BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO: Order/GR/BM/2022-23/17104-17110]

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

In respect of:

Noticee No.	Name of the Noticee	PAN
1.	Zenith Steel Pipes & Industries Limited [erstwhile Zenith Birla (India) Ltd.]	AAACZ0103C
2.	Mr. P.V.R. Murthy	ABRPM1271B
3.	Mr. Yash Birla	AAJPB2505N
4.	Mr. M. S. Arora	AABPA9704C
5.	Mr. A.P. Kurias	AAHPK2699E
6.	Mr. Arun R. Panchariya	AEVPP6125N
7.	Mr. Mukesh Chauradiya	AAVPC0966A

In the matter of GDR Issue by Zenith Steel Pipes & Industries Limited [erstwhile Zenith Birla (India) Limited]

(The aforesaid entities are hereinafter individually referred to by their respective names/ Noticee numbers and collectively as "Noticees", unless the context specifies otherwise)

BACKGROUND IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigations into the alleged irregularities in the Global Depository Receipts (hereinafter referred to as **"GDR"**) Issue by **Zenith Birla (India) Limited (now Zenith Steel Pipes & Industries Limited),** (hereinafter referred to as **"the Company / ZBIL / Zenith"**) during the period from May 01, 2010 to June 30, 2010 (hereinafter referred to as **"Investigation Period"**).

2. ZBIL is a company whose shares are listed on the BSE Ltd. (BSE) and National Stock Exchange of India Ltd. (NSE). The investigation, *prima facie,* revealed that ZBIL had issued 1.81 million GDRs (amounting to USD 22.99 million) equivalent to its 5,43,57,060 equity shares of Rs.10 each, and the said issue was subscribed by only one entity viz. Vintage FZE (now known as Alta Vista International FZE) (hereinafter referred to as "**Vintage**"). It was observed that the subscription amount was paid by Vintage by obtaining a loan from European American Investment Bank AG ("**EURAM Bank"**) by entering into Loan Agreement dated May 12, 2010 with EURAM Bank.

3. It was observed that directors of ZBIL, had passed board resolution dated October 28, 2009, inter alia authorizing the opening of an account with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue of ZBIL and authorizing Mr. M.S. Arora (Managing Director of ZBIL) and Mr. P.V.R. Murthy (Director of ZBIL) to sign the agreements relating to the GDR issue *'jointly'* also for using the funds deposited in the said bank account as security in connection with loans, if any. It was further observed that the directors of ZBIL namely, Mr. P.V.R. Murthy (Noticee No 2), Mr. Yash Birla (Noticee No.3), Mr. M.S. Arora (Noticee No.4) and Mr. A.P. Kurias (Noticee No.5), who had passed another resolution dated March 3, 2010 superseding the earlier resolution of opening of Bank account with EURAM and authorizing Mr. M.S. Arora (Managing Director of ZBIL) and Mr. P.V.R. Murthy (Director of ZBIL) *'jointly and severally'* to sign, execute, any application,

agreement, escrow agreement and other paper(s) from time to time as may be required by EURAM Bank and to carry and affix Common Seal of the company. In pursuant to this, ZBIL had signed a 'pledge agreement' dated May 12, 2010 with EURAM Bank pledging GDR proceeds as collateral against the loan availed by Vintage vide 'loan agreement' dated May 12, 2010, which was executed by Mr. P. V. R. Murthy, Director and Authorized Signatory of ZBIL. In view of this, it was alleged that, ZBIL had pledged the GDR proceeds against the loan availed by Vintage for subscribing to GDRs of ZBIL, thus securing Vintage's loan. The loan agreement and the pledge agreement enabled Vintage to avail loan from the EURAM Bank for subscribing to GDR of the company. The said GDR issue would not have been subscribed, had the company not given such security towards the loan taken by Vintage. The bank account in which GDR proceeds were held was in the name of the company but the amount deposited in the account was not at the disposal of the company as the same was pledged as security against the loan availed by Vintage. Therefore, it was alleged that the scheme of issuance of GDRs was fraudulent.

4. As the said execution of Pledge agreement by Mr. P. V. R. Murthy on behalf of ZBIL was authorized by other directors of ZBIL i.e. Noticee No. 3, 4 and 5 way of Board Resolution dated March 3, 2010, thereby it was alleged that the Noticees No. 2 to 5 had acted as parties to the fraudulent scheme.

5. SEBI's investigation also observed that the aforesaid arrangement (viz. Loan Agreement and Pledge Agreement) was not disclosed to the public. Investigations further alleged that ZBIL did not inform stock exchanges as required under clause 36(7) of Listing Agreement with regard to – i) Pledge Agreement entered into with EURAM Bank for subscription of GDRs, ii) delisting of GDRs on Luxembourg Stock Exchange, and iii) termination of GDR facility by the Global Depository i.e. The Bank of New York Mellon, which was price sensitive information that could have impacted the price of the scrip. Further, it was observed that ZBIL did not follow Accounting Standards – 3 and 29 since it did not disclose/ provide for potential

liability for pledged GDR proceeds in its financial statements, presented its cash balance pledged with EURAM Bank as free cash and did not disclose the fact of signing of Pledge Agreement and pledging of GDR proceeds as the same are the items, the knowledge of which might influence the decision of the user of the financial statements.

6. The said issue was subscribed by one entity viz. Vintage. It was observed that for the aforesaid GDR issue, the subscription amount was paid by Vintage by obtaining a loan from EURAM Bank entering into Loan Agreement dated May 12, 2010. Arun Panchariya (Noticee No.6) who was director and sole beneficial owner of Vintage signed the said Loan Agreement for the purpose of taking down GDR issue and transferring the amount to the EURAM Bank account of ZBIL and Mukesh Chauradiya (Noticee No.7), had signed the Loan Redemption Letters, as Authorized Signatory of Vintage, addressed to EURAM Bank paying back the amount of loan taken by Vintage to the extent of USD 8.531 million.

7. Further, it was observed that Pan Asia Advisors Limited ('Pan Asia'), a UK based entity was the Lead Manager to the GDR issue of ZBIL. It was observed that Pan Asia was incorporated on April 24, 2006 and Arun Panchariya was director during the period August 30, 2006 to September 29, 2011. Vide letter dated February 20, 2012, Pan Asia had submitted that Arun Panchariya held 100% shareholding in the company during the period July 2008 to January 2012.

8. Subsequently, Vintage defaulted on loan repayment of GDR issue of USD 14.505 million including interest and same amount was adjusted by EURAM Bank from the GDR proceeds of ZBIL as it had pledged GDR proceeds against this loan.

9. The GDRs acquired by Vintage were later cancelled and converted into shares and subsequently sold through sub-accounts of FIIs (related to Noticee No.6) in the Indian market. Hence, it was alleged that the shares converted and sold of ZBIL include shares acquired by Vintage free of cost as they defaulted on the loan

repayment, causing a loss to the tune of USD 14.505 million to the shareholders of ZBIL.

10. SEBI had, therefore, initiated adjudication proceedings inter alia against ZBIL (Noticee No. 1) under Section 15HA of the Securities and Exchange Board of India Act, 1992 for the alleged violation of the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(f), (k), (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003 (hereinafter referred to as "PFUTP Regulations") and Section 21 of the Securities Contracts Regulations Act, 1956 read with Clauses 32, 36(7) and 50 of the Listing Agreement. Adjudication proceedings were also initiated against Noticee No. 2 to 7 for alleged violations of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), and 4(1) of PFUTP Regulations.

APPOINTMENT OF THE ADJUDICATING OFFICER

11. Earlier, Shri Santosh Shukla, Chief General Manager, was appointed as Adjudicating Officer (AO) in the matter, which was communicated to the AO vide order dated January 30, 2018, to inquire into and adjudge under Section 15HA of the SEBI Act, 1992 and Section 23E of the SCRA the aforesaid violations alleged to have been committed by the Noticees. Subsequently, vide Order dated January 30, 2019, Shri Amit Pradhan was appointed as the Adjudicating Officer in the matter in the place of Shri Santosh Shukla. Thereafter, the undersigned was appointed as the Adjudicating Officer in the instant case, which was communicated vide communique dated June 22, 2021. These proceedings are therefore been carried forward where they had been left off by the previous AO, and an opportunity of personal hearing was granted as detailed hereinafter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

12. Show Cause Notice dated April 18, 2019 (hereinafter referred to as "**SCN**") was issued to the Noticees by the erstwhile AO Shri Santosh Shukla, in terms of Section

15-I of the SEBI Act, 1992 and Rule 4 (1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**") and Rule 4 (1) of Securities Contracts (Regulation) (Procedure for holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as "**SCR Adjudication Rules"**), to show cause for the aforesaid alleged violation, as applicable as to why an inquiry should not be initiated and penalty be not imposed under Section 15HA of the SEBI Act 1992 and/or under section 23E of the SCRA as applicable for the alleged violations specified in the SCNs.

13. SCN was delivered to Noticee No. 1, 3, 4, 5 and 7 through speed post and the status of the same is '*delivered*'. However, for Noticee No. 2 and 6 the SCN returned back undelivered. Subsequently, the SCN was served to Noticee No. 2 by way of Affixture, at the last known address available, on October 10, 2019. Initially, personal hearing was provided to the Noticees on October 24, 2019 by the erstwhile AO, which was attended by Mr. A.P. Kurias (Noticee No. 5). After the handing over of the proceedings to the undersigned, another opportunity of personal hearing in the matter by way of Hearing Notice dated April 18, 2022 was provided to the Noticees on April 28, 2022 which was attended by Noticee No. 1. Noticee No. 3, 4 and 7 sought extension for the hearing which was provided accordingly. Subsequently, Noticee No. 4 and 7 attended hearing on May 04, 2022 and May 25, 2022 respectively. The Noticee No.3 had also attended the hearing on May 04, 2022 through his Authorized Representative.

14. As regards to the Noticee No. 2, 5 and 6, Noticee No. 5 was served the Hearing Notice through speed post and the same was duly delivered, Noticee No. 2 was served the hearing notice through Newspaper Publication as the speed post returned with the remark '*Received Receptacle from abroad*'. Noticee No. 6 was served the Hearing Notice vide email dated April 25, 2022. However, despite the efforts made and the Hearing Notice being served upon them, said Noticees did not attend the personal hearing.

15. The details of the written replies submitted / not submitted by the Noticees are tabulated as below:

Noticee No.	Date of Written Reply
1	April, 27, 2022
2	No Reply filed
3	April 27, 30 and May 09, 2022
4	May 06, 2022
5	May 06 and November 05, 2019
6	No Reply filed
7	May 13, 2019

The summary of the replies submitted by Noticees No. 1, 3, 4, 5 and 7 are as under:

Noticee No. 1

(i) The Noticee submitted that no adverse observations were observed by NSE vide its order dated June 02, 2020 against the Noticee in the matter of misuse of funds, misrepresentation of business or violation of SEBI (Listing Obligation and Disclosure Requirement) Regulations, 2015 (for short "*SEBI LODR Regulations*").

