BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/KS/PP/2020-21/10156-10158)

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

In respect of:

Sr. no.	Noticee	PAN
1	K Sera Sera Limited	AAACG5103D
2	Shri Hussain Sattaf	ANGPS3086F
3	Shri Rajesh Pavithran	AAZPN1547N

In the matter of

GDR issue of K Sera Sera Limited (now known as KSS Limited)

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), upon receipt of alerts in its surveillance system, started investigation in regards to certain companies which had come out with their respective issues of Global Depository Receipts (**GDR**). During the course of investigation, it was observed that K Sera Sera Limited, now known as KSS Limited**,** (herein after referred to as '**KSS /Company**') had come up with its GDR issues on two different occasions; first on March 30, 2007 and second on May 15, 2009. In this regard, it is observed that one Pan Asia Advisors Ltd (hereinafter referred to as '**Pan Asia**') was the Book

Running Lead Manager for both of these said GDR issues of KSS. Further, it was also observed that one Mr. Arun Panchariya (hereinafter referred to as '**AP**') was the founder, director as well as 100% shareholder of Pan Asia. It is alleged in the Investigation Report (**IR**) that the complete process of GDR issuances by KSS was devised and structured by AP in connivance with KSS to the detriment of the Indian investors wherein loans were arranged for the subscription of GDRs of KSS on both these occasions. It is further alleged that AP was Managing Director, 100% shareholder and Authorized Signatory of Vintage. Thereafter, using certain Foreign Institutional Investors (**FIIs**), AP got the GDRs converted into underlying shares and sold them in the Indian securities market with the help of certain domestic entities connected to him.

2. On the basis of the said investigation, it is alleged by SEBI that KSS, Shri Hussain Sattaf, director of KSS, Shri Rajesh Pavithran, Managing director of KSS have violated the provisions of Section 12A(a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') read with Regulations 3(b), (c), (d), 4(2)(c), (f), (k) & (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'). Further, it is also alleged that KSS had failed to submit certain information demanded by SEBI and also submitted false information and, by doing so, have violated the provisions of Sections 11C(3) read with 11C(6) of SEBI Act. For the purpose of the present order, KSS and its directors are hereinafter collectively referred to as '**Noticees**'.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Suresh Gupta was appointed as the Adjudicating Officer vide Order dated June 15, 2016 under Section 19 read with Section 15-I(1) of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 15A(a) and Section 15HA of the SEBI Act, the violations of the relevant provisions of SEBI Act and PFUTP Regulations, alleged to be committed by the KSS and its directors. Subsequently, the undersigned was appointed as the Adjudicating Officer vide order dated July 05, 2018.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

4. A common Show Cause Notice ref. A&E/EAD-8/KS/VB/8174/2019 dated March 28, 2019 (hereinafter referred to as '**SCN'**) was issued to KSS and its directors under the provisions of Rule 4(1) of Adjudication Rules to show cause as to why an inquiry should not be held against them and why penalty, if any, should not be imposed on them under Sections 15A(a) and 15HA of the SEBI Act for alleged violation of the relevant provisions of law.

5. The relevant part of SCN including details in respect of alleged violations by the KSS and its directors are as given below:

a. It is observed from the Investigation Report (hereinafter referred to as "IR") that there were two GDR issues by K Sera Sera. First GDR Issue was of 47,61,900 GDRs (amounting to USD 25 Million) and issue closed on November 02, 2007. Second GDR issue was of 44,75,238 GDRs(amounting to USD 29.98 Million) and issue closed on October 16, 2009. Further, Pan Asia Advisors Ltd. (herein after referred to as 'Pan Asia') was the Lead Manager of both GDR issue of K Sera. Summary of the GDR issues as provided by K Sera is tabulated below:
Table 1

GDR issue close date	*No. of GDRs Issued*	*Capital raised (US mn.)*	*No. of equity shares underlying GDRs*	*Lead Manager*	*Bank where GDR proceeds were deposited*
November 02,2007	*47,61,900*	*25*	*4,76,19,000*	*Pan Asia Advisors Ltd*	*EURAM Bank, Austria*
October16, 2009	*44,75,238*	*29.98*	*13,42,57,140*	*Pan Asia Advisors Ltd*	*EURAM Bank, Austria*

b. The following were the investors in the first GDR issue of K Sera as submitted by K Sera vide its letter dated November 02,2011(Annexure-II).

Name of Subscriber	GDRs Subscribed	Amount Paid (USD)	% of total GDR issue
Rexflec	5,00,000	26,25,000	10.50
Figura	4,21,900	22,14,975	8.86
Tradetec	9,90,000	51,97,500	20.79
Knightsbridge Management Inc.	10,00,000	52,50,000	21.00
Flamboyant	9,00,000	47,25,000	18.90
Greenwich	9,50,000	49,87,500	19.95

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

Name of Subscriber	GDRs Subscribed	Amount Paid (USD)	% of total GDR issue
Dynamic holding Investment Corp	*5,75,000*	*38,52,500*	*12.85*
Greenwich	*4,75,000*	*31,82,500*	*10.61*
Ababil	*3,25,000*	*21,77,500*	*7.26*
Figura	*5,48,000*	*36,71,600*	*12.25*
Flagstaff	*5,23,000*	*35,04,100*	*11.69*
Tradetec	*4,69,238*	*31,43,895*	*10.49*
Imagination	*5,25,000*	*35,17,500*	*11.73*
Echelon	*5,50,000*	*36,85,000*	*12.29*
Flamboyant	*4,85,000*	*32,49,500*	*10.84*

Loan & Pledge Agreement signed among K Sera, Vintage &Euram.

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

ISSUE 2 (in 2009)

*e. It is observed that a loan agreement (Loan Agreement No. K061009-002) dated October 06, 2009 **(Annexure-III)**, was signed between Euram and Vintage. The agreement was signed by Arun Panchariya (hereinafter referred to as AP) as Managing Director on behalf of Vintage. The Loan agreement states that Euram has agreed to make available a loan of USD 29984094.60 to Vintage (referred to as "the Borrower"). The nature and purpose of the loan facility is to provide funding enabling Vintage to take down GDR issue of K Sera and may only be transferred to Euram account no: 540019 for K Sera Sera Production Ltd. The following is stated in the Loan Agreement.*

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

- *Pledge of certain securities held from time to time in the Borrower's account no. 540 019 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*
- *Pledge of the account no. 540 019 of the Borrower held with the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement."*

f. *Further, a Pledge Agreement dated October 08, 2009 (Annexure III) is also signed between K Sera and Euram Bank. The agreement was signed by Noticee-2 on behalf of K Sera as Director of K Sera. The following Resolution was passed by the Board of Directors of K Sera at its meeting dated October 01, 2009 (Copy placed at Annexure – V).*

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

"RESOLVED FURTHER THAT Mr; Rajesh Pavithran, Managing Director and Mr. Dinesh Bhanusali, Authorised Signatory be and are hereby authorise. to sign, execute, any application /agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s), jointly from time to time as may be required by the Bank and to carry and to affix the Common Seal of the Company thereon, if and when so required."

