,000
17-11-2009	Euram Bank, Vienna	1,00,000	6,00,000
20-11-2009	J.P. Morgan Clearing Corp.	75,000	4,50,000
20-11-2009	Euram Bank, Vienna	20,000	1,20,000

Transaction Date	Entities cancelling GDRs on behalf of FIIs/Sub-Accounts	GDRs Cancelled	Shares Released
	Total	**25,80,000**	**1,54,80,000**

n. Therefore, for the first GDR issue of CAT, out of 43,04,348 GDRs issued, 25,80,000 (59.99% of GDR issued) were cancelled . There was no cancellation of the GDRs of the company after November 20, 2009 till June 30, 2012.

o. For second GDR issue of CAT in 2009, cancellation happened only on one occasion by IFCF. Following is the detail of cancellation of GDR for second issue of CAT.

Transaction Date	Entities cancelling GDRs on behalf of FIIs/Sub-Accounts	GDRs Cancelled	Shares Released
12-01-2010	Euram Bank, Vienna	13,685	4,10,550

p. Subsequently, shares were released into the demat accounts of Sub-Accounts in India by custodian of shares. Following are the details of the same.

Issue 1 (2007)

Date of receiving shares	Name of entity receiving shares from GDR cancellation	No. of shares received
4-Dec-2007	RHODES DIVERSIFIED	15,00,000
31-Dec-2007	RHODES DIVERSIFIED	12,00,000
04-Jan-2008	RHODES DIVERSIFIED	3,00,000
07-Jan-2008	RHODES DIVERSIFIED	3,00,000
07-Jan-2008	SOPHIA GROWTH	15,00,000
08-Jan-2008	RHODES DIVERSIFIED	12,00,000
11-Jan-2008	SOPHIA GROWTH	7,50,000
11-Jan-2008	SOPHIA GROWTH	7,50,000
14-Jan-2008	RHODES DIVERSIFIED	3,00,000
15-Jan-2008	RHODES DIVERSIFIED	7,50,000
21-Jan-2008	SOPHIA GROWTH	4,50,000
22-Jan-2008	RHODES DIVERSIFIED	4,50,000
29-Jan-2008	MAVI INVESTMENTS FUND LTD	12,60,000
11-Feb-2008	RHODES DIVERSIFIED	3,00,000
18-Feb-2008	SOPHIA GROWTH	6,00,000
15-Apr-2008	RHODES DIVERSIFIED	4,50,000
22-May-2008	SOPHIA GROWTH	7,50,000
25-May-2009	ARES DIVERSIFIED	15,00,000
18-Nov-2009	INDIA FOCUS CARDINAL FUND	6,00,000
23-Nov-2009	KII LTD	4,50,000
23-Nov-2009	INDIA FOCUS CARDINAL FUND	1,20,000
	Total	**1,54,80,000**

Issue 2 (2009)

Date of receiving shares	Name of entity receiving shares from GDR cancellation	No. of shares received
13-Jan-2010	INDIA FOCUS CARDINAL FUND	4,10,550

q. For second GDR issue of CAT, out of 15,95,333 GDRs issued, 4,10,550 (0.85% of GDRs issued) were cancelled. The shares thus received by FIIs were then sold by them in the Indian Markets. As seen in the case of other Examined Companies, a high percentage of these shares then go to certain set of Indian clients. The following are the details of counterparties to the sale of shares by Sub-Accounts to Indian clients during the period January 01, 2009 to September 21, 2011.

FII	CP PAN	CP NAME	Sell Volume	Sell Value (Rs.)	% to total Sale
IFCF	AAACO3597K	Oudh	1,49,999	18,10,488	61.17
IFCF	AAACB4324K	Basmati	94,990	10,49,662	38.74
IFCF		Others	211	3,753	0.09
	IFCF Total		**2,45,200**	**28,63,902**	**100.00**

FII	CP PAN	CP NAME	Sell Volume	Sell Value (Rs.)	% To Total Sale
Mavi	AACCE0781B	Espirit Technologies Private Ltd	5,31,732	13,32,932	42.20
Mavi	ABSPJ3747J	Dinesh Kumar Jaiswal	3,62,695	9,66,131	28.79
Mavi	ADTPB3843L	Laxmipershad Jaiswal	3,21,076	8,58,100	25.48
Mavi		Others	44,497	1,16,137	3.53
	Mavi Total		**12,60,000**	**32,73,300**	**100.00**

FII	CP PAN	CP NAME	Sell Volume	Sell Value (Rs.)	% To Total Sale
Rhodes	AAACB4324K	Basmati	5,92,150	31,85,993	39.5
Rhodes	AACCE0781B	Espirit Technologies Private Ltd	5,94,465	16,85,895	39.6
Rhodes	AACCN3776H	Newgen International Private Ltd	1,50,000	8,11,500	10.0
Rhodes	AABCA6702F	Alka	1,50,000	4,47,000	10.0
Rhodes		Others	13,385	67,059	0.9
	Rhodes Total		**15,00,000**	**61,97,446**	**100.0**

FII	CP PAN	CP NAME	Sell Volume	Sell Value (Rs.)	% To Total Sale
Sophia	AACCE0781B	Espirit Technologies Private Ltd	6,03,268	17,10,572	40.2
Sophia	AAACB4324K	Basmati	3,00,000	17,50,500	20.0
Sophia	ACLPJ8528K	Dhiraj Kumar Jaiswal	2,22,900	5,94,916	14.9
Sophia	ADTPB3843L	Laxmipershad Jaiswal	1,77,100	4,51,584	11.8
Sophia	AABCA6702F	Alka	1,50,000	4,47,000	10.0
Sophia		Others	46,732	1,15,428	3.1
	Sophia Total		**15,00,000**	**50,70,000**	**100.0**

r. From the counterparty analysis of the sell trades of Sub-Accounts, it is observed that Indian entities like SV, Alka, Basmati and Oudh apart from promoter group entities like Noticee-2, Laxmi Pershad Jaiswal and Noticee-7 have been the major counterparties. It is noted that these entities are connected with AP as observed from the Bank account statements, the Demat statements and KYC of these entities. The connections among entities and with AP are explained below.

Sr. No	Name of Entity	Details of connection
1	Alka India Ltd (Alka)	• AP is among the promoters of Alka. • As per Annual Return of Basmati filed with MCA on September 30, 2005, Alka and Oudh are among the shareholders of Basmati. Together, they hold 37.68% of the shares of Basmati. • Alka and Oudh have common phone number (9702001974) in their KYC documents available with their respective brokers viz, Mansi Share & Stock Advisors Pvt Ltd, Alankit Assignments Ltd and Arch Finance Ltd. (Source: MCA and BSE filing of Alka. KYC documents with B. Lodha Securities Ltd. Indiabulls Securities Ltd, Mansi Share & Stock Advisors Pvt Ltd, Alankit Assignments Ltd and Arch Finance Ltd, Ssj Finance & Securities Pvt. Ltd, Madhya Pradesh stock Exchange Indiabulls Securities Ltd, Shriram Insight Share Brokers Ltd and Multiplex Capital Ltd.)
2	Basmati Securities Pvt Ltd (Basmati)	• Basmati holds 27.8% of the shares of Oudh. • As per Annual Return of Basmati filed with MCA on September 30, 2005, Alka and Oudh are among the shareholders of Basmati. Together, they hold 37.68% of the shares of Basmati. • Basmati and Oudh have common authorised signatory (Rahul C Shah) for operating their demat accounts as per the KYC documents provided by depository participants – Shriram Insight Share Brokers, K & A Securities Pvt Ltd and Motilal Oswal Securities Ltd. • Basmati and Oudh have common phone number (9619040060) and address - Room No. 5, Ground Floor, Heera Mahal Building, 250 Kalbadevi Road, Mumbai - 400002 in the KYC documents available with depository participant Shriram Insight Share Brokers Ltd. • Basmati and Oudh have common phone number (32015743) and address – 5/7 Kothari House 2nd Floor Office No 4 Fort Mumbai in the KYC documents available with brokers/ depository participants B.lodha Securities Ltd., Motilal Oswal Securities Ltd, Anand Rathi Share and Stock Brokers Ltd and Networth Stock Broking Ltd. • Basmati and Oudh have common phone number (24526764) and address – Kothari House 1st Floor 5/7 Oak Lane Fort Bombay in the KYC documents available with broker Vertex Securities Ltd. (Source: MCA and BSE filing of Alka. KYC documents available with Religare Securities Ltd. and Cpr Capital Services Ltd, Shriram Insight Share Brokers, K & A Securities Pvt Ltd, Motilal Oswal Securities Ltd., Shriram Insight Share Brokers Ltd., B.lodha Securities Ltd. and Networth Stock Broking Ltd., Anand Rathi Share and Stock Brokers Ltd and Vertex Securities Ltd.
3	Oudh Finance& Investment Pvt Ltd. (Oudh)	• Basmati holds 27.8% of the shares of Oudh. As per Annual Return of Basmati filed with MCA on September 30, 2005, Alka and Oudh are among the shareholders of Basmati. Together, they hold 37.68% of the shares of Basmati.

Sr. No	Name of Entity	Details of connection
		• Basmati and Oudh have common authorised signatory (Rahul C Shah) for operating their demat accounts as per the KYC documents provided by depository participants – Shriram Insight Share Brokers, K & A Securities Pvt Ltd and Motilal Oswal Securities Ltd. • Basmati and Oudh have common phone number (9619040060) and address - Room No. 5, Ground Floor, Heera Mahal Building, 250 Kalbadevi Road, Mumbai - 400002 in the KYC documents available with depository participant Shriram Insight Share Brokers Ltd. • Basmati and Oudh have common phone number (32015743) and address – 5/7 Kothari House 2nd Floor Office No 4 Fort Mumbai in the KYC documents available with brokers/ depository participants B.lodha Securities Ltd., Motilal Oswal Securities Ltd, Anand Rathi Share and Stock Brokers Ltd and Networth Stock Broking Ltd. • Basmati and Oudh have common phone number (24526764) and address – Kothari House 1st Floor 5/7 Oak Lane Fort Bombay in the KYC documents available with broker Vertex Securities Ltd. (Source: MCA and BSE filing of Alka, KYC Documents available with Shriram Insight Share Brokers, K & A Securities Pvt Ltd, Motilal Oswal Securities Ltd., Shriram Insight Share Brokers Ltd., B.lodha Securities Ltd. and Networth Stock Broking Ltd., Anand Rathi Share and Stock Brokers Ltd and Vertex Securities Ltd.)
4	Newgen International Pvt Ltd (Newgen)	• One of the shareholders of Newgen is Vintage FZE (UAE) Pvt Ltd. which was holding around 33% of its shares as on dates 28-Sep-2007, 31-Mar-2008, and 30-Sep-10. • As on 27/05/2011 Vintage FZE (India) Pvt Ltd. (previously known as Vedant Finvest and Consultant Pvt Ltd and having same address as Vintage FZE (UAE) Pvt Ltd)was holding around 16.49 % of Newgen's shares. • AP was appointed as director of Vintage FZE (India) Pvt. Ltd on February 20, 2007. • Alka, and Newgen have common phone number (9820113530) in the KYC documents available with their respective brokers viz, Indiabulls Securities Ltd, B. Lodha Securities Ltd. and Cpr Capital Services Ltd. • Alka, Newgen and Oudh have another common phone number (9702001974) in their KYC documents available with their respective brokers viz, Mansi Share & Stock Advisors Pvt Ltd, Alankit Assignments Ltd and Arch Finance Ltd. (Source: KYC documents provided by the broker, Shriram Insight Share Brokers Ltd and MCA Website. KYC documents with B. Lodha Securities Ltd. Indiabulls Securities Ltd, Mansi Share & Stock Advisors Pvt Ltd, Alankit Assignments Ltd, Arch Finance Ltd and Cpr Capital services Ltd)

s. Thus, it is observed that all the aforesaid entities have connections with AP and AP has substantial influence over their activities.

t. In view of the foregoing, it is alleged that the Noticees have violated Sections 12A(a), (b) and (c) of the SEBI Act read with regulations 3 (b), 3(c), 3(d), 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations.

u. The alleged violations of the relevant provisions of the SEBI Act and PFUTP Regulations by the Noticees as brought out above, if proved, makes the Noticees liable for monetary penalty under the provisions of Section 15HA of the SEBI Act.

Non-furnishing of information and misleading submissions by CAT:-

v. In terms of Section 11 C(3) read with 11 C(6) of the SEBI Act, it is obligatory on any person so summoned to produce the necessary documents/information/appear in person to/before the Investigating Authority. It is alleged that during the course of investigation, summons were issued under Section 11C(3) read with 11C(6) of the SEBI Act to the Noticee 1 for production of documents regarding utilisation of GDR proceeds by the company. It is alleged that the Noticees didn't submit all the documents sought by the SEBI. Following documents/information sought vide summons/emails/letters were not provided by the CAT.

   i. Details of usage of proceeds of the GDR Issues by CAT, along with the documentary proof in support of the utilization of the funds.
   ii. Copies of bank account statements of CAT maintained with Euram Bank.
   iii. Copies of bank account statements of CAT in India highlighting transactions related to repatriation of GDR proceeds.
   iv. Chronology of events leading to the issue of GDRs along with a certified true copy of the resolution passed by Board of Directors.
   v. Rationale for the appointment of Panasia as LM for GDR issue of CAT.
   vi. Copies of all the agreements between CAT and Panasia
   vii. Copies of agreements with Euram.
   viii. Details of the conditions that were laid upon CAT for the withdrawal of GDR proceeds from bank accounts maintained with Euram.

ix. Copy of any other agreement that CAT had with Euram apart from those related to GDR issues.

x. Details of any agreement of CAT regarding financing for the purpose of subscription by initial investors of GDRs.

xi. Copies of agreements that CAT had with Vintage and AP.

xii. Details of nature of business of the subsidiary of CAT in U.A.E viz, CAT Technologies FZE (**CAT FZE**).

xiii. Copies of Bank Account Statements of CAT FZE.

xiv. Details of payments made to Panasia or companies associated with Panasia.

xv. Name of the directors and promoters of CAT at the time of issue of GDRs.

xvi. Details of money paid by CAT FZE, be it on account of purchases or expenses or loan, to other entities for more than USD 25,000 from incorporation. CAT was specifically asked to provide details like name of entities to which payments were done, purpose of payments and amount paid by CAT FZE.

xvii. Audit Report of CAT FZE along with financial statements for the year ending March 2010 and March 2011.

xviii. Contact details, Nature of business and Bank Account statements of CAT FZE.

w. It is alleged that managing director of CAT was also summoned to appear in person at SEBI Head Office with documents sought. It is observed that summons was acknowledged by the company and an extension of two months was sought. However, CAT once again vide email dated April 23, 2012 sought extension beyond April 30, 2012. Vide email dated April 25, 2012, new date for personal appearance was given as May 02, 2012. However, CAT has till date not complied with this summons. Following information was not provided to SEBI despite being asked specifically in summons dated January 12, 2012 and email dated April 20, 2012-

1. Information like the account statement of the Euram bank account of CAT was incomplete. According to submissions of CAT, approximately Rs. 22.31 crore was

transferred to CAT FZE from its Euram bank account during the period January 2008 to March 2008. However, these transactions do not get reflected in the bank account statement provided by CAT. Vide letter dated July 19, 2012, CAT was, once again asked to provide the complete bank account statement i.e. for the period January 09, 2008 to March 31, 2008, which would reflect the transfer of funds to CAT FZE. CAT has not replied to the aforesaid letter of SEBI, till date.

2. Documentary proof of the utilisation of GDR proceeds.
3. Bank Account Statements of CAT FZE required to examine the flow of funds transferred to CAT FZE.
4. Details of nature of business and Audit reports of CAT.
5. Details of payments done to Panasia and other AP Entities.
6. Details (including name of entity to which payment has been done, purpose of payment and amount paid) of money paid by CAT FZE.
7. Details with respect to subsidiary of CAT viz. address, contact person and contact no.
8. Name of the directors of CAT at the time of issuance of GDRs

x. It is noted that apart from not providing aforementioned critical information to SEBI, wrong information was also provided by CAT. The wrong submissions of CAT were particularly related to Pledge and Loan Agreements to which CAT was one of the party.

y. In view of the observation(s) mentioned at above paragraph, it is alleged that the Noticees have violated the provisions of Section 11C(3) read with 11C(6) of the SEBI Act.

z. The alleged violations of the relevant provisions of the SEBI Act by the Noticees as brought out above, if proved, makes the Noticees liable for monetary penalty under the provisions of Section 15A(a) of the SEBI Act.

aa. It is also observed that CAT funded its promoters i.e Shri Laxmi Pershad Jaiswal, Noticee-3 and Noticee-7 for the purchase of its shares by them. During the month of

March 2009, CAT funded purchase of shares of CAT worth Rs. 91,96,326 by the aforesaid promoters of CAT. Following are the violations by CAT and its promoters due to these activities.

i. From the analysis of flow of funds and purchase of shares of CAT by its aforesaid promoters, it is observed that CAT has funded these promoters for purchase of its own shares which appears to be in violation of Section 77(2) of Companies Act, 1956 and Regulation 3 of the PFUTP Regulations. Noticee-3,7, and Shri Laxmi Pershad Jaiswal have also violated the PFUTP Regulations by their aforesaid conduct.

ii. Further, from the flow of funds explained in tables above, it is observed that CAT has transferred Rs. 37.32 lakh to Dinesh Kumar Jaiswal and Rs. 3.32 lakh to Laxmi Pershad Jaiswal in the month of March 2009. Laxmi Pershad Jaiswal & Dinesh Kumar Jaiswal in addition to being promoters of CAT are Chairman and Director, respectively, in CAT. Dinesh Kumar Jaiswal & Laxmi Pershad Jaiswal are, respectively, brother and father of Mr. Noticee-2, Managing director of CAT and a key management personnel. However, CAT has not disclosed these fund transfers under the head "related party transactions" in its annual report (2008-2009) and has thereby, prima-facie, violated clause 32 of the Listing Agreement.

iii. Further, on perusal of the company's annual reports 2008-2009 and 2009-2010, it is seen that CAT has merely mentioned that related party transactions have occurred between CAT and Noticee-7. Contrary to the provisions of Accounting Standard 18, no details regarding the nature of transactions and volume of the transactions were provided in the annual report. Such omission on the part of CAT is, prima-facie, in violation of Clause 32 of the Listing Agreement bb. The alleged violations of the relevant provisions of the Listing Agreement by the Noticee 1 as brought out above, if proved, makes the Noticee 1 liable for monetary penalty under the provisions of Section 23E of SCRA.

cc. In view of the above, the Noticees are called upon to show cause as to why an inquiry should not be held against it in terms of Rule 4 of SEBI Adjudication Rules read with Section 15 I of the SEBI Act and Rule 4 of the SCRA Adjudication Rules read with Section 23-I of SCRA and why penalty, if any, should not be imposed on the Noticees under the provisions of Section 15HA of SEBI Act, Section 15A(a) of SEBI Act, Section 23E of SCRA.

7. I note that the SCN was sent to the respective addresses of the Noticees as per available records, via Speed Post Acknowledgement Due, and the same was delivered except in the cases of Noticee 5 and 8. However, no reply was received from the Noticees to whom the SCN was delivered. From the available records, I note that Noticees 1 to 4, 6, 7 and 9 were provided an opportunity of personal hearing on October 09, 2019. However, the same was not attended by the respective Noticees. Vide letters dated October 11, 2019, Noticee 1 and 7 stated that they did not recollect the receipt of the SCN and requested for a copy of the same. The said Noticees further requested for time to file reply to the SCN and an opportunity of hearing. Accordingly, Noticee 1 and 7 were once again provided with the copy of the SCN along with its annexures vide letter dated October 18, 2019. Further, vide the said letter dated October 18, 2019 the said Noticees were granted time till October 31, 2019 to file their reply, if any, to the SCN and were also granted an opportunity of personal hearing on November 07, 2019. I also note that vide letters dated October 16, 2019, Noticee 2, 3, 4, 6, and 9 were granted opportunity to file their reply to the SCN latest by October 31, 2019, and were granted an opportunity of personal hearing on November 07,

2019. Subsequently, an email dated October 31, 2019, was received from Shri Nikhil Kumar Rungta, advocate, on behalf of Noticee 1, 2, 3, 4, 6 and 9, wherein it was *inter alia* requested that inspection of documents in the matter be provided and time to file reply in the matter. Accordingly, vide letter dated November 07, 2019 addressed to Shri Nikhil Kumar Rungta, the aforesaid Noticees were granted an opportunity for inspection of documents in the matter and were advised to contact the Enforcement Department of SEBI for the same. From the available records, it is noted that vide email dated November 05, 2020 the relied upon documents in the matter were provided to Shri Nikhil Kumar Rungta by the Enforcement Department. Accordingly, vide email dated November 10 and 11, 2020, the Noticees were granted an opportunity of personal hearing on November 24, 2020 through video conferencing on webex platform in view of the pandemic.

8. I note that vide separate letters dated November 09, 2020, Noticee 1, 2, 3, 7, 8, and 9 (i.e. CAT, Shri Dhiraj Kumar Jaiswal, Shri Dinesh Kumar Jaiswal, Espirit Technologies Pvt Ltd, Ms. Namritha Jaiswal, and Ms. Nisha Jaiswal) have authorized Mrs. Chitra Sharma and Mr. Lalit Joshi, advocates as their authorized representatives (**ARs**) in the matter.

9. Noticees 1, 2, 3, 8, and 9 (viz. CAT, Shri Dhiraj Kumar Jaiswal, Shri Dinesh Kumar Jaiswal, Ms. Namritha Jaiswal and Ms. Nisha Jaiswal) vide their separate letters dated November 21, 2020 (received vide emails dated November 24, 2020 from their ARs) made *inter alia* the following common submissions –

    i. *At the outset, it is submitted that we have not violated any provisions of CA, 1956, SC(R)A, SEBI Act and PFUTP Regulations as alleged mentioned above. We humbly submit that the requisite disclosures were made and relevant approvals were obtained from the shareholders of the Company for undertaking the GDR Issuance. The shareholders of the Company therefore were at all time aware of all material particulars regarding the GDR Issuance.*

ii. *Further, it is evident from the Notice itself that there are no allegations or materials brought on record to establish any violation by us in respect of the provisions of CA, 1956, SC(R)A, SEBI Act and PFUTP Regulations as alleged in the Notice. It is submitted that for the violation of the provisions as alleged in the Notice, the specified provisions of CA, 1956, SC(R)A, SEBI Act and PFUTP Regulations are not attracted.*

iii. *Furthermore, we vehemently deny each and every allegations levied upon us. It is humbly submitted that the allegations levelled upon us are baseless and devoid of any evidence in support of them and the same shall be dealt with in detail in the para wise reply to the observations made in the Notice.*

Before proceeding further, we would like to give our brief background:

iv. *The Company was originally incorporated with the name Claswin Credit Capital Private Limited on September 6, 1995, under CA56 and a Certificate of Incorporation bearing number 18-32832 by the Additional Registrar of Companies, Tamil Nadu. The company changed its status became a public limited company on September 18, 1995. The Company subsequently changed its name to CAT Technologies Limited w.e.f. April 16, 1999. The Company shifted its registered office from State of Tamil Nadu to State of Andhra Pradesh and subsequently the Company's registration no. was changed to 01-35317 from 18-32832 and the same is the present registration no. of the Company.*

v. *The Company offered the services of software development, consulting and training. Thereafter, it became a name with tremendous brand equity. With education and training as its strength, it forayed into both government and private sector successfully imparting quality software training to the corporations. With the increasing goodwill, offers for software development from the existing clients started coming in. Other corporations looked upto CAT Academy for software solutions, and quality trained software professionals to meet their IT manpower needs.*

vi. *The Company has successfully delivered software solutions to a wide range of clients globally. In this short space of time, it has created a place for itself in the global IT industry as a provider of technology solutions in the areas of software development; IT enabled services, education, training, and consulting.*

vii. *The Company's present operations are based in Hyderabad (India), (Headquarter). The operations in New Jersey (USA) are carried out through the Company's wholly owned subsidiary CAT Technology Inc., USA ("**CAT USA**"). The operations of the Company in the Middle East are operated through M/s. Cat Technology FZE, UAE ("**CAT FZE**")*

viii. *The Company's focus is on the core business functions of IT enabled services (Healthcare BPO) and Consulting. Through the GDR issuance (First GDR issue was of 43,04,348 GDRSs amounting to USD 6.46 Million and issue closed on July 27, 2007 and Second GDR issue was of 15,95,333 GDRSs amounting to USD 10.002 Million and issue closed on November 06, 2009), the Company intended to raise funds to expand/scale up business.*

ix. *It is further submitted that the details of the issuance of GDRs is as follows The no. of GDR issued, no. of shares underlying each GDR and the issue price of GDR.*
GDR1: *No of GDR issued : 43,04,348*
No of shares underlying each GDR: 2,58,26088 (1 GDR: 6 Equity Shares)
Issue price of GDR: USD 1.50
GDR2: *No of GDR issued : 15,95,333*
No of shares underlying each GDR: 4,78,59,990 (1 GDR: 30 Equity Shares)
Issue price of GDR: USD 6.27.

x. *Furthermore, it is submitted that the value of our stock on BSE when the issue was listed on international Exchange.*
GDR1: *The issue got listed on Luxembourg Stock Exchange on 30th July, 2007 and Closing Stock Price of the Company on that date on BSE was Rs. 5.34.*
GDR2: *The issue got listed on Luxembourg Stock Exchange on 09th November, 2009 and Closing Stock Price of the Company on that date on BSE was Rs. 17.26.*

xi. *It is humbly submitted that the following are the details of usage of proceeds of the GDR Issues:*
GDR1

Date of GDR Issue	***Amount Raised via GDR Issue***	***Period (Quarterly from the day of GDR Issue)***	***Amount Utilized (Rs. Crores)***	***Comments of Expenditure (Purchase / Acquisitions / Other Payments, etc.)***	***Annexure No. of Copy of Documents supporting use of Funds***	***No. of GDRs cancelled in the Quarter***
27.07.2007 *4304348 GDRs* *(1:6)*	*USD 6456522 = INR 25,82,60,880* *+ Interest earned on Fixed Deposits*	*Sep 2007*	*Nil*	*NA*	*NA*	*Nil*
		Dec 2007	*4.00*	*Transfer to Subsidiary for its long term working capital requirements*	*EURAM Bank Statement enclosed.*	*450000*
		Mar 2008	*22.31*	*Transfer to Subsidiary for its long term working capital requirements*	*EURAM Bank Statement enclosed.*	*1485000*
		June 2008	*Nil*	*NA*	*NA*	*200000*
		Sep 2008	*Nil*	*NA*	*NA*	*Nil*
		Dec 2008	*Nil*	*NA*	*NA*	*Nil*
		Mar 2009	*Nil*	*NA*	*NA*	*Nil*

		June 2009	*Nil*	*NA*	*NA*	*250000*
		Sep 2009	*Nil*	*NA*	*NA*	*Nil*
		Dec 2009	*Nil*	*NA*	*NA*	*195000*
		Mar 2010	*Nil*	*NA*	*NA*	*Nil*
		June 2010	*Nil*	*NA*	*NA*	*Nil*
		Sep 2010	*Nil*	*NA*	*NA*	*Nil*
		Dec 2010	*Nil*	*NA*	*NA*	*Nil*
		Mar 2011	*Nil*	*NA*	*NA*	*Nil*
		June 2011	*Nil*	*NA*	*NA*	*Nil*
		Sep 2011	*Nil*	*NA*	*NA*	*Nil*
		Dec 2011	*Nil*	*NA*	*NA*	*Nil*