(ii) Noticee has referred to the show cause notice dated April 02, 2019 issued to it under Section 11(1), 11(4) and 11B of SEBI Act with respect to issuance of GDR proceeds by it. In this regard, Noticee has submitted that issuance of two show cause notices for the same offence amounts to double jeopardy, and is in gross violation of Article 20(2) of the Constitution of India that not only causes the mental and physical trauma, but also increases the legal cost of the Company.

(iii) Further, Noticee has submitted that as soon as it became aware of an arrangement by Noticee No. 2 with the EURAM Bank, it followed up with

Vintage for refund of amount. After considerable follow up, in September 2013, Vintage sold / transfer the merchandise equivalent to USD 14.50 million to the subsidiary of Zenith i.e. Zenith Middle East FZE (for convenience "Zenith FZE"). Therefore, as Zenith has recovered the funds equivalent to USD 14.50 million from Vintage, no direction to bring back money ought to be issued against it. In this regards, Noticee has submitted a certificate from independent Forensic Auditor certifying receipt of goods equivalent to USD 14.50 million.

(iv) It is submitted that GDR were issued by the Company in 2010 while SEBI has issued SCN after 9 years of the GDR and such inordinate delay of around 9 years is unjustified and unfair. In this regard, the Noticee has placed reliance on the orders of Hon'ble SAT in *Bharat J Patel vs. SEBI (DoD: September 08, 2020); ICICI Bank Ltd. vs. SEBI (Appeal no. 583 of 2019, DoD: July 08, 2020); Ashok Shivlal Rupani & Anr. vs. SEBI (Appeal no. 417 of 2018); Ashlesh Gunvantbhai Shah & Ors. vs. SEBI (Appeal no. 169 of 2019, DoD: January 31, 2020); Aditi Dalal vs. SEBI (Appeal no. 143 of 2011) and Bhavesh Pabari vs. SEBI (Civil Appeal no. 11311 of 2013, DoD: February 28, 2019)*.

(v) With regard to charge of violation of PFUTP Regulations, 2003, Noticee has placed reliance on the judicial observations of Hon'ble Supreme Court and SAT in the matters of *Nand Kishore Prasad vs. State of Bihar (1978) 3 SCC 366*; *H.D. Jaisinghani vs. Naraindas N Punjabi (1976) 1 SCC 373*; *M/s Vintel Seucrities Private Limited vs. SEBI (Appeal no. 219 of 2009)*; *Sterlite Industries Ltd. vs. SEBI (DoD: October 22, 2001)*; *Videocon International vs. SEBI (2002 4 CLJ 402)*; *Parsoli Corporation. vs. SEBI (Appeal no. 146/2011, DoD: August 12, 2011)*; *Narendra Ganatra vs. SEBI (Appeal no. 47/2011, DoD: July 29, 2011)* and *M/s Milkyways Mercantiles Pvt. Ltd. and M/s SPFL Securities Ltd.*

Noticee No. 3

(i) Noticee has submitted that he was Non-Executive Non–Independent Director of the Company and his role was limited to attending the Board meetings and he was not involved in day to day affairs of the Company. He was also not involved in any discussion relating to GDR issue except to the extent whatever was presented in the Board meetings.

(ii) Further stated that Noticee No. 2 and 4 were the only nodal points for the GDR issue and Noticee No. 3 has never signed any document pertaining to the issuance of GDR by Zenith.

(iii) It is stated that the only allegation levelled against him in the SCN is that the Noticee No. 3 had attended the Board meeting dated March 03, 2010, wherein Noticee No. 2 and 4 were authorized to execute any document in pursuance of GDR issue and no other allegation has been levelled against the Noticee. Further, the said resolution was not fraudulent and manipulative in nature.

(iv) No proceedings have been initiated against Pan Asia Advisors Ltd. as they were also involved in the alleged fraud. Pan Asia Advisors being the Lead Manager of the issue was solely responsible for the alleged fraud as he was appointed as professional to carry out the issue and the company and directors were acting on their advice.

(v) Regarding the role of Noticee No. 3 as a Director of the Company, Noticee has cited the judgments/ orders in *State of Haryana vs. Brij lal Mittal & Ors. (1998) 5 SCC 343*; *Sham Sunder & Ors. vs. State of Haryana, (1989) 4 SCC 630*; *Municipal Corporation of Delhi vs. Ram Kishan Rohtagi & Ors., (1983) 1 SCC*; *Pritha Bag vs. SEBI (Appeal no. 291 of 2017, DoD: February 14, 2019)*; *Sayanti Sen vs. SEBI (Appeal no. 163 of 2018, DoD: August 09, 2019)*; *SEBI Order no. WTM/GM/EFD/38?2017-18 dated August 03, 2017*; *SEBI Order no. AO/SBM/EAD-3/57/2017 in the matter of Brooks Laboratories Ltd.*

dated August 18, 2017; *SEBI Order no. AO/SS/AS/2019-20/4025-4038 in the matter of Action Financial Services Ltd. dated August 21, 2019*.

(vi) Apart from the above contentions the noticee has relied upon the judicial observations of Hon'ble SAT in the following matters:

- *Adi Cooper vs. SEBI* (Appeal no. 124 of 2019, DoD: November 05, 2019);
- *Adesh Jain vs. SEBI* (Appeal no. 217 of 2020, DoD: November 19, 2020);
- *Yogendra Premkrishna Trivedi vs. SEBI* (Appeal no. 417 of 2020, DoD: November 23, 2020)

<u>Apart from the above the common issues raised by Noticee No. 1 and 3 are summarized here as under:</u>

(i) The list of GDR subscribers provided to SEBI by the Company vide letter dated July 31, 2015 was based on the information received from the Lead Manager i.e. Pan Asia. The said Noticees did not have any independent mechanism to verify the same and as per secrecy laws applicable in other jurisdictions, it was not possible for the said Noticees to verify the same.

(ii) Though the Board Resolution dated March 03, 2010 states that the proceeds so deposited in the bank account can be used as security in connection with any loan, nowhere in the Board Resolution has it been specifically stated that the proceeds are pledged on account of loan availed by Vintage. In this regard, while placing reliance on observations of Hon'ble SAT in the matter of ***Adi Cooper vs. SEBI*** (Appeal no. 124 of 2019, DoD: November 05, 2019), Noticees have submitted that the Hon'ble Tribunal has observed that the Board Resolution authorizing the bank to utilize the proceeds as security in connection with a loan cannot be inferred as loan given to Vintage.

(iii) The Company and its Board trusted the Lead Manager (Pan Asia) and carried out the instructions as provided by Pan Asia Further, since Noticee No. 2 had vast experience in fund raising, the Board relied upon his expertise. Hence, the alleged fraud has been committed by Noticee No. 2 in connivance with Pan Asia. It was never informed to the Company and its Board by the Noticee no. 2 that he has entered into the Pledge Agreement with the EURAM Bank.

(iv) Regarding the allegation pertaining to adjustment of USD 14.50 million by EURAM Bank against the loan default by Vintage, Noticees have submitted that the confirmation letter of the Company which confirmed the rights of EURAM Bank to set off the pledge deposit with the outstanding Loan Agreement was signed by Noticee No. 2 and the said noticees were not aware about the same.

Noticee No. 4

(i) The Noticee has submitted that although he was acting as Managing Director in the Company since 27.07.2009, his job profile required him to look after the marketing, purchase and operational & technical aspects of manufacturing activities in the Company's plant. All financial decisions and activities of the Company were under direct control of Noticee No. 2.

(ii) He further submitted that the only allegation levelled against the Noticee No. 4 in the SCN is that he had attended the Board meeting dated March 03, 2010, which authorized Noticee No. 2 and 4 to execute any document in pursuance of GDR issue and no other allegation has been levelled against Noticee No. 4.

(iii) Initially, Noticee along with Noticee No. 2 was 'jointly' authorized by Board in its meeting dated October 28, 2009 to sign the documents pertaining to GDR issue. However, as the Noticee disagreed to sign any such document, vide

Board Resolution dated March 03, 2010 such authorisation was changed from '*jointly*' to '*jointly and severally*'. Consequently, all the documents pertaining to GDR issuance were signed by Noticee No. 2 and hence Noticee No. 4 cannot be held liable for acts of Noticee No. 2.

(iv) The concerned GDR issue was raised by ZBIL in 2010 and the instant proceedings against the same were initiated in the year 2019. There is an inordinate delay of 9 long years. Human memory is fragile and it is nearly impossible to remember the details of a transaction after a long time gap of nine years.

(v) Noticee resigned from the Board of the Company on July 24, 2013 and the Company relieved the Noticee from all duties and liabilities as a Director. Noticee has referred to the observation of Hon'ble SAT in the matter of ***Sayanti Sen vs. SEBI*** *(Appeal no. 163 of 2018, DoD: August 09, 2019)* for his role as a Director in the GDR issuance by the Company. Noticee has also submitted that he cannot be made liable for the alleged violations since as per Section 56 (4) of the Companies Act, 1956, a director cannot be held liable when he had no knowledge of the transaction and has not signed any related documents. Noticee has also referred to judicial observations on director's liability with his role in the Company in *Adi Cooper vs. SEBI (Appeal no. 124 of 2019, DoD: November 05, 2019); Rahul H. Shah and Nimisha H. Shah vs. SEBI (2004 SCC online SAT 77); M/S Vijay Remedies & Ors. Vs. SEBI (Appeal no. 49A 49B 49C & 49D/ 2003); Shiv Kumar Jatia vs, State (NCT of Delhi) 2019 SCC online SC 1090; Sunil Bharti Mittal vs. CBI (2015) 4 SCC 609.*

<u>*Noticee No. 5*</u>

(i) Noticee has submitted that he was Non-Executive Independent Director of the Company and was appointed on Board on 27.10.1999 and resigned from the same on 18.10.2013.

(ii) In the Board meetings, broad policy decisions were taken and the actual implementations of such decisions were done by Whole Time Directors along with other employees of the Company. The Independent and Non-Executive directors neither monitored nor were required to monitor the implementation of the decisions or interfere in the same on daily basis. So, his role was limited to attending the Board meetings and he was not involved in day to day affairs of the Company. Noticee was not involved in any discussion relating to GDR issue except to the extent whatever was presented in the Board meeting.

(iii) The only allegation levelled against the Noticee in the SCN is that the Noticee had attended the Board meeting dated March 03, 2010, wherein Noticee nos. 2and 4 were authorized to execute any document in pursuance of GDR issue and no other allegation has been levelled against the Noticee. Further, the said resolution was not fraudulent and manipulative in nature.

(iv) Though the Board Resolution dated March 03, 2010 states that the proceeds so deposited in the bank account can be used as security in connection with any loan, nowhere in the Board Resolution has it been specifically stated that the proceeds are pledged on account of loan availed by Vintage.