"RESOLVED FURTHER THAT Mr. Rajesh Pavithran, Managing Director and Mr. Dinesh Bhanusali, Authorised Signatory be and are hereby authorized to draw cheques and other documents, and to give instructions, jointly 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 to 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."

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

"By loan agreement K061009-002(hereinafter referred to as "Loan Agreement") dated October 06 ,2009, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates ("the Borrower") in the amount of $ USD 2,99,84,094.60. The Pledgor has received a copy of the Loan Agreement and acknowledges and agrees to its terms and conditions."

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

" 2. Pledge

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

2.1.1 all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount of $ USD 2,99,84,094.60 existing from time to time at present or hereafter on the securities account(s) no. 540 019 held with the Bank (hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein.

2.1.2 all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 540 019 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account ") and all amounts credited at any particular time therein.The interest rate on deposit in the amount of the facility amount of the loan will be fixed at 2.5% p.a (the Pledged securities account and the Pledged Time Deposit account hereinafter referred to as the "Pledged Accounts", the Pledged Securities and the Pledged Accounts hereinafter collectively referred to as "Collateral")

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

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

"6. Realization of the Pledge

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

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

agree to Realize those items of the Pledged Securities for which a market price is quoted or which are listed on a stock exchange through sale by a Broker Publicly authorized for such transactions, selected by the Bank.
6.3 The Bank may realize the Pledge rather than accepting payments from the Borrower after maturity of the claim if the Bank has reason to believe that the Borrower's payments may be contestable. "

i. *It is noted that the bank account no. 540019 is the account which K Sera has maintained with Euram Bank to keep the proceeds of GDRs, thus it is alleged that K Sera has pledged money received through issuance of GDRs to secure rights of Euram Bank against the loan given by Euram Bank to Vintage for subscription of GDR issue (as mentioned in Loan agreement of Vintage).*

j. *It is alleged that these agreements enabled Vintage to avail the loan from Euram Bank for subscribing GDRs of K Sera and the GDR issue would not have been subscribed had K Sera not given such security towards the loan taken by Vintage.It is also alleged that the Noticees did not inform Bombay Stock Exchange or shareholders of the company about signing the Pledge Agreement and Loan Agreement.*

ISSUE 1 (in 2007)

k. *It is observed that a Loan agreement was also signed between Vintage and Euram bank previously on October 30, 2007* ***(Annexure III)*** *in relation to first GDR issue of K Sera. Similarly, a Pledge Agreement was signed between K Sera and Euram on October 30, 2007. The Loan agreement and Pledge Agreement signed 1st time were exactly similar to the 2nd Loan Agreement and Pledge Agreement except following differences:*

a. *The Loan Agreement and Pledge Agreement were signed for the subscription of 1st GDR issue of 47,61,900 GDRs of K Sera Sera Ltd which closed on November 02, 2007.*
b. *The Loan amount of USD 2,49,99,975 was exactly equal to the size of GDR issue.*
c. *The Pledge Agreement was signed by Noticee-3, as Managing Director of K Sera Sera Productions Ltd.*

Acquisition, Cancellation and Sale of GDRs:-

l. *It is noted that the GDRs of K Sera were purchased by Sub-Accounts in overseas market. The detail of the purchase of 1st GDR issue of K Sera is given below:-*

Issue 1 (2007)

Date	*Name of Acquirer*	*Name of Seller*	*Quantity of GDRs Acquired*	*Value of GDRs Acquired ($)*	*Trading Platform*	*Value per GDR($)*
27-Dec-07	*Rhodes*	*NA*	*1,50,000*	*11,26,876*	*Exchange*	*7.51*
15-Jan-08	*Sophia*	*NA*	*1,50,000*	*10,51,801*	*Exchange*	*7.01*
17-Jan-08	*Rhodes*	*NA*	*1,50,000*	*10,51,801*	*Exchange*	*7.01*
22-Jan-08	*Sophia*	*NA*	*2,00,000*	*12,02,201*	*Exchange*	*6.01*
1-Apr-08	*Sophia*	*NA*	*2,60,000*	*9,01,801*	*Exchange*	*3.47*
23-Apr-08	*Rhodes*	*NA*	*1,50,000*	*9,76,726*	*Exchange*	*6.51*
05-Aug-08	*Rhodes*	*NA*	*94,000*	*5,00,138*	*Exchange*	*5.32*
12-Dec-08	*Sophia*	*NA*	*20,000*	*61,800*	*OTC*	*3.09*
29-May-09	*KII*	*Euram*	*9,25,000*	*20,04,660*	*OTC*	*2.17*
9-Jun-09	*KII*	*Euram*	*3,00,000*	*9,97,970*	*OTC*	*3.33*
14-Jul-09	*KII*	*Euram*	*1,75,000*	*3,96,900*	*OTC*	*2.27*
7-Sep-09	*IFCF*	*Euram*	*85,000*	*2,29,500*	*OTC*	*2.70*

26-Nov-09	IFCF	Euram	98,000	2,30,300	OTC	2.35
30-Nov-09	IFCF	Euram	1,45,000	3,30,600	OTC	2.28
4-Dec-09	IFCF	Euram	76,000	2,05,200	OTC	2.70
17-Dec-09	IFCF	Euram	1,26,000	2,98,620	OTC	2.37
4-Jan-10	KII	Euram	2,36,000	5,28,111	OTC	2.24
5-Jan-10	IFCF	Euram	1,80,000	3,99,600	OTC	2.22
11-Jan-10	IFCF	Euram	6,01,757	17,15,007	OTC	2.85
13-Jan-10	KII	Euram	3,09,143	7,16,717	OTC	2.32
		Total	44,30,900	1,49,26,329		

Issue 2 (2009)

Date	Name of Acquirer	Name of Seller	Quantity of GDRs Acquired	Value of GDRs Acquired ($)	Trading Platform	Value per GDR($)
13-Jan-10	IFCF	Euram	1,37,500	9,90,000	OTC	7.20
14-Jan-10	KII	Euram	17,000	1,23,379	OTC	7.26
18-Jan-10	IFCF	Euram	1,64,000	11,95,560	OTC	7.29
19-Jan-10	IFCF	Euram	3,25,000	23,40,000	OTC	7.20
20-Jan-10	KII	Euram	1,90,000	13,78,944	OTC	7.26
20-Jan-10	KII	Euram	1,25,000	9,05,940	OTC	7.25
24-Jan-10	IFCF	Euram	1,52,000	10,91,360	OTC	7.18
26-Jan-10	KII	Euram	80,000	5,78,995	OTC	7.24
27-Jan-10	KII	Euram	65,000	4,29,156	OTC	6.60
21-Nov-10	IFCF	Euram	1,30,000	10,10,100	OTC	7.77
		Total	13,85,500	1,00,43,434		

m. The Following are the details of GDRs for receipt of underlying shares.
Issue 1 (in 2007)