GDR 2

06.11.2009 *1595333 GDRs (1:30)*	*USD 10002737.91 = INR 470988917*	*Dec 2009*	*46.06* *0.47*	*Transfer to Subsidiary for its long term working capital requirements* *Transfer to Indian Account of the Company for Working Capital Requirements*	*EURAM Bank Statement enclosed.*	*Nil*
		Mar 2010	*0.59*	*Being amount paid to Merchant Bankers*	*EURAM Bank Statement enclosed.*	*13685*
		June 2010	*Nil*	*NA*	*NA*	*Nil*
		Sep 2010	*Nil*	*NA*	*NA*	*Nil*
		Dec 2010	*Nil*	*NA*	*NA*	*Nil*
		Mar 2011	*Nil*	*NA*	*NA*	*Nil*
		June 2011	*Nil*	*NA*	*NA*	*Nil*
		Sep 2011	*Nil*	*NA*	*NA*	*Nil*
		Dec 2011	*Nil*	*NA*	*NA*	*Nil*

xii. The Company has been in the IT business for a very long time and therefore, has a deep understanding of the IT requirements of the business and IT community to efficiently execute its services. The Company's experience in handling clients on a large scale is evidenced by the fact that the Company has developed and managed a network of more than 300 clients across various countries.

xiii. *The Company runs IT enabled business, contributing to the country's economy and adding value to Company's stakeholders even before and after the GDR issuance. The same is reflected in Company's financials and operations in the IT Business during the relevant period.*

xiv. *The Company came out with 2 GDRs issues, one in July 2007 and the other in November 2009. Through the said 2 GDR issues, the Company raised a total capital of USD 164,59,259.91 which was equivalent to around Rs.72,96,88,200.60. In accordance with the procedure set out in the offer documents, the proceeds of the said 2 GDR issues were credited to an Escrow Account opened and maintained with Euram Bank, Vienna, Austria who were the bankers to the issue and thereafter, credited to the bank account of the Company with Euram Bank. Also in accordance with the provisions of the Guidelines issued by the Government of India regarding GDR issues and the Regulations of the Reserve Bank of India, funds were transferred to the bank account of Company in India and to the subsidiary of the Company registered in Dubai, CAT FZE; the Company and Cat Dubai then utilized the funds for the Objects/Purposes of the issues. The funds of GDR proceeds were utilized for strengthening the operation of the company in the Middle East countries and to strengthen the infrastructure of Indian operations and to acquire Cat Technology INC, USA from Shri. Dinesh Jaiswal.*

xv. *The financial performance of the Company was increased due to business expansions of the Company. The extract from balance sheets of last three years after GDR issuance is reproduced hereunder for ready reference of your goodself*

Table B: Extract from Balance Sheets

Balance Sheet Extracts	***Fiscal 2011***	***Fiscal 2010***	***Fiscal 2009***
Equity Share Capital	*794364780*	*794364780*	*794364780*
Reserves and Surplus	*1335445651*	*691341382*	*200858524*
Net Fixed Assets	*102391699*	*70653509*	*43850605*
Non - Current Assets	*32448819*	*21648819*	*21648819*
Current Assets	*1421832830*	*1067644322*	*531014416*
Non-Current Liabilities	*597463238*	*20609674*	*230524262*
Current Liabilities	*55819911*	*77032190*	*84595211*

(Rupees in'000)

Profit & Loss	***Fiscal 2011***	***Fiscal 2010***	***Fiscal 2009***
Income from Operation	*3486754768*	*1593084517*	*952305582*
Other Income	*229866*	*1430863*	*5449865*
Total Income	*3486984634*	*1594515380*	*957755447*

Operating Expenses	*532493868*	*362694601*	*744933775*
EBIDTA	*586473543*	*651777159*	*95772422*
Depreciation	*10692705*	*11752525*	*9288788*
EBIT	*575780838*	*640024634*	*86483634*
Financial Charges	*1153284*	*1197514*	*549334*
PBT	*574627554*	*638827120*	*85934300*
PAT	*572313919*	*636460656*	*77889527*

xvi. *After the GDR issuance, SEBI has initiated investigation in the issuance of GDR by certain Companies and hastily passed the ad interim ex parte order dated September 21, 2011 and the confirmatory order dated December 30, 2011 against our Company. Subsequently, SEBI has issued Show Cause Notice in the year 2014 under Sections 11, 11(4) and 11B SEBI Act.*

xvii. *SEBI has passed the order dated April 03, 2019 under Sections 11, 11(4) and 11B SEBI Act whereby the WTM has prohibited us from accessing the capital market directly or indirectly and dealing in securities or instruments with Indian securities as underlying, in any manner whatsoever, for a further period of five years from the date of the said order. Without prejudice, the Company has challenged the said order and filed Appeal before the Hon'ble Securities Appellate Tribunal, Mumbai. The said Appeal is still pending before the Hon'ble Securities Appellate Tribunal for final disposal.*

xviii. *It is humbly submitted that due to the said ad interim ex parte order, the confirmatory order and final order, the Company has suffered huge business and financial losses and reputational harm in IT market. Further, due to said orders, the price of the shares has also fall and unquantifiable loss and damage has been caused to the Company as well investor of the Company. The extract from balance sheets of last three years showing the business of the Company at verge of insolvency is reproduced hereunder for ready reference of your goodself.*

Table C: Extract from Balance Sheets

Balance Sheet Extracts	*Fiscal 2020*	*Fiscal 2019*	***Fiscal 2018***
Equity Share Capital	*794364780*	*794364780*	*794364780*
Reserves and Surplus	*(564771477)*	*(528981007)*	*(529934997)*
Net Fixed Assets	*47828964*	*56311653*	*70135954*
Non - Current Assets	*228721194*	*240163682*	*288587059*
Current Assets	*185020133*	*211911398*	*123841183*
Non-Current Liabilities	*109624854*	*97078891*	*23571302*
Current Liabilities	*74523170*	*89612417*	*124427157*

(Rupees in'000)

Profit & Loss	*Fiscal 2020*	*Fiscal 2019*	***Fiscal 2018***

Income from Operation	*585525028*	*583612397*	*521785080*
Other Income	*12390096*	*760868*	*917*
Total Income	*597915124*	*584373265*	*521785997*
Operating Expenses	*104292588*	*82580487*	*266282025*
EBIDTA	*(68468108)*	*(26136390)*	*(237331375)*
Depreciation	*10128227*	*9635279*	*9111546*
EBIT	*(58339881)*	*(16501111)*	*(228219829)*
Financial Charges	*7136804*	*3878120*	*4091797*
PBT	*(51203077)*	*(12622991)*	*(224128032)*
PAT	*(51632863)*	*(13129727)*	*(226175973)*

xix. *It is humbly submitted that as a prudent business entity with bona fide intention we were looking at various options to raise funds to meet it requirement of funds for infrastructure development of Indian Company and to extend foothold of the company in Middle East region where Company has sensed good growth opportunities. Company was in process of identifying suitable Merchant Banker for raising funds. After series of discussion with various Merchant Bankers, Board of Directors initially appointed M/s. Credo Corporate Finance Limited as Lead Managers for the proposed GDR-I issue. Due to inefficiency in handling the issue and completion of various assignments pertaining to issue, M/s. Pan Asia Advisors Limited was appointed as Lead Managers for the proposed GDR issue, considering their previous track record as Lead Manager for various issues lead by them.*

xx. *At the outset, when SEBI passed the ad interim ex parte order in year 2011, we were shocked to know that a fraud had been perpetrated by AP on Indian Investors using our Company's GDR issuance. It is humbly submitted that we are victim of the fraud perpetrated by AP and this fraudulent act of AP has caused an irreparable harm to our business as well as reputation.*

Before going into para wise reply to the contents of the Notice, the following are some additional objections / grounds for quashing the Notice as against us:

A. ***NO SPECIFIC AVERMENT AS TO THE CHARGE OR NATURE OF FRAUD.***

xxi. *It is humbly submitted that it can be seen from the Notice that there is no specific averment, allegation or statement against us as to the nature of fraud which has been alleged or in fact there has been no allegation that which provisions of law or regulations does the GDR Issuance violate for being conducted and issued in the manner that is has been alleged. After dealing with basic facts of the GDR Issuance and stating documents and materials that are matters of fact and record, the Notice directly jumps to a conclusion that there has been a fraudulent scheme of GDR Issuance without providing any material, detail, opportunity to us to defend any specific violations of any law or regulations which have given rise to such an apprehension and allegation in the Notice.*

xxii. *The Notice nowhere suggests what specifically has been erroneous or fraudulent or violative of the specific provisions of law and directly in a* *completely vague and general manner alleges fraud and violations of the provisions of the specified provisions of CA, 1956, SC(R)A, SEBI Act and PFUTP Regulations as a result of undertaking the said GDR Issuance.*

B. ***NO CONNECTION WITH ANY PERSON / ENTITY IN THE NOTICE.***

xxiii. *It is humbly submitted that we have no relation/connection with the AP entities/persons mentioned in the Notice i.e. Alka India Ltd. ("**Alka**"), Basmati Securities Pvt. Ltd. ("**Basmati**"), Oudh Finance & Investment Pvt. Ltd. ("**Oudh**"), Newgen International Pvt. Ltd. ("**Newgen**") or with any of the counter parties to sell trades sub-Account's trades i.e. Sophia, Rhodes, Mavi, IFCF, KII, IFCF.*

xxiv. *It is further humbly submitted that the Notice has also failed to bring out any connection between us and the other persons/entities mentioned in the Notice (other than Noticees), including of the counter parties to sell trades sub-Account's trades. Therefore, by no stretch of imagination, it can be presumed that, we had any relationship/nexus/prior meeting of mind with any entities involved in GDR issuance.*

C. ***GDR ISSUANCES HAS NO ADVERSE IMPACT ON THE INDIAN SECURITIES MARKETS.***

xxv. *It is humbly submitted that* ***the Hon'ble Supreme Court in the case of SEBI v. Pan Asia Advisors Ltd.*** *laid down that SEBI has jurisdiction to take action against companies issuing GDRs only if such issue has an adverse impact on the Indian securities markets. In other words, unless it is shown by SEBI that the issue of GDRs by a company adversely impacted the Indian securities market, it would have no jurisdiction to proceed against a company for alleged manipulation or violations committed it in respect of a GDR issue. Therefore, in order to claim its jurisdiction for taking action in a matter arising out of a GDR issue, SEBI must establish that the same had adversely impacted the Indian securities market.*

xxvi. *In the present case, while in the captioned Notice issued by SEBI there is no specific allegation that alleged activities in respect of the GDR issued by us adversely impacted the Indian securities market as such, it merely makes bald statements to the effect that the we did not inform BSE or shareholders of the company about signing the Pledge Agreement and Loan Agreement. However, the Notice does not present even an iota of evidence, either by way of any data or otherwise, that the investors in the Indian securities market were in fact induced to deal in our shares due to our alleged activities and manipulations.*

xxvii. *Without prejudice to the above, it is submitted that while SEBI's jurisdiction in respect of matters of GDRs is limited in accordance with the aforesaid law laid by down by the Hon'ble Supreme Court, it cannot be denied that the provisions relating to issue of GDRs fall within the administrative control of the Ministry of Finance and the RBI. As per SEBI Board's own Memorandum on Voting Rights of GDR/ADR holders' dated May 19, 2010 the provisions relating to issue of GDRs and all matters incidental to the same fall within the administrative control of the Ministry of Finance/RBI.*

xxviii. *It is humbly submitted that though the allegation has been alleged in the Notice, no evidence has been placed on record to show our action in any way were fraudulent. Here the definition of the term "Fraud" as defined in the PFUTP*

Regulations needs to be referred, which states that any act, expression, omission or concealment committed should have induced another person to deal in the securities market but the same was not established by SEBI in the Notice.

xxix. *In this regard, it is submitted that the share price of the Company was remain same hovering around Rs. 5 to 7 throughout period of three months from First GDR and Rs 10 to 13 throughout period of three months from Second GDR. Hence, we neither induced or cheated or made any false statement or manipulated share price that could adversely affect the Indian Securities Market.*

xxx. *In this regard, the Judgment of the Supreme Court of India in the matter of **Securities and Exchange Board of India Vs. KanaiyalaBaldevbhai Patel**, can be referred wherein it was observe that:*
"A person can be said to have induced another person to act in a particular way or not to act in a particular way if on the basis of facts and statements made by the first person the second person commits an act or omits to perform any particular act. The test to determine whether the second person had been induced to act in the manner he did or not to act in the manner that he proposed, is whether but for the representation of the facts made by the first person, the latter would not have acted in the manner he did. This is also how the word inducement is understood in criminal law. The difference between inducement in criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient. No element of dishonesty or bad faith in the making of the inducement would be required."

xxxi. *In the light of the aforesaid observation of the Judgment, it is submitted that we/I have/has not made any suggestion as to a fact which is not true or which it does not believe it to be true which would have induced any entity to trades in the shares of our Company. We/I neither concealed any facts after having knowledge or belief of the fact which would have induced any entity to trades in the shares of our Company. In the present case, there is no suggestion of facts of inducement. As per above judgment it can be observed that the inducement is cannot be a mere presumption that someone may have been induced, the Supreme Court clearly specified that the inducement needs to be established by the way of the facts and in the present case the Notice failed to established any facts that the we/I have/has induced any person in the captioned matter.*

*D. **NO PURCHASE OF SHARES BY THE PROMOTERS OF CAT TECHNOLIGIES THROUGH FUNDS RECEIVED FROM THE COMPANY.***

xxxii. *It is alleged that we have funded our Promoters, viz. Late Shri Laxmi Pershad Jaiswal, Shri Dinesh Kumar Jaiswal and Espirit Technologies Private Limited, for purchase of its shares worth ₹91.96 Lakhs in March 2009. The aforesaid purchase of shares of the Company by Late Shri Laxmi Pershad Jaiswal, Shri Dinesh Kumar Jaiswal and Espirit Technologies Private Limited was through*

*Trading Member Fortune Equity Brokers (India) Ltd. ("**Fortune Equity Brokers**").*

xxxiii. *In this regard, we submit that the said allegation is patently erroneous and based on surmises and conjecture. We humbly submit that just because the amount has been transferred between the Promoter and the Company under valid legal transactions cannot be said illegal or invalid until and unless any contrary its established.*

xxxiv. *We submit that CAT has acquired CAT Technology INC, USA from Mr. Dinesh Jaiswal for increase presence of the company in US market and also considering fact the US Customers preferred to deal with Local company rather than overseas company.*

xxxv. *Accordingly, the Board of Directors of the Company in the meeting held on May 12, 2005 decided to acquire CAT USA for a sum of USD 1 Million and the said decision was approved by the shareholders in the 10th AGM of the Company held on September 12, 2005. The copies of the minutes of the said Board Meeting and AGM are annexed hereto and marked as **Annexure [A]***

xxxvi. *However, as company was not in position to pay total cost of acquisition immediately to Shri Dinesh Jaiswal, Company request for deferred payment of consideration amount, till then it will be considered as unsecured loan to the company, which was agreed by Mr. Dinesh Jaiswal. Hence the amount was accounted as unsecured loan from Shri Dinesh Jaiswal and same was reflected in the Balance Sheet of the Company for the Financial Year ended March 31, 2008.*

xxxvii. *The said unsecured loan was repaid to Shri Dinesh Jaiswal or his assignees/nominees i.e. Espirit Technologies Pvt Ltd. ("**Espirit**"), and other promoters, over the period from 2008 to 2014. We humbly submit that the Company is not concerned with and cannot be held liable or responsible for the use of the loan repayments Shri Dinesh Jaiswal and/or Espirit. A copy of the ledger account statement of Shri Dinesh Kumar Jaiswal and a copy of a letter confirming the above from Shri Jaiswal as annexed hereto and marked as **Annexure [B]**.*

xxxviii. *Further, we humbly submit that the Company paid rent to Late Shri Laxmi Pershad Jaiswal for the office premises located at H No. 5-4-736, Nampally Station Road, Abids, Hyderabad – 500001 in terms of lease agreement. We humbly submit that the Company is not concerned with and cannot be held liable or responsible for the use of rent so paid to Late Shri Laxmi Pershad Jaiswal. A copy of ledger account of Late Shri Laxmi Pershad Jaiswal showing the rent paid is annexed hereto and marked as **Annexure [C].***

xxxix. *Furthermore, we would like to add that all acquisitions of shares by the aforesaid entities were duly reported to BSE in compliance with SEBI SAST Regulations and PIT Regulations. A copy of screenshot of BSE's website showing the reporting of acquisitions of shares is attached and marked herewith **Annexure [D].** Therefore, it is humbly submitted that apart from reporting purchase of shares in compliance with SAST Regulations, company has nothing to do with acquisition of shares. It was individual interest of the promoters to increase stake in the company believing future growth prospects.*

xl. *Hence, we humbly submit that we cannot be held liable for the end use of these funds by Late Shri Laxmipershad Jaiswal, Shri Dhiraj Jaiswal and Espirit. In view of the above, we deny that the Company has funded the purchase of shares by Late Shri Laxmipershad Jaiswal, Shri Dhiraj Jaiswal and Espirit as falsely alleged or otherwise. We further deny that we have violated the provisions of Section 77 of the Companies Act, 1956 as erroneously alleged or otherwise.*

E. ***NO RELATED PARTY TRANSACTIONS.***

xli. *It is alleged that we have not disclosed the fund transfer between the Company and Late Shri Laxmi Pershad Jaiswal and Shri Dinesh Jaiswal under the head "related party transactions".*

xlii. *Further, it is also alleged that we have related party transactions with Espirit and on perusal of the Company's annual reports 2008-2009 and 2009-2010, it can be seen that the Company has merely mentioned that related party transactions have occurred between the Company and Espirit. Further, it is also alleged that contrary to the provisions of Accounting Standard 18, no details regarding the nature of the transactions were provided in the annual report.*

xliii. *In this regard, it is humbly submitted that the said allegation is patently erroneous and without due consideration of law. We submit that we did not have any related party transactions, except there was transaction of payment of monthly office rent, which was exempted transaction as per CA Act, 1956. Apart from rent only Unsecured Loan given to company which was clearly reported in Balance Sheet Schedules and disclosed to the shareholders.*

xliv. *Further, without prejudice, it is humbly submitted that the transactions which triggered the materiality policy are need to be disclosed to the Exchange or shareholders. However, in the present case the said transaction pertaining to unsecured loan had not triggered the materiality policy of the Company. Hence, there was no need to disclose the aforesaid transaction at the relevant period.*

xlv. *Further, without prejudice, with respect to allegation that we merely mentioned that related party transactions have occurred between us and Espirit, which is contrary to the provision of Accounting Standard 18, no details regarding the nature of transactions and volume of the transactions were provided in the annual report. It is humbly submitted that balance sheet has been duly audited by the Statutory Auditors and accepted by the Income Tax Authorities and It is not open to your good self to question the entries in the balance sheet as the same is beyond your goodself brief and jurisdiction.*

xlvi. *In this regard, your goodself kind attention draw to order of* ***Securities Appellate Tribunal in the matter of Corporate Strategic Allianz Ltd. vs SEBI*** *order dated March 29, 2019:*
"…..In our opinion, the AO has travelled beyond his brief and jurisdiction. The balance sheet has been duly audited by the Statutory Auditors and accepted by the Income Tax Authorities. It is not open to the AO to question the entries in the balance sheet. The AO is not an expert to juggle the accounting figures and hold as to which entry should come under "Fixed Assets" or under the "Revenue Expenditure…..".

F. ***ALLEGATIONS AGAINST OUR COMPANY IN VIOLATION OF PRINCIPLE OF EQUITY.***

xlvii. *It is humbly submitted that SEBI has wrongly alleged that the GDR issuances by us, was devised and structured by AP in connivance with us, wherein loans were arranged for the subscriptions of the GDRs of our Company on both occasions, by Vintage only. In this regard, it is submitted that each of these entities are duly incorporated under the relevant laws and has separate legal existence but the present Notice is only against us. Further, without making Alka, Basmati, Oudh, Pan, Vintage, AP, Rhodes, KII, IFCF and Sophia a party to the proceedings and giving an opportunity to be heard /cross examined, the Notice is not tenable in law and hence the Notice must be quashed on this ground only.*

xlviii. *It is humbly submitted that SEBI only took action against selected/ shortlisted persons/ entities and not against all of them who were allegedly involved in the entire GDR issuance. If the allegation of SEBI were correct then allegation would also have been levelled against all of them, failing which the Notice needs to be withdrawn.*

xlix. *Further, no reasons for such specific inclusions and exclusions were given by SEBI in the Notice. If any allegations were to be levelled on a selective set of entities and not on all those who were involved, proper reasons for the same should be given to justify the same. Thus, it is submitted that without supplying any valid reason, SEBI cannot resort to such discriminatory acts.*

l. *Thus, it is humbly submitted that, such proceedings where only selected persons/entities are alleged are strictly against the principle of justice, equity and good conscious and thus is liable to be set aside.*

G. ***THE NOTICE IS BAD IN LAW AND MUST BE STRUCK DOWN / QUASHED AS AGAINST OUR COMPANY.***

li. *The law as regards the requirement of issuance of Show Cause Notice and the contents that are mandatorily required to be included in such show cause notice was recently considered and elaborated by the Hon'ble Supreme Court in* ***Gorkha Security Services v. Govt. (NCT of Delhi), (2014) 9 SCC 105****. It was held as follows:*

*"**Contents of the show-cause notice***

21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained…

22. The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent.

However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:
(i) The material/grounds to be stated which according to the department necessitates an action;
(ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.…"

lii. *It has been further held* ***in S.L. Kapoor v. Jagmohan & Ors., (1980) 4 SCC 379*** *that:*
"The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose. We do not suggest that the opportunity need be a "double opportunity" that is, one opportunity on the factual allegations and another on the proposed penalty. Both may be rolled into one. But the person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him."

liii. *It is humbly submitted that the Notice no were makes out any case of a specific violation of any law and regulation on account of the GDR issuance as undertaken and in no manner provides an opportunity or details of any allegations against me has to meet. The Notice is general and vague in nature and there is no specific case made out as to what is the nature of fraud that is alleged in the GDR Issuance. In fact, it is SEBI's own case in the Notice that it is unable to determine whether anyone has even been defrauded or misled by any act or omission by me as alleged at all.*

liv. *It is therefore submitted that the Notice does not meet the mandatory requirements of a valid show cause notice as laid down by the Hon'ble Supreme Court in the aforesaid decision.*

H. ***LAPSES IN THE SHOW-CAUSE NOTICE.***

lv. *It is humbly submitted that the Notice suffers from serious latches. There has been a long and unexplained delay in the initiation of proceedings against us. It is a fact on record that the Notice was issued in year 2019 and the alleged nefarious committed in securities market in year 2007 and 2009, i.e., after a lapse of nearly more decade from the date of issuance of GDRs. Moreover, we would like to submit that the Notice is not forthcoming with any reason or explanation for the inordinate and unwarranted delay in the issue of the present Notice*

lvi. *In this regard, we would like crave to rely on the order* ***HB Stock holdings Limited vs. Securities and Exchange Board of India dated 27.08.2013****, in which the Hon'ble Securities Appellate Tribunal was observed as under:*

"Allowing matters to go on and on for years together by the Respondent serves no purpose, rather it risks loss of evidence such as important documents which

may get destroyed while the issue gathers dust. Such systemic failures occur to the disadvantage of all parties concerned and lead to consequences such as genuine violators being allowed to function normally in the capital market for years together, whereas I some situations the reputation of innocent entities gets tarnished as they wait for the wheels of justice to turn a bit faster than the pace at which they seem to be going."

lvii. *Further, in the case of* ***Khandwala Securities vs. SEBI dated 07.09.2012 in Appeal no. 19 of 2012,*** *where the Ld. Bench observed as under:*
"This Tribunal has held in several cases including Subhkam Securities Private Limited. vs. Securities and Exchange Board of India decided on July 25, 2012 Appeal no.73 of 2012, AditiDalal vs. Securities and Exchange Board of India decided on November 28, 2011 Appeal no.143 of 2011 that proceedings under the Securities and Exchange Board of India Act require finalization within a reasonable period of time. Delay defeats justice and the very purpose for which proceedings are initiated."

lviii. *Furthermore, in the case of* ***Subhkam Securities Private Limited. vs. Securities and Exchange Board of India (Appeal no. 73 of 2012)*** *the Hon'ble Securities Appellate Tribunal in the case of where the Ld. Bench observed as under:*
"Inordinate delay in conducting inquiries and in punishing the delinquent not only permits market manipulator to operate in the market, it also has demoralizing effect on the market players who are ultimately „not found guilty" but Damocles" sword of inquiry keeps hanging on them for years together from the date of starting investigation by the Board to the date of completion of inquiry proceedings. Precisely for this reason, regulation 28(2) of the intermediary regulations also provides that the designated member should pass appropriate order after considering reply as expeditiously as possible and endeavor shall be made to pass order within one hundred and twenty days from the date of receipt of reply of the notice or hearing. A market player has a right that if proceedings are initiated against him by the Board for violation of any rules and regulations, the proceedings against him, are also concluded expeditiously and he is not made to undergo mental agony when these are unnecessarily prolonged without any fault on his part in delaying the proceedings."

lix. *In the light of aforementioned facts and judgement cited, we humbly submit that such a delayed proceeding will cause prejudice to "us" in as much as it is likely to not remember the antecedents, and be unable to dilate on the factual position emerging from the options trades that took place in year 2007 and 2009. In this regard, we humbly submit that on account of the unnatural and unexplained delay of more than 10 years, the present proceedings are, liable to be quashed.*

Having stated our preliminary submissions to the Notice, we would like to submit para-wise reply to the Notice

lx. *The paras no. 1 and 2 of the Notice deals with Securities and Exchange Board of India ("**SEBI**") had conducted investigation against several Indian companies that has issued Global Depository Receipts ("**GDR**") in overseas market. SEBI had investigated two GDR issues by CAT. Further, Pan was the lead Manager for both the GDR issues of the Company. With regard to this it is submitted that the same is a matter of record and so we do not have any comments to offer on the same.*

lxi. *The paras 3 and 4 of the Notice deal with the investors in the GDR issues by us. In this regard, we humbly submit that we have got the list of subscribers from our Lead Manager i.e Pan. It is submitted that as an issuer there was no means to know the list of subscribers to the GDR issues, therefore, we had to rely on the information received from Lead Manager. It is common established practice in any Public Issue that the Lead Manager or Registrar to the Issue provides the list of initial subscribers to the issue.*

lxii. *We submit that the responsibility of marketing the GDR issue is and were always with our Lead Manager and it was their responsibility to get the Issue subscribed. As per information received from Pan regarding the entities who have subscribed to the issue, we have forwarded the said information to the stock exchanges, which did not raise any query at that time. We have been informed about the subscription of GDRs and information about the subscription and subscribers (initial investors) information has been provided by the Depository bank and the Lead Manager to the issue. The list of entities-initial investors was provided to the Company by the Depository Bank and Lead Manager to the issue and we accordingly informed and submitted the said detail to the Stock Exchanges. The Company neither had any role to play in the allotment of GDRs; nor was it aware of the identity of the holders of the GDRs.*

lxiii. *The para 5 of the Notice deal with the allegation of the Loan and Pledge Agreement for its First GDR issue and Second GDR issue were signed among the Company, Vintage FZE ("**Vintage**") and European American Investment Bank AG ("**Euram**"). In this regard, we submit that the allegation that he Loan and Pledge Agreement was signed by the Company, Vintage and Euram is false and denied in toto. As, no Loan and Pledge Agreement was being signed by the Company with Euram.*

lxiv. *The para 6 of the Notice deal with the loan agreement (Loan Agreement No. K271009-002) dated October 27, 2009, was signed between Euram and Vintage. In this regard, it is submitted that the said loan agreement was between Euram Bank and Vintage, who is a third party, as borrower for loan facility of US$ 1,00,02,737.91 as mentioned in the Notice, there is no privity of contract between the execution of loan agreement and us. Hence, no comments to offer on the same.*

lxv. *The para 7 of the Notice deal with the Pledge Agreement dated October 27, 2009, was alleged to be signed between the Company and Euram. In this regard, we at the outset deny that any Pledge Agreement was signed between our company and Euram. It is incorrect on the part of SEBI to allege that Agreement was signed by Noticee - 2 on behalf of the Company as Director. We humbly submit that we have never signed / authorized Noticee 2 to sign any such agreement on behalf of our Company.*

lxvi. *The paras 8 to 10 deal of the Notice deal with the preamble of the Pledge Agreement. In this regard, it is submitted that after the First GDR issue of the Company made in July 27, 2007, a number of GDR issues were made adopting the same procedure over a period of two years. None of the regulators i.e. RBI, SEBI or Stock Exchange had pointed out any anomaly or flaws in the manner in which these GDR issues were made. Hence the entire procedure has assumed legal sanctity. As such, in the Second GDR issue in November 15, 2009, we had adopted the similar procedure on the advice of Lead Manager.*

lxvii. *The paras 11 of the Notice deal with the allegation of the opening of the bank account no. 540013 with Euram and keep the proceeds of GDRs, to secure rights of Euram against the loan given by Euram to Vintage for subscription of the GDR issue. We submit that the said allegations are totally false, baseless, incorrect and without any evidence and hence are denied in toto.*

lxviii. *Firstly, we humbly submit that the said bank account was opened with the approval of Board of Director and same disclosed to public shareholder through Exchange (the copy of Board Resolution dated April 30, 2007).*

lxix. *Secondly, the proceeds of the GDR issues of the Company, were transferred to our bank account in India and to that of our subsidiary company, CAT FZE from time to time as is seen from the Bank Account statement provided by Euram to us in respect of the aforesaid bank account in which the GDR proceeds were deposited. A copy of the aforesaid Bank Account statement is annexed hereto and marked as* ***Annexure[E]****. This could not have been done if there was a Pledge/Charge over the GDR proceeds in terms of the Pledge Agreement. Therefore, the aforesaid allegation is erroneous, misplaced and not substantiated by the facts and the record. Further, we submit that the proceeds of the GDR issues, less the fee payable to Lead Manager and other expenses incidental to the GDR issues, were transferred to our subsidiary to meet its working capital requirements. CAT FZE, was incorporated in the year 2007-2008 with capital of 150,000 Dhiram and remaining part of first GDR proceeds to the extent of 13,320,896 Dhiram were transferred to CAT FZE and was reflected as Loans under "Current liabilities" head in the Books of Accounts of the Company. We further submit that in financial year 2009-2010, the proceeds of Second GDR to the extent of 34,143,824 Dhiram were transferred to CAT FZE and was reflected as Loans under "Current liabilities" head in the Books of*