(v) As per the provisions of the Companies Act, it is settled law that only “officers in default” be held liable or can be penalized for any violation by the company. Noticee being a Non-Executive Independent Director of the Company cannot be termed as Officer in Default as per the provisions of Companies Act. In this regard, Noticee has referred to the observations of Hon’ble High Court of Bombay in the matter of *Nanjundiah (H.) vs. Govindan, Registrar of Companies [(1986) 59 Comp Cas 356 (Bom)].*

(vi) Regarding the role of Noticee as a Director in the Company, reliance has been placed on the judicial observations of Hon' ble SAT in the following matters

- *Sayanti Sen vs. SEBI (Appeal no. 163 of 2018, DoD: August 09, 2019);*
- *Pritha Bag vs. SEBI (Appeal no. 291 of 2017, DoD: February 14, 2019)*

<u>Noticee No. 7</u>

(i) The notice has submitted that he was never the director or Managing Director of Vintage as alleged in the SCN. He has tried to collect documents from Jebel Ali Free Zone Authority UAE ("JAFZA") to prove that he was never director or MD of Vintage, however, the authority has denied him the information without a court order. To further prove his contentions the documents like copy of Resident Permit, copy of Employment Card were submitted.

(ii) Noticee has submitted that Arun Panchariya (AP) was the MD in Vintage. Under the implementing regulations number 1/92 pursuant to Law No.9 of 1992 of FZE Regulation under which Vintage was registered as a Free Zone Enterprise (FZE) stipulated that FZE was to have a single owner and in this case was AP was the beneficial and legal owner. In this regard, Noticee no. 7 has submitted the following documents/ evidences:

- Letter dated October 1, 2009 written by AP on behalf of Vintage to Abu Dhabi Commercial Bank ("ADCB"), wherein the Noticee was referred as General Manager in Vintage since September 2005.
- Copy of the visa issued to AP by JAFZA valid from 12.1.2010 to 11.01.2013, wherein it can be seen that AP was the MD of Vintage.
- The beneficial ownership of Vintage is also owned by AP who owned 99.99% of its shares.
- The administrative fine statement passed by the Dubai Financial Services Authority (for short "DFSA") imposing a fine of USD 12,000

on AP also clearly indicates that AP was the licensed director in relation to Vintage.

- Key decision-making powers in Vintage such as availing loans from banks, subscribing to GDRs or other investments and repayment of loans were with the owner and director of Vintage which was AP or his brother.

- The Loan Agreement between EURAM Bank and Vintage was signed by AP as MD of Vintage.

(iii) Noticee No. 7 did not get any other monetary advantage or otherwise from what has been done by him except for salary received as an employee of Vintage.

(iv) The commissions and omissions on part of Noticee No. 7 as alleged in the SCN were done in Dubai, which is beyond the territorial jurisdiction of SEBI. Therefore, the SCN is beyond the scope and authority of SEBI.

(v) Further, the noticee has submitted that he was not engaged in the investigation process and also all the relied documents and complete investigation report is not being provided to him.

16. The Noticee No. 2, 4 and 6 had failed to submit their reply and attend the personal hearing before the undersigned. I am, therefore, bound to proceed on the basis of available material with respect to the Noticees No. 2, 4 and 6.

17. In view of the above, I note that principles of natural justice have been duly complied with, as SCNs and Hearing Notices were duly served upon the Noticees and sufficient opportunity was also granted to the Noticees to reply to the SCN and appear for hearing.

CONSIDERATION OF ISSUES

18. I have perused the SCN including all the annexures as referred to in the SCN, replies received from the Noticees to the aforesaid SCN and all other relevant material available on record and find that the pertinent issues that require consideration in this matter are captured in the following queries:

    I. Whether the Noticees have violated the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4 (1), 4(2) (f), (k), (r) of SEBI (PFUTP) Regulations, 2003, and Section 21 of SCRA, 1956 read with Clauses 32, 36(7) and 50 of Listing Agreement, as applicable?

    II. Does the violation, if established, attract monetary penalty under Section 15HA of the SEBI Act, 1992 and Section 23E of SCRA, as applicable?

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

OBSERVATIONS AND FINDINGS

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

SEBI Act, 1992:

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

12A. No person shall directly or indirectly –

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

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

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

PFUTP Regulations, 2003:

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

….

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

….

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

….

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

……

Section 21 of SCRA 1956

Conditions for listing.

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

Clause 36 (7) of Listing Agreement:

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

....

(7) Any other information having bearing on the operation/performance of the company as well as price sensitive information…….,

The above information should be made public immediately."

Clause 50 of the Listing Agreement:

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

Clause 32 of Listing Agreement:

"The Company will also give a Cash Flow Statement along with Balance Sheet and Profit and Loss Account. The Cash Flow Statement will be prepared in accordance with the Accounting Standard on Cash Flow Statement (AS-3) issued by the Institute of Chartered Accountants of India, and the Cash Flow Statement shall be presented only under the Indirect Method as given in AS-3."

<u>Preliminary Issues raised by certain Noticees</u>

20. Before proceeding with the merits of the matter, it would be appropriate to first deal with the certain preliminary contentions raised by Noticee No. 1, 3 and 4. At the outset, the said Noticees have contended that the instant proceedings deserve to be dropped on account of delay as the instant proceedings have been initiated after a lapse of more than nine (09) years from the date of the GDR issuance, hence have caused prejudices against them as they cannot defend themselves effectively. I also note the said Noticees have placed reliance on various decisions viz; ***Bharat J Patel vs. SEBI*** *(supra),* ***Ashok Shivlal Rupani & Anr. vs. SEBI*** *(supra),* ***ICICI Bank Ltd.vs. SEBI*** *(supra),* ***Ashlesh Gunvantbhai Shah & Ors. vs. SEBI*** *(supra),* etc., In this respect, it is noted that the present proceeding and the issues involved herein are different to that involved in the orders cited by the said Noticees. Hence, in defense to the said contention I would draw reference to the Hon'ble SAT order in ***Jindal Cotex Ltd. and others vs. SEBI*** (Appeal No. 376 of 2019 decided on 05.02.2020) whereby while dealing with an appeal

emanating from the similar GDR issue wherein a plea of delay was also taken by the appellant therein, Hon'ble SAT observed as under:

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

21. In view of the above, I am inclined to reject the contention raised by the above mentioned Noticees as the Hon'ble SAT has accepted the complexity involved in the GDR issues and hence it is bound to take time which is longer than usual. Also there are around 50 Indian Companies who were found by SEBI to be involved in fraudulent GDR issuance and disclosures using similar tactics and SEBI has been taking actions against the said companies.

22. ZBIL (Noticee No.1) have referred to the show cause notice issued under section 11(1), 11(4) and 11B and has submitted that issuance of two show cause notices for the same offence amounts to double jeopardy, and is in gross violation of Article 20(2) of the Constitution of India. Admittedly, the two proceedings initiated against the Noticee, viz: the one before the Whole Time Member and the present proceedings before me, are based on the same facts and allegations. However, it is pertinent to acknowledge here that the outcome /consequences desired under law from these two separate proceedings are different. While the Adjudication Proceedings are initiated under relevant provisions of SEBI Act, 1992 to levy monetary penalty for violation of securities law, the proceedings under section 11 of SEBI Act, 1992 aim at issuing disciplinary directions like debarment, warning, etc. in the interest of investors and securities market (prior to the 2018 amendment which came in force from 08-03-2019). The scheme of SEBI Act, 1992 envisages initiation of multiple proceedings and there is no prohibition in initiating an adjudication proceeding as well as proceedings under section 11 of the SEBI Act,

1992 for the same set of offence/ breach of Securities Laws. It is a settled principle of law that each proceeding warrants to be adjudicated on its own merit. Order passed in one quasi-judicial proceeding shall not be binding on the outcome of another proceeding validly initiated under law, though the quasi-judicial authority may make reference to, or rely on the findings recorded in one proceeding, while adjudicating the other proceeding pending before it. The legislative frame work under SEBI Act, 1992 and the provisions of relevant regulations framed under the SEBI Act, 1992, do not envisage that the order passed by the Whole Time Member of SEBI would abate or shall be binding on any other proceeding initiated under separate provisions of the SEBI Act, 1992 even though both the proceedings have emanated out of same set of facts and allegations.

23. Under the circumstances, each proceeding needs to be decided on merit based on the facts and allegations made and after considering the reply/ submission advanced by the entities therein without being tied up with the decision taken in another proceeding against the entities in the same case. Hence, I reject this contention of the said Noticees.

24. Mr. Mukesh Chauradiya (Noticee No. 7) has questioned the territorial jurisdiction of SEBI in the instant matter as the commissions and omissions on part of the said Noticee as alleged in the SCN were done outside India, hence the SCN is beyond the scope and authority of SEBI and therefore, provisions of SEBI Act, 1992 are not applicable on him. It is hereby observed that if any listed company issues further securities for raising more capital through public offer, such as preferential allotment, rights issue, etc., it has to comply with the applicable provisions of the Companies Act, 2013 (previously Companies Act, 1956), Securities Laws including SEBI Act, 1992 and rules & regulations made thereunder. The listed Companies are required to make true and complete disclosure about its business and commercial decisions for the consumption of investors at large, so as to enable them to make informed decision about investing in the scrip of the company. The same regulatory standards are also equally applicable to the issue

of GDRs by an already existing publicly listed company. The Hon'ble Supreme Court in its judgment dated July 06, 2015 in the matter of ***Securities and Exchange Board of India v. Pan Asia Advisors Ltd. and Another (Civil Appeal No. 10560/2013, AIR 2015 SC 2782)*** dealing with the issuance of GDRs by companies and SEBI's territorial jurisdiction therein has noted that GDRs are issued by an overseas depository bank on the basis of the shares deposited by a company with a domestic custodian bank in India. Considering this, the Supreme Court held that since GDR issuances were backed by underlying shares held by the Domestic Custodian Bank in India, a GDR can be construed as a right or interest in securities. Section 2(h) of the Securities Contracts (Regulation) Act, 1956, which enlists the instruments that can be considered as 'Securities' and includes rights or interest in securities among those. Further, the Hon'ble Supreme Court placed reliance on the case of ***GVK Industries Officer v. Income Tax Officer (2011) 4 SCC 36***, where it had been held that a law may proceed against an extra-territorial aspect, in case it had "*got a cause and something in India or related to India and Indians in terms of impact, effect of consequence*". The Court also placed reliance on the *effects doctrine*; which meant that in case the allegations of manipulation were true, there would be adverse consequences in the Indian securities market. In view of the above-mentioned reasons, the Hon'ble Supreme Court concluded that any fraudulent activity impinging upon the interests of Indian investors would squarely fall within the jurisdiction of SEBI. Thus, it was held by the Court that SEBI had the powers to initiate action against Pan Asia Advisors and Arun Panchariya, even though they were based outside India, since their actions impinged upon the interests of Indian investors. With respect to the GDR issue the Hon'ble Supreme Court has settled that SEBI can take action against the entities located outside the territorial limits of India if their actions impact the securities market in India and the interest of Indian investors. Hence, the contention of Noticee No. 7 that this matter is outside the territorial jurisdiction of SEBI is rejected.

<u>Issue I :</u> Whether the Noticees have violated the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3 (a), (b), (c), (d), 4 (1), 4(2) (f),

(k), (r) of SEBI (PFUTP) Regulations, 2003, and Section 21 of SCRA, 1956 read with Clauses 32, 36(7) and 50 of Listing Agreement, as applicable?