Transaction Date	Entities cancelling GDRs on behalf of FIIs/Sub-Accounts	GDRs Cancelled	Shares Released	Sub-Account receiving shares	Date of receiving shares
17-01-08	BROWN BROTHERS HARRIMAN CO	1,50,000	15,00,000	Rhodes	17-01-08
22-01-08	BROWN BROTHERS HARRIMAN CO	1,50,000	15,00,000	Sophia	23-01-08
25-01-08	BROWN BROTHERS HARRIMAN CO	1,50,000	15,00,000	Rhodes	28-01-08
11-03-08	BROWN BROTHERS HARRIMAN CO	1,50,000	15,00,000	Sophia	13-03-08
24-04-08	BROWN BROTHERS HARRIMAN CO	45,000	4,50,000	Sophia	07-05-08
06-06-08	BROWN BROTHERS HARRIMAN CO	60,000	6,00,000	Rhodes	09-06-08
18-06-08	BROWN BROTHERS HARRIMAN CO	30,000	3,00,000	Sophia	19-06-08
10-09-08	BROWN BROTHERS HARRIMAN CO	60,000	6,00,000	Sophia	11-09-08
12-09-08	BROWN BROTHERS HARRIMAN CO	60,000	6,00,000	Sophia	15-09-08
15-12-08	JULIUS BAER, ZUR, SWITZERLAND	20,000	2,00,000	Sophia	16-12-08
22-05-09	KAS DEPOSITARY TST/CUST,	2,99,000	29,90,000	ARES	25-05-09
03-06-09	KAS DEPOSITARY TST/CUST,	2,46,000	24,60,000	ARES	04-06-09
03-06-09	JPM CL CORP.,BK, UNITED STATES	3,25,000	32,50,000	KII	04-06-09
04-06-09	JPM CL CORP.,BK, UNITED STATES	3,00,000	30,00,000	KII	05-06-09
08-09-09	Euram	85,000	8,50,000	IFCF	09-09-09

25-11-09	*Euram*	*85,000*	*8,50,000*	*IFCF*	*26-11-09*
27-11-09	*Euram*	*98,000*	*9,80,000*	*IFCF*	*30-11-09*
01-12-09	*Euram*	*1,45,000*	*14,50,000*	*IFCF*	*02-12-09*
04-12-09	*Euram*	*76,000*	*7,60,000*	*IFCF*	*07-12-09*
18-12-09	*Euram*	*1,26,000*	*12,60,000*	*IFCF*	*21-12-09*
31-12-09	*JPM CL CORP.,BK, UNITED STATES*	*3,00,000*	*30,00,000*	*KII*	*02-01-10*
05-01-10	*JPM CL CORP.,BK, UNITED STATES*	*3,00,000*	*30,00,000*	*KII*	*06-01-10*
06-01-10	*JPM CL CORP.,BK, UNITED STATES*	*1,75,000*	*17,50,000*	*KII*	*07-01-10*
07-01-10	*Euram*	*1,80,000*	*18,00,000*	*IFCF*	*08-01-10*
11-01-10	*JPM CL CORP.,BK, UNITED STATES*	*2,36,000*	*23,60,000*	*KII*	*12-01-10*
13-01-10	*Euram*	*6,01,757*	*60,17,570*	*IFCF*	*14-01-10*
15-01-10	*JEFFERIES CO INC,*	*3,09,143*	*30,91,430*	*KII*	*18-01-10*
	Total	*47,61,900*	*4,76,19,000*		

Issue 2 (in 2009)

Transaction Date	Entities cancelling GDRs on behalf of FIIs/Sub-Accounts	GDRs Cancelled	Shares Released	Sub-Account receiving shares	Date of receiving shares
15-Jan-10	Euram	1,37,500	41,25,000	IFCF	20-01-10
19-Jan-10	JEFFERIES CO INC	17,000	5,10,000	KII	21-01-10
20-Jan-10	Euram	1,64,000	49,20,000	IFCF	21-01-10
21-Jan-10	Euram	1,25,000	37,50,000	IFCF	22-01-10
21-Jan-10	JEFFERIES CO INC	1,90,000	57,00,000	KII	22-01-10
25-Jan-10	Euram	2,00,000	60,00,000	IFCF	27-01-10
26-Jan-10	Euram	75,000	22,50,000	IFCF	27-01-10
27-Jan-10	Euram	57,000	17,10,000	IFCF	28-01-10
27-Jan-10	JEFFERIES CO INC	1,25,000	37,50,000	KII	28-01-10
28-Jan-10	JEFFERIES CO INC	80,000	24,00,000	KII	29-01-10
29-Jan-10	JEFFERIES CO INC	65,000	19,50,000	KII	01-02-10
	Total	12,35,500	3,70,65,000		

n. *On receipt of the underlying shares, the Sub-Accounts sold the shares in the Indian market and interestingly, as has been observed for other Examined Companies, the main counterparties to these sales were AP related entities such as Basmati and Oudh:-*

FII	*CP PAN*	*CP Name*	*Sell Volume*	*Sell value (Rs.)*	*% to total Sale*
IFCF	*AAACB4324K*	*Basmati*	*81,64,299*	*10,55,92,702*	*30.9*
IFCF	*AAACO3597K*	*Oudh*	*54,37,005*	*6,80,62,401*	*19.9*
IFCF	*AACCN3776H*	*Newgen International*	*27,66,800*	*3,44,53,906*	*10.1*
IFCF		*Others*	*1,06,44,646*	*13,40,04,591*	*39.1*
		IFCF Total	*2,70,12,750*	*34,21,13,600*	*100.0*

FII	*CP PAN*	*CP Name*	*Sell Volume*	*Sell value (Rs.)*	*% to total Sale*
KII	*AACCN3776H*	*Newgen International*	*57,18,100*	*8,30,76,318*	*25.8*
KII	*AAACB4324K*	*Basmati*	*43,31,324*	*5,46,65,391*	*17.0*
KII	*AAACO3597K*	*Oudh*	*24,92,795*	*3,12,28,167*	*9.7*
		Others	*1,21,19,211*	*15,26,73,849*	*47.5*
		KII Total	*2,46,61,430*	*32,16,43,725*	*100.0*

FII	CP PAN	CP Name	Sell Volume	Sell value (Rs.)	% to total Sale
Rhodes	ACRPP5552H	SV	11,35,560	1,34,10,847	36.2
Rhodes	AAACO3597K	Oudh	5,87,765	70,53,180	19.1
Rhodes	AAACB4324K	Basmati	5,82,642	70,06,128	18.9
Rhodes	AABCA6702F	Alka	2,27,550	38,79,728	10.5
		Others	4,66,483	56,68,654	15.3
		Rhodes Total	30,00,000	3,70,18,536	100.0

FII	CP PAN	CP Name	Sell Volume	Sell value (Rs.)	% to total Sale
Sophia	AAACO3597K	Oudh	4,11,236	55,62,066	20.2
Sophia	AAACE2875N	Jitendra Patel (Excel Paints Pvt Ltd)	3,17,730	43,00,528	15.6
Sophia	ACRPP5552H	SV	1,95,695	20,61,398	7.5
		Others	7,50,545	1,07,07,248	38.9
		Sophia Total	20,00,000	2,75,22,638	100.0

o. *From the counterparty analysis of the sell trades of Sub-Accounts, it is observed that Indian entities like SV, Alka, Basmati and Oudh have been the major counterparties.It is noted that these entities are connected with AP as observed from the Bank account statements, the Demat statements and KYC of these entities. The connections among entities and with AP are explained below.*