*Accounts of the Company. The details of the proceeds of the GDR issuance is attached herewith as **Annexure[F].***

lxx. We humbly submit that the documents and information provided by our Company clearly establishes the bonafide on our part towards the legitimate funding funded by our Company for expansion of our business and it completely negates the baseless allegation of SEBI. Hence, the allegation that we have provided security towards the loan taken by Vintage is false, baseless, unsustainable and without any evidence and therefore it is denied in toto.

lxxi. Further, we deny that any capital of the Company was unavailable for its use on account of the said Pledge Agreement dated July 20, 2007 and the Pledge Agreement dated October 27, 2009. We had already provided SEBI with a detailed statement on the usage of the GDR proceeds along with FIRC copy. It is evident from the said statement that the GDR proceeds were in fact received by the Company and deployed for the purposes set out in the offer documents. We repeat, reiterate and submit that our Company have received all the proceeds of the GDRs issued in 2007 and 2009 into our bank accounts in India, companies subsidiaries overseas and have filed the required reports with the RBI. The copies of the same have already been provided to SEBI.

lxxii. Furthermore, with respect to the allegation that we did not inform Bombay Stock Exchange or shareholders of the Company about signing the Pledge Agreement and Loan Agreement. In this regard, we reiterate our submissions that we were not aware about the said agreements. Without prejudice, we humbly submit that the non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Since there is no specific requirement of such disclosure is mandated under the law, no disclosure of Pledge agreement to BSE made and which cannot be consider as fraud as alleged by SEBI. We further submit that even such disclosure was required, even then non-disclosure of information cannot by any stretch of imagination become fraudulent.

lxxiii. The para 12 of the Notice deal with the Loan agreement dated October 30, 2007, was signed between Vintage and Euram. In this regard, we submit that we are not aware if any Loan Agreement was signed between Vintage and Euram. Further, there is no Pledge Agreement dated October 30, 2007 was signed between us and Euram. It is incorrect on the part of SEBI to allege that said Agreements was signed by Noticee - 2 on behalf of the Company as Director. We humbly submit that we have never authorized by any means Noticee No.2 to sign any such pledge agreement on behalf of the Company.

lxxiv. The para 13 to 16 of the Notice deal with purchase of GDRs issues of the Company. In this regard, it is submitted that there is no prohibition on purchase of GDRs after listing on market or OTC for consideration by Sub-Account of FII registered in India for ultimate cancellation and acquiring underlying shares of

Indian company so long as they are within the ceiling prescribed by RBI. The Notice has produced the statement of detail of purchase by FIIs including Rhodes, KII, IFCF, Sophia in GDRs Issue and but had not pointed out any irregularity or anomaly in these transactions. Further, we submit that we have no connection/relation/ with these institutions, even the Notice has failed to brought any connection/relation with these institutions. Furthermore, we humbly submit that we had no control over who is cancelling or who is buying or who is selling GDRs over OTC or Market. So, there was nothing wrong or fraudulent about these transactions as far as in our case.

lxxv. *The para 17 and 18 of the Notice deal with the details of GDRs for receipt of underlying shares. In this regard, it is submitted that we have no connection/relation/nexus with these institutions. Further, the Notice also failed to brought any connection/relation/nexus with these institutions. Hence, no irregularity or fraud on these transactions can be attributed on us.*

lxxvi. *The paras 19 and 20 of the Notice deal with the counter party analysis of the sell trades of Sub- Accounts, it is observed that Indian entities like Alka, Basmati, SV and Oudh has been major counterparties. In this regard, it is submitted that we do not have any connection/relation/nexus with these counter parties entities. Further, the Notice also failed to provide any evidence/ connection / relation with these entities. Hence, there was nothing wrong or fraudulent about these transactions as far as in our case.*

lxxvii. *Further, it is submitted that purchase of the shares by our promoter group i.e. Shri Dhiraj Kumar Jaiswal, Late Shri Laxmi Pershad Jaiswal and M/s. Espirit Technologies Pvt. Ltd were duly reported to BSE in compliance with SEBI SAST Regulations and PIT Regulations. Hence, there was nothing wrong or fraudulent about these transactions as far as in our case. Further it is submitted that we have no connections /relation/nexus with these seller counter party sub accounts. Furthermore, the Notice also failed to provide any evidence/ connection / relation between us with these entities and/or with AP or his entities. As Acquisition of Shares of Company by promoters does not amount fraud on the stock market and shares acquired through stock exchange where the identity of seller of shares is not available to acquirer of shares.*

lxxviii. *The para 21 of the Notice deal with observations that the entities, Alka, Basmati, SV and Oudh have connections with AP and AP has substantial influence over their entities. In this regard, it is submitted that we have no connections /relation/nexus with these counter parties entities. Further, the Notice also failed to provide any evidence/ connection / relation between us with these entities and/or with AP or his entities.*

lxxix. *It is humbly submitted that the Notice has failed to provide any cogent evidence/ connections and does not pointed any irregularity/illegality not to speak of fraudulency in the respective transactions in the abovementioned paras of the*

Notice. Further, we humbly submit that we have established that each and every transaction whether execution of any legal documents, issue of GDRs, purchase of GDRs by FIIs, cancellation/ of GDRs and issue of underlying shares per se standalone basis were legal and within the rules and regulations of this Act and those of respective countries at the material time. Once GDR issue was complete, we had no direct role in any other activities i.e. purchase of GDR by FII, Cancellation of GDRs and issue of underlying shares etc. so any wrongdoings on the part of other parties cannot be attributed to us.

lxxx. *Further, it has been whimsically, capriciously and arbitrarily alleged in the Notice that we acted as parties to a fraudulent scheme of GDR without even first establishing as to whether a fraud was even conducted in the GDR scheme. The Notice has in no manner throughout produced any charge, document, evidence, material or suggestion as to what exactly was the wrongdoing as regards the scheme of GDR Issuance is concerned and has not even suggested any provision of law or regulation applicable to GDR Issuance which has been violated. In the absence of any such material, such charge and allegation are merely speculative and we are not able to understand the specific act which it has to defend or respond to or which has been alleged to have been fraudulent or violative of any provision of law. It can be seen throughout the Notice that predominant allegation raised against us only pertains to non-disclosure of the alleged Loan and Pledge Agreements*

lxxxi. *Attention is invited to the decision of the Supreme Court in* ***Union of India vs. Chaturbhai M. Patel*** *(AIR 1976 SC 712) which holds that fraud, even in civil proceedings, must be established beyond reasonable doubt. Thus the allegations in the Notice against us does not meet the well settled standards of law and evidence in such a case and needs to be withdrawn. According to the decision of the Securities Appellate Tribunal in* ***Parsoli Corporation vs.SEBI*** *(Appeal No 146/2011 order dated 12th August 2011) where the Hon'ble SAT observed:- "...a serious charge like fraud has to be established on preponderance of probabilities and since this charge is serious, higher has to be the degree of probability to establish the same." The SAT also held in****Sterlite Industries vs. SEBI*** *(Appeal No. 20/2001 dated 22nd October 2001) that "...in the absence of reasonably strong evidence, even in a civil proceeding, a person cannot be held guilty and awarded punishment. Mere surmise, conjuncture or suspicion cannot sustain the finding of fault". It is seen that in the present case, the Notice is admittedly based on low preponderance of probabilities Thus, the Notice is bad in law and so must be withdrawn and the proceedings must be dropped qua us with immediate effect.*

lxxxii. *It is submitted that serious allegation of violation of PFUTP Regulations cannot be alleged on the basis of mere surmises and conjectures and based on the erroneous interpretation of data, as has been done in the instant case. The same is also clear from the decisions given by various courts in numerous cases.*

lxxxiii. *The SAT in its order in case of* ***KSL & Industries Ltd vs. SEBI*** *(SAT Appeal no. 9/2003 decided on 30.09.2009) has held that "I do not find any material on record in support of the said charge. A wild allegation of market manipulation, in particular the charge of fraudulent action unsupported with convincing evidence are not sustained. Fraud cannot survive on mere conjecture and surmises."*

lxxxiv. *In* ***Union of India vs. H.C. Geol (AIR 1964 SC 364)*** *the Hon'ble Court has inter alia held that :*
"the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary inquiries held under the statutory rules".

lxxxv. *In* ***L.D. Jaisinghani vs. Naraindas N Punjabi (1976) 1 SCC 354: AIR 1976 SC 373 at P. 376*** *– wherein Ray, CJ speaking for the Court has observed:*
"In any case we are left in doubt whether the complainants version with which he had come forward with considerable delay was really truthful. We think that in a case of this nature, involving possible debarring of the advocate concerned the evidence should be of a character which should leave no reasonable doubt about guilt. The Disciplinary Committee had not only found the Appellant guilty but had disbarred him permanently. (In Re An advocate AIR 1989 SC 245)".

lxxxvi. *About the test of evidence in a civil proceeding, the following observations made by the Hon'ble Court* ***(Razikram vs. J.S. Chauhan - AIR 1975 SC 667: (1975) 4 SCC 769)*** *is to be noted:*

"It is true that there is no difference between the general rules of evidence in civil and criminal cases and the definition provided in section 3 of the Evidence Act does not draw a distinction between civil and criminal cases. Nor does this definition insist on perfect proof because absolute certainty amounting to demonstration is rarely to be had in the affairs of life. Nevertheless, the standard of measuring proof prescribed by the definition is that of a person of prudence and practical good sense… The same is equally true about proof of a charge of corrupt practice which cannot be established by a mere balance of probabilities".

lxxxvii. *The Hon'ble Supreme Court in yet another case with reference to adjudication under the Sea Customs Act and Land Customs Act (****Ambalal vs. Union of India AIR 1961 SC 264****) relating to imposition of penalty on the person concerned had held:*
"To such a situation though the provisions of the Code of Criminal Procedure or the Evidence Act may not apply, except in so far as they are statutorily made applicable, the fundamental principles of criminal jurisprudence and of natural justice must necessarily apply. If so, the burden of proof is on the customs

authorities and they have to bring home the guilt to the person alleged to have committed a particular offence under the said Acts by adducing evidence"

lxxxviii. *Further in the case of **Seth Gulabchand vs. Seth Kudilal (AIR 1966 SC 1734)**, the Hon'ble Court has inter alia held that:*
"the Indian Evidence Act applies the same standard of proof in civil cases. It makes no difference between cases in which charges of a fraudulent or criminal character are made and cases in which such charges are not made. But this is not to say that the courts will not, while striking the balance of probability keep in mind the presumption of honesty or innocence or the nature of the crime or fraud charged."

lxxxix. *As regards alleged violations of the provisions of SEBI Act and PFUTP Regulations as stated in Para 22 and 23 of the Notice, it is stated that:*

(i) In so far as the alleged violation of Section 12 (A) (a) of the SEBI Act is concerned, it is submitted that we have throughout our conduct of business and as a matter of company policy maintained highest standards of compliance, fairness, integrity and ensured the interests of our investors. From the submissions made by us in the foregoing paragraphs it has been abundantly established that we have never, directly or indirectly, employed any manipulative or deceptive device or contrivance, in relation to the issue, purchase or sale of any shares listed or proposed to be listed on a recognized stock exchange, in contravention of the SEBI Act and rules or regulations made thereunder. Therefore, the Notice has completely erred in alleging that we have violated Section 12A (a) of the SEBI Act.

(ii) In so far as the alleged violation of Section 12(A)(b) of the SEBI Act is concerned, it is submitted that from the submissions made in the foregoing paragraphs it clearly comes out that we have never, directly or indirectly, employed any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange. Therefore, the Notice has completely erred in alleging that we have violated Section 12A (b) of the SEBI Act.

*(iii) In so far as the alleged violation of Section 12(A)(c) of the SEBI Act is concerned, it is submitted that from the submissions made in the foregoing paragraphs it clearly comes out that we have never, directly or indirectly, engaged ourselves in any act, practice, course of business which operates as or would operate as a fraud or deceit upon any person, in connection with the issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the SEBI Act and rules or regulations made thereunder. Therefore, the Notice has completely erred in alleging that we have violated Section 12A(c) of the SEBI Act. *

(iv) In so far as Regulation 3(b) of the PFTUP Regulations is concerned, it is submitted that from the submissions made by us in the foregoing paragraphs it has been abundantly established that we have never, directly or indirectly, employed any manipulative or deceptive device or contrivance, in relation to the issue, purchase or sale of any shares listed or proposed to be listed on a recognized stock exchange, in contravention of the SEBI Act and rules or regulations made thereunder. Therefore, the Notice has completely erred in alleging that we have violated Section Regulation 3(b) of the PFUTP Regulations.

(v) In so far as the alleged violation of Regulation 3(c) of the PFUTP Regulations is concerned, it is submitted that from the submissions made in the foregoing paragraphs it clearly comes out that we have never, directly or indirectly, employed any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange. Therefore, the Notice has completely erred in alleging that we have violated Regulation 3(c) of the PFUTP Regulations.

(vi) In so far as the alleged violation of Regulation 3(d) of the PFUTP Regulations is concerned, it is submitted that from the submissions made in the foregoing paragraphs it clearly comes out that we have never, directly or indirectly, engaged ourselves in any act, practice, course of business which operates as or would operate as a fraud or deceit upon any person, in connection with the issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the SEBI Act and rules or regulations made thereunder. Therefore, the Notice has completely erred in alleging that we have violated Regulation 3(d) of the PFUTP Regulations.

(vii) In so far as the alleged violation of Regulation 4(2) (c) of the PFUTP Regulations is concerned, it is submitted that: from the submissions made in the foregoing paragraphs it clearly emerges that we have neither advanced nor agreed to advance any money to any person thereby inducing any other person to offer to buy security in any issue only with intention of securing minimum subscription to such issue; there is no allegation in the Notice that such the alleged money advanced by us was with an intention of securing minimum subscription to an issue; or with an intention to induced the general public in India to deal with our shares; Therefore, the Notice has completely erred in alleging that we have violated Regulation 4(2)(c) of the PFUTP Regulations.

(viii) In so far as the alleged violation of Regulation 4(2)(f) of the PFUTP Regulations is concerned, it is submitted that from the submissions made in the foregoing submissions), it has been established beyond doubt that we have not published or caused to be published or caused to be reported

by any person dealing in securities any information which is not true or which we did not believe to be true prior to or in the course of dealing in securities. It is reiterated that any information furnished by us to the BSE was under the bona fide belief of its truth and accuracy and on the basis of the valid documents.

(ix) In so far as the alleged violation of Regulation 4(2)(k) of the PFUTP Regulations is concerned, it is submitted that: From the submissions made in the foregoing submissions, it has been established beyond doubt we have never carried out any advertisement that was misleading or that contained information in a distorted manner and which could influence the decision of the investors. Without prejudice to the above, the Notice does contain any allegation as to any such 'advertisement' having been carried by us. Therefore, the Notice has completely erred in alleging that we have violated Regulation 4(2)(k) of the PFUTP Regulations.

(x) In so far as the alleged violation of Regulation 4(2)(r) of the PFUTP Regulations is concerned, it is submitted that: it has been established beyond doubt we have never planted any news which could induce sale or purchase of securities.

xc. From the abovementioned paras it is clear that the allegations of violating the SEBI Act and PFUTP Regulations cannot be alleged against us and the Notice be dropped / quashed forthwith.

xci. The para 24 to 26 of the Notice deal with allegation of violation of Section 11C(3) read with 11C(6) of the SEBI Act. In this regard, it is submitted that we had submitted copies of Bank statements and furnished all the relevant information which are available with us and the same were duly acknowledged by SEBI, the contents of which are self-explanatory, if any information was being not submitted to SEBI it was due to certain situations which were out of our control as we were being defrauded by local agent of CAT FZE and due to long gap of time of five years between the transactions taken place and summons issued by SEBI. We submit sincerely and with all earnestness that any such omission is not deliberate or intentional. Hence, we have not violated any provisions of Sec 11 C (3) and Sec 11 C (6) of the SEBI Act.

xcii. Further, we deny that we have not provided SEBI with the complete statement of accounts relating to our bank account with Euram Bank; the said Show Cause Notice does not mention why and in what manner, the bank account statement provided by us is incomplete.

xciii. Further, we humbly submits that in response to SEBI's Letter No.ISD/SR/AS/ASR/35082/2011/1, Dated November 16, 2011, we had confirmed that Mr.Dhiraj Kumar Jaiswal, Managing Director of our Company and Mr.Vasant Bajaj would attend the personal hearing before ShriPrashant

Saran on November 29, 2011 at 4.00 PM at Securities and Exchange Board of India, SEBI Bhawan, Plot No.C4-A,"G" Block, BandraKurla Complex, Mumbai – 400051 and in fact we have attended personal hearing on that date.

xciv. *With regard to the allegation that we did not provide the details sought by SEBI vide emails dated April 20, 2012 and July 19, 2012, we submit that we hesitated to provide the details sought by email since we did not receive the physical copies of the letters (sent by email); however, upon receipt of the physical copies of the letters, we immediately submitted the details sought by SEBI.*

xcv. *The para no. 29 and 30 of the Notice deals with the allegation of funding the promoters and non- disclosure of related party transactions. In this regard, we reiterateour submission thatthe said allegation is patently erroneous and based on surmises and conjecture. We humbly submit that just because the amount has been transferred between the Promoter and the Company under valid legal transactions cannot be said illegal or invalid until and unless any contrary its established.*

xcvi. *We submit that one of our Company's promoter, Shri Dinesh Jaiswal acquired CAT USA at a cost of Rs.10 million US Dollars, which was equivalent to around Rs.4 Crores at relevant time.*

xcvii. *We carried on business in USA through CAT USA and the Lead Manager to the GDR issuance i.e. Pan, advised us to acquire CAT USA, so that business and revenues could be consolidated into the Shri Dinesh Jaiswal's Accounts.*

xcviii. *Accordingly, the Board of Directors of the Company in the meeting held on May 12, 2005 decided to acquire CAT USA for a sum of USD 1 Million and the said decision was approved by the shareholders in the 10th AGM of the Company held on September 12, 2005.*

xcix. *However, we were unable to pay the said amount immediately to Shri Dinesh Jaiswal, we treated it as an unsecured loan from Shri Dinesh Jaiswal and showed the same as such in the Balance Sheet of the Company for the Financial Year ended March 31, 2008.*

c. *The said unsecured loan was repaid to Shri Dinesh Jaiswal or his assignees/nominees i.e. Espirit, and other promoters, over the period from 2008 to 2014. We humbly submit that the Company is not concerned with and cannot be held liable or responsible for the use of the loan repayments Shri Dinesh Jaiswal and/or Espirit.*

ci. *Further, we humbly submit that the Company paid rent to Late ShriLaxmiPershadJaiswal for the office permises located at H No. 5-4-736, Nampally Station Road, Abids, Hyderabad – 500001 in terms of lease agreement. We humbly submit that the Company is not concerned with and* *cannot be held liable or responsible for the use of rent so paid to Late Shri Laxmi Pershad Jaiswal.*

cii. *Hence, we humbly submit that we cannot be held liable for the end use of these funds by Late Shri Laxmi pershad Jaiswal, Shri Dhiraj Jaiswal and Espirit. In view of the above, we deny that the Company has funded the purchase of shares by Late Shri Laxmi Pershad Jaiswal, Shri Dhiraj Jaiswal and Espirit as falsely alleged or otherwise. We further deny that we have violated the provisions of Section 77 of the Companies Act, 1956 as erroneously alleged or otherwise.*

ciii. *Further it is alleged that we have not disclosed the fund transfer between the Company and Late Shri Laxmi Pershad Jaiswal and Shri Dinesh Jaiswal under the head "related party transactions".*

civ. *Further, it is also alleged that we have related party transactions with Espirit and on perusal of the Company's annual reports 2008-2009 and 2009-2010, it can be seen that the Company has merely mentioned that related party transactions have occurred between the Company and Espirit. Further, it is also alleged that contrary to the provisions of Accounting Standard 18, no details regarding the nature of the transactions were provided in the annual report.*

cv. *In this regard, it is humbly submitted that the said allegation is patently erroneous and without due consideration of law. We submit that we did not have any related party transactions, except there was transaction of payment of monthly office rent, which was exempted transaction as per CA Act, 1956. Apart from rent only Unsecured Loan given to company which was clearly reported in Balance Sheet Schedules and disclosed to the shareholders.*

cvi. *Further, without prejudice, it is humbly submitted the said transaction pertaining to unsecured loan does not comes under the purview of Related party transactions under CA Act, 1956.*

cvii. *Further, without prejudice, with respect to allegation that we merely mentioned that related party transactions have occurred between us and Espirit, which is contrary to the provision of Accounting Standard 18, no details regarding the nature of transactions and volume of the transactions were provided in the annual report. It is humbly submitted that balance sheet has been duly audited by the Statutory Auditors and accepted by the Income Tax Authorities and It is not open to your good self to question the entries in the balance sheet as the same is beyond your goodself brief and jurisdiction.*

cviii. *The para no. 31 of the Notice deal with penal provision, in this regard, we submit that we have repeatedly demonstrated in preceding paragraphs that we have not indulged in any fraudulent or unfair trade practices relating to securities. No fraud has been made out in any of the allegation. Allegations of fraud are* *serious allegation and require serious and substantial proof. We humbly submit that there is no loss or fraud has been caused or intended to be caused to any person and this has not been even alleged in the Notice. The charge of having indulged in fraudulent and unfair trade practices relating to securities thus wholly fails and hence there is no question of levy of any penalty on our Company.*

cix. *It is further submitted that while taking a decision under the impugned provision, the Learned Adjudicating Officer has to take in to account Section 15J of the SEBI Act, 1992 which specifies the factors to be considered before levying any penalty, which are as under:*
"(a) the amount of disproportionate gain or unfair advantage, whether 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."

cx. *With regard to Clause (a):- "the amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default": it is submitted that the findings do not lead to the conclusion that there has been disproportionate gain or unfair advantage to us.*

cxi. *We would further like to bring forth before your goodself, the order of the Hon'ble SAT dated June 8th, 2018 in the matter of* ***KII Industries V/s SEBI*** *wherein SAT has held that "Therefore, when funds were received under a contract which is in accordance with law, it could not be presumed that the funds were received by the appellant for committing fraud on the investors in India" in the present set of facts too the entire process of GDR issue was agreed by the banks and various enities involved. The loan agreement and pledge agreement were also approved by the EURAM bank and there was no irregularity in the same.*

cxii. *In the the light of the above mentioned Judgement, it is submitted that that the present Notice has failed to show any fund transfer between our Company and the concerned entities to prove that we received any ill-gotten gains from the said GDR issue, it has only derived baseless connection between our Company and other entities based on mere surmises and conjectures.*

cxiii. *With regard to Clause (b);- "the amount of loss caused to an investor or group of investors as a result of the default" : it is submitted that there are no investor complaints filed at any Stock Exchange or SEBI in respect of the present matter and the same has also not been alleged in the Notice. In absence of any direct information, the allegation of causing loss to other investors is baseless.*

cxiv. *With regard to Clause (c):- "the repetitive nature of the default." it is stated that our act does not have a repetitive nature of defaults and carries on their job in a dignified and respectful manner. It is submitted that the instances pointed out* *in the Notice are isolated instances and hence there is no question of repetitive nature of default.*

cxv. *Having stated the factors of Section 15J, we would like to draw the attention of your goodself to a few case laws, wherein the respective courts have dealt into the aspect of penalty and factors for levying any penalty on any delinquent. In this regard your goodself kind attention is drawn to Hon'ble Supreme Court's decision in the case of* ***Hindustan Steel vs. State of Orissa (AIR 1970 SC 253)*** *where it was held as follows:*

"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceeding and penalty will not be ordinarily imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute."

cxvi. *Again, the Hon'ble Apex Court in the case of* ***Ex-Naik Sardar Singh vs. Union of India (1991) 3 SCC 212)*** *inter alia held that:*
"the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."

cxvii. *Further in the matter of* ***Ranjit Thakur vs. Union of India (AIR 1987 SC 2386)*** *it was held that:*
"The Sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review would ensure that even on an aspect which is, otherwise, within the exclusive province of Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic then the sentence would not be immune from correction. Irrationality and perversity are recognized ground of judicial review. The penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Art. 14 of the Constitution. The point to note and emphasis is that all powers have legal limits."

cxviii. *Further, Hon'ble Supreme Court of India in the case of* ***Adjudicating Officer vs. Bhavesh Pabari*** *dated 28th February, 2019 held that section 15J are illustrative in nature and depends from situation to situation:*

"……This dictum, however, does not mean that factum of continuing default is not a relevant factor, as we have held that clauses (a) to (c) in Section 15J of the SEBI Act are merely illustrative and are not the ***only grounds/factors which can be taken into consideration while determining the quantum of penalty****."*

cxix. *Further in the matter of* ***P G Electroplast vs SEBI****, Hon'ble SAT held that:*
"…….The AO while imposing the penalty has not factored this debarment while fixing the quantum of penalty. Further, in our opinion, the factors contemplated under Section 15J was also not considered by the AO in the right perspective…."

cxx. *Further, in light of aforesaid order dated August 02, 2019 of Hon'ble SAT in the matter of* ***P G Electroplast vs SEBI****. it is submitted that the vide Order dated March 28, 2019 Hon'ble Whole Time Member of SEBI has restrained usissuing equity shares or any other instrument convertible into equity shares or any other security for a period of five years from the date of that Order. Hence, before imposing the penalty, without prejudice, your goodself should consider the said restrained order.*

cxxi. *Further, we humbly submit that due to Covid-19 pandemic, there was complete lock down in country. Since our business come under IT industry, we were under lock down for the nearly 9 months and accrued huge losses. Hence, we under huge financial distress. Therefore, it is humbly submitted to your goodself, that it will take a years to recover and recoup our losses in order to service in the IT market due to Covid-19 adverse affect on our business. Hence, it is humbly prayed to your good self that before imposing the any minimal penalty, without prejudice, your goodself should consider our economic distress situation due to the said Covid-19 pandemic situation.*

cxxii. *In this regard, we humbly submit that the Hon'ble Securities Appellate Tribunal in* ***Alkan Projects Pvt Ltd v. SEBI*** *wherein it was held that the capacity to pay the penalty also has to be considered while imposing penalty. The following observations of the Hon'ble Tribunal are noted:*
"Although Section 15J does not consider impecuniosity as a factor in adjudicating the quantum of penalty, it appears to us it would be an important factor along with the three factors mentioned in 15J viz., (a) amount of disproportionate gain (b) amount of loss caused to the investor and (c) repetitive nature of default."

cxxiii. *It is submitted that the aforesaid explanations make it quite clear that we have not violated any provisions of the SEBI Act and PFUTP Regulations and* *therefore the directions and findings of the Notice must be quashed and set aside with immediate effect. The Notice is uncalled for and unjust since there is no justification in subjecting us to such harsh and baseless allegations. It is submitted that, we have not committed any wrong and no charge has been established against us on prima facie, to warrant any action. Therefore, it will be unfair on unwarranted directions under the SEBI Act and PFUTP Regulations against our Company.*

cxxiv. It is submitted that we reserve our right to modify and add additional grounds in these submissions. It is respectfully submitted that the allegations in the Notice do not flow out of the factual position and therefore demolishes the charges and therefore it is humbly prayed that the Notice be set aside and the charges as levelled against us must be dropped.

cxxv. We may also be given an opportunity of personal hearing before any decision is taken by your goodself in the present matter.