25. From the material available on record, I note that ZBIL had issued 1.81 million GDRs (amounting to USD 22.99 million) on March 15, 2010, equivalent to 5,43,57,060 equity shares. Summary of the aforesaid GDRs issued by ZBIL is tabulated below.

GDR issue date	**No. of GDRs issued (mn.)**	**Capital raised (USD mn.)**	**Local custodian**	**No. of equity shares underlying GDRs**	**Global Depository Bank**	**Lead Manager**	**Bank where GDR proceeds deposited**	**GDRs listed on**
28-May-2010	1.81 (at USD 2.58 each GDR)	22.99	HSBC Bank, Mumbai	5,43,57,060	The Bank of New York Mellon	Pan Asia Advisors Ltd.	EURAM Bank, Austria	Luxembourg Stock Exchange

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

27. Investigation further observed that an entity viz. Vintage FZE (now known as Alta Vista International FZE) had obtained a loan of USD 22.99 million by entering into a Loan Agreement dated May 12, 2010 with EURAM Bank to subscribe to the GDRs of ZBIL. The aforesaid Loan Agreement was signed by Mr. Arun R Panchariya in the capacity of Managing Director of Vintage. On perusal of the Loan Agreement, I note that the following has been *inter alia* mentioned therein –

<u>1. Currency and amount of facility:</u>

USD 22,993,036.38

(The amount is exactly the same amount raised by ZBIL 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 1,811,902 Luxembourg public offering and may only be transferred to EURAM account nr. 580013, Zenith Birla (India) Limited.

*(*The specific purpose of the loan/ draw down was for the purpose of subscribing to the GDR issue of ZBIL. *580013* is the client account number of ZBIL. Exactly, the amount of USD *22,993,036.38* was credited to the escrow account of ZBIL with EURAM Bank on the same date of loan being debited to the account of Vintage i.e., May 12, 2010 (**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. 540012 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.* (emphasis supplied)

- *Pledge of the account no. 580013 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.*

28. From the aforesaid Loan Agreement, I note that Vintage had availed a loan facility to the extent of USD 22.99 million from EURAM Bank to subscribe to the GDRs of ZBIL.

29. From the certified true copy of ZBIL's Board Resolution dated March 03, 2010 provided by EURAM Bank, and copy of minutes of the board meeting of ZBIL held on the same date provided by ZBIL to SEBI, it is observed that the following resolution was *inter alia* passed in the said meeting–

16. CHANGE IN THE OPERATION OF BANK ACCOUNT WITH EURAM BANK
"*RESOLVED THAT in supersession of all the earlier resolution passed in the connection with the opening of bank account 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, Shri. M.S. Arora, Managing Director and Shri. P.V.R. Murthy, Director be and are hereby jointly and severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking confirmation, declaration and other paper(s) from time to time as may be required by the Bank and to carry and affix, Common Seal of the company thereon, if and when so required.*

"RESOLVED FURTHER THAT Shri M.S. Arora, Managing Director and Shri P.V.R. Murthy, Director, be and are hereby jointly and severally 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 <u>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>". [Emphasis supplied]

30. From the aforesaid minutes of the board meeting it is observed that the Board of Directors of ZBIL authorized, Shri P.V.R. Murthy (Noticee No. 2) and Shri M.S Arora (Noticee No. 4) to sign, execute, jointly and severally, any application, agreement and other paper(s) from time to time as may be required by EURAM Bank. For this purpose, Shri P.V.R. Murthy / Shri M.S Arora were *inter alia* authorized to carry and use the seal of ZBIL. In the said resolution, the Board of Directors had further authorized EURAM Bank to use the funds deposited in the bank account opened with EURAM Bank in the manner of subscription money in respect of the GDR issue of the company, as security in connection with loans, if any.

31. From the copy of the minutes of the meeting, it is observed that the directors namely Mr. P.V.R. Murthy (Noticee No 2) Mr. Yash Birla (Noticee No.3), Mr. M.S. Arora (Noticee No.4), Mr. A.P. Kurias (Noticee No.5), late Mr. A.R. Barwe had attended the Board meeting dated March 3, 2010 and approved the aforementioned resolutions. The aforesaid fact of opening of account with EURAM Bank for such purposes as stated in the Board resolution and reproduced above has also been admitted by ZBIL in its submissions.

32. I note that subsequently ZBIL has entered into a Pledge Agreement with EURAM Bank on May 12, 2010. The said Pledge Agreement was signed by Mr. P.V.R. Murthy on behalf of ZBIL, in the capacity of Director and Authorized Representative of ZBIL. The salient Clauses of the Pledge Agreement are *inter alia* as under:

> ***1.*** *<u>Preamble</u>*
> *By loan agreement K120510-005 (hereinafter referred to as the "Loan Agreement") dated 12 May 2010, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahmadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates ("the Borrower") in the amount of USD 22,993,036.38. The Pledgor has received a copy of the Loan Agreement No. K120510-005 and acknowledges and agrees to its terms and conditions."*
>
> ***2.*** *<u>Pledge</u>*

*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 22,993,036.38 existing from time to time at present or hereafter on the **securities account(s) no. 580013** 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. 580013 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account ") and all amounts credited at any particular time therein. The interest rate on the deposit in the amount of facility amount of the Loan Agreement will be fixed at 1.00% 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.

2.3 The Bank herewith accepts the pledge established pursuant to section 2.1 hereof."

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 **<u>Bank is entitled to apply the funds in the Pledged Accounts to</u>** **<u>settle the Obligations</u>**. 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."

33. I note that the Pledge Agreement refers to the Loan Agreement dated May 12, 2010 between the borrower i.e. Vintage and EURAM Bank, whereby Vintage was granted a loan of USD 22,993,036.38, and it is stated that the Pledgor i.e. ZBIL has received a copy of the said Loan Agreement and acknowledges and agrees to its terms and conditions. By signing the Pledge Agreement, ZBIL is deemed to be clearly aware that Vintage was the subscriber to the GDR issue. On perusal of the contents of the Pledge Agreement, it is noted that the Pledgor had agreed to pledge 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".

34. Regarding the dates, it is noted that the Pledge Agreement and the Loan Agreement were both dated May 12, 2010. Further, I also note that Clause 6.1 of the Loan Agreement specifies that the Pledge Agreement was an integral part of the Loan Agreement.

35. From the Loan Agreement and the bank account statement of Vintage, I note that Vintage had availed a loan from the EURAM Bank to the extent of USD 22,993,036.38 to subscribe to the GDRs of ZBIL. From the statement of Vintage's bank account and the escrow account for the GDR issue, it is observed that Vintage received the loan amount of USD 22,993,036.38 on May 12, 2010 and the same was then transferred to the escrow account of ZBIL. From the above, it is evident that GDR subscription money was received from only one entity i.e. Vintage. Accordingly, I note that the GDR issue of ZBIL comprising 1.81 million GDRs amounting to USD 22.99 million, was subscribed by only one entity, i.e. Vintage. I further note that the amount was transferred to ZBIL's bank account held with EURAM Bank on May 27, 2010 and the same ZBIL's account was pledged with EURAM Bank under the Pledge Agreement. In view of this, it can further be noted that the GDR proceeds were pledged prior to realizing the same.

36. Vide its reply dated April 27, 2022, ZBIL has *inter alia* denied that there was only one subscriber to its GDR issue, viz. Vintage and has instead named eight entities namely:

Axinite Capital Inc	Cruise Waterford Investments Limited
Creative Stone Holdings Limited	Kingsly Holdings Ltd.
Chromestar Assets Limited	Trapezius Capital Limited
Tieze Limited	New Jersey Ltd.

These investors had purportedly subscribed to its GDR issue. This information pertaining to the list of allottees was purportedly received by it from its Lead

Manager, Pan Asia Advisors Limited. They stated that same has been submitted to SEBI vide letter dated July 31, 2015. The above submission is difficult to be accepted as said fact of the number of subscribers of the GDR issue could have been verified by the Company as the escrow account with EURAM Bank was operated by it. The transfer of the proceeds from Vintage's account to that of ZBIL is clearly visible from the account statement, which can reasonably be presumed to have been known by ZBIL and its directors/ key managerial personnel as well. Therefore, it was evident from the fund transfer details itself that ZBIL ought to have known that the GDR proceeds were being received from only one entity, viz. Vintage. Also in September 2013 the company purportedly recovered from Vintage the amount equivalent to the defaulted loan amount i.e. USD 14.46 million. Hence, the submission that the company was not aware of Vintage as sole subscriber cannot be accepted and they are further guilty of providing wrong information to SEBI with respect to the subscriber of GDR. Further, I note that ZBIL had received copy of the Loan Agreement signed by Vintage and had agreed to its terms and conditions.

37. Vintage had repaid the loan to EURAM Bank in several installments from August 2010 to May 2012. It was further observed that only after Vintage repaid the loan installments, on same day or later date, equal/ less/more amount of money was transferred (barring six instances i.e. August 05, 2010, September 20-22, 2010, January 05, 2011 and December 14, 2012, when more money was transferred on account of availability of surplus money in ZBIL's account) from ZBIL's account to: i) ZBIL's bank account in India; and ii) Other entities abroad. Thus, the amount transferred from ZBILs account was as dependent on the repayment of loan by Vintage. Details of transfer of GDR proceeds (along with the interest earned on it) are tabulated below as Table A and details of repayment of loan by Vintage to EURAM Bank are tabulated below as Table B:

TABLE – A

Date of transfer of funds	Amount of funds transferred from ZBIL's EURAM Bank a/c to ZBIL's bank account in India (USD)	Amount of funds transferred from ZBIL's EURAM Bank a/c to other entities (USD)
05.08.2010	100,000.00	
06.08.2010	1,000,000.00	
10.08.2010	1,000,000.00	
13.08.2010	1,000,000.00	
18.08.2010	1,000,000.00	
23.08.2010	1,000,000.00	
25.08.2010	1,000,000.00	
27.08.2010	1,000,000.00	
30.08.2010	1,000,000.00	
20.09.2010	400,000.00	
21.09.2010		10,496.00 EURAM Bank Asia Ltd.
22.09.2010		2,373.68 Singhania and Co. (payment of legal opinion)
05.01.2011		13,396.73 Al Jabha Legal Consultants Cultan Business Centre (Legal Services)
14.12.2012	216,889.65	
Total	**8,716,889.65**	**26,266.41**

(ZBIL's EURAM bank a/c statement)

TABLE - B

Date of transfer of funds	Amount repaid by Vintage (USD)	Amount of funds transferred from ZBIL's EURAM Bank a/c to: 1) ZBIL's bank account in India, and 2) other entities
05.08.2010	103,000.00	100,000.00
06.08.2010	1,000,000.00	1,000,000.00
10.08.2010	1,000,000.00	1,000,000.00
13.08.2010	1,000,000.00	1,000,000.00
18.08.2010	1,000,000.00	1,000,000.00
23.08.2010	1,000,000.00	1,000,000.00
25.08.2010	1,000,000.00	1,000,000.00
27.08.2010	1,000,000.00	1,000,000.00
30.08.2010	1,000,000.00	1,000,000.00
20.09.2010	413,000.00	400,000.00
21.09.2010		10,496.00
22.09.2010		2,373.68
05.01.2011	15,000.00	13,396.73
14.12.2012		216,889.65
	8,531,000.00	**8,743,156.06**

(source: Vintage's loan account statement with EURAM Bank)

38. From the above Table-A and Table-B, it is observed that out of the GDR proceeds of USD 22.99 million (along with the interest earned on it), ZBIL transferred USD 8.72 million to its bank account in India and USD 0.03 million to certain entities situated abroad for payments and the amount transferred from ZBIL's EURAM

Bank account was dependent on the repayment of the loan by Vintage. Vintage repaid the loan to the extent of USD 8.53 million and thereafter defaulted on the repayment of outstanding loan. On account of the loan default by Vintage, EURAM Bank adjusted outstanding loan amount to the extent of USD 14.50 million (includes interest on loan amount) from ZBIL's GDR proceeds.