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

		Securities Pvt Ltd, MotilalOswal Securities Ltd., Shriram Insight Share Brokers Ltd., B.lodha Securities Ltd. and Networth Stock Broking Ltd., Anand Rathi Share and Stock Brokers Ltd and Vertex Securities Ltd.
3	*Oudh Finance& Investment Pvt Ltd. (Oudh)*	*Basmati holds 27.8% of the shares of Oudh.* *As per Annual Return of Basmati filed with MCA on September 30, 2005, Alka and Oudh are among the shareholders of Basmati. Together, they hold 37.68% of the shares of Basmati.* *Basmati and Oudh have common authorised signatory (Rahul C Shah) for operating their demat accounts as per the KYC documents provided by depository participants – Shriram Insight Share Brokers, K & A Securities Pvt Ltd and MotilalOswal Securities Ltd.* *Basmati and Oudh have common phone number (9619040060) and address - Room No. 5, Ground Floor, HeeraMahal Building, 250 Kalbadevi Road, Mumbai - 400002 in the KYC documents available with depository participant Shriram Insight Share Brokers Ltd.* *Basmati and Oudh have common phone number (32015743) and address – 5/7 Kothari House 2nd Floor Office No 4 Fort Mumbai in the KYC documents available with brokers/ depository participants B.lodha Securities Ltd., MotilalOswal Securities Ltd, Anand Rathi Share and Stock Brokers Ltd and Networth Stock Broking Ltd.* *Basmati and Oudh have common phone number (24526764) and address – Kothari House 1st Floor 5/7 Oak Lane Fort Bombay in the KYC documents available with broker Vertex Securities Ltd.* *(Source: MCA and BSE filing of Alka, KYC Documents available with Shriram Insight Share Brokers, K & A Securities Pvt Ltd, MotilalOswal Securities Ltd., Shriram Insight Share Brokers Ltd., B.lodha Securities Ltd. and Networth Stock Broking Ltd., Anand Rathi Share and Stock Brokers Ltd and Vertex Securities Ltd.)*
4	*SV Enterprise / Sarfaraz Khan Pathan (SV)*	*SV is the proprietary firm of Mr.Sarfaraz Khan Pathan.* *SV is involved in fund transactions with Alka. From the statement of SV's account no. 002405013273, maintained with ICICI Bank, it is observed that during the period from January 1, 2010 to April 30, 2010, SV received Rs. 83 lakh from Alka and transferred Rs. 85 lakh to Alka.* *In the demat account of Sarfaraz Khan Pathan maintained with Shah Investors Home Limited, the nominee of the account is mentioned as Ashok and the witnesses are SatishPanchariya and MadanlalBugaliya* *(Source: Bank account statements of Gujarat Enterprise's account no. 2306 with Gujarat Mercantile Co-op Bank Ltd., SV's account no. 002405013273 with ICICI Bank, KYC documents of SV available with ICICI Bank and KYC of demat account of SV with Shah Investors Home Limited)*

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

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

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

Non-furnishing of information and misleading submissions by KSS

s. *In terms of Section 11C(3) read with 11C(6) of the SEBI Act, it is obligatory on any person so summoned to produce the necessary documents / information / appear in person to/ before the Investigating Authority. It is alleged that during the course of investigation, summons were issued under Section 11C(3) read with 11C(6) of the SEBI Act to the KSS for production of documents regarding utilisation of GDR proceeds by the company. It is alleged that the Noticees didn't submit all the documents sought by the SEBI. Following documents/information sought vide summons/emails/letters were not provided by K Sera.*
   1. *Complete Bank account statements of its subsidiaries from inception till date. Vide email dated June 26, 2012, K Sera was once again asked to provide complete bank account statements of its subsidiaries , yet it did not provide the same.*

2. *K Sera also did not provide details like name of payee entity, purpose of money paid by foreign subsidiaries.*
3. *Apart from not providing aforementioned critical information to SEBI, wrong information was also provided by K Sera. The wrong submissions of K Sera were particularly related to Pledge and Loan Agreements to which K Sera was one of the party.*
4. *Investigation has revealed that K Sera like all other Examined Companies also provided false information and concealed material information to SEBI to mislead the investigation. Following false information was furnished to SEBI by the company:-*

   a) K Sera made wrong submission that it did not have any agreement with Vintage. It was clearly mentioned in the Loan Agreement signed between Vintage and Euram that Pledge Agreement signed between K Sera and Euram is part of the Loan Agreement.

   b) K Sera has submitted that it did not have any arrangement with AP for subscription of GDRs. As explained the complete GDR issuance was done on the basis of AP GDR Scheme.

   c) K Sera denied having any agreement with Euram, other than the Escrow account agreement.

   d) K Sera denied having any agreement with any of the entity for the purpose of financing of the GDR issue. It specifically denied having any agreement with Vintage and AP.

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

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

6. I note that the SCN was sent to the respective addresses of the Noticees as per available records, via Speed Post Acknowledgement Due (SPAD). SCN sent to KSS and 3 had returned undelivered with comment “left”. SCN sent to Shri Hussain Sattaf had returned undelivered with comment “unclaimed”. Subsequently, SCN was hand delivered to KSS at the same address from where SCN sent through SPAD had returned undelivered with comment “left”. Acknowledgment of receipt of SCN by one, Mr. Anshu Singh is on record.

7. KSS vide letter dated September 27, 2019 was granted opportunity to reply on or before October 09, 2019 and opportunity of hearing on October 11, 2019. KSS vide its letter dated October 07, 2019 had listed out the documents sought for

inspection. KSS availed of the inspection on February 10, 2020 and Enforcement Department of SEBI has confirmed the same vide email dated February 11, 2020. Vide letter dated February 14, 2020 KSS was granted a final opportunity to submit reply by February 28, 2020 and an opportunity of hearing was granted on March 04, 2020. KSS vide letter dated February 28, 2020 requested additional time for reply and personal hearing. Vide letter dated June 29, 2020 Noticee1 was granted final opportunity of hearing. KSS vide reply dated July 04, 2020 requested for rescheduling the hearing scheduled on July 09, 2020. Vide letter dated October 09, 2020 and email dated October 12, 2020 KSS was granted an opportunity to file reply latest by October 23, 2020 and an opportunity of hearing on October 27, 2020. KSS vide reply dated October 26, 2020 submitted as under-

1) *At the outset, it is submitted that we have not violated any provisions of SEBI Act and PFUTP Regulations as alleged. We humbly submit that the requisite disclosures were made and relevant approvals were obtained from the shareholders of the Company for undertaking the GDR Issuance. The shareholders of the Company therefore were at all time aware of all material particulars regarding the GDR Issuance.*
2) *Further, it is evident from the Notice itself that there are no allegations or materials brought on record to establish any violation by us in respect of the provisions of SEBI Act and/or PFUTP Regulations as alleged in the Notice. It is submitted that for the violation of the provisions as alleged in the Notice, the specified provisions of the SEBI Act and PFUTP Regulations are not attracted. Furthermore, we vehemently denies each and every allegations levied upon us. It is humbly submitted that the allegations levied upon us are baseless and devoid of any evidence in support of them and the same shall be dealt with in detail in the para wise reply to the observations made in the Notice.*

PARAWISE REPLY TO THE SHOW CAUSE NOTICE

3) *The paras no. 1 and 2 of the Notice deals with Securities and Exchange Board of India ("SEBI") had conducted investigation against several Indian companies that has issued Global Depository Receipts ("GDR") in overseas market. SEBI had investigated two GDR issues by M/s K Sera Sera Limited ("Noticee/Company"). First GDR issue was of 47,61900 GDRs (amounting to USD 25 Million) and issue closed on November 02, 2007. Second GDR issue was of 44,75,238 GDRs (amounting to USD 29.98 Million) and issued closed on October 16, 2009. Further,*

Pan Asia Advisors Ltd. ("Pan Asia") was the lead Manager for both the GDR issues of the Company. With regard to this it is submitted that the same is a matter of record and so we do not have any comments to offer on the same.