10. Apart from the above common submissions, I note that Noticee 2, 3, 8, and 9 have made the following submissions -

i. Noticee 2 (Shri Dhiraj KumarJaiswal) has submitted as follows – "*I am passionate about developing leaders within my organization and has conceptualized the full life cycle leadership system which develops leaders at all levels of CAT Technologies Limited. I worked very hard to ensure the growth of the company. I hold a Bachelor degree in Science from Osmania University in India.*"

ii. Noticee 3 (Shri Dinesh Kumar Jaiswal) as submitted as follows - "*I am the founder of CAT Technology Inc. I am the key promoter and serves as the president of the CAT Technology Inc. I am a seasoned entrepreneur with effective leadership and vision. I worked hard to make CAT Technology Inc. a truly global player that provides international quality standard solutions in software, technical consulting, e-solutions and IT enabled services.*"

iii. Noticee 8 (Ms. Namritha Jaiswal) has submitted as follows – "*I hold a Bachelor Degree in Arts. I am a house wife and also serves as a Director of family running business of Espirit Technologies Private Limited. I am involved in developing and* *implementing strategic solutions related to different divisions of Espirit Technologies Private Limited to achieve their goals.*"

iv. Noticee 9 (Ms. Nisha Jaiswal) has submitted as follows – "*I serve as one of the board of directors of CAT Technologies Limited. I hold a degree in commerce. I worked very hard for developing and marketing software solutions to International clients. My knowledge and experience in the project management areas helped the organization to attain success in multiple business segments."*

11. Noticee 7 (Espirit Technologies Pvt Ltd) vide its letter dated November 23, 2020, made the following submissions –

> *1) Please refer to the captioned Notice dated March 28, 2019, ("**SCN/Notice**") in which inter alia it has been alleged that we have violated the provisions of Section 12A(a),(b) and (c) of SEBI Act, 1992 ("**SEBI, Act**") read with Regulations 3 (b), (c) and (d), 4(2)(c), 4(2)(f), 4(2)(k) and 4 (2)(r) of SEBI (Prohibition of Fraudulent & Unfair Trade Practices Relating to Securities Market) Regulations, 2003 **("PFUTP Regulations").***
>
> *2) Further, vide the Notice your goodself have called upon us to show cause as to why an inquiry should not be held against us in term of Rule 4 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 ("**Adjudication Rules**") read with Section 15 I of the SEBI Act, and why penalty, if any, should not be imposed under Section 15HA and Section 15 A(a) of the SEBI Act upon us for the alleged contravention of regulations as mentioned above.*
>
> *3) At the outset, it is submitted that we have not violated any provisions of SEBI Act and PFUTP Regulations as alleged mentioned above. We humbly submit that we were never being funded by CAT Technologies Limited for purchase of shares of CAT Technologies Limited as falsely alleged or Otherwise.*
>
> *4) Further, it is evident from the Notice itself that there are no allegations or materials brought on record to establish any violation by us in respect of the provisions of SEBI Act and/or PFUTP Regulations as alleged in the Notice. It is submitted that for the violation of the provisions as alleged in the Notice, the specified provisions of the SEBI Act and PFUTP Regulations are not attracted.*
>
> *5) Furthermore, we vehemently denies each and every allegations levied upon us. It is humbly submitted that the allegations levied upon us are baseless and devoid of*

any evidence in support of them and the same shall be dealt with in detail in the para wise reply to the observations made in the Notice.

PARAWISE REPLY TO THE SHOW CAUSE NOTICE

*6) The paras no. 1 and 2 of the Notice deals with Securities and Exchange Board of India ("SEBI") had conducted investigation against several Indian companies that has issued Global Depository Receipts ("**GDR**") in overseas market. SEBI had investigated two GDR issues by M/s CAT Technologies Limited ("**CAT**"). First GDR issue was of 43,04,348 GDRs (amounting to USD 6.46 Million) and issue closed on July 27, 2007. Second GDR issue was of 15,95,333 GDRs (amounting to USD 10.002 Million) and issued closed on November 06, 2009. Further, Pan Asia Advisors Ltd. ("**Pan Asia**") was the lead Manager for both the GDR issues of the CAT. With regard to this it is submitted that the same is a matter of record and so we do not have any comments to offer on the same.*

7) The paras 3 and 4 of the Notice deal with the investors in the GDR issues by the CAT. In this regard, we humbly submit that we neither had any role to play in the allotment of GDRs; nor we were aware of the identity of the holders of the GDRs and so we do not have any comments to offer on the same.

*8) The para 5 of the Notice deal with the allegation of the Loan and Pledge Agreement for its First GDR issue and Second GDR issue were signed among the CAT, Vintage FZE ("**Vintage**") and EURAM Bank ("**Euram**").In this regard, we humbly submit that we neither had any role to play in the said Loan and Pledge Agreement; nor we were aware of the signatories to the said Loan and Pledge Agreement and so we do not have any comments to offer on the same.*

9) The para 6 of the Notice deal with the loan agreement (Loan Agreement No. K271009-002) dated October 27, 2009, was signed between Euram and Vintage. In this regard, we humbly submit that we neither had any role to play in the said Loan Agreement; nor there is any privity of contract between the executants of loan agreement and us. Hence, no comments to offer on the same.

10) The para 7 of the Notice deal with the Pledge Agreement dated October 27, 2009, was alleged to be signed between CAT and Euram. In this regard, we humbly submit that we neither had any role to play in the said Pledge Agreement; nor there is any privity of contract between the executants of Pledge agreement and us. Hence, no comments to offer on the same.

11) The paras 8 to 10 deal of the Notice deal with the preamble of the Pledge Agreement. In this regard, we humbly submit that we neither had any role to play in the said Pledge Agreement and not aware of the Contents of Pledge Agreement; nor there is any privity of contract between the executants of Pledge agreement and us. Hence, no comments to offer on the same.

12) The para 11 of the Notice deal with the allegation of the opening of the bank account no. 540013 with Euram and keep the proceeds of GDRs, to secure rights of Euram against the loan given by Euram to Vintage for subscription of the GDR issue. In this regard, we humbly submit that we neither had any role in opening of the Bank account nor aware of any such kind of transactions. Hence, no comments to offer on the same.

13) The para 12 of the Notice deal with the Loan agreement dated July23, 2007, was signed between Vintage and Euram. In this regard, we submit that we are not aware if any Loan Agreement was signed between Vintage and Euram. Further, we are not aware about any Pledge Agreement dated July20, 2007 signed between CAT and Euram. Hence, no comments to offer on the same.

14) The para 13 of the Notice deal with Acquisition of GDRs issues of the CAT. In this regard, we humbly submit that we neither had any role in acquisition of GDRs nor aware of any such kind of transactions. Hence, no comments to offer on the same.

15) The para 14 to 18 of the Notice deal with Cancellation of the GDRs of the CATthe details of GDRs for receipt of underlying shares. In this regard, we humbly submit that we neither had any role in Cancellation of GDRs nor aware of any such kind of transactions. Hence, no comments to offer on the same.

16) The para 19 and 20 of the Notice deal with in this regard, it is submitted that we have no connection/relation/nexus with these institutions. Further, the Notice also failed to brought any connection/relation/nexus with these institutions. Hence, no irregularity or fraud on these transactions can be attributed on us.

17) Further, it is submitted that purchase of the shares by us were duly reported to BSE in compliance with SEBI SAST Regulations and PIT Regulations by CAT. Hence, there was nothing wrong or fraudulent about these transactions as far as in our case. Further it is submitted that we have no connections /relation/nexus with these seller counter party sub accounts. Furthermore, the Notice also failed to provide any evidence/ connection / relation between us with these entities and/or with AP or his entities.

18) The para 20 of the Notice deal with thecounter party analysis of the sell trades of Sub- Accounts, it is observed that Indian entities like SV, Alka, Basmati and Oudh has been major counterparties. In this regard, it is submitted that we do not have any connection/relation/nexus with these counter parties entities. Further, the Notice also failed to provide any evidence/ connection / relation with these entities. Hence, there was nothing wrong or fraudulent about these transactions as far as in our case.

19) The para 21 of the Notice deal with observations that the entities, Alka, Basmati, SV and Oudh have connections with AP and AP has substantial influence over their entities. In this regard, it is submitted that we have no connections /relation/nexus *with these counter parties entities. Further, the Notice also failed to provide any evidence/ connection / relation between us with these entities and/or with AP or his entities.*

20) We humbly submit that the Notice has failed to provide any cogent evidence/ connections /role and does not pointed any irregularity/illegality not to speak of fraudulency in the respective transactions in the abovementioned paras of the Notice. Further, we humbly submit that the we have established we had no role in any activities i.e. issuance of GDR, purchase of GDR by FII, Cancellation of GDRs and issue of underlying shares etc so any wrongdoings on the part of other parties cannot be attributed to us

21) Further, it has been whimsically, capriciously and arbitrarily alleged in the Notice that we acted as parties to a fraudulent scheme of GDR without even first establishing our role and connection in the whole GDR scheme. The Notice has in no manner throughout produced any charge, document, evidence, material or suggestion as to what exactly was our wrongdoing as regards the scheme of GDR Issuance is concerned and has not even suggested any provision of law or regulation applicable to GDR Issuance which has been violated by us. In the absence of any such material, such charge and allegation is merely speculative and we are not able to understand the specific act which it has to defend or respond to or which has been alleged to have been fraudulent or violative of any provision of law. It can be seen throughout the Notice that predominant allegation raised against us only pertains to Related Party Transactions have occurred between the CAT and us, which was not allegedly reported by the CAT in their balance sheet.

*22) Attention is invited to the decision of the Supreme Court in **Union of India vs. Chaturbhai M. Patel** (AIR 1976 SC 712) which holds that fraud, even in civil proceedings, must be established beyond reasonable doubt. Thus the allegations in the Notice againstus does not meet the well settled standards of law and evidence in such a case and needs to be withdrawn. According to the decision of the Securities Appellate Tribunal in **Parsoli Corporation vs. SEBI**(Appeal No 146/2011 order dated 12th August 2011) where the Hon'ble SAT observed:- "...a serious charge like fraud has to be established on preponderance of probabilities and since this charge is serious, higher has to be the degree of probability to establish the same." The SAT also held in **Sterlite Industries vs. SEBI** (Appeal No. 20/2001 dated 22nd October 2001) that "...in the absence of reasonably strong evidence, even in a civil proceeding, a person cannot be held guilty and awarded punishment. Mere surmise, conjuncture or suspicion cannot sustain the finding of fault". It is seen that in the present case, the Notice is admittedly based on low preponderance of probabilities Thus, the Notice is bad in law and so must be withdrawn and the proceedings must be dropped qua us with immediate effect.*

23) It is submitted that serious allegation of violation of PFUTP Regulations cannot be alleged on the basis of mere surmises and conjectures and based on the *erroneous interpretation of data, as has been done in the instant case. The same is also clear from the decisions given by various courts in numerous cases.*

24) The SAT in its order in case of ***KSL & Industries Ltd vs. SEBI*** *(SAT Appeal no. 9/2003 decided on 30.09.2009) has held that "I do not find any material on record in support of the said charge. A wild allegation of market manipulation, in particular the charge of fraudulent action unsupported with convincing evidence are not sustained. Fraud cannot survive on mere conjecture and surmises."*

25) In ***Union of India vs. H.C. Geol (AIR 1964 SC 364)*** *the Hon'ble Court has inter alia held that :*
"the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary inquiries held under the statutory rules".

26) In ***L.D. Jaisinghani vs. Naraindas N Punjabi (1976) 1 SCC 354: AIR 1976 SC 373 at P. 376 –*** *wherein Ray, CJ speaking for the Court has observed:*

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

27) About the test of evidence in a civil proceeding, the following observations made by the Hon'ble Court ***(Razikram vs. J.S. Chauhan - AIR 1975 SC 667: (1975) 4 SCC 769)*** *is to be noted:*

> *"It is true that there is no difference between the general rules of evidence in civil and criminal cases and the definition provided in section 3 of the Evidence Act does not draw a distinction between civil and criminal cases. Nor does this definition insist on perfect proof because absolute certainty amounting to demonstration is rarely to be had in the affairs of life. Nevertheless, the standard of measuring proof prescribed by the definition is that of a person of prudence and practical good sense… The same is equally true about proof of a charge of corrupt practice which cannot be established by a mere balance of probabilities".*

*28) The Hon'ble Supreme Court in yet another case with reference to adjudication under the Sea Customs Act and Land Customs Act (****Ambalal vs. Union of India AIR 1961 SC 264****) relating to imposition of penalty on the person concerned had held:*

> *"To such a situation though the provisions of the Code of Criminal Procedure or the Evidence Act may not apply, except in so far as they are statutorily made applicable, the fundamental principles of criminal jurisprudence and of natural justice must necessarily apply. If so, the burden of proof is on the customs authorities and they have to bring home the guilt to the person alleged to have committed a particular offence under the said Acts by adducing evidence"*

*29) Further in the case of **Seth Gulabchand vs. Seth Kudilal (AIR 1966 SC 1734)**, the Hon'ble Court has inter alia held that:*

> *"the Indian Evidence Act applies the same standard of proof in civil cases. It makes no difference between cases in which charges of a fraudulent or criminal character are made and cases in which such charges are not made. But this is not to say that the courts will not, while striking the balance of probability keep in mind the presumption of honesty or innocence or the nature of the crime or fraud charged."*

30) As regards alleged violations of the provisions of SEBI Act and PFUTP Regulations as stated in Para 22 to 23, it is stated that:

No violations of Sections 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(b), 3(c), 3(d) and 4(2)(c), 4(2)(f), and 4(2)(k) and 4(2)(r) of the PFUTP Regulations having been committed by us:

(i) In so far as the alleged violation of Section 12 (A) (a) of the SEBI Act is concerned, it is submitted that we have throughout our conduct of business and as a matter of company policy maintained highest standards of compliance, fairness, integrity and ensured the interests of our investors. From the submissions made by us in the foregoing paragraphs it has been abundantly established that we have never, directly or indirectly, employed any manipulative or deceptive device or contrivance, in relation to the issue, purchase or sale of any shares listed or proposed to be listed on a recognized stock exchange, in contravention of the SEBI Act and rules or regulations made thereunder. Therefore, the Notice has completely erred in alleging that we have violated Section 12A (a) of the SEBI Act.

(ii) In so far as the alleged violation of Section 12(A)(b) of the SEBI Act is concerned, it is submitted that from the submissions made in the foregoing paragraphs it clearly comes out that we have never, directly or indirectly, employed any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange. Therefore, the Notice has completely erred in alleging that we have violated Section 12A (b) of the SEBI Act.

(iii) In so far as the alleged violation of Section 12(A)(c) of the SEBI Act is concerned, it is submitted that from the submissions made in the foregoing paragraphs it clearly comes out that we have never, directly or indirectly, engaged ourselves in any act, practice, course of business which operates as or would operate as a fraud or deceit upon any person, in connection with the issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the SEBI Act and rules or regulations made thereunder. Therefore, the Notice has completely erred in alleging that we have violated Section 12A(c) of the SEBI Act.

(iv) In so far as Regulation 3(b) of the PFTUP Regulations is concerned, it is submitted that from the submissions made by us in the foregoing paragraphs it has been abundantly established that we have never, directly or indirectly, employed any manipulative or deceptive device or contrivance, in relation to the issue, purchase or sale of any shares listed or proposed to be listed on a recognized stock exchange, in contravention of the SEBI Act and rules or regulations made

thereunder. Therefore, the Notice has completely erred in alleging that we have violated Section Regulation 3(b) of the PFUTP Regulations.

(v) In so far as the alleged violation of Regulation 3(c) of the PFUTP Regulations is concerned, it is submitted that from the submissions made in the foregoing paragraphs it clearly comes out that we have never, directly or indirectly, employed any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange. Therefore, the Notice has completely erred in alleging that we have violated Regulation 3(c) of the PFUTP Regulations.

(vi) In so far as the alleged violation of Regulation 3(d) of the PFUTP Regulations is concerned, it is submitted that from the submissions made in the foregoing paragraphs it clearly comes out that we have never, directly or indirectly, engaged ourselves in any act, practice, course of business which operates as or would operate as a fraud or deceit upon any person, in connection with the issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the SEBI Act and rules or regulations made thereunder. Therefore, the Notice has completely erred in alleging that we have violated Regulation 3(d) of the PFUTP Regulations.

(vii) In so far as the alleged violation of Regulation 4(2) (c) of the PFUTP Regulations is concerned, it is submitted that: from the submissions made in the foregoing paragraphs it clearly emerges that we have neither advanced nor agreed to advance any money to any person thereby inducing any other person to offer to buy security in any issue only with intention of securing minimum subscription to such issue; there is no allegation in the Notice that such the alleged money advanced by us was with an intention of securing minimum subscription to an issue; or with an intention to induced the general public in India to deal with our shares; Therefore, the Notice has completely erred in alleging that we have violated Regulation 4(2)(c) of the PFUTP Regulations.'

(viii) In so far as the alleged violation of Regulation 4(2)(f) of the PFUTP Regulations is concerned, it is submitted that from the submissions made in the foregoing submissions), it has been established beyond doubt that we have not published or caused to be published or caused to be reported by any person dealing in securities any information which is not true or which we did not believe to be true prior to or in the course of dealing in securities. It is reiterated that any information furnished by us to the BSE was under the bona fide belief of its truth and accuracy and on the basis of the valid documents.

(ix) In so far as the alleged violation of Regulation 4(2)(k) of the PFUTP Regulations is concerned, it is submitted that: From the submissions made in the foregoing submissions, it has been established beyond doubt we have never carried out any advertisement that was misleading or that contained information in a distorted manner and which could influence the decision of the investors. Without prejudice to the above, the Notice does contain any allegation as to any such 'advertisement' having been carried by us. Therefore, the Notice has completely erred in alleging that we have violated Regulation 4(2)(k) of the PFUTP Regulations.

(x) In so far as the alleged violation of Regulation 4(2)(r) of the PFUTP Regulations is concerned, it is submitted that: it has been established beyond doubt we have never planted any news which could induce sale or purchase of securities.

31) From the abovementioned paras it is clear that the allegations of violating the SEBI Act and PFUTP Regulations cannot be alleged against us and the Notice be dropped / quashed forthwith.

32) The para 24 of the Notice deal with Non-furnishing of information and misleading submissions by the CAT. In this regard, we humbly submit that we neither had any role to play in the non-furnishing of information and misleading submissions by the CAT; nor we are aware about such information. Hence, no comments to offer on the same.

33) The para 25 of the Notice deal with non-compliance with the summons andnon-furnishing of the information to SEBI by the CAT. In this regard, we humbly submit that we neither had any role to play in the non-furnishing of information by the CAT; nor we are aware about such information. Hence, no comments to offer on the same.

34) The para 26 of the Notice deal with allegation that the CAT made wrong submission related to Pledge and Loan Agreement. In this regard, we humbly submit that we neither had any role to play in the wrong submissions made by the CAT; nor we are aware about such information. Hence, no comments to offer on the same.

35) The para 27 to 28 of the Notice deal with allegation of violation of Section 11C(3) read with 11C(6) of the SEBI Act. In this regard, we humbly submit that we neither had any role to play in the non-furnishing of information and misleading submissions by the CAT; nor we are aware about such information. Therefore, no comments to offer on the same. Hence, we have not violated any provisions of Sec 11 C (3) and Sec 11 C (6) of the SEBI Act.

36) The para 29 and 30 of the Notice deal with the allegation of funding the promoters and non- disclosure of related party transactions. In this regard, it is humbly submitted that the said allegation is patently erroneous and without due consideration of law. We submit that we did not have any related party transactions, even without prejudice, if it is related party transactions, then also it is not our duty disclosed to the Exchange. Hence no liability can be cast upon us.

37) Further, the funds we have received from the CAT was under as assignee of Shri Dhiraj Jaiswal, which was duly reported in balance sheet and Exchange.

38) Further, without prejudice, it is humbly submitted that the transactions which triggered the materiality policy are need to be disclosed to the Exchange or shareholders. However, in the present case the said transaction pertaining to unsecured loan had not triggered the materiality policy of the Company. Hence, there was no need to disclose the aforesaid transaction at the relevant period.

39) The para no. 31of the Notice deal with penal provision, in this regard, we submit that we have repeatedly demonstrated in preceding paragraphs that we have not indulged in any fraudulent or unfair trade practices relating to securities. No fraud has been made out in any of the allegation. Allegations of fraud are serious allegation and require serious and substantial proof. We humbly submit that there is no loss or fraud has been caused or intended to be caused to any person and this has not been even alleged in the Notice. The charge of having indulged in fraudulent and unfair trade practices relating to securities thus wholly fails and hence there is no question of levy of any penalty on our Company.

40) It is further submitted that while taking a decision under the impugned provision, the Learned Adjudicating Officer has to take in to account Section 15J of the SEBI Act, 1992 which specifies the factors to be considered before levying any penalty, which are as under:

> *"(a) the amount of disproportionate gain or unfair advantage, whether 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."*

41) With regard to Clause (a):- "the amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default": it is submitted that the findings do not lead to the conclusion that there has been disproportionate gain or unfair advantage to us.

42) We would further like to bring forth before your goodself, the order of the Hon'ble SAT dated June 8th, 2018 in the matter of KII Industries V/s SEBI wherein SAT has held that "Therefore, when funds were received under a contract which is in accordance with law, it could not be presumed that the funds were received by the appellant for committing fraud on the investors in India" in the present set of facts too the entire process of GDR issue was agreed by the banks and various enities involved. The loan agreement and pledge agreement were also approved by the EURAM bank and there was no irregularity in the same.

43) In the light of the above mentioned Judgement, it is submitted that that the present Notice has failed to show any fund transfer between our Company and the concerned entities to prove that we received any ill-gotten gains from the said GDR issue, it has only derived baseless connection between our Company and other entities based on mere surmises and conjectures.

44) With regard to Clause (b);- "the amount of loss caused to an investor or group of investors as a result of the default" : it is submitted that there are no investor complaints filed at any Stock Exchange or SEBI in respect of the present matter and the same has also not been alleged in the Notice. In absence of any direct information, the allegation of causing loss to other investors is baseless.

45) With regard to Clause (c):- "the repetitive nature of the default." it is stated that our act does not have a repetitive nature of defaults and carries on their job in a dignified and respectful manner. It is submitted that the instances pointed out in the Notice are isolated instances and hence there is no question of repetitive nature of default.

46) Having stated the factors of Section 15J, we would like to draw the attention of your goodself to a few case laws, wherein the respective courts have dealt into the aspect of penalty and factors for levying any penalty on any delinquent. In this regard your goodself kind attention is drawn to Hon'ble Supreme Court's decision in the case of ***Hindustan Steel vs. State of Orissa (AIR 1970 SC 253)*** *where it was held as follows:*

> *"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceeding and penalty will not be ordinarily imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute."*

47) Again, the Hon'ble Apex Court in the case of ***Ex-Naik Sardar Singh vs. Union of India (1991) 3 SCC 212)*** *inter alia held that:*
"the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."

48) Further in the matter of ***Ranjit Thakur vs. Union of India (AIR 1987 SC 2386)*** *it was held that:*
"The Sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review would ensure that even on an aspect which is, otherwise, within the exclusive province of Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic then the sentence would not be immune from correction. Irrationality and perversity are recognized ground of judicial review. The penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Art. 14 of the Constitution. The point to note and emphasis is that all powers have legal limits."

*49) Further, Hon'ble Supreme Court of India in the case of **Adjudicating Officer vs. Bhavesh Pabari** dated 28th February, 2019 held that section 15J are illustrative in nature and depends from situation to situation:*
*"……This dictum, however, does not meanthat factum of continuing default is not a relevant factor, as we have held that clauses (a) to (c) in Section 15J of the SEBI Act are merely illustrative and are not the **only grounds/factors which can be taken into consideration while determining the quantum of penalty**."*

*50) Further in the matter of **P G Electroplast vs SEBI**, Hon'ble SAT held that:*
"…….The AO while imposing the penalty has not factored this debarment while fixing the quantum of penalty. Further, in our opinion, the factors contemplated under Section 15J was also not considered by the AO in the right perspective…."

*51) Further, in light of aforesaid order dated August 02, 2019 of Hon'ble SAT in the matter of **P G Electroplast vs SEBI**. it is submitted that the vide Order dated April 03, 2019, Hon'ble Whole Time Member of SEBI has prohibited from accessing he capital market directly or indirectly and dealing in securities or instruments with Indian securities as underlying, in any manner whatsoever, for a period of five from the date of that Order. Hence, before imposing the penalty, without prejudice, your goodself should consider the said restrained order.*

*52) Further, we humbly submit that due to Covid-19 pandemic, there was complete lock down in country. Since our business was under lock down for the nearly 9 months and accrued huge losses. Hence, we under huge financial distress and not even in position to pay salaries, rent, electricity and other expenses and therefore we humbly submits that we will not be able to pay any penalty if so imposed by your goodself. Also, it is submitted that our company is running into huge losses since last many years the copy of the balance sheets of last 3 years is annexed herewith as **Annexure – "A".** Therefore, it is humbly submitted to your goodself, that it will take a years to recover and recoup our losses in order to service in the cinema market due to Covid-19 adverse affect on our business. Hence, it is humbly prayed to your good self that before imposing the any minimal penalty, without prejudice, your goodself should consider our economic distress situation due to the said Covid-19 pandemic situation.*

53) It is submitted that the aforesaid explanations make it quite clear that we have not violated any provisions of the SEBI Act and PFUTP Regulations and therefore the directions and findings of the Notice must be quashed and set aside with immediate effect. The Notice is uncalled for and unjust since there is no justification in subjecting us to such harsh and baseless allegations. It is submitted that, we have not committed any wrong and no charge has been established against us on prima facie, to warrant any action. Therefore, it will be unfair on unwarranted directions under the SEBI Act and PFUTP Regulations against our Company.

54) It is submitted that we reserve our right to modify and add additional grounds in these submissions. It is respectfully submitted that the allegations in the Notice do not flow out of the factual position and therefore demolishes the charges and therefore it *is humbly prayed that the Notice be set aside and the charges as levelled against us must be dropped.*

55) We may also be given an opportunity of personal hearing before any decision is taken by your goodself in the present matter.