39. As mentioned herein above, Mr. Arun Panchariya signed the Loan Agreement with EURAM Bank for GDR issue of ZBIL in the capacity of Managing Director of Vintage. Vintage repaid the loan to the extent of USD 8.53 million and thereafter defaulted on outstanding loan amount of USD 14.50 million. Mr. Mukesh Chauradiya signed the requests for redemption of loan amount for GDR issue of ZBIL in the capacity of Authorized Signatory of Vintage and he also worked in the capacity of Managing Director of Vintage when Vintage stopped repaying the outstanding loan.

40. From the details of fund transfer stated above, I observe that only after Vintage repaid loan instalments to EURAM Bank that ZBIL could make payments from its account maintained with the same bank and such payments were exactly for the same amount or less amount except for adjustments on account of bank charges / interest earned by ZBIL. Therefore, it is evident that the amount transferred from ZBIL's EURAM Bank account was dependent on the repayment of the loan by Vintage to EURAM Bank. It also establishes that the purpose of the Pledge Agreement was to facilitate the subscription of GDR issue and securing the loan obtained by Vintage.

41. In the present matter, I note that the GDR subscription amount of USD 22.99 million was not available to ZBIL for utilization until the loan taken by Vintage for subscribing the GDRs was repaid to the EURAM Bank. I also note that after the subscription of GDR on May 28, 2010, Vintage repaid the loan amount to the extent of USD 8.53 million as on March 31, 2011 and as on March 31, 2012. Hence only USD 8.53 million was at the disposal of ZBIL out of the total issue of GDR despite

the GDRs of ZBIL being fully subscribed. Subsequently, the said GDR proceeds along with the interests accrued thereupon less bank charges was transferred by ZBIL. The outstanding loan amount of USD 14.46 million was defaulted by Vintage and had to be subsequently set off by the GDR proceeds of ZBIL pledged against the loan taken by Vintage.

42. It is pertinent to note that nowhere did Noticee No. 1 and 3 to 5 inform that they had taken any steps against the purported pledge agreement or Mr. P.V.R. Murthy. It has not been stated by the aforesaid Noticees anywhere that any complaint was lodged with police authorities against execution of such purportedly unauthorized pledge agreement on their behalf. Further, the entire trail of funds as can be observed from the bank account statements of Vintage and ZBIL with EURAM Bank and the pattern of subsequent disbursements as already narrated above, when seen as a whole, strongly establishes collusion between Vintage and aforesaid Noticees with respect to the subscription of the said GDR issue of ZBIL. In this regard, I refer to the Hon'ble SAT Order dated July 14, 2006, in the case of ***Ketan Parekh vs. SEBI*** *(Appeal no. 2/2004)*, wherein, Hon'ble SAT has observed that:

> *"… in order to find out whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism, will depend upon the intention of the parties <u>which could be inferred from the attending circumstances of the cases, because direct evidence in such cases may not be available."</u>* [Emphasis supplied]

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

that the aforesaid Noticees named above had acted as parties to the fraudulent scheme.

44. I also note that Company has submitted that after considerable follow ups with Vintage, goods equivalent to USD 14.50 million were received by its overseas subsidiary, viz: Zenith FZE (subsidiary of ZBIL) in September 2013 from Vintage. In support of this, the Company has submitted a certificate from an independent accountant certifying receipt of goods / merchandise by Zenith FZE and invoices for the sale of same merchandise. I have perused the submissions of the Company and the aforesaid certificate and invoices and note that, this will not lower the responsibility and the gravity of violation by the Noticees as the act of fraud committed is apparent and the said Noticees cannot take the protection of subsequent corrective actions. The present proceedings are limited to the fraudulent issuance of GDRs and disclosure lapses by the Company. ZBIL and its directors have failed in their duties during the issuance of GDRs and in their responsibility towards the shareholders. The transfer of merchandise and subsequent sell off was never approved by shareholders of ZBIL and was never the purpose behind the issuance of GDRs which were earlier wrongly projected to be fully subscribed.

45. Further, as seen from the submissions made by some of the Noticees that they came to know about the fact that Vintage was the sole subscriber of ZBIL's GDR issue through the SCN (April, 2019) only and Lead Manager provided them wrong data with respect to the subscribers of the GDR and they were constrained to seek any data by the law of secrecy applicable to the Lead Manager who was registered in UK. However, in contradiction to the above submission it was observed that the company received merchandise worth USD 14.50 million in September 2013 in furtherance of the recovery of pledged amount which was set off for loan repayment default of Vintage. Hence, it is apparent that ZBIL and its Directors were aware about the subscription of GDRs by Vintage way back in 2013 itself and as the SCN was issued in 2019. Having considered the observation made above, it is difficult

to lend credibility to the submissions made by the company and its directors particularly with regard to them being unaware about the fraudulent scheme under scrutiny in the present proceeding and it is surprising that they did not take any legal action against Mr. P.V.R. Murthy, Pan Asia and Vintage.

46. Moreover, it is noted that ZBIL had provided incorrect information to SEBI vide its letter dated July 31, 2015, wherein it had stated that the GDR issue was subscribed by eight investors. The same was informed to exchanges after the completion of issue. However, from the documents available on record, it is observed that the GDRs were subscribed by one entity only, viz. Vintage. I also note that the Pledge Agreement which was specifically signed by the authorized representative of ZBIL makes reference to Vintage. The same also clearly shows that ZBIL was aware that the subscriber to the GDR issue was Vintage. Such actions also indicate *mala fide* intention on the said Noticee's part.

47. Further I also note that, false and misleading corporate announcements were made by ZBIL to BSE and NSE between May-June 2010 and it also suppressed the material and price sensitive information viz. (i). execution of pledge agreement dated May 12, 2010 by ZBIL in favor of EURAM Bank pledging the GDR proceeds for providing security to the loan taken by Vintage, (ii) linking of the aforesaid pledge agreement to the loan agreement dated May 12, 2010, by Vintage for obtaining loan from the EURAM bank for subscribing the GDR issue of ZBIL and (iii) Vintage was the only subscriber of GDR issued by ZBIL. I find that all these three events were price sensitive information and could have impacted the scrip price of ZBIL. I find that the corporate announcements made by ZBIL on May 28, 2010 stating that it had 'allotted 1,811,902 GDRs', might have mislead the investors and created a false impression in the minds of the investors that the GDR issue was fully subscribed hence ZBIL did not comply with clause 36(7) of the Listing Agreement and as observed Noticee no. 1 (SIEL) has violated Section 21 of SCRA, 1956 read with clause 36(7) of Listing Agreement.

48. The aforementioned act of ZBIL resulted in 'fraud' as defined under the PFUTP Regulations, 2003. In this respect, it would be appropriate to refer to the Order of the Hon'ble SAT in ***Pan Asia Advisors Limited vs. SEBI*** cited above wherein, while interpreting the expression of 'fraud' under the PFUTP Regulations, 2003, it was observed that:

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

49. In their reply, the Company has referred to an order dated June 02, 2020 issued by NSE (for short "NSE Order") and has taken a plea that the stock exchange after examination has observed no adverse observations against the Company in the matters pertaining to misuse of funds, misrepresentation of business or violation of SEBI LODR Regulations. I have perused the NSE Order and in my opinion, ZBIL may not be able to take a shelter under it, as same was issued by NSE after examination of violation of SEBI LODR Regulations, while the instant proceedings have been initiated for their alleged violation of PFUTP Regulations, 2003. Further, from the perusal of NSE Order, it is understood that the exchange has observed no negative inference related to misuse of funds, misrepresentation of business, etc., while the instant proceedings have been initiated on the basis of allegedly fraudulent issuance of GDRs, wherein the Company pledged its own GDRs

amounting to USD 22.99 million as security in the EURAM Bank by signing the Pledge Agreement in order to ensure that the subscriber to its entire issue of GDRs (Vintage) avails a loan of equivalent amount of USD 22.99 million from the EURAM Bank on the basis of the said Pledge Agreement. Therefore, the contention of the ZBIL that no negative findings have been observed against the Company by NSE and hence no action should be initiated against it, has to be rejected and does not require further consideration. Further, I note that the orders by NSE cannot curtail SEBI's power to initiate enforcement / adjudication proceedings in case of alleged violation of Securities Laws.

50. In view of the above, I note that the scheme of arrangement of ZBIL, in allotting GDR issue to only one entity i.e. Vintage which subscribed the GDR issue by obtaining loan from EURAM Bank and the same was again secured by the ZBIL by pledging its GDR proceeds, seen along with the false and misleading corporate announcements made by ZBIL and allotted, without disclosing the crucial details pertaining to the aforesaid loan and pledge agreements which were price sensitive information, lead to conclusion that the same were done in a fraudulent manner. Thus, in view of the foregoing, ZBIL has violated the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1), (2)(f), (k), (r) of PFUTP Regulations, 2003 and Section 21 of the Securities Contracts Regulations Act, 1956 read with Clause 36(7) of the Listing Agreement.