4) *The paras 3 and 4 of the Notice deal with the investors in the GDR issues by us. In this regard, we humbly submit that we have got the list of subscribers from our Lead Manager i.e Pan Asia. It is submitted that as an issuer there was no means to know the list of subscribers to the GDR issues, therefore, we had to rely on the information received from Lead Manager. It is common established practice in any Public Issue that the Lead Manager or Registrar to the Issue provides the list of initial subscribers to the issue.*
5) *We submit that the responsibility of marketing the GDR issue is and were always with our Lead Manager and it was their responsibility to get the Issue subscribed. As per information received from Pan Asia regarding the entities who have subscribed to the issue, we have forwarded the said information to the stock exchanges, which did not raise any query at that time. We have been informed about the subscription of GDRs and information about the subscription and subscribers (initial investors) information has been provided by the Depository bank and the Lead Manager to the issue. The list of entities- initial investors was provided to the Company by the Depository Bank and Lead Manager to the issue and we accordingly informed and submitted the said detail to the Stock Exchanges. The Company neither had any role to play in the allotment of GDRs; nor was it aware of the identity of the holders of the GDRs.*
6) *The para 5 of the Notice deal with the allegation of the Loan and Pledge Agreement for its First GDR issue and Second GDR issue were signed among the Company, Vintage FZE ("Vintage") and EURAM Bank ("Euram"). In this regard, we submit that the allegation that Loan Agreement was signed by the Company, Vintage and Euram is false and denied in toto. As, no Loan Agreement was being signed by the Company with Euram.*
7) *The para 6 of the Notice deal with the loan agreement (Loan Agreement No. K061009-002) dated October 06, 2009, was signed between Euram and Vintage. In this regard, it is submitted that the said loan agreement was between Euram Bank and Vintage, who is a third party, as borrower for loan facility of US$29984094.60 as mentioned in the Notice, there is no privity of contract between the executants of loan agreement and us. Hence, no comments to offer on the same.*
8) *The para 7 of the Notice deal with the Pledge Agreement dated October 08, 2009, was alleged to be signed between our company and Euram. In this regard, we at the outset deny that any Pledge Agreement was signed between our company and Euram. It is incorrect on the part of SEBI to allege that Agreement was signed by Noticee - 2 on behalf of the Company as Director. We humbly submit that we have never authorized by any means Noticee No.2 to sign any such agreement on behalf of our Company. Further, it is pertinent to mention SEBI had wrongly placed a Board Resolution dated July 31, 2007 for opening of Bank Account in Euram, as the aforesaid Board Resolution has no connection with the Pledge agreement dated October 08, 2009 signed by Noticee - 2.*

9) *The paras 8 to 10 of the Notice deal with the preamble of the Pledge Agreement. In this regard, it is submitted that after the First GDR issue of the Company made in November 02, 2007, a number of GDR issues were made adopting the same procedure over a period of two years. None of the regulators i.e. RBI, SEBI or Stock Exchange had pointed out any anomaly or flaws in the manner in which these GDR issues were made. Hence the entire procedure has assumed legal sanctity. As such, in the Second GDR issue in October, 2009, we had adopted the similar procedure on the advice of Lead Manager. Further, without prejudice, we submit that the alleged Pledge Agreement was normal practice permissible under and allowed under Companies Act 1956 ("now known as Companies Act 2013, UCA, 2013") and hence these agreements per se were totally valid agreements, no element of fraud was involved in the same.*
10) *The paras 11 and 12 of the Notice deal with the allegation of the opening of the bank account no. 540019 with Euram and keep the proceeds of GDRs, to secure rights of Euram against the loan given by Euram to Vintage for subscription of the GDR issue. We submit that the said allegations are totally false, baseless, incorrect and without any evidence and hence are denied in toto. In this regard, firstly, we humbly submit that the said bank account was opened with the approval of Board of Director and same disclosed to public shareholder through Exchange (the copy of Board Resolution dated July 31, 2007). Secondly, the proceeds of the First GDR were utilized to fund the production (or co-production) and/or for acquisition of further movies/television, to fund the requirement of working capital to acquire distribution rights for movies made and exhibited and to invest in its subsidiary company in Dubai and the proceeds of the Second GDR were utilized interalia for investment in fixed assets and working capital (the same has been submitted to SEBI vide our letter date April 22, 2011 and March 26, 2012), The documents and information provided by our Company clearly establishes the bonafide on our part towards the legitimate funding funded by our Company for expansion of our business and it completely negates the baseless allegation of SEBI. Hence the allegation that we have provided security towards the loan taken by Vintage is false, baseless, unsustainable and without any evidence and therefore it is denied in toto.*
11) *Further, we deny that any capital of the Company was unavailable for its use on account of the said Pledge Agreement dated October 30, 2007 and the Pledge Agreement dated October, 16 2009. Vide our letter dated March 26, 2012, we provided SEBI with a detailed statement on the usage of the GDR proceeds along with FIRC copy. It is evident from the said statement that the GDR proceeds were in fact received by the Company and deployed for the purposes set out in the offer documents. Till deployment the said funds have been kept in an Interest bearing fixed deposit in a foreign bank. We repeat, reiterate and submit that our Company have received all the proceeds of the GDRs issued in 2007 and 2009 into our bank accounts in India and have filed the required reports with the RBI. The copies of the same have already been provided to SEBI.*
12) *Furthermore, with respect to the allegation that we did not inform Bombay Stock Exchange or shareholders of the Company about signing the Pledge Agreement*

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

13) *The para 13 of the Notice deal with the Loan agreement dated October 30, 2007, was signed between Vintage and Euram. In this regard, we submit that we are not aware if any Loan Agreement was signed between Vintage and Euram. Further, there is no Pledge Agreement dated October 30, 2007 was signed between us and Euram. It is incorrect on the part of SEBI to allege that said Agreements was signed by Noticee - 3 on behalf of the Company as Managing Director. We humbly submit that we have never authorized by any means Noticee No.3 to sign any such pledge agreement on behalf of the Company.*