12. I note that Noticee 4, 5, and 6 (viz. Shri Dhaduvai Venkatram, Shri Kesava Mallikarjuna Prasad Chivukula, and Ms. Namratha Muralidhar respectively) have authorized Mr. Jitendra Sharda, advocate as their authorized representative (**AR**) in the matter. Noticee 4, 5, and 6 vide their letters dated November 22, 2020, November 23, 2020 and November 20, 2020 respectively (received vide emails dated November 23, 2020 from their AR) made *inter alia* the following common submissions –

    i. *Please refer to the captioned Notice dated March 28, 2019 (hereinafter referred to as "**SCN**"/"**Notice**") in the captioned matter in which SEBI has allegedly conducted an investigation into the issuance of Global Depository Receipts (hereinafter referred to as "**GDR**") issue of CAT, to ascertain whether shares underlying GDRs were issued with proper consideration and whether appropriate disclosures, if any required, were made by CAT with respect to the GDRs issue.*

    ii. *It can be seen from the SCN that the allegation and charge against the Company and its promoter and the then directors are that the loan agreement and pledge agreement was entered into by the company which resulted in the subscription of the GDR Issue by the Company and that the same was not disclosed to the stock exchange. Therefore, the alleged charge and the basis for alleging any violations of the provisions of the SEBI Act and the regulations framed thereunder, against the Company and its promoter and the then directors, is non-disclosure regarding fact of entering into the said agreements by the Company. On the basis of the aforesaid the SCN alleges violation by me of provisions of Section 12A (a), (b), (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with Regulations 3 (b), (c), (d) and 4 (2)(c), 4 (2)(f), 4 (2)(k) and 4(2)(c) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**").*

    iii. *At the outset it is submitted that I have not violated any provisions of SEBI Act and PFUTP Regulations as alleged or at all and that the requisite disclosures were made and relevant approvals were obtained from the shareholders of the*

Company for undertaking the GDR Issue and for entering into the said agreements. The shareholders of the Company therefore were at all time aware of all material particulars regarding the GDR Issue.

iv. *Further, it is evident from the SCN itself that there are no allegations or materials brought on record to establish any violation by me in respect of the provisions of SEBI Act and/or PFUTP Regulations as alleged in the SCN. It is submitted that for the violation of the provisions as alleged in the SCN, the specified provisions of the SEBI Act and PFUTP Regulations are not attracted.*

v. *Further, I vehemently deny each and every allegation levied upon me. It is humbly submitted that the allegations levied me are baseless and devoid of any evidence in support of them and the same shall be dealt with in detail in the para wise reply to the observations made in the SCN.*

vi. *This is a preliminary reply based on the documents made available to me along with the SCN and I reserve the right to file an additional detailed reply to the SCN if and when warranted upon receipt of additional documents.*

Para-wise reply to the SCN

vii. *In Para 1 of the SCN, it has been stated that your goodself has been appointed as the Adjudicating Officer under Section 15-I (1) of SEBI Act read with Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "***Adjudication Rules***") to inquire into adjudge the violation of various provisions under SEBI Act, Securities Contract (Regulation) Act, 1956 (hereinafter referred to as "***SCRA***"), and PFUTP Regulations. With regard to this it is submitted that the same is a matter of record and so I have no comments to offer on the same.*

viii. *In Para 2, 3 and 4 of the SCN, the details of the investigation period and certain details regarding the GDRs issued by the CAT are stated, with regard to this it is again submitted that the same is a matter of record and I have nothing to offer on the same.*

ix. *In Para 5 of the SCN, it has been stated that the Loan and Pledge Agreement for its First GDR issue and Second GDR issue (First GDR issue was of 43,04,348 GDRSs amounting to USD 6.46 Million and issue closed on July 27, 2007 and Second GDR issue was of 15,95,333 GDRSs amounting to USD 10.002 Million and issue closed on November 06, 2009) were signed among the CAT, Vintage FZE ("***Vintage***") and EURAM Bank ("***Euram***"). In this regard, I humbly submit that I neither had any role to play in the said Loan and Pledge Agreement; nor I was aware of the signatories to the said Loan and Pledge Agreement and so I do not have any comments to offer on the same.*

x. *In Para 6 of the SCN, it has been stated that the Loan Agreement (Loan Agreement No. K271009-002) dated October 27, 2009, was signed between*

Euram and Vintage. With regard to this it is submitted that the same is a matter of record and so I have no comments to offer on the same.

xi. *In Para 7 of the SCN, it has been stated that the Pledge Agreement dated October 27, 2009, was alleged to be signed between CAT and Euram. With regard to this it is submitted that the same is a matter of record and so I have no comments to offer on the same.*

xii. *Further, it is alleged that I have authorized Mr. Dhiraj Jaiswal (Noticee No. 2) to sign the said Pledge Agreement dated October 27, 2009 vide the Board Resolution dated August 28, 2009 and April 30, 2007. In this regard, I humbly submit that I never authorized by any means Noticee No.2 to sign any such agreement on behalf of our Company.*

xiii. *In Para 8 to 10 of the SCN deal with the Loan Agreement and Pledge Agreement, in this regard, I humbly submit that I neither had any role to play in the said Pledge Agreement or Loan Agreement and not aware of the Contents of Pledge Agreement or Loan Agreement; nor there is any privity of contract between the executants of Pledge Agreement or me. Hence, I have no comments to offer on the same.*

xiv. *In Para 12 of the SCN, it has been stated that the Loan Agreement dated July 23, 2007, was signed between Euram and Vintage. With regard to this it is submitted that the same is a matter of record and so I have no comments to offer on the same.*

xv. *The para 13 of the SCN deal with Acquisition of GDRs issues of the CAT. In this regard, I humbly submit that I neither had any role in acquisition of GDRs nor aware of any such kind of transactions. Hence, no comments to offer on the same.*

xvi. *The para 14 to 18 of the SCN deal with Cancellation of the GDRs of the CAT the details of GDRs for receipt of underlying shares. In this regard, I humbly submit that I neither had any role in Cancellation of GDRs nor aware of any such kind of transactions. Hence, no comments to offer on the same.*

xvii. *The para 19 and 20 of the SCN deal with in this regard, it is submitted that I have no connection/relation/nexus with these institutions. Further, the Notice also failed to brought any connection/relation/nexus with these institutions. Hence, no irregularity or fraud on these transactions can be attributed on me.*

xviii. *Further, the counter party analysis of the sell trades of Sub- Accounts, it is observed that Indian entities like SV, Alka, Basmati and Oudh has been major counterparties. In this regard, it is submitted that I do not have any connection/relation/nexus with these counter parties entities. Further, the Notice also failed to provide any evidence/ connection / relation with these* *entities. Hence, there was nothing wrong or fraudulent about these transactions as far as in my case.*

xix. *The para 21 of the SCN deal with observations that the entities, Alka, Basmati, SV and Oudh have connections with AP and AP has substantial influence over their entities. In this regard, it is submitted that I have no connections /relation/nexus with these counter parties entities. Further, the Notice also failed to provide any evidence/ connection / relation between m ewith these entities and/or with AP or his entities.*

xx. *I humbly submit that the Notice has failed to provide any cogent evidence/ connections /role and does not pointed any irregularity/illegality not to speak of fraudulency in the respective transactions in the abovementioned paras of the Notice. Further, I humbly submit that I have no role in any activities i.e. issuance of GDR, purchase of GDR by FII, Cancellation of GDRs and issue of underlying shares etc so any wrongdoings on the part of other parties cannot be attributed to me.*

xxi. *As regards alleged violations of the provisions of SEBI Act and PFUTP Regulations as stated in Para 22 to 23, it is stated that:*

No violations of Sections 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(b), 3(c), 3(d) and 4(2)(c), 4(2)(f), and 4(2)(k) and 4(2)(r) of the PFUTP Regulations having been committed by me:

xxii. *In so far as the alleged violation of Section 12 (A) (a) of the SEBI Act is concerned, it is submitted that I have throughout my conduct of business and as a matter of company policy maintained highest standards of compliance, fairness, integrity and ensured the interests of our investors. From the submissions made by me in the foregoing paragraphs it has been abundantly established that I had never, directly or indirectly, employed any manipulative or deceptive device or contrivance, in relation to the issue, purchase or sale of any shares listed or proposed to be listed on a recognized stock exchange, in contravention of the SEBI Act and rules or regulations made thereunder. Therefore, the SCN has completely erred in alleging that I had violated Section 12A (a) of the SEBI Act.*

xxiii. *In so far as the alleged violation of Section 12(A)(b) of the SEBI Act is concerned, it is submitted that from the submissions made in the foregoing paragraphs it clearly comes out that I have never, directly or indirectly, employed any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange. Therefore, the SCN has completely erred in alleging that I have violated Section 12A (b) of the SEBI Act.*

xxiv. *In so far as the alleged violation of Section 12(A)(c) of the SEBI Act is concerned, it is submitted that from the submissions made in the foregoing* *paragraphs it clearly comes out that I have never, directly or indirectly, engaged ourselves in any act, practice, course of business which operates as or would operate as a fraud or deceit upon any person, in connection with the issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the SEBI Act and rules or regulations made thereunder. Therefore, the SCN has completely erred in alleging that I have violated Section 12A(c) of the SEBI Act.*

xxv. *In so far as Regulation 3(b) of the PFTUP Regulations is concerned, it is submitted that from the submissions made by me in the foregoing paragraphs it has been abundantly established that I have never, directly or indirectly, employed any manipulative or deceptive device or contrivance, in relation to the issue, purchase or sale of any shares listed or proposed to be listed on a recognized stock exchange, in contravention of the SEBI Act and rules or regulations made thereunder. Therefore, the SCN has completely erred in alleging that I have violated Section Regulation 3(b) of the PFUTP Regulations.*

xxvi. *In so far as the alleged violation of Regulation 3(c) of the PFUTP Regulations is concerned, it is submitted that from the submissions made in the foregoing paragraphs it clearly comes out that I have never, directly or indirectly, employed any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange. Therefore, the Notice has completely erred in alleging that I have violated Regulation 3(c) of the PFUTP Regulations.*

xxvii. *In so far as the alleged violation of Regulation 3(d) of the PFUTP Regulations is concerned, it is submitted that from the submissions made in the foregoing paragraphs it clearly comes out that I have never, directly or indirectly, engaged ourselves in any act, practice, course of business which operates as or would operate as a fraud or deceit upon any person, in connection with the issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the SEBI Act and rules or regulations made thereunder. Therefore, the Notice has completely erred in alleging that I have violated Regulation 3(d) of the PFUTP Regulations.*

xxviii. *In so far as the alleged violation of Regulation 4(2) (c) of the PFUTP Regulations is concerned, it is submitted that: from the submissions made in the foregoing paragraphs it clearly emerges that I have neither advanced nor agreed to advance any money to any person thereby inducing any other person to offer to buy security in any issue only with intention of securing minimum subscription to such issue; there is no allegation in the Notice that such the alleged money advanced by me was with an intention of securing minimum subscription to an issue; or with an intention to induced the general public in India to deal with our shares; Therefore, the Notice has completely erred in alleging that I have violated Regulation 4(2)(c) of the PFUTP Regulations.*

xxix. In so far as the alleged violation of Regulation 4(2)(f) of the PFUTP Regulations is concerned, it is submitted that from the submissions made in the foregoing submissions), it has been established beyond doubt that I have not published or caused to be published or caused to be reported by any person dealing in securities any information which is not true or which I did not believe to be true prior to or in the course of dealing in securities. It is reiterated that any information furnished by me to the BSE was under the bona fide belief of its truth and accuracy and on the basis of the valid documents.

xxx. In so far as the alleged violation of Regulation 4(2)(k) of the PFUTP Regulations is concerned, it is submitted that: From the submissions made in the foregoing submissions, it has been established beyond doubt I have never carried out any advertisement that was misleading or that contained information in a distorted manner and which could influence the decision of the investors. Without prejudice to the above, the Notice does contain any allegation as to any such 'advertisement' having been carried by us. Therefore, the Notice has completely erred in alleging that I have violated Regulation 4(2)(k) of the PFUTP Regulations.

xxxi. In so far as the alleged violation of Regulation 4(2)(r) of the PFUTP Regulations is concerned, it is submitted that: it has been established beyond doubt I have never planted any news which could induce sale or purchase of securities.

xxxii. From the abovementioned paras it is clear that the allegations of violating the SEBI Act and PFUTP Regulations cannot be alleged against me and the Notice be dropped / quashed forthwith.

xxxiii. The para 24 of the Notice deal with Non-furnishing of information and misleading submissions by the CAT. In this regard, I humbly submit that I neither had any role to play in the non-furnishing of information and misleading submissions by the CAT; nor I am aware about such information. Hence, no comments to offer on the same.

xxxiv. The para 25 of the Notice deal with non-compliance with the summons and non furnishing of the information to SEBI by the CAT. In this regard, I humbly submit that I neither had any role to play in the non-furnishing of information by the CAT; nor I was aware about such information. Hence, no comments to offer on the same.

xxxv. The para 26 of the Notice deal with allegation that the CAT made wrong submission related to Pledge and Loan Agreement. In this regard, I humbly submit that I neither had any role to play in the wrong submissions made by the CAT; nor I was aware about such information. Hence, no comments to offer on the same.

xxxvi. *The para 27 to 28 of the Notice deal with allegation of violation of Section 11C(3) read with 11C(6) of the SEBI Act. In this regard, I humbly submit that I neither had any role to play in the non-furnishing of information and misleading submissions by the CAT; nor I was aware about such information. Therefore, no comments to offer on the same. Hence, I have not violated any provisions of Sec 11 C (3) and Sec 11 C (6) of the SEBI Act.*

xxxvii. *The para 29 and 30 of the Notice deal with the allegation of funding the promoters and non- disclosure of related party transactions. The said para does not deal with me. Hence no comments to offer on the same.*

xxxviii. *It is further submitted that while taking a decision under the impugned provision, the Learned Adjudicating Officer has to take in to account Section 15J of the SEBI Act, 1992 which specifies the factors to be considered before levying any penalty, which are as under:*
"(a) the amount of disproportionate gain or unfair advantage, whether 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."

xxxix. *With regard to Clause (a):- "the amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default": it is submitted that the findings do not lead to the conclusion that there has been disproportionate gain or unfair advantage to me.*

xl. *With regard to Clause (b);- "the amount of loss caused to an investor or group of investors as a result of the default" : it is submitted that there are no investor complaints filed at any Stock Exchange or SEBI in respect of the present matter and the same has also not been alleged in the Notice. In absence of any direct information, the allegation of causing loss to other investors is baseless.*

xli. *With regard to Clause (c):- "the repetitive nature of the default." it is stated that our act does not have a repetitive nature of defaults and carries on their job in a dignified and respectful manner. It is submitted that the instances pointed out in the Notice are isolated instances and hence there is no question of repetitive nature of default.*

xlii. *Having stated the factors of Section 15J, I would like to draw the attention of your goodself to a few case laws, wherein the respective courts have dealt into the aspect of penalty and factors for levying any penalty on any delinquent. In this regard your goodself kind attention is drawn to Hon'ble Supreme Court's decision in the case of* ***Hindustan Steel vs. State of Orissa (AIR 1970 SC 253)*** *where it was held as follows:*
"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceeding and penalty will not be ordinarily imposed

unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute."

xliii. *Again, the Hon'ble Apex Court in the case of* ***Ex-Naik Sardar Singh vs. Union of India (1991) 3 SCC 212)*** *inter alia held that:*

> *"the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."*

xliv. *Further in the matter of* ***Ranjit Thakur vs. Union of India (AIR 1987 SC 2386)*** *it was held that:*
"The Sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review would ensure that even on an aspect which is, otherwise, within the exclusive province of Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic then the sentence would not be immune from correction. Irrationality and perversity are recognized ground of judicial review. The penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Art. 14 of the Constitution. The point to note and emphasis is that all powers have legal limits."

xlv. *Further, Hon'ble Supreme Court of India in the case of* ***Adjudicating Officer vs. Bhavesh Pabari*** *dated 28th February, 2019 held that section 15J are illustrative in nature and depends from situation to situation:*
"……This dictum, however, does not mean that factum of continuing default is not a relevant factor, as I have held that clauses (a) to (c) in Section 15J of the SEBI Act are merely illustrative and are not the ***only grounds/factors which can be taken into consideration while determining the quantum of penalty****."*

xlvi. *It is submitted that the aforesaid explanations make it quite clear that I have not violated any provisions of the SEBI Act and PFUTP Regulations and therefore the directions and findings of the Notice must be quashed and set aside with immediate effect. The Notice is uncalled for and unjust since there is no justification in subjecting me to such harsh and baseless allegations. It is* *submitted that, I have not committed any wrong and no charge has been established against me on prima facie, to warrant any action. Therefore, it will be unfair on unwarranted directions under the SEBI Act and PFUTP Regulations against me.*

xlvii. *It is submitted that I reserve our right to modify and add additional grounds in these submissions. It is respectfully submitted that the allegations in the Notice do not flow out of the factual position and therefore demolishes the charges and therefore it is humbly prayed that the Notice be set aside and the charges as levelled against me must be dropped.*

xlviii. *I may also be given an opportunity of personal hearing before any decision is taken by your goodself in the present matter.*

13. Further, vide their respective aforementioned letters, Noticee 4, 5, and 6 made the following submissions –

a. Noticee 4 (Shri Dhaduvai Venkatram) has submitted as follows –

i. *I am an Indian habitant and holding a degree of B.E. from Bangalore University, Bangalore in the year 1988. I was utilizing my experience in advising the board on the overall administrative policies and procedures of the Company.*

ii. *I had joined CAT as Non-executive Director on January 28, 2000 and I was appointed on as a Director on honorary basis.*

iii. *I had resigned as the Non-executive Director of the CAT with effect from May 14th 2012. It is pertinent to note here that I was neither a shareholder nor traded in the shares of CAT.*

iv. *I am presently not associated with the CAT or its Promoter in any manner.*

v. *I as an employee and director of the CAT during the aforesaid tenure have always given top priorities towards the compliance of all the applicable laws and have no previous track record of any serious default in statutory compliances in respect of existing laws for the time being in force.*

vi. *Further in the matter of **P G Electro last vs SEBI**, Hon'ble SAT held that:*

> *"…….The AO while imposing the penalty has not factored this debarment while fixing the quantum of penalty. Further, in our opinion, the factors contemplated under Section 15J was also not considered by the AO in the right perspective…."*

vii. *Further, in light of aforesaid order dated August 02, 2019 of Hon'ble SAT in the matter of P G Electroplast vs SEBI. it is submitted that the vide Order dated*

April 03, 2019, Hon'ble Whole Time Member of SEBI has prohibited me from accessing the capital market directly or indirectly and dealing in securities or instruments with Indian securities as underlying, in any manner whatsoever, for a period of five from the date of that Order. Hence, before imposing the penalty, without prejudice, your good self should consider the said restrained order.

b. Noticee 5 (Shri Kesava Mallikarjuna Prasad Chivukula) submitted as follows –

i. *I am an Indian habitant and holding a M.Sc. € from SV University, Tirupati, Andhra Pradesh in the year 1988 and M. Tech (CS) from IETE, Hyderabad in the year 2000. I am also a member of the institute of Electronics and Telecommunications Engineers since the year 2000.*

ii. *My work is related to technical competence in the Information Technology and software development areas to broad base the board on the new Software Technologies. This assignment was purely to give suggestions and improvements in the new technology areas to the company.*

iii. *I had joined CAT as Whole Time Director on January 28, 2000 and I was appointed on as a Director for technical competence.*

iv. *I had resigned as the Whole Time Director of the CAT with effect from 2012. It is pertinent to note here that I was neither a shareholder nor traded in the shares of CAT.*

v. *Presently I am working as a Senior Project manager in Espirit in the software development areas to support and maintain client projects. not associated with the CAT or its Promoter in any manner.*

vi. *I as an employee and director of the CAT during the aforesaid tenure have always given top priorities towards the compliance of all the applicable laws and have no previous track record of any serious default in statutory compliances in respect of existing laws for the time being in force.*

vii. *Further in the matter of **P G Electro last vs SEBI**, Hon'ble SAT held that:*

> *"…….The AO while imposing the penalty has not factored this debarment while fixing the quantum of penalty. Further, in our opinion, the factors contemplated under Section 15J was also not considered by the AO in the right perspective…."*

viii. *Further, in light of aforesaid order dated August 02, 2019 of Hon'ble SAT in the matter of P G Electroplast vs SEBI. it is submitted that the vide Order dated April 03, 2019, Hon'ble Whole Time Member of SEBI has prohibited me from accessing the capital market directly or indirectly and dealing in securities or instruments with Indian securities as underlying, in any manner whatsoever, for a period of five from the date of that Order. Hence, before imposing the penalty, without prejudice, your good self should consider the said restrained order.*

c. Noticee 6 (Ms. Namratha Muralidhar) has submitted as follows –

   i. *Further, it is pertinent to mentioned herein that I was on leave when the said Board Resolution dated April 30, 2007 was passed in Board meeting. Further, when the said Board Resolution dated August 28, 2009 was passed in Board meeting, I was not in company board. Hence, no duty can cast upon me. Further, the WTM vide order dated April 03, 2019 has also dispose off proceeding against me on ground that facts have not been brought out to show that I were indeed in control of the activities or actions of the company at the time of the GDR issues in 2007 and 2009.*

   ii. *It is submitted that the vide Order dated April 03, 2019, Hon'ble Whole Time Member of SEBI has also dispose off proceeding against me on ground that facts have not been brought out to show that I were indeed in control of the activities or actions of the company at the time of the GDR issues in 2007 and 2009. Hence, no penalty should be imposed upon me.*

14. Subsequently, personal hearing was held in respect of the Noticees on November 24, 2020. Owing to the pandemic situation, the hearing was conducted through video conferencing on the webex platform.

15. On behalf of the Noticee 1-3 and 7-9 (i.e. CAT, Shri Dhiraj Kumar Jaiswal, Shri Dinesh Kumar Jaiswal, Espirit Technologies Pvt Ltd, Ms. Namritha Jaiswal and Ms. Nisha Jaiswal), the following ARs viz. Mr. Lalit Joshi, advocate, Ms. Chitra Sharma, advocate, appeared for the aforesaid hearing and reiterated the submissions made by the said Noticees in their letters dated November 21, 2020 and November 23, 2020 which were submitted vide emails dated November 24, 2020. Further, the ARs requested 7 days of time for submitting the updated addresses of its clients and copy of the death certificate of Shri Ashok Kulkarni. Accordingly, time till December 01, 2020 was granted for the same. The personal hearing in the matter was thus completed for the aforesaid Noticees and the ARs didn't request for any further opportunity of personal hearing.

16. On behalf of Noticee 4-6 (i.e. Shri Dhaduvai Venkatram, Shri Kesava Mallikarjuna Prasad Chivukula, and Ms. Namratha Muralidhar), Mr. Jitendra Sharda, advocate appeared as the AR and reiterated the submissions made by the Noticees vide emails dated November 23, 2020. Further, the ARs requested 3 days of time for making additional submissions and also for submitting the updated addresses of its clients. Accordingly, time till November 27, 2020 was granted for the same. The personal hearing in the matter was thus completed for the aforesaid Noticees and the AR didn't request for any further opportunity of personal hearing.

17. Further, Noticee 4, 5 and 6 (i.e. Shri Dhaduvai Venkatram, Shri Kesava Mallikarjuna Prasad Chivukula, and Ms. Namratha Muralidhar) vide their separate letters dated November 27, 2020 (received from their AR vide emails dated November 27, 2020) made post hearing submissions in the matter. The common submissions made therein are as under –

> *I. At the outset, I am thankful to your good self for granting me an opportunity of personal hearing in the captioned matter, wherein my Authorized Representative denied violation of all alleged provisions of law as mentioned in the captioned SCN and also prayed for the withdrawal of the present SCN qua me.*
>
> *II. Further, at the outset, I submit that all the allegations mentioned in the SCN, are baseless, bald, sweeping, vague, unfounded, misconceived and speculative, based on assumptions, surmises and conjectures and are completely contrary to factual position on record.*
>
> *III. Furthermore, I humbly submit that considering my reply dated November 22, 2020 and arguments made by the Authorised Representative at the time of schedule hearing dated November 24, 2020 in the captioned matter, I would like to summarize my submissions cum additional reply in the captioned matter hereunder:*
>
> *a) Further, I humbly submit that I was neither a shareholder nor traded in the shares of CAT at any point of time.*
>
> *b) Further, I humbly submit that the alleged the Loan and Pledge Agreement for its*

*First GDR issue and Second GDR issue (First GDR issue was of 43, 04,348 GDRSs amounting to USD 6.46 Million and issue closed on July 27, 2007 and Second GDR issue was of 15, 95,333 GDRSs amounting to USD 10.002 Million and issue closed on November 06, 2009) were signed among the CAT, Vintage FZE ("**Vintage**") and EURAM Bank ("**Euram**"). In this regard, reiterate my submissions that I neither had any role to play in the said Loan and Pledge Agreement; nor I was aware of the said Loan and Pledge Agreement.*

*c) Accordingly, I humbly submit that I cannot be held liable vicariously, just because I was a signatory to the resolutions dated August 28, 2009 and April 30, 2007 inter alia which authorized Mr. Dhiraj Jaiswal (**Noticee No. 2**) to open the Bank account with EURAM. It is pertinent to mentioned herein that I never authorized by any means Noticee No.2 to sign any such alleged agreements on behalf of the CAT.*

*d) Further, it is submitted that as per the Section 27 of the SEBI Act, 1992 ("**SEBI, Act**"), which clearly affirms that "person who at the time the [contravention] was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the [contravention]".*

The text of the Section 27 of the SEBI Act is extracted hereunder:-

> ***"162[Contravention by companies.]*** *27. (1) Where 163[a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder] has been committed by a company, every person who at the time the 164[contravention] was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the 165[contravention] and shall be liable to be proceeded against and punished accordingly:*
>
> *Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the 166[contravention] was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such 167[contravention].*
>
> *(2) Notwithstanding anything contained in sub-section (1), where an 168[contravention] under this Act has been committed by a company and it is proved that the 169[contravention] has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the 170[contravention] and shall be liable to be proceeded against and punished accordingly.*

Explanation: For the purposes of this section,—
(a) "company" means any body corporate and includes a firm or other association of individuals; and
(b) "Director", in relation to a firm, means a partner in the firm."

e) In the present case, it is evident from the facts enumerated in the SCN, and submissions made aforesaid, I was neither responsible nor was he in charge of the affairs of the Company i.e. CAT.

f) Further, your goodself's kind attention draw to the recent judgement of Hon'ble Securities Appellate Tribunal in the matter of ***Adesh Jain versus Securities and Exchange Board of India (Appeal No. 217 of 2020 decided on November 19, 2020),*** *which relied on the its earlier judgment of* ***Adi Cooper vs Securities and Exchange Board of India (Appeal No. 124 of 2019 decided on November 5, 2019),*** *which as follow: -*

g) The relevant para of the ***Adi Cooper vs Securities and Exchange Board of India*** *is extracted hereunder: -*

"8. ***The finding of the WTM against the appellant Adi Cooper is wholly misconceived, farfetched and cannot be accepted to come to a conclusion that the said appellant was party to a resolution which had an intention to manipulate the market or defeat its mechanism.*** *Admittedly, the appellant Adi Cooper was party to a resolution of the Board of Directors dated January 30, 2008 which only resolved the company to open an account with the EURAM bank for the purpose of deposit of the GDR proceeds. The resolution further authorized the bank to use the proceeds as security in connection with a loan. The resolution did not stipulate that the proceeds would be used as security in connection with a loan taken by another entity. The resolution could also mean that the proceeds would be utilized by the bank as security in connection with a loan taken by the company itself. Thus, from the resolution dated January 30, 2008 one cannot arrive at a conclusion that this was the first step or the starting point of a fraudulent arrangement through which the company could facilitate the financing of the GDR subscription by Vintage. It may be noted here that when the resolution of January 30, 2008 was passed Vintage was nowhere in the picture. The pledging of the shares on May 5, 2009 in favour of Vintage and the loan taken by Vintage in order to subscribe to the GDR issues was done at a time when the appellant admittedly was not involved in the affairs of the company as he had ceased to be a director prior to that date. There is no evidence to establish that the appellant Adi Cooper remained associated with the company or with other directors even after he resigned on October 10, 2008.*

9. We further find that the resolution of January30, 2008 authorizing the *bank to utilize the proceeds as security in connection with a loan cannot is inferred as loan given to Vintage. Such presumption is farfetched and cannot hold that the appellant had intention to manipulate the market or play a fraud. Therefore, the finding of the WTM that the appellant had violated Section 12A of the SEBI Act read with Regulations 3 and 4 of the PFUTP Regulations is misconceived and not acceptable. For facility, the said provision of Section 12A of the SEBI Act and Regulations 3and 4 of the PFUTP Regulations are extracted here under:- ……………………………………………………. ………………………………………………*

10. A perusal of the aforesaid provisions clearly indicates that the appellant Adi Cooper was neither directly or indirectly neither involved in any fraudulent activity nor employed any scheme to defraud any shareholder or investor. The WTM committed a manifest error in holding that the appellant Adi Cooper cannot be absolved of the consequences of the resolution of January 30, 2008 even though he was not present in the time when the issuance of GDR and execution of the loan and pledge agreements. ***We are of the opinion that the resolution of January 30, 2008 does not indicate any resolution or execution of the loan or the pledge agreement and, thus, holding the appellant that he was actively involved in the manipulation of the market through this fraudulent scheme is patently erroneous and farfetched. In the light of the aforesaid, we are of the opinion that the order of the WTM debarring the appellant Adi Cooper from accessing the securities market for two years cannot be sustained****."*

h) Further, the relevant para of the ***Adesh Jain versus Securities and Exchange Board of India (Appeal No. 217 of 2020 decided on November 19, 2020)****, is extracted hereunder: -*

"14. We also find that there is no finding of the fact that the appellant was involved in the day-to-day affairs of the management of the Company. The submission of Shri Shyam Mehta, the learned senior counsel for the respondent that the appellant attended several board meetings and was chairman of various committees which can be find out from the annual reports are submissions which are not borne out from the records. The submissions so made are beyond the pleadings and cannot being taken into consideration. The respondent cannot be allowed to better their case and rely upon such documents which are not part of the record. There is no finding that the appellant, being a director for more than 10 years, was deemed to be involved in the day-to-day affairs and management of the Company nor there is any finding that the appellant was chairman of various committees and therefore deemed to be involved in the day-to-day affairs of the Company. There is no finding that the credit agreement and the charge account agreement were in the knowledge of the appellant. On the

other hand, it is the consistent case of the appellant that he was a practicing chartered accountant and a non-executive independent director and was only involved in policy decisions. These facts have not been disputed nor controvert by any documentary evidence before the WTM.