<u>Violation of Section 21 of SCRA, 1956 read with Clauses 32 and 50 of Listing Agreement:</u>

51. I note that ZBIL in its Annual Report for Financial Year (FY) 2010-11 and 2011-12 had stated that:

"*"..company follows the Accounting Standards issued by the Institution of Chartered Accountants of India and Company (Accounting Standards) Rules,* *2006. The company has not adopted a treatment different from that prescribed in any Accounting Standards, in the preparation of financial statements.”*

52. However, ZBIL in its Annual Report for FY 2010-11 and FY 2011-12 showed cash and cash equivalent at the end of the period March 31, 2011 as ₹76.58 Crore and for the end of the period March 31, 2012 as ₹80.03 Crore. ZBIL vide its emails dated April 16 and April 19, 2018 provided the details which are tabulated below:

FY	**Cash & cash equivalent at the end of FY (₹ in lacs)**	**Cash & cash equivalent kept with EURAM Bank**	
		Amount (₹ in lacs)	**Summary of break up**
2010-11	7,658.35	0.80	Scheduled banks - Current account
		6,457.30	Scheduled banks - Fixed deposit (including interest accrued)
Total		6,458.10	
2011-12	8,003.04	7,526.89	Balances with banks

53. As mentioned hereinabove, ZBIL had pledged its GDR proceeds of USD 22.99 million with EURAM Bank against the loan availed by Vintage. Vintage repaid loan to the extent of USD 8.53 million as on March 31, 2011 and as on March 31, 2012. Therefore, GDR proceeds to the extent of USD 14.46 million (₹64.56 crore at RBI exchange rate of ₹44.65 per USD on March 31, 2011) were outstanding as on March 31, 2011. Similarly, GDR proceeds to the extent of USD 14.46 million (₹73.98 crore at RBI exchange rate of ₹51.16 per USD on March 31, 2012) were outstanding as on March 31, 2012. Hence, ₹64.56 crore and ₹73.98 crore lying in ZBIL’s EURAM Bank account were not free cash and cash equivalent as per Accounting Standard (AS)-3. ZBIL has sought to dispute this allegation made in the SCN by stating that it was unaware of the said pledge agreement and therefore has denied non-compliance with the Accounting Standards. As already held above that ZBIL’s knowledge of the pledge agreement is established in

preceding paragraphs, hence this submission of ZBIL cannot be accepted. In view of the above, I hold that ZBIL has not complied with AS-3 by considering the amount lying in the EURAM Bank account as Cash and Cash Equivalent. Hence, it is held that BCIL by not complying with AS-3 has violated the provisions of Clause 32 and Clause 50 of the Listing Agreement.

54. I also observe that ZBIL had pledged its GDR proceeds of USD 22.99 million against the loan availed by Vintage for subscription of GDR issue of ZBIL. ZBIL could utilize its GDR proceeds only to the extent of loan amount repaid by Vintage and as per Vintage's loan account statement, USD 14.46 million (excludes interest) (approximately ₹64.56 crore) was outstanding loan amount as on March 31, 2011 and USD 14.46 million (approximately ₹73.98 crore) was outstanding loan amount as on March 31, 2012. Therefore, there was a possible obligation on ZBIL for an amount of USD 14.46 million in FY 2010-11 and FY 2011-12 (GDR proceeds kept with EURAM Bank as security) as on the date of the balance sheets i.e. March 31, 2011 and March 31, 2012 respectively, in the event of default of repayment of loan by Vintage which are contingent liability in nature. ZBIL failed to disclose the contingent liability to the extent of ₹64.56 crore and ₹73.98 crore in Annual Reports for FY 2010-11 and FY 2011-12, respectively, for GDR proceeds pledged with EURAM Bank in terms of AS-29.

55. Further, it is also observed that ZBIL (in its financial statement for the Financial Year 2010-11 and 2011-12) did not follow prudence since it did not disclose the contingent liability, did not follow substance over form as it presented its bank balance with EURAM Bank as free cash available with the company and also did not follow materiality as it did not disclose the fact of signing of the Pledge Agreement and pledging of GDR proceeds, as the same are items, the knowledge of which might influence the decision of the user of the financial statements. Thus, I note that ZBIL has not complied with Accounting Standard -1. In view of this, I hold that this defense in untenable and I hold that ZBIL has violated Clause 50 of the Listing Agreement.

56. It is further noticed that although the orders passed by SEBI in similar GDR cases has been contested before the judicial forums, the allegations and findings pertaining to such identical fraudulent schemes have been well recognised and upheld in many of those forums. Therefore, in the present case, considering the background and conduct of Company and its Board members having indulged themselves in conceiving a similar scheme and making similar arrangement to ensure successful subscription of GDR by passing required enabling Board Resolutions, I find the GDR issuance of the Company in the instant matter also was a façade only to manipulate the investors and the securities market.

Role and contention of Noticees

57. I note that as per the Board Resolution dated March 03, 2010, the GDR proceeds were authorized / permitted to be kept as a security against the loans if any, and in this case the said loan was not availed by the Company but by the sole subscriber of GDR i.e. Vintage. In conformity with the above Board Resolution, I find that an amount of USD 22.99 million, which were raised through GDR issue were pledged with the EURAM Bank as security for the aforesaid loan availed by Vintage. Therefore it was not made available to the Company for its immediate utilization. I note that nothing has been brought in defence to support that the intent of the aforesaid Board Resolution was something else and not to ensure subscription to the GDRs through a fraudulent scheme. Therefore, in the absence of any other contingency or business exigency demonstrated by the Company, my observations as recorded in preceding paragraphs, I don't see there could be any reason to keep the GDR proceeds as a security for any loan that was proposed to be availed by the Company itself. I also note that the Pledge Agreement signed and executed by the Notice No. 2 incorporates provisions about the Loan Agreement and accordingly in the clauses of the Pledge Agreement, suitable stipulations have been made, whereby the Company has undertaken to discharge the liability of the borrower, in the event the Borrower

defaults in paying the loan availed by it from EURAM Bank to subscribe to the GDR of the Company. It becomes clear that Noticee No. 2, was very much seized of the intent behind the Board Resolution passed on March 03, 2010 pursuant to which he has signed the Pledge Agreement to ensure and secure the loan taken by Vintage for subscribing to the GDR of Zenith and therefore, having considered the allegations and the evidence available on record, in my view charges made in the SCN against Noticee No. 2 are found be established.

58. As regards to the contention of Noticee No. 4 that his job profile required him to look after the marketing, purchase, operational & technical aspects of manufacturing activities in the Company's plant and all financial decisions and activities of the Company were under direct control of Noticee No. 2. Admittedly, Noticee No. 4 was the Managing Director of the ZBIL and was in-charge of the day to day management of the affairs of the Company. As such, it is abundantly clear that as on May 12, 2010, when the Loan and Pledge Agreements were signed, the Noticee No. 4 being the Managing Director and in charge of the day to day affairs of the Company, knew very well that the GDR subscription amount was liable to be kept as a security against the loan taken by the sole subscriber of the GDR (Vintage) from EURAM Bank. Hence, contrary to the submissions made by the Noticee No.4, the question of his being innocent and not guilty of the violation alleged made in the SCN does not survive. I also note that Noticee No. 4 has taken a plea that initially he along with Noticee No. 2 were '*jointly*' authorized by the Board in its meeting dated October 28, 2009, to sign the documents pertaining to GDR. However, as the Noticee No.4 disagreed to sign, vide Board Resolution dated March 03, 2010 such authorisation was changed from '*jointly*' to '*jointly and severally*'. Consequently, all the documents pertaining to GDR issuance were signed by Noticee No. 2. It is a matter of fact that the Noticee No. 4 was also authorised by the Board to sign the documents on behalf of the Company pertaining to GDR. Such a decision albeit indicates that the Noticee No. 4 was having prior knowledge about the fraudulent scheme of the GDR issue and hence decided to stay away from the signature on such documents. In such

circumstances, as Noticee No. 4 was the Managing Director of the Company, it was certainly his primary duty to come out completely clean before the Board with all the facts, strategy, steps to be followed and compliances to be made with respect to the proposed GDR issue, before moving a Resolution before the Board. Being the Managing Director, it was he, who was statutorily required to manage the affairs of the Company. He, in his capacity as the Managing Director during the relevant period he was required to take care of the proposed GDR issuance and therefore ought to have clarified to the stakeholders about his pre-arrangement with the subscriber and about the proposed Pledge Agreement that was devised to be executed with the EURAM Bank. Therefore, his submission that though he was holding the post of Managing Director but was not exercising the power and function of Managing Director for the GDR issue cannot be an acceptable explanation without any supporting and strong evidence to prove his innocence as claimed by him.

59. With regard to contention of the Noticee No. 3 and 5, they were only Non-Executive Directors of the Company during the relevant time and were not involved in the day to day affairs of the company. I note that the allegation against these Directors is that they have facilitated and authorised the Noticee No. 2 and 4 by passing the afore stated Board Resolution for opening of an account with EURAM Bank and for the execution of a Pledge Agreement and thereby, have allegedly indulged in a fraudulent arrangement with the Company to ensure successful subscription to the GDR issue of the Company. In this regard, it is pertinent to note that officials like Noticee No. 3 and 5 who, even though were not actively involved in the day to day affairs of a company, nevertheless, the kind of posts they occupied bound them with more onerous duty that not only required them to be diligent and to act in adherence of the rules and regulations, but also expected them to desist from adopting or permitting the adoption of any unfair means, which would be detrimental to the interest of the Indian securities market, even though their action per se may not lead to any unjust profit to them or any quantifiable loss to the investors. The Noticees ought to realise that the Securities

Market is not a platform for adopting or allowing the practice of any fraudulent or unfair trade practice in whatsoever manner that obstructs dissemination of true and fair disclosures to the public. From the documents on record and submissions made by these Noticees to rebut the allegations, it can be seen that the Noticee No. 3 and 5 were undeniably involved and have facilitated the fraudulent arrangement for allotment of GDR to a single subscriber and have not raised voice objecting the passing of such Board Resolution.

60. As regards to the specific contention of Noticee No. 5 that he was only an Independent Director in the Company and was associated with ZBIL only for participating in the Board Meetings and was not involved in any financials of the Company. With regard to the said contention it is important to understand that the Independent Directors who comprise the Board, apart from providing their key functional expertise to the company, also play a key role in balancing the interests of managements and shareholders and such Independent Directors are expected to, inter alia, ensure fairness and transparency in the dealings of the company. Further, Board of Directors play a key role in balancing the interests of managements and shareholders and the independent directors are expected to, inter alia, ensure fairness and transparency in dealings of the Company. I note that, Noticee No. 5 served as an Independent Director from 1999 to 2013, when the issuance of GDR by ZBIL and the entire movement of the said GDR proceed was carried out. Where an act or omission occurs through board processes, then such non-executive directors can be held liable for such acts/omissions of company, if such directors had participated in the relevant board meetings and did not act diligently. In the present case, I note that Noticee No. 5 had attended the board meeting dated March 03, 2010 of the Company wherein resolution was passed for opening a bank account with EURAM Bank and authorizing EURAM Bank to use the GDR proceeds as security against loan, if any. Hence, the Noticee No. 5 has not only failed to bring any documents on record to justify his act in the capacity of an Independent Director in the Board, but on the contrary his participation in the Board Meeting wherein the crucial decisions about the GDR issue were taken and those GDR related resolutions were passed, justifies his

deliberate intent and active support to the Company in perpetrating the fraud upon the investors of Securities Market.

61. Further, I note that no evidences have been provided by the Noticee No. 3 and 5 to demonstrate that they have actually exercised considerable due diligence while dealing with Board processes pertaining to the GDR issue of the Company, inter alia, by raising any pertinent questions in the Board Meetings or by not signing the Board Resolution or by objecting to the proposed fraudulent scheme being conceived by the Company, by bringing the same to the notice of regulator. Further, by not raising any concern over non receipt of the GDR proceeds for Company's utilisation immediately after the issue, these Noticees have not exhibited any good conduct either by raising a suspicion before the Board or Management or by protesting against the inaction of the Company to bring the GDR proceeds for Company's use. Such inaction and misconduct on the part of the said Noticees not only show how they behaved in a casual manner but also have consciously turned a blind eye to the fraudulently acts of the Company thereby allowing something to be done in gross disregard of the duties of a Director which can't be considered as a mere omission, but do indicate their active collusion with the Company to execute a pre-designed arrangement for ensuring a successful GDR issue by the Company.