14) *The para 14 of the Notice deal with purchase of GDRs issues of the Company. In this regard, it is submitted that there is no prohibition on purchase of GDRs after listing on market or OTC for consideration by Sub-Account of FII registered in India for ultimate cancellation and acquiring underlying shares of Indian company so long as they are within the ceiling prescribed by RBI. The Notice has produced the statement of detail of purchase by FIIs including Rhodes, KII, IFCF, Sopiha in GDRs Issue and but had not pointed out any irregularity or anomaly in these transactions. Further, we submit that we have no connection/relation/ with these institutions, even the Notice has failed to brought any connection/relation with these institutions. Furthermore, we humbly submit that we had no control over who is cancelling or who is buying or who is selling GDRs over OTC or Market. So, there was nothing wrong or fraudulent about these transactions as far as in our case.*

15) *The para 15 of the Notice deal with the details of GDRs for receipt of underlying shares. In this regard, it is submitted that we have no connection/relation/nexus with these institutions. Further, the Notice also failed to brought any connection/relation/nexus with these institutions. Hence, no irregularity or fraud on these transactions can be attributed on us.*

16) *The paras 16 and 17 of the Notice deal with the counter party analysis of the sell trades of Sub- Accounts, it is observed that Indian entities like SV, Alka, Basmati and Oudh has been major counterparties. In this regard, it is submitted that we do not have any connection/relation/nexus with these counter parties entities. Further, the Notice also failed to provide any evidence/ connection / relation with these entities. Hence, there was nothing wrong or fraudulent about these transactions as far as in our case.*

17) *The para 18 of the Notice deal with observations that the entities SV, Alka, Basmati and Oudh have connections with Arun Panchariya ("AP") and AP has substantial influence over their entities. In this regard, it is submitted that we have no connections /relation/nexus with these counter parties entities. Further, the Notice*

also failed to provide any evidence/ connection / relation between us with these entities and/or with AP or his entities.

18) *We humbly submit that the Notice has failed to provide any cogent evidence/ connections and does not pointed any irregularity/illegality not to speak of fraudulency in the respective transactions in the abovementioned paras of the Notice. Further, we humbly submit that the we have established that each and every transaction whether execution of any legal documents, issue of GDRs, purchase of GDRs by FIIs, cancellation/ of GDRs and issue of underlying shares per se standalone basis were legal and within the rules and regulations of this Act and those of respective countries at the material time. Once GDR issue was complete, we had no direct role in any other activities i.e. purchase of GDR by FII, Cancellation of GDRs and issue of underlying shares etc so any wrongdoings on the part of other parties cannot be attributed to us.*

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

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

21) *It is submitted that serious allegation of violation of PFUTP Regulations cannot be alleged on the basis of mere surmises and conjectures and based on the erroneous interpretation of data, as has been done in the instant case. The same*

is also clear from the decisions given by various courts in numerous cases. The SAT in its order in case of KSL & Industries Ltd vs. SEBI (SAT Appeal no. 9/2003 decided on 30.09.2009) has held that "I do not find any material on record in support of the said charge. A wild allegation of market manipulation, in particular the charge of fraudulent action unsupported with convincing evidence are not sustained. Fraud cannot survive on mere conjecture and surmises."In Union of India vs. H.C. Geol (AIR 1964 SC 364) the Hon'ble Court has inter alia held that :"the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary inquiries held under the statutory rules. In L.D. Jaisinghani vs. Naraindas N Punjabi (1976) 1 SCC 354: AIR 1976 SC 373 at P. 376 - wherein Ray, CJ speaking for the Court has observed:"In any case we are left in doubt whether the complainants version with which he had come forward with considerable delay was really truthful. We think that in a case of this nature, involving possible debarring of the advocate concerned the evidence should be of a character which should leave no reasonable doubt about guilt The Disciplinary Committee had not only found the Appellant guilty but had disbarred him permanently. (In Re An advocate AIR 1989 SC 245)"

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

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

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

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

26) *As regards alleged violations of the provisions of SEBI Act and PFUTP Regulations as stated in Para 19, it is stated that:(i)In so far as the alleged violation of Section 12 (A) (a) of the SEBI Act is concerned, it is submitted that we have throughout our conduct of business and as a matter of company policy maintained highest standards of compliance, fairness, integrity and ensured the interests of our investors. From the submissions made by us in the foregoing paragraphs it has been abundantly established that we have never, directly or indirectly, employed any manipulative or deceptive device or contrivance, in relation to the issue, purchase or sale of any shares listed or proposed to be listed on a recognized stock exchange, in contravention of the SEBI Act and rules or regulations made thereunder. Therefore, the Notice has completely erred in alleging that we have violated Section 12A (a) of the SEBI Act. (ii)In so far as the alleged violation of Section 12(A)(b) of the SEBI Act is concerned, it is submitted that from the submissions made in the foregoing paragraphs it clearly comes out that we have never, directly or indirectly, employed any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange. Therefore, the Notice has completely erred in alleging that we have violated Section 12A (b) of the SEBI Act.(iii) In so far as the alleged violation of Section 12(A)(c) of the SEBI Act is concerned, it is submitted that from the submissions made in the foregoing paragraphs it clearly comes out that we have never, directly or indirectly, engaged ourselves in any act, practice, course of business which operates as or would operate as a fraud or deceit upon any person, in connection with the issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the SEBI Act and rules or regulations made thereunder. Therefore, the Notice has completely erred in alleging that we have violated Section 12A(c) of the SEBI Act. iv) In so far as Regulation 3(b) of the PFTUP Regulations is concerned, it is submitted that from the submissions made by us in the foregoing paragraphs it has been abundantly established that we have never, directly or indirectly, employed any manipulative or deceptive device or contrivance, in relation to the issue, purchase or sale of any shares listed or proposed to be listed on a recognized stock exchange, in contravention of the SEBI Act and rules or regulations made thereunder. Therefore, the Notice has completely erred in alleging that we have violated Section Regulation 3(b) of the PFUTP Regulations. (v)In so far as the alleged violation of Regulation 3(c) of the PFUTP Regulations is concerned, it is submitted that from the submissions made in the foregoing paragraphs it clearly comes out that we have never, directly or indirectly, employed any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange. Therefore, the Notice has completely erred in alleging that we have violated Regulation 3(c) of the PFUTP Regulations. (vi)In so far as the alleged violation of Regulation 3(d) of the PFUTP Regulations is concerned, it is submitted that from the submissions made in the foregoing paragraphs it clearly comes out that we have never, directly or indirectly, engaged ourselves in any act, practice, course of business which operates as or would operate as a fraud or*

deceit upon any person, in connection with the issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the SEBI Act and rules or regulations made thereunder. Therefore, the Notice has completely erred in alleging that we have violated Regulation 3(d) of the PFUTP Regulations.(vii)In so far as the alleged violation of Regulation 4(2) (c) of the PFUTP Regulations is concerned, it is submitted that: from the submissions made in the foregoing paragraphs it clearly emerges that we have neither advanced nor agreed to advance any money to any person thereby inducing any other person to offer to buy security in any issue only with intention of securing minimum subscription to such issue; there is no allegation in the Notice that such the alleged money advanced by us was with an intention of securing minimum subscription to an issue; or with an intention to induced the general public in India to deal with our shares; Therefore, the Notice has completely erred in alleging that we have violated Regulation 4(2)(c) of the PFUTP Regulations. (viii)In so far as the alleged violation of Regulation 4(2)(f) of the PFUTP Regulations is concerned, it is submitted that from the submissions made in the foregoing submissions), it has been established beyond doubt that we have not published or caused to be published or caused to be reported by any person dealing in securities any information which is not true or which we did not believe to be true prior to or in the course of dealing in securities. It is reiterated that any information furnished by us to the BSE was under the bona fide belief of its truth and accuracy and on the basis of the valid documents. (ix) In so far as the alleged violation of Regulation 4(2)(k) of the PFUTP Regulations is concerned, it is submitted that: From the submissions made in the foregoing submissions, it has been established beyond doubt we have never carried out any advertisement that was misleading or that contained information in a distorted manner and which could influence the decision of the investors. Without prejudice to the above, the Notice does contain any allegation as to any such 'advertisement' having been carried by us. Therefore, the Notice has completely erred in alleging that we have violated Regulation 4(2)(k) of the PFUTP Regulations. (x) In so far as the alleged violation of Regulation 4(2)(r) of the PFUTP Regulations is concerned, it is submitted that: it has been established beyond doubt we have never planted any news which could induce sale or purchase of securities.