15. We also find that the reliance of Section 27 of the SEBI Act is patently erroneous. Section 27 is not applicable if the offence is committed without the knowledge of the incumbent. We have already held that there is no finding given by the WTM that the appellant was involved in the day-to-day affairs and management of the Company. On the other hand, a specific case was stated by the appellant that the fraud was committed by the mastermind, namely, the chairman, managing director and the authorized signatory / director Mr. Rajinder Singh Negi and that he had no knowledge of the violation committed by the masterminds of the PFUTP Regulations. This fact has not been denied by the respondent. In our view Section 27 of the SEBI Act has no application. Consequently, the decision relied upon by the respondent in N. Narayanan (supra) is distinguishable and not applicable to the present facts and circumstances of the case. 16. In view of the aforesaid, the impugned order insofar as it relates to the appellant cannot be sustained and is quashed. The appeal is allowed with no order as to costs."

*i) Further, I would like to draw your goodself's attention on the circular issued by Ministry of Corporate Affairs on 25th March, 2011 "**the Circular 1/2011 dated July 29, 2011, the Ministry of Company Affairs**" vide which it is clarified that no director shall be held liable for any violation by the company or by any other officer of the company, if the violation occurred without his or her knowledge and without his or her consent or connivance, or where he or she has acted diligently. Further, it is pertinent to mentioned herein that the said circular states that the prosecution should be filed primarily against the Managing Director and against such Directors who were in charge and responsible for the affairs of the Company.*

*In the light of aforesaid submissions made and judgment cited, it is humbly submitted that the finding of the Hon'ble Securities Tribunal in **Adi Cooper's matter** and **Adesh Jain's matter** is squarely covered with the facts of present matter and, on that basis; the SCN should be discharged qua me.*

18. Further, vide their respective aforementioned letters dated November 27, 2020, Noticee 4, 5, and 6 made the following submissions –

i. Noticee 4 (Shri Dhaduvai Venkatram) submitted as follows –

a. During the course of hearing on November 24, 2020, your good self requested to submit updated my address. With respect to this it is submitted that my *updated residential address at Dhaduvai Venkat Ram, 15-1-634, Feelkhana, Hyderabad – 500 012. Kindly, take on record of the same.*

b. *I had joined CAT Technologies Ltd. ("**CAT**") as Non-executive Director on January 28, 2000 and I was appointed on as a Director on honury basis. I resigned as the Non-executive Director of the CAT with effect from May 14, 2012. During my tenure of directorship with CAT, I was associated in a capacity as Professional Director/Technical Director. Further, I humbly submit I was not involved in day-to-day affairs of the management of the CAT. Further, it is pertinent to mentioned herein that even the SCN also failed to prove that I was involved in day to day affairs of the management of the CAT.*

c. *Accordingly, I humbly submit that I cannot be held liable vicariously, just because I was a signatory to the resolutions dated August 28, 2009 and April 30, 2007 inter alia which authorized Mr. Dhiraj Jaiswal (**Noticee No. 2**) to open the Bank account with EURAM. It is pertinent to mentioned herein that I never authorized by any means Noticee No.2 to sign any such alleged agreements on behalf of the CAT.*

d. *In the present case, it is evident from the facts enumerated in the SCN, and submissions made aforesaid, I was neither responsible nor was he in charge of the affairs of the Company i.e. CAT, I was only signatory to the board resolutions dated August 28, 2009 and April 30, 2007 interalia which authorized the Noticee No. 2 to open the Bank account with EURAM.*

ii. Noticee 5 (Shri Kesava Mallikarjuna Prasad Chivukula) submitted as follows –

a. *During the course of hearing on November 24, 2020, your goodself requested the Authorised Representative to submit updated address of the Noticee. With respect to this it is submitted that my updated residential address at Kesava Mallikarjuna Prasad, Chivukula, H No. 8-3-430/3/14, Yellareddyguda, Hyderabad – 500 004. Kindly, take on record of the same.*

b. *I had joined CAT Technologies Ltd. ("**CAT**") as Director on January 28, 2000 and I was appointed on as a Director for technical competence. I resigned as Director of the CAT with effect from 2012. During my tenure of directorship with CAT, I was associated in a capacity as Professional Director/Technical Director. Further, I humbly submit I was not involved in day-to-day affairs of the management of the CAT. Further, it is pertinent to mentioned herein that even the SCN also failed to prove that I was involved in day to day affairs of the management of the CAT.*

c. *Accordingly, I humbly submit that I cannot be held liable vicariously, just because I was a signatory to the resolutions dated August 28, 2009 and April 30, 2007 interalia which authorized Mr. Dhiraj Jaiswal (**Noticee No. 2**) to open the Bank account with EURAM. It is pertinent to mentioned herein that I never* *authorized by any means the Noticee No.2 to signed any such alleged agreements on behalf of the CAT.*

iii. Noticee 6 (Ms. Namratha Muralidhar) submitted as follows –

a. *During the course of hearing on November 24, 2020, your goodself requested to submit updated my address. With respect to this it is submitted that my updated residential address at Namratha Muralidhar, 102, Manbbhum Prestige Apartments, 1-10-1/12 Street No. 6, Ashok Nagar Hyderabad – 500 004. Kindly, take on record of the same.*

b. *I had joined CAT Technologies Ltd. ("CAT") in August, 1988 as faculty to teach Computer courses on COBOL, dBASE, Lotus 123 and etc., in the training division of CAT Academy, Hyderabad. I started teaching faculty for DOEACC "O", "A" and "B" level courses. Thereafter, I was promoted to as the Head, Computer Education, in which I given responsibility of scheduling and planning for courses and allocation of faculty resources, for the DOEACC Computer Education and other short-term courses.*

c. *By virtue of my long term and committed service to the CAT, the management gradually me from Faculty, to Head of Department (computer Education & Training) and thereafter, appointed me as women employee Director-Education & Training (Academics) on January 28, 2000.*

d. *I resigned as the Director of the CAT with effect from December 24, 2007. During my tenure of directorship with CAT, I was associated in a capacity as Professional Director/Technical Director. Further, I humbly submit I was not involved in day-to-day affairs of the management of the CAT. Further, it is pertinent to mentioned herein that even the SCN also failed to prove that I was involved in day to day affairs of the management of the CAT.*

e. *Further, it is pertinent to mentioned herein that I was on leave when the said Board Resolution dated April 30, 2007 was passed in Board meeting. Further, when the said Board Resolution dated August 28, 2009 was passed in Board meeting, I was not Director in the CAT as well as not in Board of the CAT. Hence, no duty can cast upon me. Further, the WTM vide order dated April 03, 2019 has also dispose off the proceeding qua me on ground that "**facts have not been brought out to show that I were indeed in control of the activities or actions of the company at the time of the GDR issues in 2007 and 2009**."*

CONSIDERATION OF ISSUES AND FINDINGS:

19. I have taken into consideration the facts and circumstances of the case, the material available on record. I note that the allegations levelled against CAT, its directors and promoters are as below:

    a. CAT and its directors and promoters, in connivance with entities connected/related to AP, had executed the scheme of fraudulent issuance of GDR wherein they had issued GDRs on two different occasions and pledged the GDR proceeds with Euram Bank so that Vintage could take loan for the subscription of GDRs. Thereafter, certain FIIs had converted the GDRs into underlying shares and had sold them in the Indian securities market with the help of the entities connected with AP. Therefore, it is alleged that CAT, its directors and promoters have violated the provisions of Section 12A(a), (b) (c) of SEBI Act read with 3(b), (c), (d), 4(2)(c), (f), (k) & (r) of PFUTP Regulations.

    b. CAT and Noticee 2, by their failure to submit the required information as well as by making false submissions before SEBI, have violated the provisions of Section 11C(3) read with 11C(6) of SEBI Act.

    c. CAT has funded its promoters viz. Mr. Laxmi Pershad Jaiswal, Mr. Dinesh Kumar Jaiswal, and Espirit Technologies Ltd for the purchase of its own shares.

    d. CAT has not disclosed related party transactions i.e. fund transfers between itself and its promoter directors viz. Noticee 3 and Mr. Laxmipershad Jaiswal, in its annual report (2008-2009). CAT has also not disclosed the nature of transactions and volume of transactions between itself and its promoter viz. Espirit Technologies Pvt Ltd, in the related party transactions in annual reports (2008-2009, and 2009-2010). Therefore, CAT is alleged to have violated Clause 32 read with Listing Agreement read with Section 23E of SCRA.

20. In view of the above, the issues for consideration before me are:-

    a. Whether the Noticees, in light of their role in GDR issues of CAT, have been responsible for fraudulent issues of GDRs and, as a consequence, whether have violated the provisions of Section 12A(a), (b) (c) of SEBI Act read with 3(b), (c), (d), 4(2)(c), (f), (k) & (r) of PFUTP Regulations?
    b. Whether Noticee 1 and 2, viz. CAT and Dhiraj Kumar Jaiswal, have violated the provisions of Section 11C(3) read with Section 11C(6) of SEBI Act?
    c. Whether CAT has funded its promoters viz. Mr. Laxmi Pershad Jaiswal, Mr. Dinesh Kumar Jaiswal, and Espirit Technologies Ltd for the purchase of its own shares?
    d. Whether CAT has violated the provisions of Clause 32 of the Listing Agreement read with Section 23E of SCRA?
    e. If yes, whether the Noticees are liable for penalty under Section 15HA of the SEBI Act, Section 15A(a) of the SEBI Act, and/ or Section 23E of SCRA, as applicable?
    f. If yes, what should be the quantum of penalty that should be imposed on them?

21. Before moving forward, the relevant extracts of the provision of law, allegedly violated by Noticees, are mentioned as under-

<u>SEBI Act</u>

Investigation.

11C.

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

(6) If any person fails without reasonable cause or refuses—

…….

(b) to furnish any information which is his duty under sub-section (3) to furnish; or

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.

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

12A. No person shall directly or indirectly—

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

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

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

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

(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:—

(c) advancing or agreeing to advance any money to any person thereby inducing any other person to offer to buy any security in any issue only with the intention of securing the minimum subscription to such issue;

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

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

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

SCRA

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.*

22. Before moving forward, I would like to deal with certain preliminary issues raised by the Noticees 1, 2, 3, 8, and 9 in their replies. It has been contended that the Hon'ble Supreme Court in the case of SEBI v. Pan Asia Advisors Ltd. laid down that SEBI has jurisdiction to take action against companies issuing GDRs only if such issue has an adverse impact on the Indian securities markets. It was also contended that that the provisions relating to issue of GDRs fall within the administrative control of the Ministry of Finance and the RBI and as per SEBI Board's own Memorandum on Voting Rights of GDR/ADR holders' dated May 19, 2010 the provisions relating to issue of GDRs and all matters incidental to the same fall within the administrative control of the Ministry of Finance/RBI.

23. In this regard, I note that in the matter of SEBI vs. Pan Asia Advisors Ltd., the issue under consideration before the Hon'ble Supreme Court of India was whether SEBI has jurisdiction in respect to GDR issues of 6 companies, including CAT. In the said matter, SEBI had filed an appeal against Hon'ble SAT order dated September 30, 2013 wherein it was held that SEBI does not have jurisdiction in the matter of GDR issues. The said appeal of SEBI was allowed by Supreme Court of India and it was held that SEBI has jurisdiction in the matter of GDR issues of the companies. While discussing the definition of 'securities' as per SCRA, Hon'ble Supreme Court of India observed that:

"*63. Going by the definition under Section 2(h)(i) 'security' would include other marketable securities of a like nature of any incorporated company. Therefore reading Section 2(h)(i) and 2(h)(iii) together and apply the same to GDRs, having regard to the fact that the issuance of GDRs are always based on the* *underlying Indian shares deposited with the Domestic Custodian Bank and thereby the GDRs possess in it right, as well as, interest in the shares, scripts etc., it will have to be straight away held that all GDRs would fall within the definition of 'securities' as defined under Section 2(h) of the 1956 Act.*"

I note that Hon'ble Supreme Court of India also made the following observations:

"*We are therefore convinced that having regard to the nature of allegations in the interests of investors in securities as well as the statutory obligation/duty cast upon SEBI to protect their interests, SEBI has got every jurisdiction to proceed against the respondents as well as the issuing company.*"

Therefore, in terms of above observations of Hon'ble Supreme Court of India, I hold that it is a settled position that SEBI has jurisdiction in respect of GDR issue as the same fall within the definition of 'securities' under SCRA.

24. I note that Noticee 1, 2, 3, 8, and 9 have also contended that there has been a long and unexplained delay in the initiation of proceedings against them. In this regard, I note that the GDRs under consideration in the present proceedings were issued in July 2007 and November 2009. However, I note that the present matter is complex involving investigation of various entities registered under foreign jurisdiction. The same, *inter alia*, required collaboration with foreign regulators by SEBI and collection of information. In this regard, I note that Hon'ble SAT in its order dated February 05, 2020 in the matter of Jindal Cotex Ltd. vs. SEBI had made the following observations:

"*Arguments on delay in investigation and consequently affecting natural justice are also devoid of any merit in the matter since this Tribunal is aware of the complexity involved in the entire manipulative GDR issue; how long it took SEBI to gain information relating to the various entities from multiple jurisdictions in* *the matter of PAN Asia Advisors Limited (Supra) and Cals Refineries Limited (Supra) etc.*"

In this regard, I also note that proceedings in respect of the GDR issue of CAT were initiated by SEBI as early as 2011, wherein SEBI passed an interim order dated September 21, 2011. Thereafter, pursuant to complete investigation in the matter, vide final order dated April 03, 2019, directions were passed against CAT and its directors and promoters. In view of the aforesaid, I do not find merit in the contentions of the Noticees.

a. Whether the Noticees, in light of their role in GDR issues of CAT, have been responsible for fraudulent issues of GDRs and, as a consequence, whether have violated the provisions of Section 12A(a), (b) (c) of SEBI Act read with 3(b), (c), (d), 4(2)(c), (f), (k) & (r) of PFUTP Regulations?

25. I note from the Investigation Report (**IR**) that, CAT had come up with its GDR issue on 2 separate occasions. First GDR Issue was of 43,04,348 GDRs (amounting to USD 6.46 Million) and issue closed on July 27, 2007 (hereinafter referred as '**first issue**'). Second GDR Issue was of 15,95,333 GDRs (amounting to USD 10.002 Million) and issue closed on November 15, 2009 (hereinafter referred to as '**second issue**'). Further, Pan Asia was the Lead Manager of both GDR issues of CAT.

26. I further note from the IR that, before the first issue, CAT had an issued share capital of 57,50,400 fully paid up equity shares. Thereafter, by appointing Pan Asia as Lead Manager, CAT decided to raise funds from investors outside India through the issuance of GDRs. Consequently, on July 27, 2007, CAT issued 2,58,26,088 equity shares which resulted in allotment of 43,04,348 GDRs having total value of USD

6.46 Million. The said GDRs, issued by CAT, were fully subscribed and the issue closed on July 27, 2007 itself.

27. Further, before the second issue, CAT had an issued share capital of 3,15,76,488 fully paid up equity shares. Thereafter, by appointing Pan Asia as Lead Manager, CAT decided to raise funds from investors outside India through the issuance of GDRs. Consequently, on November 06, 2009, CAT issued 4,78,59,990 equity shares which resulted in allotment of 15,95,333 GDRs having total value of USD 6.27 Million. The said GDRs, issued by CAT, were fully subscribed.

28. I note the following details regarding GDR issue of CAT from the IR:

Sr. No	Issuer	Date of GDR Issue	Pre GDR equity	Shares issued under GDR	% GDR to Pre GDR equity	Market Cap prior to GDR issue (Rs Crore)	Capital raised by GDR Issue (Rs. Crore)	% Capital raised to pre GDR Market Cap
1	CAT	27-07-2007	57,54,400	2,58,26,088	449.11%	3.00	26.14	871.20%
2.	CAT	06-11-2009	3,15,76,488	4,78,59,990	151.57%	50.81	46.83	92.17%

Thus, I note from the above data that the capital raised under the first issue was 871.20% of market capital of the company prior to first issue. Further, the capital raised under the second issue was 92.17% of market capital of the company prior to second issue.

29. I note from the IR that SEBI, on the basis of investigation in the scrip of CAT, alleged that the complete process of GDR issuance by CAT, on both the occasions, was devised and structured by AP in connivance with CAT to the detriment of the Indian investors, wherein AP arranged for loans for the subscription of GDRs by Vintage, wherein it was observed that, Vintage, a Dubai based company, was allegedly 100% owned and controlled by AP. CAT, in turn, helped AP in arrangement of those funds

by signing two separate pledge agreements, with European American Investment Bank AG (hereinafter referred to as '**Euram Bank**'), a bank based in Vienna, Austria, thereby, providing security for such loans taken by Vintage. Thereafter, these GDRs were converted into underlying shares and sold to Indian investors with the help of certain FIIs registered with SEBI or their Sub-Accounts as well as certain Indian entities connected to AP. At the same time, CAT misled the Indian investors by not disclosing information regarding pledge agreements signed by Mr. Dhiraj Kumar Jaiswal, at the time of both the GDR issues, whereby the funds received by CAT under the respective GDR issues were given as collateral for the loans taken by Vintage. In light of this, it is alleged that the activities of CAT and its Manging Director, viz. Mr. Dhiraj Kumar Jaiswal, in connivance with AP and his connected entities, involved in the whole scheme, created a wrong impression before the Indian investors that foreign investors were interested in investing in CAT due to its reputation and future prospects and therefore, defrauded them.

30. 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 issuances by CAT.

<u>2nd GDR Issue</u>

31. Firstly, I note that the Board of Directors of CAT, in its meeting dated April 30, 2007, and August 28, 2009 had passed the following resolution:

<u>April 30, 2007</u>

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

RESOLVED FURTHER THAT Mr. Dhiraj Kumar Jaiswal, Managing Director of the company be and is hereby authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.

RESOLVED FURTHER THAT Mr. Dhiraj Kumar Jaiswal, Managing Director of the company be and are 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.

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"

<u>August 28, 2009</u>

"RESOLVED THAT the Company do re-open Retail banking Account No. 5400130101 maintained with European American Investment Bank Ag (Euram Bank Ag) Vienna, Austria.

FURTHER RESOLVED THAT Mr. Dhiraj Kumar Jaiswal, Managing Director of the company be and is hereby authorised to make application to the Bank and further authorized to operate the aforesaid account and to do all such acts and deeds as may be necessary to give effect to this resolution"

I note from the above resolution that Board of Directors of CAT had resolved to open a bank account with EURAM Bank for its GDR issue and authorized Mr. Dhiraj Kumar Jaiswal to sign any document in this regard. I further note that EURAM Bank was also authorized to use any funds deposited with it as a security to loans.

32. I further note from the subscriber's side, as part of the GDR scheme that, ten days prior to the issuance of the aforesaid GDRs, Vintage entered into a loan agreement dated October 27, 2009 with EURAM Bank by virtue of which EURAM Bank advanced loan to the tune of USD 10,002,737.91 to Vintage expressly for subscribing to the GDRs to be issued by CAT which observation I note from the covenants of the loan agreement brought out in subsequent paragraph(s). The said loan agreement was signed by AP on behalf of Vintage in the capacity of its Managing Director. I further note from the said loan agreement that Vintage is mentioned as the Borrower.

33. As noted above, on perusal of the Loan Agreement, the purpose of the Loan Agreement is stated as;

> "*To provide funding enabling Vintage FZE to take down GDR issue of 1,595,333 Luxemburg public offering and may only be transferred to Euram account nr. 540013, CAT Technologies Ltd*"

From the aforesaid Loan Agreement, I note that Vintage had availed of a loan facility to the extent of approx. USD 10 Million from EURAM Bank solely for the purpose of subscribing to the GDRs of CAT.

34. At the same time, CAT opened its account with EURAM Bank for the purpose of credit of proceeds of GDR Issue. I also note that, on the same date on which Vintage signed the loan agreement with EURAM Bank, as discussed in pre-paragraphs, CAT also entered into a pledge agreement dated October 27, 2007 with EURAM Bank which was signed by Noticee 2 viz. Mr. Dhiraj Kumar Jaiswal as the Authorized Representative of CAT. By the said pledge agreement, CAT pledged the proceeds

of its GDR issue with EURAM Bank as security for the loan given by EURAM Bank to Vintage for subscribing to its GDRs.

35. According to the Pledge Agreement, CAT has been referred as "Pledgor" and Euram has been referred to as "Bank". I note that the preamble of the Pledge Agreement states

> *"By loan agreement K271009-002(hereinafter referred to as "Loan Agreement") dated October 27,2009, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates ("the Borrower") in the amount of $ USD 1,00,02,737.91. <u>The Pledgor has received a copy of the Loan Agreement and acknowledges and agrees to its terms and conditions</u>." (Emphasis Supplied).*

36. Further, the pledge created in the Pledge Agreement is stated below:-

> *" 2. Pledge*
>
> *2.1 In order to secure any and all obligations, Present and future, whether conditional or unconditional of the Borrower towards the bank under the Loan Agreement and any and all respective amendments thereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the Loan Agreement – including those limited as to condition or time or not yet due – irrespective of whether such claims have originated from the account relationship, from bills of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations") the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:*
>
> *2.1.1 all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount of $ USD 1,00,02,737.91 existing from time to time at present or hereafter on the securities account(s) no. 540 013 held with the Bank (hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein.*
>
> *2.1.2 all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 540 013 kept by the*

Bank (hereinafter referred to as the "Pledged Time Deposit Account ") and all amounts credited at any particular time therein. The interest rate on deposit in the amount of the facility amount of the loan will be fixed at 2.5% p.a
(the Pledged securities account and the Pledged Time Deposit account hereinafter referred to as the "Pledged Accounts", the Pledged Securities and the Pledged Accounts hereinafter collectively referred to as "Collateral")
2.2 The Pledgor agrees to deposit with the Bank all dividends, interest and other payments, distributions of cash or other property resulting from the Pledged Securities and funds."

37. I note that Noticee 1, 2, 3, 8, and 9 have contended that they are not aware about the loan agreement signed between Vintage and EURAM Bank. Further, they have denied that the Pledge Agreement was signed between CAT and EURAM Bank. The Noticees have contended that they have not authorized Noticee 2 to sign any Pledge Agreement on behalf of the company. I have considered this argument of the Noticees while dealing with the arguments concerning the 1st GDR issue in the subsequent paragraphs. Further, it was submitted that there was no privity of contract between the execution of loan agreement and them. In this regard, I note that though CAT may not have entered into any loan agreement, *per se,* however, I note that the Pledge Agreement refers to the Loan Agreement signed between the borrower i.e. Vintage and EURAM, whereby Vintage was granted a loan of approx. USD 10 Million. Therefore, I observe that, while signing the Pledge Agreement, CAT was clearly aware that Vintage had acquired a loan of approx. USD 10 Million and the same is being secured by way of money deposited by CAT in its bank account with EURAM Bank. Further, as the pledge agreement was signed by Noticee 2 on behalf of CAT, in his capacity as the Authorized Representative as well as Managing Director of CAT, I note that he was well aware of the said loan agreement between

Vintage and EURAM Bank. On perusal of the contents of the Pledge Agreement, it is noted that CAT 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 Vintage. Further, I note that the following condition have been put in the Pledge agreement for the realization of the pledge.

> **"***6. Realization of the Pledge*
>
> *6.1 In the case that the* ***Borrower fails to make payment*** *on any due amount, or default in accordance with the Loan Agreement, the Pledgor herewith grants its express consent and the Bank is entitled to apply the funds in the Pledged Accounts to* ***settle the Obligations****. In such case the Bank shall transfer the funds on the Pledged Accounts, even repeatedly, to an account specified by the Bank*
>
> *6.2 Notwithstanding the foregoing, in the case that the Borrower fails to make payment on any due amount, or defaults in providing or increasing security, the Pledgor herewith grants its express consent and the Bank is entitled to realize the Pledged Securities (i) at a public auction for those items of Pledged Securities for which no market price is quoted or which are not listed on a recognized stock exchange or (ii) in a private sale pursuant to the provisions of Section 376 Austrian Commercial Code unless the Bank decides to exercise its rights through court proceedings. The Pledgor and the Bank agree to Realize those items of the Pledged Securities for which a market price is quoted or which are listed on a stock exchange through sale by a Broker Publicly authorized for such transactions, selected by the Bank.*
>
> *6.3 The Bank may realize the Pledge rather than accepting payments from the Borrower after maturity of the claim if the Bank has reason to believe that the Borrower's payments may be contestable. "*

I note from the perusal of the Pledge Agreement and the Loan Agreement that both of them were signed on October 27, 2009. Further, I note that the Preamble Clause of the Pledge Agreement clearly defines loan agreement in the terms quoted above. Therefore, in view of this, I hold that both the loan agreement and Pledge agreement are intertwined with each other and support each other. Therefore, one cannot be read in isolation of the another.

38. I note that it has been contended by the Noticee 1, 2, 3, 8, and 9 that the proceeds of the GDR issues were transferred to the bank account of CAT and its subsidiary CAT FZE from time to time. In this regard, I note that the GDR proceeds of CAT was not freely held unencumbered fund and further CAT was not allowed to withdraw the same without prior written approval of EURAM Bank. In terms of the Pledge Agreement, the GDR proceeds of CAT were provided as security against the loan availed by Vintage, and withdrawal by CAT was dependent on the loan repayment by Vintage. In this regard I note it relevant to rely upon the observations of the Hon'ble SAT, incorporated 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 EURAM Bank and the CAT was not allowed to withdraw the same without prior written approval of EURAM Bank.

39. I also note from the IR and the disclosures available on Bombay Stock Exchange (**BSE**) website that the loan agreement and pledge agreement which were instrumental in the whole scheme of GDR issue were not disclosed to the BSE.