62. I note that ZBIL and its directors have placed reliance on the findings of Hon'ble SAT in the case of ***Adi Cooper vs. SEBI*** *(Appeal no. 124/2019, Order dated November 5, 2019)* to substantiate their claim that no fraud can be logically inferred from the reading of the contents of the Board Resolutions, hence basing the entire allegations of fraud as being founded and built upon the said Board Resolution is not correct. In this regard, I find that the reliance on the findings of Hon'ble SAT in the *Adi Cooper* (supra) would not be helpful to the said Noticees, as in the case of *Adi Cooper*, the Hon'ble SAT has also found another Independent Director guilty of the violations as alleged in the same SCN. It is further observed that the appellant in the said appeal i.e. Adi Cooper, resigned

soon after the passing of the resolution and before the issuance of GDR also he was not associated with the issuer company when Vintage came into the picture i.e. when pledge agreement was signed, which is not the case in the present matter. Some Noticees have claimed that they were not involved in the day to day running of the company however in the same order of *Adi Cooper*, Hon'ble SAT has remarked that *"The contention of this appellant that he was not involved in the day to day running of the company cannot be accepted as he was found to be part of the resolution process of the company and his involvement in the issuance of the GDR proceeds."* Hence in the present proceedings, the Directors of ZBIL i.e. Noticee No. 2, 3, 4 and 5 by virtue of them being part of the board meetings dated October 28, 2009 and March 03, 2010 which passed the resolutions under consideration in the present proceedings and also were part of the issuance of the GDR cannot take such defence and run away from their responsibilities.

63. With respect to the contentions that the board resolution did not mention Vintage as the beneficiary against the security of GDR proceeds of ZBIL and hence resolution should be interpreted in restricted manner, similar argument came up for consideration before the Hon'ble SAT in the matter of ***Cals Refineries Limited vs. SEBI*** *(Appeal No 04 of 2014; Date of Decision 12.10.2017)*, wherein the company and directors had claimed that from the contents of the Board Resolutions, it would not be justified to allege that loan mentioned in the Board Resolution was ever intended for third party loan as alleged in the SCN. The Hon'ble SAT after having heard the parties, found their submissions untenable.

64. Further, I note that the fraudulent arrangement indulged by the Company to ensure successful completion of GDR issue in the instant matter, was not the first case dealt by SEBI. SEBI had found that as many as 51 Indian companies had made 59 GDR issues over a period of about 12 years and in all such GDR issues, companies were found resorting to almost similar *modus operandi* viz. it has opened a bank account for receiving / depositing GDR proceeds, executed a Pledge Agreement with the same Bank and facilitated the execution of a Loan Agreement so as to secure subscription to its entire GDR issue solely by one

entity i.e. Vintage. Even the contents/text of the Board Resolution passed by the respective companies pertaining to keeping GDR proceeds as securities against loan, were found to be worded in identical manner. Further, the above cited observations of Hon'ble SAT have been affirmed in other appeals involving GDR cases as well. I find the facts of the aforesaid case of *Cals Refineries* (supra) and the observations made by the Hon'ble SAT therein are squarely applicable to the facts of the present case involving the Company and its Directors.

65. Therefore, the Noticee No. 3 and 5 are found to be liable since they had attended the Board meeting dated March 03, 2010 and did not raise any objection/question to the resolutions passed therein including the resolution that authorised the Company to keep the GDR proceeds as securities against loan, and thereby have failed to show that they have indeed acted diligently.

66. It has also been submitted by Noticees No. 1, 3, 4 and 5 that the Noticee No. 2 (Mr. P.V.R. Murthy) had never informed the Company and its Board that he had entered into a Pledge Agreement with the EURAM Bank. Further, the confirmation letter of the Company which confirmed the rights of EURAM Bank to set off the pledged deposits of GDR Proceeds with the outstanding loan of Vintage in terms of the Loan Agreement, was signed by Noticee No. 2 and the ZBIL was not aware about the same. It has also been submitted that since Noticee no. 2 had vast experience in fund raising, the Board relied upon his expertise. In this regard, at the outset I note that Zenith has not refused to acknowledge the existence of the Loan Agreement as well as the Pledge Agreement, both signed on May 12, 2010, but has merely stated that it was not aware about such Agreements. I find that ZBIL has only tried to shift the blame regarding failure to disclose true and correct facts as per the regulatory norms on to the Noticee No. 2 who has signed the Pledge Agreement and the confirmation letter on behalf of the Company. Admittedly, the Pledge Agreement and the confirmation letter were signed by Noticee No. 2, however, irrespective of who signed those documents, it was also the responsibility of the ZBIL and its Board of Directors to ensure that the GDRs of the Company are issued

in compliance with all the regulatory rules and regulations. Further, ZBIL has not produced any piece of evidence to demonstrate that after the issuance of GDRs or subsequent to knowing about the charge of fraud as alleged against them in the SCN, they have raised any concerns over these issues against Noticee No. 2 before any authority if they felt that the Noticee No. 2 has actually failed to do his duty or has misled the Company in the matter or had acted beyond his authority and resorted to acts which were detrimental to the interest of the Company. If ZBIL was aggrieved it should have taken the appropriate step in this regard at the earliest opportunity before the appropriate forums which it has not done, hence I note that the said Noticees before making such submissions failed to keep their own hands clean and hence I am bound to deny the above submission.

67. ZBIL and its directors have further submitted that the Company and its Board trusted the Lead Manager Pan Asia and carried out the instructions as provided by Pan Asia. Further, the list of GDR subscribers provided to SEBI by the Company was based on the information received from the Lead Manager, and the Noticees did not have any independent mechanism to verify the same and as per secrecy laws applicable in other jurisdictions, it was not possible for the said Noticees to verify the same. The submission of the Noticees that it trusted the Lead Manager do not lend credence to such a submission. The Noticee has not produced any correspondence, email or any other tangible effort made by it to contact the Lead Manager nor has it produced any communication with the EURAM Bank so as to verify the antecedent of the Pledge Agreement or the Lead Manager. The Company had the choice and discretion to open a bank account in any other bank and to have consultants of its own choice for assisting it in executing the GDR issue since, in case of any default on the part of any of its consultants/intermediaries, statutorily it is the Company that will be held liable and it can't escape from its responsibility on the ground that it has acted in good faith or trust reposed by it on the advice given by the intermediaries and consultants. If the contention of the Noticee that it was unaware of the Pledge Agreement as well as about the subscriber to its GDR issue and that it has signed the said Board Resolution and Pledge Agreement on

good faith trusting the Lead Manager is to be believed, then it was duty bound to take stringent legal action against the Lead Managers for such criminal breach of trust. However, as per the records available, no action has been initiated by the Company or other Noticees against any of the intermediaries/consultants so far. Under the circumstances, again as observed in the previous paragraph and the reasoning provided therein I reject the present contention.

68. Directors are bound by the maxim *delegates non- protest delegare* i.e. authority once delegated cannot be delegated again. Shareholders have appointed him because of their faith in his skill, competence and integrity and they may not have the same faith in another person. This issue came up before Hon'ble Supreme Court in the case of ***J.K. Industries v. Chief Inspector of Factories*** *(MANU/SC/1293/1996).* Whereby it was held that the rule is, however, not that rigid. The Act or Articles of Association of the Company may make a delegation of functions to the extent to which it is authorized. Also, there are certain duties, which may, having regard to the exigencies of business, properly be left to some other officials. <u>*A proper degree of delegation and division of responsibility is permissible but not a total abrogation of responsibility. A director might be in breach of duty if he left to others the matters to which the Board as a whole had to take responsibility. Directors are responsible for the management of the company and cannot divest themselves of their responsibility by delegating the whole management to agent and abstaining from all enquiries. He is the agent of the company except for matters to be dealt with by the company in general meeting and not of the other members of the Board.*</u> **[Emphasis Supplied]**

69. Also the issue of not including Pan Asia in the current proceedings was raised by some noticees. It is clarified here that the present proceedings are concerned about the role of directors and the issuing company. The company through its directors appointed Pan Asia as the Lead Manager for their GDR issue. Hence, it was the agent of the company and being principal for the said agent the company and its directors cannot run away from their responsibility which is to carry out the

business of company in fair and lawful manner. It is noted that appropriate action has been taken by SEBI against the Lead Manager of issue (Pan Asia) as well and not incorporating Pan Asia in the present proceedings will not bring any relief to the Noticees in the instant matter. In this respect, I note that in the matter of ***Systematix Shares & Stocks India Limited v. SEBI*** (Appeal No. 21 of 2012 DoD: 23.04.2012),the Hon'ble SAT also had the occasion to deal with a similar argument of the appellant therein contending that the Board should have proceeded against all wrong doers and the action against the appellant and a few entities alone was discriminatory. In the said case, the Hon'ble SAT had held that *"We cannot subscribe to this view since the Board has set its own benchmark in selecting cases for action and, in any case, the appellant cannot plead himself innocent or his trades as lawful."*

70. In my view, in a listed public company, all the Directors on Board including the Independent Directors, should take all such steps and measures as may be necessary in furtherance of the interest of shareholders and should demonstrate highest standards of governance. Ignorance of law or knowledge is no excuse. The Noticee No. 2 to 5 have not produced any evidence or any submission to support that they had actually acted responsibly or that they had raised all the pertinent issues and had asked relevant questions to the management before the Board, before agreeing to pass such a resolution. Their claim of holding a position of Independent or Non-Executive Director on the Board cannot *suo moto* absolve them from their expected duties and responsibilities during their tenure as a Director of the Company, which bestowed a statutory responsibility on them to act diligently in the interest of the Company and the Shareholders. Therefore, I am of the view that the way the Directors of ZBIL (Noticee No. 2, 3, 4 and 5) have conducted themselves as Directors of the Board and have agreed to pass those Board Resolutions pertaining to the GDR issue, as suggested by the aforesaid facts of the matter, they have clearly allowed themselves to be a part of the fraudulent scheme and hence, do not deserve exoneration on that account only. Therefore, in my view, apart from the Issuer Company (ZBIL) i.e. Noticee No. 1,

Noticee No. 2 to 5 have acted fraudulently alongwith the Company, in breach of the provisions of 12A(a), (b), (c) of SEBI Act, 1992 read with regulation 3(a),(b),(c),(d) and 4(1) of SEBI PFUTP Regulations, 2003.

71. As regards to the Noticee No. 6 I note that the sole subscriber to the GDRs of ZBIL i.e. Vintage, whose beneficial owner was Mr. Arun Panchariya (AP, Noticee no. 6) who obtained loan from EURAM Bank, an entity connected to him, for subscription of GDR issue for which security was provided by ZBIL by pledging its GDR proceeds. Further I also note that, the aforesaid Loan Agreement was signed by AP on behalf of Vintage. It is also noted that Pan Asia (Director was AP), which was the Lead Manager to the GDR issue of ZBIL. It is observed that Vintage defaulted on repayment of loan to EURAM Bank to the extent of USD 14.50 million, thereby GDR proceeds to that extent were adjusted by EURAM Bank from the proceeds of GDRs.