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

28) *The para 21 of the Notice deal with information like bank account statements of its subsidiaries from inception till date and details of payee entity, purpose of money paid by foreign subsidiaries was not provided by us to SEBI. In this regard, it is submitted that the records of our Dubai based subsidiaries are missing due to malafide conduct of the pervious Managing Director i.e. Mr. Sanjay Lai, due to that we were compelled to remove the Managing Director i.e Mr. Sanjay Lai from the post of Managing Director. We have also filed FIR no. 70/2012 with Amboli Police Station in Mumbai against our pervious Managing Director and also a case was registered in Dubai. We humbly submit that we have tried our best and have*

provided all the necessary information and documents to SEBI. Further, we vide our letter dated March 26, 2012, April 27, 2012 and June 18, 2012 has provided all the necessary information and all documents. Hence, it is not correct in making such a generic and sweeping allegation that necessary information and all documents were not provided by us which devoid of truth.

29) *It is pertinent to mention that, at the relevant time, our company had given instructions to the then Whole Time Director late Mr. Brigadier Vinod Ahuja - an ex-army men and also to Mr. Shrikant Maheshwari then Chief Financial Officer of the Company, a qualified chartered Accountant to extend full cooperation and assistance to the Investigation team. SEBI. They were also authorized to appear, plead and argue before the Investigation team SEBI and were also authorized to submit and furnish any document/paper/statement that may be required by the Investigation team of SEBI. It is most pertinent to mention that at the relevant time, the Investigation team, SEBI had not raised any grievance on any non-compliance or on non-furnishing of information by our said authorized representatives. Hence, we are really shocked and surprised to face with such allegation made in the Notice against us.*

30) *The para 22 of the Notice deal with allegation that the Company made wrong submission that it did not have any agreement with Vintage, Euram and any arrangement with AP or with any entity for subscription of the GDRs. In this regard, we humbly submit that we still standby with our denial that we have no agreement with Vintage, Euram and AP or any entity for the purpose of financing of GDR issue. A copy each of the alleged Agreement between Vintage and Euram, provided by SEBI, along with the Notice, the contents of which are self explanatory. We put onus on SEBI to produce copy of any such agreement between us and Vintage/AP signed by both parties on single instrument.*

31) *The para 23 of the Notice deal with allegation of violation of Section 11C(3) read with 11C(6) of the SEBI Act. In this regard, it is submitted that we had submitted copies of Bank statements and furnished all the relevant information which are available with us and the same were duly acknowledged by SEBI, the contents of which are self explanatory, if any information was being not submitted to SEBI it was due to certain situations which were out of our control as we were being defrauded by our pervious Managing Director i.e. Sanjay Lai and due to long gap of time of five years between the transactions taken place and summons issued by SEBI. We submit sincerely and with all earnestness that any such omission is not deliberate or intentional. Hence, we have not violated any provisions of Sec 11 C (3) and Sec 11 C (6) of the SEBI Act.*

32) *In addition to the aforesaid para wise reply to the contents of the Notice, the following are some additional objections / grounds for quashing the Notice as against us:*

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

(i) We humbly submit that it can be seen from the Notice that there is no specific averment, allegation or statement against us as to the nature of fraud which has been alleged or in fact there has been no allegation that which provisions of law or

regulations does the GDR Issuance violate for being conducted and issued in the manner that is has been alleged. After dealing with basis facts of the GDR Issuance and stating documents and materials that are matters of fact and record, the Notice directly jumps to a conclusion that there has been a fraudulent scheme of GDR Issuance without providing any material, detail, opportunity to us to defend any specific violations of any law or regulations which have given rise to such an apprehension and allegation in the Notice. (ii) The Notice nowhere suggests what specifically has been erroneous or fraudulent or violative of the specific provisions of law and directly in a completely vague and general manner alleges fraud and violations of the provisions of SEBI Act and PFUTP Regulations as a result of undertaking the said GDR Issuance.

B. THE SCN IS BAD IN LAW AND MUST BE STRUCK DOWN / QUASHED AS AGAINST OUR COMPANY. (i) The law as regards the requirement of issuance of Show Cause Notice and the contents that are mandatorily required to be included in such show cause notice was recently considered and elaborated by the Hon'ble Supreme Court in Gorkha Security Services v. Govt. (NCT of Delhi), (2014) 9 SCC 105. It was held as follows: "Contents of the show-cause notice. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz: The material/grounds to be stated which according to the department necessitates an action; Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit..."

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

(iii)It is humbly submitted that the Notice no were makes out any case of a specific violation of any law and regulation on account of the GDR issuance as undertaken and in no manner provides an opportunity or details of any allegations against us has to meet.

The Notice is general and vague in nature and there is no specific case made out as to what is the nature of fraud that is alleged in the GDR Issuance. In fact, it is SEBI's own case in the Notice that it is unable to determine whether anyone has even been defrauded or misled by any act or omission by us as alleged at all.

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

C. LAPSES IN THE SHOW-CAUSE NOTICE

(i) We would like to point out that the Notice suffers from serious latches. There has been a long and unexplained delay in the initiation of proceedings against us. It is a fact on record that the Notice was issued in year 2019 and the alleged nefarious committed in securities market in year 2007 and 2009, i.e., after a lapse of nearly more ten years from the date of issuance of GDRs.

Moreover, we would like to submit that the Notice is not forthcoming with any reason or explanation for the inordinate and unwarranted delay in the issue of the present Notice.

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

"Allowing matters to go on and on for years together by the Respondent serves no purpose, rather it risks loss of evidence such as important documents which may get destroyed while the issue gathers dust Such systemic failures occur to the disadvantage of all parties concerned and lead to consequences such as genuine violators being allowed to function normally in the capital market for years together, whereas I some situations the reputation of innocent entities gets tarnished as they wait for the wheels of justice to turn a bit faster than the pace at which they seem to be going."