<u>1st GDR Issue</u>

6. On similar lines to the 2nd GDR issue, I note that that a Loan agreement was also signed between Vintage and Euram bank previously on July 23, 2007 in relation to first GDR issue of CAT. Similarly, a Pledge Agreement was signed between CAT and Euram on July 20, 2007. The Loan agreement and Pledge Agreement signed 1st time were exactly similar to the 2nd Loan Agreement and Pledge Agreement except following differences:

- The loan agreement mentions the name of Kohinoor Broadcasting Corporation Ltd (Kohinoor) as the issuer company for which the loan is provided. The nature and purpose of the Loan Agreement states that,

  " to provide funding enabling Vintage to take down GDR issue of Kohinoor Broadcasting Corporation Ltd's (Kohinoor) Luxemburg public offering and may only be transferred to Euram account no: 540013 for CAT Technologies Ltd..."

- Thus the Loan and Pledge Agreement were signed for the subscription of 1st GDR issue of 43,04,348 GDRs of CAT Technologies Ltd which closed on July 27, 2007 but mentioned the name of Kohinoor, presumably due to a typographical error.

- The Loan amount was USD 64,56,522.00.

40. I note from the IR that, subsequent to successful implementation of the above scheme, CAT once again decided to raise funds from investors outside India through the 2nd issuance of GDRs, as has been explained in previous paragraphs.

41. I note from the IR that, from the subscriber's side, as part of the GDR scheme that, four days prior to the issuance of the aforesaid GDRs, Vintage entered into a loan agreement dated July 23, 2007 with Euram Bank by virtue of which Euram Bank advanced loan to Vintage expressly for subscribing to the GDRs to be issued by CAT which observation I note from the covenants of the loan agreement brought out in subsequent paragraph(s). The said loan agreement was signed by AP on behalf of Vintage as its Managing Director. As previously mentioned, I note that AP was the founder and director of Vintage and Alkarni, a company registered in British Virgin Island with its entire share capital held by AP and his family, is the 100% shareholder of Vintage. In view of these facts, I hold that Vintage was controlled by the AP during the relevant period of time.

42. As noted above, on perusal of the Loan Agreement, I note that the following has, *inter alia,* been mentioned therein –

1. *Currency and the amount of facility:*

   USD $6,456,522.00

   (The amount is exactly the same amount raised by CAT through the said GDR offering.) (Explanation supplied).

2. *Nature and purpose of facility:*

   To provide funding enabling Vintage FZE to take down GDR issue of CAT Technologies Ltd. Luxemburg public offering and may only be transferred to Euram account nr 540 013, CAT Technologies Limited

   (The specific purpose of the loan/ draw down was for the purpose of subscribing to the GDR issue of CAT. 540 013 is the client account number of CAT.)(Explanation supplied).

6. *Security*

   6.1. In order to secure all and any of the Bank's claims and entitlements against the Borrower, arising now or in the future out of or in connection with the Loan or any other obligation or liability of the Borrower to the Bank, including without limitation other loans granted in the future , it is hereby irrevocably agreed that *the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be demanded by the Bank: "*

- *Pledge of certain securities held from time to time in the Borrower's account no 540 013 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*
- *Pledge of the account no. 540 013 of the Borrower held with the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*

From the aforesaid Loan Agreement, I note that Vintage had availed of a loan facility to the extent of USD 6.456 Million from Euram Bank solely for the purpose of subscribing to the GDRs of CAT.

43. At the same time, CAT opened its account (A/c No. 540 013) with Euram Bank for the purpose of credit of proceeds of GDR Issue. I also note that, at almost the same time when Vintage had entered into loan agreement with Euram Bank, as discussed in pre-paragraphs, CAT also entered into a pledge agreement dated July 20, 2007 with Euram Bank which was signed by Noticee 2 viz. Shri Dhiraj Kumar Jaiswal as the Managing Director of CAT. By the said pledge agreement, CAT pledged the proceeds of its GDR issue with Euram Bank as security for the loan given by Euram Bank to Vintage for subscribing to its GDRs. The salient Clauses of the Pledge Agreement *inter alia* are as under:

1. Preamble

By loan agreement (hereinafter referred to as the "Loan Agreement") dated July 20, 2007, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates ("the Borrower") in the amount of $ USD 6,456,522.00 million. <u>The Pledgor has received a copy of the Loan Agreement and acknowledges and agrees to its terms and conditions</u>.

2. Pledge

2.1. In order to secure any and all obligations, present and future, whether conditional or unconditional of the Borrower towards the bank under the Loan Agreement and any and all respective amendments thereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the Loan Agreement – including those limited as to condition or time or not yet due – irrespective of whether such claims have originated from the account relationship, from bills of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations") the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:

2.1.1. all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount of $ USD 6,456,522.00 existing from time to time at present or hereafter on the securities account(s) no. 540 013 held with the Bank (hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein.

2.1.2. all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 540 013 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account ") and all amounts credited at any particular time therein.

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

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

6. Realisation of the Pledge:

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

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

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

44. From a perusal of copy of resolution dated April 30, 2007 on record, I note that the same is copy of the resolution passed by the Board of Directors of CAT on April 30, 2007 printed on the letter head of the company and signed by Noticee 3 (Shri Dinesh Kumar Jaiswal), whereby Shri Dhiraj Kumar Jaiswal, Managing Director of CAT viz. Noticee 2 was appointed as the authorized signatory on behalf of the company and to execute all the transactions with the Banks. Similarly, the resolution passed by the Board of Directors of CAT on August 28, 2009 printed on the letter head of the company was signed by Noticee 5 (Shri Kesava Mallikarjuna Prasad Chivukula). I further note from copy of pledge agreements entered into between CAT and Euram Bank for the 1st GDR issue and 2nd GDR issue were signed by Noticee 2 for CAT. I note the signatures are the same as found in the application to open an account / securities account submitted to Euram for opening Corporate account by CAT.

45. I note that Noticee 2 has denied that he signed the Pledge Agreements. Further, CAT and other Noticees have denied that they had authorized Noticee 2 (Shri Shri Dhiraj Kumar Jaiswal) to sign any such agreement on behalf of CAT. I note that the resolutions dated April 30, 2007 and August 28, 2009 passed by the board of directors of CAT are available on record. In this regard, I note, while placing such argument, CAT and other Noticees have not produced any evidence before me to prove otherwise. On perusal of the Board resolution dated August 28, 2009, it is noted that the same had authorized the reopening CAT's bank account with Euram. The resolution pertaining to the 2nd GDR issue which was passed on August 28, 2009, has a specific mention about the retail banking account no. 5400130101. I further note that the GDR subscription funds of 2nd GDR issue were received in this account. Similarly, I find the board resolution dated April 30, 2007 was passed for opening bank account with EURAM Bank as mentioned above. Thus, I note that the board resolution(s) to open a bank account with EURAM Bank is one of the formal initial steps to implement the GDR scheme as has been discussed without which resolution, the plan could not have been kick started. I note from the perusal of the records with respect to the 2nd GDR that the Pledge Agreement and the Loan Agreement that both of them were dated October 27, 2009. I note that the pledge agreements were signed by the authorized director of CAT viz. Noticee 2. Further, I note that the Definition Clause of the Pledge Agreement clearly defines loan agreement in the terms quoted above. Therefore, in view of this, I hold that both the loan agreement and pledge agreement are intertwined with each other and support each other. Therefore, one cannot be read in isolation of the another. I also note that only by virtue of the pledge agreement executed by CAT, Vintage was granted loan

by Euram. Without the said loan, the GDR subscription itself would not have happened. Thus, I note that the loan and pledge agreements played the central role in the 2nd GDR issuance. In light of the aforesaid facts and circumstances, I find the contentions of CAT and its directors that Noticee 2 was not authorized to sign the pledge agreements lack any merits more so CAT has not produced any documentary evidence establishing the powers granted to its directors to sign the pledge agreements. I note that CAT is a joint stock company, an artificial juristic person and has to necessarily act through its human resources. I note that the Noticee 2 (Managing Director) has signed the pledge agreements as the authorized signatory and thereby calling for an authorization by the board of directors. I note that CAT and the Noticees has generally argued in regard to authorizing Noticee 2 to sign pledge agreements without any documentary evidence in support of their arguments to negate the facts as set out in the SCN. Therefore, I find no merits in the arguments of the Noticees in this regard.

46. I note that the Pledge Agreement refers to the Loan Agreement between the borrower i.e. Vintage and Euram Bank, whereby Vintage was granted a loan of USD 6,456,522.00 and it is stated that the Pledger i.e. CAT had received a copy of the said Loan Agreement and had also acknowledged and agreed to the terms and conditions of the said loan agreement. Therefore, I observe that, while signing the Pledge Agreement, CAT was very much aware that Vintage had acquired loan only to subscribe to the GDR issue of CAT. Further, as the pledge agreement was signed by Shri Dhiraj Kumar Jaiswal (Noticee 2) on behalf of CAT, in his capacity as the Managing Director of CAT, I note that he had, as clearly mentioned in the pledge agreement, acknowledged receiving the said loan agreement and agreed to its terms

and conditions after perusing the said agreement. On perusal of the contents of the Pledge Agreement, it is noted that CAT had agreed to pledge all its rights, title and interest in and to the securities deposited in the Pledge Securities Account and funds in Pledged Time Deposit Account so as to secure the present and future obligations of Vintage. The Pledge Agreement also expressly states that:

> "*In the case that the Borrower fails to make payment on any due amount, or defaults in accordance with the Loan Agreement, the Pledgor herewith grants its express consent and the Bank is entitled to apply the funds in the Pledged Accounts to settle the Obligations*".

I note from the perusal of the Pledge Agreement and the Loan Agreement that -

- Clause 6.1 of the Loan Agreement specifies that the Pledge Agreement was an integral part of the Loan Agreement.
- The preamble of the pledge agreement clearly mentions that the pledge is being created for the purpose of the loan agreement.

Therefore, in view of the above points, I hold that both the loan agreement and pledge agreement are intertwined with each other and support each other. Therefore, one cannot be read in isolation of the another.

47. Regarding the Pledge Agreement, CAT has inter alia submitted that after the First GDR issue of the Company made in July 27, 2007, a number of GDR issues were made adopting the same procedure over a period of two years, and none of the regulators i.e. RBI, SEBI or Stock Exchange had pointed out any anomaly or flaws in the manner in which these GDR issues were made. In this regard, I note that the modus operandi of the GDR Issues through an arrangement involving loan and Pledge Agreements came into light post the investigation by SEBI and the said arrangement was never disclosed by the company during the relevant time. Hence,

I do not find merit in the above contention of the Noticees. I am of the view that the GDR proceeds of CAT were not freely held unencumbered fund and further CAT was not allowed to withdraw the same without prior written approval of Euram Bank. In this regard I note it relevant to rely upon the observations of the Hon'ble SAT, incorporated 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.*"

48. Further, I am of the view that the only reason the funds remained unemployed was because the same were pledged with Euram Bank and CAT was not allowed to withdraw the same without prior written approval of Euram Bank.

49. With regard to CAT and following Noticees viz. Noticee 2, 3, 8, and 9 contending that the GDR proceeds were received by the Company and deployed for the purposes set out in the offer documents, I note from the IR that the major portion of GDR proceeds was not received by CAT in India. I further note that the funds were transferred directly to its subsidiary in U.A.E (viz. CAT FZE) or utilized as GDR expense. 100% of the GDR proceeds from the 1st issue and 98% of the GDR proceeds from the 2nd issue were transferred to CAT FZE. I also note that the summons were sent to CAT seeking details regarding utilization of GDR proceeds by CAT and it was observed that CAT had failed to provide critical information like

the particulars of end use of GDR proceeds by its foreign subsidiaries. The aforesaid Noticees have submitted the bank account statement of CAT with EURAM Bank and details of usage of GDR proceeds in tabular form as Annexure E and F respectively in their replies. On perusal of the same, I note that 100% of the GDR proceeds from the 1st GDR issue i.e. USD 6.46 million was transferred to its U.A.E subsidiary viz. CAT FZE. Similarly, for the 2nd GDR issue, CAT has submitted that out of GDR proceeds of USD 10 million (equaling INR 47.09 crores), INR 46.06 crores was transferred to CAT FZE, INR 47 Lakh was transferred to Indian account of CAT, and INR 59 lakh was amount paid to merchant bankers. I note that CAT and other Noticees have not adduced the bank statement of CAT FZE in their reply, nor have the same been provided in response to summons issued by SEBI during investigation. Regarding non-submission of such critical information, the above Noticees have submitted that the same was due to they being defrauded by local agent of CAT FZE and the long gap between the transactions and summons issued by SEBI. However, no further details of such defraudment has been provided. In view of the above, I am unable to accept the contentions of the above Noticees.

50. Further, I note from the corporate announcements available on BSE website that CAT had informed BSE on July 28, 2007 that

> "*Cat Technologies Ltd has informed BSE that the Board of Directors of the Company at its meeting held on July 27, 2007, has considered and approved the following:*
>
> *1. Approved the Placing Agreement, Deposit Agreement and the Esrow Agreement in respect of GDR issue.*
>
> *2. Approved the offering circular filed at Luxembourg Stock Exchange.*

3. Allotted 25,826,088 Equity Shares of Rs 10/- each underlying 4,304,348 GDR's Issued in the name of Depository i.e. Deutsche Bank Trust Company Americas."

Further, CAT, had informed to SEBI that the following were the investors in the 1st GDR issue of CAT :

Name of Subscriber	GDRs Subscribed	Amount Paid (USD)	% of total GDR issue
Rexflec Ltd (**Rexflec**)	7,00,000	10,50,000	16.26
Trendsetter	8,00,000	12,00,000	18.59
Futura Group Ltd (Futura)	8,00,000	12,00,000	18.59
Tradetec	10,04,348	15,06,522	23.33
Imagination	10,00,000	15,00,000	23.23

Further, following were the investors in the 2nd GDR issue of CAT as submitted by CAT.

Name of Subscriber	GDRs Subscribed	Amount Paid (USD)	% of total GDR issue
Futura	4,95,333	31,05,738	31.05
Tradetec	6,00,000	37,62,000	37.61
Trendsetter	5,00,000	31,35,000	31.34

51. I incidentally note from the IR that the above entities were also subscribers in other GDR issues also. In order to contact these initial investors, SEBI had sent emails to their available Email addresses and also had issued summons to their contact addresses as per records. However, all the Emails and summons returned undelivered. Thereafter, SEBI contacted the respective Financial Markets Regulators of Hong Kong and Singapore. In this regard, I note that following:

i. The Securities and Futures Commission of Hong Kong, vide its Email dated July 31, 2012, informed SEBI that Imagination Network Inc. is not present at the address given above.

ii. The Monetary Authority of Singapore, vide its Email dated July 27, 2012, informed SEBI that the building Prudential Tower, where Tradetec Corporation is supposed to have an office at Level 47, does not have a Level (floor) 47. The highest floor is Level 30.

I note that copies of the above referred email letters have been shared with CAT and its directors vide annexures to the SCN. In this regard, I note that the matter of GDR issues of CAT came up for consideration by the Hon'ble SAT vide appeal No. 126 of 2013 (Pan Asia Advisors Ltd. vs. SEBI) along with GDR issues of 5 other companies. The said matter was decided by Hon'ble SAT by way of an order dated October 25, 2016. The Hon'ble SAT in the aforesaid matter while noting that same *modus operandi* was adopted in all the six issuer companies, for convenience discussed the GDR issue of Asahi Infrastructure & Projects Ltd., and noted, *inter alia,* as follows: -

"*It is equally interesting to note from the investigation carried out by SEBI that the alleged initial subscribers to the GDRs were nonexistent entities because, e-mails and summons issued to those entities were return back undelivered. Moreover, the respective securities market regulators of the Countries in which the alleged initial subscribers were supposed to be situated have informed SEBI that the addresses of the initial subscribers are either non-existent or do not belong to those entities. In case of Tradetec the address shown was 'level 47, Prudential Tower, 30 Cecil Street, Singapore, 049712'. Investigation carried out by SEBI through the Monetary Authority of Singapore revealed that there was no level 47 and the highest floor of Prudential Tower was level 30 and that Tradetec is not even listed in the office directory of Singapore. One of the* *alleged initial subscriber known as Rexflex Ltd. was found to be controlled by AP and admittedly the name of Rexflex Ltd. has now been changed PAN Asia Management Ltd. Even in case of other issuer companies, the WTM of SEBI has recorded a finding in para 15 of the impugned order that those entities do not exist at the given address and the names of those entities do not exist in the official directory of the Countries in which the said entities were supposed to be situated. In these circumstances, findings recorded in the impugned order that the names of initial subscribers exist only in fiction and that the appellants have artificially sought to create an impression that the GDRs were initially subscribed by foreign investors other than Vintage cannot be faulted.*"

52. The abovementioned information, forwarded by the respective Securities Market Regulators of Hong Kong and Singapore clearly show that the initial subscribers, submitted by CAT to SEBI and BSE, do not exist and that CAT had submitted wrong information. In this regard, CAT has contended that it had only forwarded the information regarding the initial investors to stock exchanges and SEBI, which it had received from Pan Asia and Depository Bank. However, I do not accept the above contention of CAT as Mr. Dhiraj Kumar Jaiswal, on behalf of CAT, had signed the pledge agreements corresponding to the loan agreements between Vintage and Euram Bank wherein it was clearly mentioned that the loan was being given to Vintage only to subscribe to the GDR issue of CAT and the proceedings of the loan agreement may only be transferred to Euram Bank Account no. 540 013 (bank account of CAT). Therefore, in view of the scheme of the GDR issue as described in the initial paragraphs of this order, I note that, from the beginning, CAT and its Managing Director Mr. Dhiraj Kumar Jaiswal were aware of the fact that Vintage was the only initial subscriber of the GDR issue. In light of the whole scheme of things as explained it only stands to reason that despite clear knowledge of the subscriber to

the GDR issue CAT and its directors have disclosed non-factual information which buttresses their *malafide* intention behind withholding the correct actual information.

53. Therefore, in light of the above observations and the fact that CAT itself had secured the loan taken by Vintage for the subscription of its GDR and the documents related to that were signed by Mr. Dhiraj Kumar Jaiswal himself, I am of the view that, from the initial stage, CAT and its directors were well aware that the GDRs were subscribed only by Vintage.

54. Therefore, as noted above in pre-paragraphs, CAT didn't disclose the details of loan agreement of Vintage and its own pledge agreement with Euram Bank for the two of its GDR issues. The Noticees 1, 2, 3, 8 and 9 have contended that the said loan agreements and account charge agreement/pledge agreement were not required to be disclosed as per law. It was further submitted that even if such disclosure was required, even then the said non-disclosure cannot be termed as fraudulent. 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 loan agreement and 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 on both the occasions were 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 CAT.

55. I also note that Hon'ble Supreme Court of India, in its judgment dated July 06, 2015, in the matter of SEBI vs. Pan Asia Advisors Ltd. & Ors, had explained the object of creating and trading in GDRs outside India in the following terms:

"*60. On a consideration of the 2000 Regulations, the 1993 Scheme and the Master Circular issued by RBI periodically one can discern that for creation of GDRs which can be traded only at the global level, the issuing company should have developed a reputation at a level where the marketability of its investment creation potential will have a demand at the hands of the foreign investors. Simultaneously, having regard to the development of the issuing company in the market and the confidence built up with the investors both internally as well as at global level, the issuing company's desire to raise foreign funds by creating GDRs should have the appreciation of investors for them to develop a keen interest to invest in such GDRs. Mere desire to raise foreign investments without any scope for the issuing company to develop a market demand for its GDRs by increasing the share capital for that purpose is not the underlying basis for creation of GDRs. In fact for creating of GDRs apart from the desire of the* *issuing company to raise foreign funds, the marketability of such shares in the form of GDRs should have an applicable potential at the global level. To put it differently, by artificial creation of global level investment operation, either the issuing company on its own or with the aid of its Lead Manager cannot attempt to make it appear as though there is scope for trading GDRs at the global level while in reality there is none. The above fact has to be kept in mind when dealing with an issue relating to creation of GDRs, in as much as, when the GDRs gets fully subscribed at the global level providing scope for huge foreign investment, the same will have a serious impact at the internal investment market in the form of high appreciation of share value whereby the issuing company and the investor will be greatly benefited mutually. Such a real growth structurally and financially is the underlying principle in the creation and trading of GDRs at the global level.*"

Therefore, I observe that the company has issued GDRs on two separate occasions without disclosing the actual subscribers would clearly give an impression that the company has developed a reputation at a level where the marketability of its investment creation potential will have a demand at the hands of the foreign investors.

56. In this regard, I am of the view that the above general disclosure that the GDRs were allotted to the subscribers clearly establishes the malafide intention on the part of CAT as well as its directors. Further, the purpose behind such disclosure has been elaborately explained by the Hon'ble SAT, in its order dated October 25, 2016 in the matter of Pan Asia Advisors Ltd. vs. SEBI, in following words:

"*It is apparent that the appellants knew that if the investors in India come to know that the GDRs of the issuer companies have not been subscribed by foreign investors but by the entities controlled by the Managing Director (AP) of PAN Asia, then it would not generate interest in minds of the investors in*

India to subscribe to the shares of issuer companies. Therefore, in order to create an artificial impression that global investors have shown keen interest in investing in the issuer companies by subscribing to the GDRs, appellants by a dubious method introduced fictitious and non-existent initial subscribers to the GDRs of the issuer companies so as to mislead the investors in India in believing that the global investors have shown keen interest in investing in the GDRs of issuer companies. In these circumstances, decision of SEBI that the appellants attempted to committed fraud on the investors in India by introducing fictitious initial subscribers cannot be faulted."

In view of this, I hold that the deliberate act on the part of CAT and its directors to submit wrong information on two separate occasions was an important part of the whole schemes of GDR issues and the same was done only for the purpose of defrauding Indian investors by creating an impression that the GDRs of CAT have been subscribed by genuine foreign entities on both the occasions on the basis of its fundamentals and future prospects.

57. I further note from IR that these GDRs were sold by way of Over the counter (**OTC**) transactions to FIIs and their sub-accounts such as Mavi Investment Fund Limited, Rhodes Diversified, India Focus Cardinal Fund ('**IFCF**'), KII etc. at the time of 1st GDR issue. Similarly, these GDRs were sold to FIIs and their sub-accounts such as IFCF at the time of second issue. In this regard, I note from the IR that IFCF was an entity connected with AP. Thereafter, I note that the said GDRs were converted into underlying shares by IFCF. Pursuant to the said conversion, IFCF sold these shares in Indian Securities Market to the entities connected with AP. Incidentally, I note from the investigation report that no wrongdoing, whatsoever, has been identified on part of CAT and its directors or promoters in respect of the above leg of the scheme.

58. To put the entire discussion in a nutshell, I find that CAT, by appointing Pan Asia as the lead manager, issued GDRs on two separate occasions. In the first occasion viz. in the year 2007, a loan agreement entered into between Vintage and EURAM Bank to the extent of the whole GDR proceeds of CAT, secured by a corresponding account charge agreement between CAT and EURAM Bank, was instrumental in the subscription of the complete GDR issue by Vintage. I note that the two agreements were drawing strength from each other. At the same time, CAT did not disclose the aforesaid loan agreement and account charge agreement. Thereby, CAT created an impression that the GDRs were genuinely subscribed by foreign entities. Thereafter, the said GDRs were sold in OTC trades to certain FIIs by Vintage which converted the same and sold them in Indian Securities Market.

59. Similarly, on the second occasion viz. in the year 2009, a loan agreement entered into between Vintage and Euram Bank to the extent of the whole GDR proceeds of CAT, secured by a corresponding pledge agreement between CAT and Euram Bank, was instrumental in the subscription of the complete GDR issue by Vintage. I note that the two agreements were drawing strength from each other. At the same time, CAT did not disclose the aforesaid loan agreement and pledge agreement. Thereby, CAT created an impression that the GDRs were genuinely subscribed by foreign entities. Thereafter, the said GDRs were sold in OTC trades to certain FIIs by Vintage which converted the same and sold them in Indian Securities Market.

60. Thus, I note that the issuance of GDRs by adopting the explained *modus operandi* and the consequential misleading and false disclosure on both the occasions render the whole schemes of things a fraudulent act orchestrated by CAT and its directors

with the help of AP and associates. At the same time, Vintage has played a very important role in the first GDR issue by subscribing the whole GDR issue using funds secured by CAT.

61. In view of the above, I further hold that, using the 1st GDR issue, the fraudulent impression, created before the investors in Indian securities market, showed CAT as a company to be of international reputation and better investment opportunity. The said fraudulent impression was again strengthened by way of 2nd GDR issue in 2009. I am of the view that the said impression was made possible only through an elaborate fraudulent planning detailed above.

62. In view of the foregoing, I find that the fraudulent GDR schemes crafted; false and misleading corporate announcements made and material and price sensitive information viz., (i) execution of pledge agreement dated July 20, 2007 by CAT in favour of EURAM Bank pledging the GDR proceeds of 1st GDR issue for providing security to the loan taken by Vintage, (ii) execution of loan agreement dated July 23, 2007 by Vintage for obtaining loan from the EURAM Bank for subscribing the 1st GDR issue of CAT, (iii) Vintage was the only subscriber of GDR issued in July 2007 by CAT, (iv) execution of pledge agreement dated October 27, 2009 by CAT in favour of Euram Bank pledging the GDR proceeds of entire 2nd GDR issue for providing security to the loan taken by Vintage, (v) execution of loan agreement dated October 27, 2009 by Vintage for obtaining loan from the Euram Bank for subscribing the 2nd GDR issue of CAT and (vi) Vintage was the only subscriber of GDR issued in October 2009 by CAT, suppressed by CAT are price sensitive information and have the strength to impact the scrip price of CAT.

63. I note that the Noticees have submitted that there is no violation of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3 (b), (c), (d) and 4(2)(c), (f), (k), (r) of PFUTP Regulations. It has been contended that they had never, directly or indirectly, employed any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange. It was also contended that they have not published or caused to be published any information which was not true. Further, it was submitted that they have never carried out any advertisement that was misleading or that contained information which could influence the decision of the investors.

64. I note that the Hon'ble SAT, in its order dated October 25, 2016 in the matter of Pan Asia Advisors Ltd. vs. SEBI, has made the following observations:

> "*From the aforesaid definition (of fraud) it is absolutely clear that if a person by his act either directly or indirectly causes the investors in the securities market in India to believe in something which is not true and thereby induces the investors in India to deal in securities, then that person is said to have committed fraud on the investors in India. In such a case, action can be taken under the PFUTP Regulations against the person committing the fraud, irrespective of the fact any investor has actually become a victim of such fraud or not. In other words, under the PFUTP Regulations, SEBI is empowered to take action against any person if his act constitutes fraud on the securities market, even though no investor has actually become a victim of such fraud. In fact, object of framing PFUTP Regulations is to prevent fraud being committed on the investors dealing in the securities market and not to take action only after the investors have become victims of such fraud. Therefore, in the facts of present case, if fraud is committed by the appellants on the investors in India, then without making the investors as party to the proceedings, SEBI could take action against the appellants.*"

65. In this regard, 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.*"

66. 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."

67. I further note that CAT and its directors have contended that they had not planted any news which could induce purchase or sale of shares. However, I have already discussed as to how the corporate announcements made by CAT had the capacity to create an impression of a genuine subscription of its GDR issue, thus impacting Indian investors. In this regard, I note that the Hon'ble Supreme Court in its Order dated July 06, 2015, SEBI (Appellant) vs. Pan Asia Advisors Ltd. (Respondent) had observed that –

"81. Therefore, it is for the respondents as well as the Indian issuing company to demonstrate that any of the allegations made by the appellant in relation to the so called fraud or fictitious creation of GDRs at the global level to mislead the local investors was totally baseless and that therefore no action was called for. …. It is common knowledge that in the commercial sector, companies which are in the field of manufacturing or any other business activity are able to gain the confidence of the investors by virtue of their appreciable performance in the respective manufacturing or other business activities and while controlling and developing the growth in their respective field of business, aspire to make further excellence by drawing the attention of foreign investors to make investments and thereby broad base their business venture also endeavour to sustain their development in the concerned business in which they are involved. Any such initiative taken by any entrepreneur would develop an appreciable trend in the share market which would draw the attention of the local investors to stake their claim in such well established, well grown business ventures with a view to earn better profits on whatever investments

they wish to make. Therefore, if there is going to be a false pretext or misleading information circulated with a view to lure both the foreign investors as well as Indian investors and in that process the very purpose of creation and trading in GDRs are found to be not true or bona fide, it cannot be said that simply because creation of such GDRs and its trading is in global market, SEBI should keep its mouth shut on the ground that it cannot extend its long statutory arm beyond Indian territory to control any such misdeeds deliberately committed with a view to defraud the Indian investors and thereby their interest in the investment of securities and its protection is at great stake."