72. Further I also note that, Mr. Mukesh Chauradiya (Noticee no. 7), a close associate of AP was the Managing Director and authorized signatory in Vintage. He has submitted that he was not involved in the investigation process and was not provided copy of the Investigation Report. Further, he has contested the claim made in the SCN that he was the Managing Director of Vintage FZE when Vintage defaulted on the loan from EURAM Bank as no supporting document was provided to him in support of the above claim.

73. With regard to the above contention, from the SCN and Annexures, I find that all the relevant and relied upon documents in support of the SCN and also the findings of the investigation captured in the SCN have been forwarded to the Noticee. Further, on a comparison of the SCN and the Investigation Report, it is observed that the SCN has reproduced the contents of the Investigation Report to a large extent and hence it tantamount to providing the Investigation Report itself. The said Noticee has further contended that no document has been provided against the claim that the Noticee was the Managing Director of Vintage FZE when it defaulted on the loan from EURAM Bank and *in toto* denied holding

the position of Managing Director in Vintage FZE at any point in time. However, the said Noticee never denied signing the documents that were relied on in the SCN.

74. Addressing the above contention, I want to point out that Mukesh Chauradiya (Noticee No. 7) has been found involved in various other matters involving Arun Panchariya and Vintage FZE where fraudulent GDR issue was carried out applying similar *modus operandi*, as in the instant matter. SEBI has taken action against the entities involved in all those matters including Mukesh Chauradiya. In this regard Hon'ble SAT in ***Mukesh Chauradiya vs. SEBI*** (Date of Decision: January 7, 2021 Appeal No. 260 of 2020) wherein it was argued that he was never a managing director of Vintage FZE; he was initially only a Manager and later on a General Manager. It was contended that he was never a beneficial owner of the company Vintage FZE and he has never benefited anything in the alleged violation as he was only a salaried employee of Vintage FZE. In the matter, the Hon'ble SAT held as follows:

"It is an undisputed fact that the appellant has signed as Managing Director as we also note at page 94 of the Memo of appeal. It is not that he signed "for managing director" or "on behalf of managing director" etc. Therefore, irrespective of the dispute relating to the designation as contended by the appellant, the appellant was undoubtedly having the power to sign as managing director. In the certificate given by the JAFZA only 3 names [and 4 designations, with the sole Director, being named as the Secretary also] are indicated who are responsible people in Vintage FZE and appellant was one of them. Therefore, the dispute as to what was the exact designation of the appellant is irrelevant in the context that admittedly the appellant signed as Managing Director of Vintage FZE. It is also important to clarify here that using a designation in other jurisdictions, such as UAE in the instant case, or Adjudication Order in the matter of disclosures by Rainbow Papers Ltd. in respect of its GDR issue Page 42 of 49 elsewhere, for comparison to similar designations in India is also not relevant because designations vary widely even with respect to similarly placed officials across

multiple jurisdictions. What is relevant is only whether the appellant was holding a position in which he could put his signature, that too in a loan agreement for USD 13.24 million with a bank under the designation of Managing Director. In any case designation of a person and whether a person is "an officer in default" in an organization etc. are irrelevant when the charge is that of aiding and abetting fraud under the PFUTP Regulations, which is the case herein."

75. As held by the Hon'ble SAT, the exact designation of the Noticee No. 7 is not relevant. I note that Noticee No. 6 and 7 have executed several loan agreements/ other documents in various matters involving fraud related to similar GDR related issues where Vintage was involved and action has been taken against them. In view of this, it can be concluded that Noticee No. 7 held key position in Vintage and cannot plead ignorance of the scheme of manipulation and seek relief on the ground of his designation being different than Managing Director in the present matter.

76. The records available clearly suggest that Vintage was a wholly owned entity of Noticee No. 6 and was part of the said fraudulent scheme through which, without paying adequate consideration/subscription amount, it had received allotment of entire issue of GDRs in violation of law, Also, he signed the loan agreement with EURAM Bank for the subscription of the GDRs of ZBIL in the capacity of Managing Director. Therefore, from the consideration of materials available on record including the submissions made by Noticee No. 7, in respect to the instant matter, Arun Panchariya (Noticee No. 6) and Mukesh Chauradiya (Noticee no. 7) has certainly violated Section 12A(a), (b),(c) of SEBI Act, 1992 read with regulation 3(a), (b), (c), (d) and 4(1) of SEBI PFUTP Regulations, 2003.

<u>Issue II</u> : Does the violation, if established, attract monetary penalty under Section 15HA of the SEBI Act, 1992 and Section 23E of the SCRA, as applicable?

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

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

78. I note that the Hon'ble Supreme Court, in the matter of ***N Narayanan v. Adjudicating Officer, SEBI*** (Civil Appeals No. 4112-4113 of 2013) has observed as under:

"33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."

79. I find that Mr. P. V. R. Murthy (Noticee No. 2) had signed the Pledge Agreement dated May 12, 2010 for and on behalf of ZBIL and the seal of ZBIL is also affixed thereon. Vide this pledge agreement, EURAM Bank was authorized to use the funds of ZBIL as security in connection with loan obtained by Vintage (subscriber of GDR issue of ZBIL) from the EURAM Bank. As such, the Noticee No. 2 was not only part of the fraudulent arrangement of ZBIL but also played an active role in executing the pledge agreement dated May 12, 2010 which actually facilitated the subscription of GDR issue of ZBIL.

80. The Noticee No. 2, 3, 4, and 5 had participated in the Board meeting of ZBIL on March 3, 2010 wherein approvals were made to, among other, authorizing the EURAM bank to use the GDR proceeds as security in connection with the loan and the same was acted upon by the Company (Noticee No. 1) in which the Noticee No. 2 has signed and executed the pledge agreement dated May 12, 2010 on behalf of the Noticee No.1. Further, the Noticees No. 2, 3, 4 and 5 had continued to be on the board of Directors of ZBIL during the entire process of issue of GDRs, receipt of such proceeds etc. Thus, the Noticees No. 2, 3, 4 and 5 were part of the fraudulent scheme and arrangement of the Noticee No.1 in facilitating the subscription of its own GDR in connivance with Noticee No. 6 and 7. Thus, Noticee 1 to 7 had acted as party to the said fraudulent arrangement, and have violated Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4 (1), 4(2) (f), (k), (r) of SEBI (PFUTP) Regulations, 2003, and Section 21 of SCRA, 1956 read with Clauses 32, 36(7) and 50 of Listing Agreement, as applicable and hence it make them liable for imposition of penalty under Section 15HA of the SEBI Act, 1992 and Section 23E of the SCRA, as applicable, which reads as below –

SEBI Act, 1992

"Penalty for fraudulent and unfair trade practices.

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

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

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

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

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."*

__Issue III__ **: If yes, then what should be the quantum of penalty?**

81. In this regard, the provisions of Section 15J of the SEBI Act, 1992, Rule 5 of the SEBI Adjudication Rules and Section 23E of SCRA read with Rule 5 (2) 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.

82. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that no quantifiable figures or data is available on record to assess the disproportionate gain or unfair advantage and amount of loss caused

to an investor or group of investors as a result of the default of the Noticees. In the present case, I note that ZBIL had issued 1.81 million GDRs worth USD 22.99 million to Vintage on May 28, 2010. However, it had pledged the entire GDR proceeds as collateral against the loan availed by Vintage from EURAM Bank. The same was carried out through a Loan Agreement entered between Vintage and EURAM Bank, and Pledge Agreement entered between ZBIL and EURAM Bank. Out of the total loan amount, Vintage repaid to the extent of USD 8.53 million and thereafter defaulted on the loan repayment to the extent of USD 14,505,221 (including interest on loan amount) which was adjusted by EURAM Bank from ZBIL's GDR proceeds. Thereafter, the shares converted from these GDRs (i.e. USD 14,505,221) were sold in Indian Market were effectively acquired by the Vintage free of cost. The said subscription of the GDRs by Vintage was funded by ZBIL itself. In view of the same, the magnitude of the fraud committed by the Noticees is enormous as is evident from the issue size of USD 22.99 million.

ORDER

83. After taking into consideration all the facts and circumstances of the case, gravity of violations and the material on record, and also the factors stipulated in Section 15J of the SEBI Act, 1992 and Section 23J of SCRA, 1956, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, and Section 23-I read with Rule 5 of SCR Adjudication Rules, hereby impose the following penalty on the Noticees –

Entity	Violation	Penal Provisions	Penalty (Rs.)
Zenith Steel Pipes & Industries Limited {erstwhile	Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(f), (k), (r) of PFUTP Regulations	Section 15HA of the SEBI Act, 1992 and Section 23E of the SCRA, 1956	**Rs. 10,00,00,000/- (Rupees Ten Crore Only)**

Zenith Birla (India) Ltd.} [PAN: AACZ0103C] (Noticee No. 1)	Section 21 of SCRA, 1956 read with Clauses 36(7) of Listing Agreement <u>*(1 instance)*</u> Section 21 of SCRA, 1956 read with Clauses 32 and 50 of Listing Agreement <u>*(1 instance)*</u> Section 21 of SCRA, 1956 read with Clause 50 of Listing Agreement <u>*(1 instance)*</u>		
Mr. P.V.R. Murthy [PAN: ABRPM1271B] (Noticee No. 2)	Penalty imposed under Section 15HA of the SEBI Act, 1992 for violation of the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations		**Rs.20,00,000/- (Rupees Twenty Lakhs Only)**
Mr. Yash Birla [PAN: AAJPB2505N] (Noticee No. 3)	Penalty imposed under Section 15HA of the SEBI Act, 1992 for violation of the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations		**Rs.10,00,000/- (Rupees Ten Lakhs Only)**
Mr. M.S. Arora [PAN: AABPA9704C] (Noticee No. 4)	Penalty imposed under Section 15HA of the SEBI Act, 1992 for violation of the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations		**Rs.10,00,000/- (Rupees Ten Lakhs Only)**
Mr. A.P. Kurias [PAN: AAHPK2699E]	Penalty imposed under Section 15HA of the SEBI Act, 1992 for violation of the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations		**Rs.10,00,000/- (Rupees Ten Lakhs Only)**

(Noticee No. 5)	3(a), (b), (c), (d) and 4(1) of PFUTP Regulations	
Mr. Arun Panchariya [PAN: AEVPP6125N] (Noticee No. 6)	Penalty imposed under Section 15HA of the SEBI Act, 1992 for violation of the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations	**Rs.20,00,000/- (Rupees Twenty Lakhs Only)**
Mr. Mukesh Chauradiya [PAN: AAVPC0966A] (Noticee No. 7)	Penalty imposed under Section 15HA of the SEBI Act, 1992 for violation of the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations	**Rs.10,00,000/- (Rupees Ten Lakhs Only)**

84. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link.

ENFORCEMENT →Orders →Orders of AO →PAY NOW

85. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity (Noticee):
b) Name of the case / matter:
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number:
e) Transaction Number:

86. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to

recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties

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

Place: Mumbai **G. Ramar**
Date: June 16, 2022 **Adjudicating Officer**