Therefore, in view of this, I am unable to accept the contentions of CAT and its directors.

68. I incidentally note from the IR that SEBI had attempted to examine the utilization of the funds of both the GDR issues. I note from the IR that the entire 100% of funds i.e. USD 64,56,522 raised by CAT in its first GDR issue was transferred to its foreign based subsidiary viz. CAT FZE. Further as noted previously, USD 9,800,000 out of approx. USD 10 million raised from the second GDR issue (i.e. 98% of the total GDR issue proceeds) were transferred to CAT FZE. In this regard, CAT did not provide information like bank account statements and utilisation of funds regarding CAT FZE to SEBI. Therefore, the allegation of misutilization of funds could not be examined by SEBI due to lack of evidences.

69. In view of the above, I note that the scheme of arrangement of CAT, in allotting GDR issue to only one entity on each of the two occasions, i.e. Vintage on both the GDR issues which subscribed to the GDR issues by obtaining loans from Euram Bank and

which were secured by CAT by pledging its GDR proceeds, seen along with the false and misleading corporate announcements made by CAT on both the occasions stating that the GDR was issued and allotted without disclosing the crucial details pertaining to the aforesaid Loan and Pledge Agreements which were price sensitive information, lead to a conclusion that the same were done in a fraudulent manner. Therefore, I find that CAT has violated the provisions of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(b), (c), (d) and 4(2)(c), (f), (k), (r) of PFUTP Regulations.

70. I further note that Noticee 2 viz. Mr. Dhiraj Kumar Jaiswal was the Authorized Representative of CAT for all the purposes of GDR issues of CAT. At the same time, the pledge agreements was signed by Noticee 2 in his capacity as the Authorized Representative of CAT.

71. In this regard, as the Authorized Representative of CAT, Noticee 2 was central to the whole scheme on part of CAT at the time of 1st and 2nd GDR issue. I note that Noticee 2, being the Managing Director of CAT, had been vested with substantial powers for the purpose of respective GDR issues of CAT, an artificial juridical person and he assumes the character as “officer in default” for any violation.

72. I note that Noticee 4, 5, and 6 have submitted that they were not involved in day-to-day management of the company. The above Noticees have submitted that they cannot be held liable vicariously, just because they were a signatory to the resolutions dated August 28, 2009 and April 30, 2007 *inter alia* which authorized Mr. Dhiraj Jaiswal (Noticee No. 2) to open the Bank account with EURAM. It was further submitted that they never authorized by any means Noticee No.2 to sign any such

alleged agreements on behalf of the CAT. The aforesaid Noticees have also relied upon the judgements of Hon'ble SAT in the case of *Adesh Jain versus Securities and Exchange Board of India (Appeal No. 217 of 2020 decided on November 19, 2020)* and *Adi Cooper vs Securities and Exchange Board of India (Appeal No. 124 of 2019 decided on November 5, 2019)* in support of their contentions.

73. In this regard, I note that the facts of the present case are distinguishable from the facts of the above cases. In the case of Adi Cooper vs SEBI, the appellant (director) had resigned from the directorship of the company at the time of the GDR Issuance. Noticee 4 (Shri Dhaduvai Venkatram) and Noticee 5 (Shri Kesava Mallikarjuna Prasad Chivukula) have submitted that they were appointed as directors of CAT in January 2000 and they resigned from CAT in the year 2012. Noticee 6 (Ms. Namratha Muralidhar) has submitted that she was on leave when the Board Resolution dated April 30, 2007 was passed, and further she was not a director of CAT, when the Board Resolution dated August 28, 2009 was passed. Thus, I note that both the Noticee 4 and 5 were admittedly signatories to the resolutions dated August 28, 2009 and April 30, 2007. Further, both the above Noticees were also discharging their duties as directors of the company when the 1st and 2nd GDR Issue occurred (i.e. July 27, 2007 and November 06, 2009). The said GDR issues were carried out on the basis of back-end arrangements of Loan and Pledge Agreements executed between the subscriber (Vintage), EURAM Bank, and CAT, which were subsequent to the abovementioned board resolutions. I note that the above board resolutions were submitted by CAT to EURAM Bank pursuant to which the Pledge Agreements were executed between CAT and EURAM Bank. While based on the Loan and Pledge Agreements, the GDR issues were successfully subscribed, the

GDR proceeds (funds) were not available at the disposal of CAT as the same were pledged as security against the loan taken by Vintage. I find Noticee 4 and 5 were involved as directors during this period. I note that Noticee 5 had also signed and certified the copy of the board resolution dated August 28, 2009 submitted by CAT to EURAM Bank. I further note from the annual report of CAT for FY 2007-08 and FY 2009-10 that Noticee 5 had signed the financial statements of the company as a whole time director. I also note that Noticee 4 was a part of Shareholders and Investor Grievance Committee of CAT. Thus, I find no merit in the submission of Noticee 4 and 5 being directors of CAT that they were not involved in the day to day affairs of the company. I note that Noticee 8 and 9 were not directors of CAT during the FY 2007-08 and FY 2009-10. I further note that Noticee 7 is a promoter of CAT.

74. In this regard 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 quote 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 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*

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..."

75. 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.

76. In light of the above discussions regarding the scheme of GDR issues of CAT, I am of the view that the Directors viz. Noticee 2, 3, 4, and 5 had played the major role from the side of CAT as, by virtue of the respective Board Resolutions mentioned above, Mr. Dhiraj Kumar Jaiswal (Noticee 2) given sole authority to open the bank account Euram Bank and sign any other document necessary for the respective GDR issues. Further, I note that it is Mr. Dhiraj Kumar Jaiswal who had signed everywhere on behalf of CAT be it KYC document or the pledge agreement at the time of the GDR issues. Further, Mr. Dhiraj Kumar Jaiswal was given the sole authority to operate the said bank account with EURAM.

77. Therefore, in view of the above I hold the directors viz. 2, 3, 4, and 5 to be equally liable for the abovementioned frauds carried out by CAT, in collusion with AP, on the Indian investors and has violated the provisions of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(b), (c), (d) and 4(2)(c), (f), (k), (r) of PFUTP Regulations.

78. Further, I note that Noticee 8 and 9 were not directors in CAT during the time of GDR issuances and Noticee 7 was promoter of CAT. I note that Noticee 6 was not a director in CAT during FY 2009-10 (i.e. at the time of 2nd GDR issuance) and further, Noticee 6 has submitted that she was on leave during the time when the board resolution dated April 30, 2007 was passed. Further, I note that the IR has also not brought on records details of the subsequent board meeting in which minutes of the board meeting in which the impugned resolution was approved was brought to the attention of Noticee 6. In view of the above, I find that the alleged violations of the provisions of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(b), (c), (d) and 4(2)(c), (f), (k), (r) of PFUTP Regulations in respect of Noticee 6, 7, 8, and 9 is not established.

b. Whether CAT and Noticee 2 have violated the provisions of Section 11C(3) read with Section 11C(6) of SEBI Act?

79. It is alleged that CAT and Mr. Dhiraj Kumar Jaiswal, by their failure to submit the complete and correct information regarding the GDR issues of CAT have violated the provisions of Section 11C(3) read with 11C(6) of SEBI Act. In this regard, it is observed that there are two allegations against CAT viz.:

- Wrong submission of information
- Non-submission of information

It is also alleged that Noticee 2 viz. the Managing Director was also summoned to appear in person at SEBI Head Office with documents sought, however the same was not complied.

80. I note that Section 11C(3) of SEBI Act requires any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before the Investigating Authority or any person authorised by it in this behalf which the investigating authority considers relevant or necessary for the purposes of its investigation.

81. I note that the following documents/information sought vide summons/emails/letters were not provided by CAT :-

    1. Details of usage of proceeds of the GDR Issues by CAT, along with the documentary proof in support of the utilization of the funds.
    2. Copies of bank account statements of CAT maintained with Euram Bank.
    3. Copies of bank account statements of CAT in India highlighting transactions related to repatriation of GDR proceeds.
    4. Chronology of events leading to the issue of GDRs along with a certified true copy of the resolution passed by Board of Directors.
    5. Rationale for the appointment of Panasia as LM for GDR issue of CAT.
    6. Copies of all the agreements between CAT and Panasia
    7. Copies of agreements with Euram.
    8. Details of the conditions that were laid upon CAT for the withdrawal of GDR proceeds from bank accounts maintained with Euram.
    9. Copy of any other agreement that CAT had with Euram apart from those related to GDR issues.
    10. Details of any agreement of CAT regarding financing for the purpose of subscription by initial investors of GDRs.
    11. Copies of agreements that CAT had with Vintage and AP.
    12. Details of nature of business of the subsidiary of CAT in U.A.E viz, CAT Technologies FZE (**CAT FZE**).
    13. Copies of Bank Account Statements of CAT FZE.
    14. Details of payments made to Panasia or companies associated with Panasia.
    15. Name of the directors and promoters of CAT at the time of issue of GDRs.
    16. Details of money paid by CAT FZE, be it on account of purchases or expenses or loan, to other entities for more than USD 25,000 from incorporation. CAT was specifically asked to provide details like name of entities to which payments were done, purpose of payments and amount paid by CAT FZE.

17. Audit Report of CAT FZE along with financial statements for the year ending March 2010 and March 2011.
18. Contact details, Nature of business and Bank Account statements of CAT FZE

82. It is noted that apart from not providing aforementioned critical information to SEBI, wrong information was also provided by CAT. The wrong submissions of CAT were particularly related to Pledge and Loan Agreements to which CAT was one of the party. As per the IR, following are the submissions made by CAT which were found to be false:-

    a. CAT submitted that it did not have any agreement with Vintage. It was clearly mentioned in the Loan Agreement signed between Vintage and Euram that Pledge Agreement signed between CAT and Euram is part of the Loan Agreement. Similarly it is mentioned in the Pledge Agreement that the Pledgor has received the Loan Agreement and agrees to its conditions.
    b. CAT submitted that it did not have any arrangement with AP for subscription of GDRs. As explained, the complete GDR issuance was done on the basis of arrangement between AP and companies like CAT.
    c. CAT denied having any agreement with Euram which puts condition on withdrawal of GDR issue proceeds. This is again false as the GDR issue proceeds were pledged by CAT against loan taken by Vintage.
    d. CAT also denied having an agreement with Euram other than Escrow account agreement which is false due to the fact that Pledge Agreement was signed between CAT and Euram.
    e. CAT denied having any agreement with any of the entity for the purpose of financing of the GDR issue. It specifically denied having any agreement with Vintage and AP.

83. At this juncture, it is relevant to mention that the Hon'ble Supreme Court of India, in Civil Appeal No. 5859 of 2006 in the matter of Bonanza Biotech Ltd Vs SEBI and other connected appeals examined the issue as to whether the Adjudicating Officer (AO) under Section 15A of the SEBI Act is authorized to impose penalty when the documents/information called for and furnished are false or whether the power of the said AO to impose penalty on the person/entity is limited and exercisable only in the event of failure to furnish information/details/documents. I note that the above appeal was filed in the context of an Order dated June 16, 2008 in the matter of Bonanza Biotech Ltd vs SEBI wherein Hon'ble SAT had upheld the levy of penalty imposed by the AO on Bonanza Biotech Ltd (the appellant) under Section 15A for submission of false information /details to the investigating authority of SEBI. In its order dated March 7, 2017, in Civil Appeal No 5859 of 2006, the Hon'ble Supreme Court, *inter alia*, referred to the observation of the expert group constituted by SEBI under the chairmanship of Late Mr. Justice M. H. Kania, former Chief Justice of India, which was relied upon by the appellant, which mentioned that-

> "*as per the provisions of Chapter VIA of SEBI Act, SEBI can impose monetary penalty for failure to furnish information or delay in furnishing the information. However, there is no provision for monetary penalty for giving false information*"

The Hon'ble Supreme Court of India, in its judgment dated March 07, 2017 had observed the following: -

> "*It appears that the only question in this matter is whether the Adjudicating Officer Under Section 15A of the Securities and Exchange Board of India Act, 1992, is authorized to impose penalty on the ground that the documents*

which have been asked for and have been furnished are false or whether power of the Adjudicating Officer to impose penalty is limited and can be exercised only in the event of failure to furnish documents.

We have perused the order passed by the Adjudicating Officer. It appears from the order which was passed that the Adjudicating Officer had specifically stated in para 31 'that the Appellant has already furnished the materials which are available on record'. Since the materials have already been furnished, in our opinion, the said section is not attracted on the given facts."

84. Having regard to the above mentioned observations, the Hon'ble Supreme Court, set aside the Order dated June 16, 2008 of Hon'ble SAT as not sustainable. Therefore, in view of the above observations and in the context of the present proceedings against CAT, the allegation levelled in the SCN that CAT has violated the provisions of Section 11C(3) of SEBI Act by furnishing false information/details to the Investigating Authority w.r.t details sought through the summons (two summons) issued to CAT by the IA is not sustainable. Accordingly, no penalty can be levied on CAT under Section 15A(a) of the SEBI Act, as existing at the time of occurrence of cause of action, for furnishing false information/details sought through the summons issued by the Investigating Authority. Therefore, I dispose of the SCN against CAT limited to the allegation of furnishing of wrong information.

85. Further, it is also alleged that CAT has failed to submit the following information to SEBI despite repeated issuance of summons. I note that the following information

was not provided to SEBI despite being asked specifically in summons dated January 12, 2012 and email dated April 20, 2012:-

- Information like the account statement of the Euram bank account of CAT was incomplete. According to submissions of CAT, approximately Rs. 22.31 crore was transferred to CAT FZE from its Euram bank account during the period January 2008 to March 2008. However, these transactions do not get reflected in the bank account statement provided by CAT. Vide letter dated July 19, 2012, CAT was, once again asked to provide the complete bank account statement i.e. for the period January 09, 2008 to March 31, 2008, which would reflect the transfer of funds to CAT FZE. CAT has not replied to the aforesaid letter of SEBI, till date.
- Documentary proof of the utilisation of GDR proceeds.
- Bank Account Statements of CAT FZE required to examine the flow of funds transferred to CAT FZE.
- Details of nature of business and Audit reports of CAT.
- Details of payments done to Panasia and other AP Entities.
- Details (including name of entity to which payment has been done, purpose of payment and amount paid) of money paid by CAT FZE.
- Details with respect to subsidiary of CAT viz. address, contact person and contact no.
- Name of the directors of CAT at the time of issuance of GDRs

86. The Noticee 1 and 2 have submitted that they had submitted copies of Bank statements and furnished all the relevant information which are available with them and the same were duly acknowledged by SEBI and further that if any information was being not submitted to SEBI it was due to certain situations which were out of their control as they were being defrauded by local agent of CAT FZE and due to long gap of time of five years between the transactions taken place and summons issued by SEBI. It was further submitted that any such omission was not deliberate

or intentional. However, I note that CAT did not provide complete bank account statements of its subsidiaries from inception till date. CAT also did not provide details like name of payee entity, purpose of money paid by foreign subsidiaries.

87. Further, I note that Managing Director of CAT was also summoned to appear in person at SEBI Head Office with documents sought vide summons dated April 16, 2012. I note that the summons was acknowledged by the company and an extension of two months was sought. However, CAT once again vide email dated April 23, 2012 sought extension beyond April 30, 2012. Vide email dated April 25, 2012, new date for personal appearance was given as May 02, 2012. However, CAT has till date not complied with this summons. It has been contended that the Managing Director of CAT (i.e. Noticee 2), and one Mr. Vasant Bajaj have attended the personal hearing before the Whole Time Member of SEBI on November 29, 2011. However, I note that the charge against Noticee 2 is that he did not appear before the Investigating Authority and thus did not comply with the summons issued by the Investigating Authority. Thus, appearing in the personal hearing in the proceedings before the Whole Time member of SEBI has no relevance in the present context. Thus, I conclude that CAT and Noticee 2 have violated the provisions of Section 11C(3) of the SEBI Act. However, I note that the power to try an entity and punish accordingly, if required, under Section 11C(6) lies with some other forum and the same is outside the purview of an Adjudication Proceedings. Therefore, I hold that the provisions of Section 11C(6) of SEBI Act will not be applicable in the present adjudication proceedings.

c. Whether CAT has funded its promoters viz. Mr. Laxmi Pershad Jaiswal, Mr. Dinesh Kumar Jaiswal, and Espirit Technologies Ltd for the purchase of its own shares?

88. I note that it is alleged in the SCN that CAT funded its promoters i.e Shri Laxmi Pershad Jaiswal, Mr. Dinesh Kumar Jaiswal (Noticee 3), and Espirit Technologies Pvt Ltd (Noticee 7) for the purchase of its shares by them. During the month of March 2009, CAT funded purchase of shares of CAT worth Rs. 91,96,326 by the aforesaid promoters of CAT.

89. In this regard, I note upon perusal of bank account statements of the promoters, viz. Espirit Technologies Pvt Ltd (account no. 02721900001335 in Development Credit Bank), Mr. Dinesh Kumar Jaiswal (account no. 01292011002503 in Oriental Bank of Commerce) and Mr. Laxmi Pershad Jaiswal (account no.01292010008470 in Oriental Bank of Commerce), it is observed that CAT Technologies Ltd had provided funds to the aforesaid promoters of the company. The funds received by the said promoters from CAT were transferred to the trading member Fortune Equity Brokers (India) Ltd (hereinafter referred to as "**Fortune**") either on the same day or within the next few days. Thus, I note that perusal of the bank statements and ledger maintained with Fortune, indicate that the above entities paid Fortune for their purchase of shares of CAT from the money received from CAT itself. It is not the case of the Noticees that they have purchased any other shares apart from that of CAT during the said period.

90. In view of the above, I note that it has been alleged that CAT has provided funds on several occasions to the promoter entities – Shri Laxmi Pershad Jaiswal, Shri Dinesh

Kumar Jaiswal (Noticee 3), and Espirit Technologies Pvt Ltd (Noticee 7) for dealing in shares of CAT. However, I note that the shares have not been sold by the promoters subsequently and they were observed to be holding the shares. Regarding the fund transfers, I note that it has been contended by CAT and above Noticees that funds were transferred by CAT to Noticee 3 and 7, as they had acquired an overseas company viz. CAT USA from Noticee 3. Further, it was contended by CAT that the funds transferred to Shri Laxmi Pershad Jaiswal was on account of rent for office premises. Further, it was contended that CAT was not concerned with or cannot be held responsible for use of funds by the respective promoter entities. I note that funding or giving guarantee for purchase of its own securities by a company is prohibited under Section 77 of the Companies Act, 1956. However, in the present matter, the investigation report has not brought out how funding of share purchase, *per se*, has invoked the provisions of PFUTP Regulations. I find that a charge under PFUTP Regulations require more examination and the violation has not been established in the context of funding of share purchase.

d. Whether CAT has violated the provisions of Clause 32 read with Listing Agreement read with Section 23E of SCRA?

91. I further note from the fund flow explained above that CAT has transferred Rs. 37.32 lakh to Noticee 3 (Mr. Dinesh Kumar Jaiswal) and Rs. 3.32 lakh to Mr. Laxmi Pershad Jaiswal in the month of March 2009. I note that Noticee 3 and Mr. Laxmi Pershad Jaiswal in addition to being promoters of CAT are director and chairman, respectively, in CAT. They are also, respectively, brother and father of Noticee 2 viz. Mr. Dhiraj Kumar Jaiswal, who was the Managing director of CAT and key

management personnel as per CAT's Annual Report for FY 2008-09. I note that CAT has not disclosed these fund transfers under the head "related party transactions" in its annual report for the financial year 2008-2009 and has thereby violated clause 32 of the Listing Agreement. I note that the facts of the above entities having related party relationships is not in dispute. I note that CAT has contended that they did not have any related party transactions, except there were transaction of payment of monthly office rent, which was exempted as per the Companies Act, 1956. It was further submitted that the transaction with Noticee 3 pertained to unsecured loan and does not come under the purview of Related party transactions under the Companies Act, 1956. In this regard, I note that Clause 32 of the Listing Agreement inter alia states that – "*The company will make disclosures in compliance with the Accounting Standard on "Related Party Disclosures" in its Annual Report*." . It further states "*For the purpose of the above disclosures the terms 'Associate' and 'Related Party' shall have the same meaning as defined in the Accounting Standard on "Related Party Disclosures (AS-18)" issued by ICAI*".

92. I note that the Noticees have contended that they did not have any related party transactions, except there were transaction of payment of monthly office rent, which was exempted as per the Companies Act, 1956. It was further submitted that the transaction with Noticee 3 pertained to unsecured loan and does not come under the purview of Related party transactions under the Companies Act, 1956. In this regard, I note that Clause 24 of the AS-18 states *inter alia* states - "*The following are examples of the related party transactions in respect of which disclosures may be made by a reporting enterprise: (a)…, (e) leasing or hire purchase arrangements; .. (h) finance (including loans and equity contributions in cash or in kind); …".* Thus, I

find no merit in the said contention of the Noticees, and accordingly, conclude that CAT has violated Clause 32 of the Listing Agreement.

93. Further, on perusal of the company's annual reports for the financial years 2008-2009 and 2009-2010, extracts of which were shared with the Noticees as annexures to the SCN, it is seen that CAT has merely mentioned that related party transactions have occurred between CAT and Noticee 7 viz. Espirit Technologies Pvt Ltd. In this regard, CAT has submitted that that balance sheet has been duly audited by the Statutory Auditors and accepted by the Income Tax Authorities and hence it cannot be questioned. However, I note that as stated previously, Clause 32 specifies that the related party disclosures have to be made by the companies in compliance with the relevant accounting standard. In this regard, I note that Clause 23 of AS-18 states as follows –

> *"23. If there have been transactions between related parties, during the existence of a related party relationship, the reporting enterprise should disclose the following:*
>
> *(i) the name of the transacting related party;*
>
> *(ii) a description of the relationship between the parties;*
>
> *(iii) a description of the nature of transactions;*
>
> *(iv) volume of the transactions either as an amount or as an appropriate proportion;*
>
> *(v) any other elements of the related party transactions necessary for an understanding of the financial statements;*
>
> *(vi) the amounts or appropriate proportions of outstanding items pertaining to related parties at the balance sheet date and provisions for doubtful debts due from such parties at that date; and*
>
> *(vii) amounts written off or written back in the period in respect of debts due from or to related parties. "*

94. I note that no such details have been disclosed by CAT in the annual reports for 2008-2009, and 209-2010, and CAT has merely mentioned that there were related party transactions with Noticee 7. Therefore I conclude that such omission on the part of CAT is also a violation of Clause 32 of the Listing Agreement.

e. If yes, whether Noticees are liable for penalty under Section 15HA of the SEBI Act, Section 15A(a) of the SEBI Act, and/or Section 23E of SCRA, as applicable?

95. As established in the pre-paragraphs, the Noticee 1, 2, 3, 4, and 5 have violated the provisions of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(b), (c), (d) and Regulations 4(2)(c), (f), (k) and (r) of PFUTP Regulations. Therefore, CAT and its directors (viz. Noticee 2, 3, 4, and 5) 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.*

96. It has further been established that Noticee 1 and 2 viz. CAT and Mr. Dhiraj Kumar Jaiswal have violated the provisions of Section 11C(3) of SEBI Act. Therefore, the said Noticees are liable for penalty under Section 15A(a) of SEBI Act. The text of the said provision of law is being reproduced below:

> ***SEBI Act***
>
> ***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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

97. It has also been established that CAT has violated the provisions of Clause 32 of Listing Agreement read with Section 23E of SCRA. Therefore, CAT is liable for penalty under Section 23E of SCRA. The text of the said provision of law is being reproduced below:

SCRA

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.*

98. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the SEBI Adjudication Rules and Section 23J of SCRA read with Rule 5 of the SCR 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.

99. 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 CAT and its directors and promoters. Further, I note that the violation of CAT and its directors and promoters under Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(b), (c), (d) and Regulations 4(2)(c), (f), (k) and (r) of PFUTP Regulations was a repeated violation as the same modus operandi was employed by CAT in the both GDR issues leading to defrauding Indian investors on two different occasions.

100. I also note that the Hon'ble SAT, in its order dated April 21, 2017 in the matter of Sunita Gupta vs. SEBI, has made the following observations:

"*6. Where a person violates the provisions contained in the SEBI Act and the regulations made thereunder, then, SEBI is empowered to initiate penalty proceedings against that person under Chapter VIA of SEBI Act and also issue directions in the interests of investors or securities market as it deems fit under Chapter IV of SEBI Act. Thus, the powers conferred on the Board under Chapter IV are independent from the powers to impose penalty under Chapter VIA of SEBI Act. Accordingly, in the present case, since the appellant had indulged in synchronized/ circular trades in gross violation of SEBI Act/ PFUTP Regulations and the same was detrimental to the interests of the investors and securities market, the Board deemed it fit to issue direction under Chapter IV in addition to the penalty imposed under Chapter VIA of SEBI Act. Therefore, in the facts of present case, initiation of proceedings under Chapter IV even after initiating proceedings under Chapter VIA cannot be faulted."*

101. Further, in light of recent order dated August 02, 2019 of Hon'ble SAT in the matter of P G Electroplast vs SEBI, I also note that, vide Order dated April 03, 2019, Hon'ble

Whole Time Member of SEBI has debarred CAT from issuing equity shares or any other instrument convertible into equity shares or any other security for a period of five years. Further, vide the said order dated April 03, 2019, Hon'ble Whole Time Member of SEBI also prohibited Mr. Dhiraj Kumar Jaiswal, Mr. Dinesh Kumar Jaiswal, Mr. Dhadhuvai Venkatram, and Mr. Kesava Mallikarjuna Prasad Chivukula, from accessing the capital market directly or indirectly, and dealing in securities or instruments with Indian securities as underlying, in any manner whatsoever, for a period of five years.

ORDER

102. 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 and Section 23-I of SCRA read with Rule 5 of SCR Adjudication Rules, hereby impose the following penalty on CAT and its following directors and promoters under Section 15A(a) & 15HA of the SEBI Act and Section 23E of SCRA for their violation of the provisions of SEBI Act and PFUTP Regulations, and Listing Agreement read with SCRA as discussed in this order:

Name of the Noticee	Provision	Penalty
Noticee 1 (CAT Technologies Ltd.)	Section 15HA of SEBI Act	Rs. 12,00,00,000/- (Rupees Twelve Crore Only)
	Section 15A(a) of SEBI Act	Rs. 10,00,000/- (Rupees Ten Lakh Only)
	Section 23E of SCRA	Rs. 5,00,000/- (Rupees Five Lakh Only)

Noticee 2 (Mr. Dhiraj Kumar Jaiswal)	Section 15HA of SEBI Act	Rs. 1,00,00,000/- (Rupees One Crore Only)
	Section 15A(a) of SEBI Act	Rs. 10,00,000/- (Rupees Ten Lakh Only)
Noticee 3 (Mr. Dinesh Kumar Jaiswal)	Section 15HA of SEBI Act	Rs. 10,00,000/- (Rupees Ten Lakh Only)
Noticee 4 (Mr. Dhadhuvai Venkatram)	Section 15HA of SEBI Act	Rs. 10,00,000/- (Rupees Ten Lakh Only)
Noticee 5 (Mr. Kesava Mallikarjuna Prasad Chivukula)	Section 15HA of SEBI Act	Rs. 10,00,000/- (Rupees Ten Lakh Only)

I am of the view that the said penalty is commensurate with the lapse/omission on the part of CAT and its directors as well as promoters.

103. The aforesaid Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

104. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

105. 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 **K SARAVANAN**

Date: April 28, 2021 **ADJUDICATING OFFICER**