(iii) Further, in the case of Khandwala Securities vs. SEBI dated 07.09.2012 in Appeal no. 19 of 2012, where the Ld. Bench observed as under:

"This Tribunal has held in several cases including Subhkam Securities Private Limited, vs. Securities and Exchange Board of India decided on July 25, 2012 Appeal no. 73 of 2012, Aditi Dalai vs. Securities and Exchange Board of India decided on November 28, 2011 Appeal no. 143 of 2011 that proceedings under the Securities and Exchange Board of India Act require finalization within a reasonable period of time. Delay defeats justice and the very purpose for which proceedings are initiated."

(iv) Furthermore, in the case of Subhkam Securities Private Limited, vs. Securities and Exchange Board of India (Appeal no. 73 of 2012) the Hon'ble Securities Appellate Tribunal in the case of where the Ld. Bench observed as under:

"Inordinate delay in conducting inquiries and in punishing the delinquent not only permits market manipulator to operate in the market it also has demoralizing effect on the market players who are ultimately (not found guilty' but Damocles' sword of inquiry keeps hanging on them for years together from the date of starting investigation by the Board to the date of completion of inquiry proceedings. Precisely for this reason, regulation 28(2) of the intermediary regulations also provides that the designated member should pass appropriate order after considering reply as expeditiously as possible and endeavor shall be made to pass order within one hundred and twenty days from the date of receipt of reply of the notice or hearing. A market player has a right that if proceedings are initiated against him by the Board for violation of any rules

and regulations, the proceedings against him, are also concluded expeditiously and he is not made to undergo mental agony when these are unnecessarily prolonged without any fault on his part in delaying the proceedings."

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

D NO CONNECTION WITH ANY PERSON / ENTITY IN THE NOTICE.

(i) We humbly submit that we have no relation/connection with the AP entities/persons mentioned in the Notice other than Noticees or with any of the counter parties to sell trades sub-Account's trades.

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

E. ALLEGATIONS AGAINST OUR COMPANY IN VIOLATION OF PRINCIPLE OF EQUITY.

(i) We humbly submit that SEBI has wrongly alleged that the GDR issuances by us, was devised and structured by Mr. Arun Panchariya in connivance with us, wherein loans were arranged for the subscriptions of the GDRs of our Company on both occasions, by Vintage only. In this regard, we submit that each of these entities not only incorporated under the relevant laws and has separate legal existence but the present Notice is only against us. Further, without making Alka India, Basmati Securities Pvt Ltd., Oudh Finance and Investment Pvt. Ltd., SV Enterprises/Sarfaraz Pathan, Pan Asia, Vintage, Arun Panchariya Rhodes, KII, IFCF, Sopiha and other parties a party to the proceedings and giving an opportunity to be heard /cross examined, the Notice is not tenable in law and hence the Notice must be quash on this ground only.

(ii) We submit that SEBI only took action against selected/ shortlisted persons/ entities and not against all of them who were allegedly involved in the entire GDR issuance. If the allegation of SEBI were correct then allegation would also have been levelled against all of them, failing which the Notice needs to be withdrawn.

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

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

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

(i) We humbly submit that the Hon'ble Supreme Court in the case of SEBI v. Pan Asia Advisors Ltd. laid down that SEBI has jurisdiction to take action against companies issuing GDRs only if such issue has an adverse impact on the Indian securities

markets. In other words, unless it is shown by SEBI that the issue of GDRs by a company adversely impacted the Indian securities market, it would have no jurisdiction to proceed against a company for alleged manipulation or violations committed it in respect of a GDR issue. Therefore, in order to claim its jurisdiction for taking action in a matter arising out of a GDR issue, SEBI must establish that the same had adversely impacted the Indian securities market.

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

(iii) Without prejudice to the above, it is submitted that while SEBI's jurisdiction in respect of matters of GDRs is limited in accordance with the aforesaid law laid by down by the Hon'ble Supreme Court, it cannot be denied that the provisions relating to issue of GDRs fall within the administrative control of the Ministry of Finance and the RBI. As per SEBI Board's own Memorandum on Voting Rights of GDR/ADR holders' dated 19.05.2010 the provisions relating to issue of GDRs and all matters incidental to the same fall within the administrative control of the Ministry of Finance/RBI.

(iv) We humbly submit that though the allegation has been alleged in the Notice, no evidence has been placed on record to show our action in any way were fraudulent. Here the definition of the term 'Fraud' as defined in the PFUTP Regulations needs to be referred, which states that any act, expression, omission or concealment committed should have induced another person to deal in the securities market but the same was not established by SEBI in the present notice

(v) In this regard, it is submitted that the share price of the Company was remain same hovering around Rs. 3 throughout period of six months from First GDR and Rs 1.3 to 1.5 throughout period of six months from Second GDR. Hence, we neither induce or cheated or made any false statement or manipulated share price that could adversely affect the Indian Securities Market.

(vi) In this regard, we would like to refer the Judgment of the Supreme Court of India in the matter of Securities and Exchange Board of India Vs. Kanaiyalal Baldevbhai Patel, wherein it was observe that:

"A person can be said to have induced another person to act in a particular way or not to act in a particular way if on the basis of facts and statements made by the first person the second person commits an act or omits to perform any particular act. The test to determine whether the second person had been induced to act in the manner he did or not to act in the manner that he proposed, is whether but for the representation of the facts made by the first person, the latter would not have acted in the manner he did. This is also how the word inducement is understood in criminal law. The difference between inducement in criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for

the inducement is sufficient. No element of dishonesty or bad faith in the making of the inducement would be required."

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

33) *The para no. 25 of the Notice deal with penal provision, in this regard, we submit that we have repeatedly demonstrated in preceding paragraphs that we have not indulged in any fraudulent or unfair trade practices relating to securities. No fraud has been made out in any of the allegation. Allegations of fraud are serious allegation and require serious and substantial proof. We humbly submit that there is no loss or fraud has been caused or intended to be caused to any person and this has not been even alleged in the Notice. The charge of having indulged in fraudulent and unfair trade practices relating to securities thus wholly fails and hence there is no question of levy of any penalty on our Company.*

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

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

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

(c) the repetitive nature of the default."

35) *With regard to Clause (a):- "the amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default": it is submitted that the findings do not lead to the conclusion that there has been disproportionate gain or unfair advantage to us. We would further like to bring forth before your goodself, the order of the Hon'ble SAT dated June 8th, 2018 in the matter of KII Industries V/s SEBI wherein SAT has held that "Therefore, when funds were received under a contract which is in accordance with law, it could not be presumed that the funds were received by the appellant for committing fraud on the investors in India" in the present set of facts too the entire process of GDR issue was agreed by the banks and various entities involved. The loan agreement and pledge agreement were also approved by the EURAM bank and there was no irregularity in the same.*

36) *In the light of the above mentioned Judgement, it is submitted that the present Notice has failed to show any fund transfer between our Company and the concerned entities to prove that we received any ill- gotten gains from the said*

GDR issue, it has only derived baseless connection between our Company and other entities based on mere surmises and conjectures.

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

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

39) *Having stated the factors of Section 15J, we would like to draw the attention of your goodself to a few case laws, wherein the respective courts have dealt into the aspect of penalty and factors for levying any penalty on any delinquent. In this regard your goodself kind attention is drawn to Hon'ble Supreme Court's decision in the case of Hindustan Steel vs. State of Orissa (AIR 1970 SC 253) where it was held as follows: "An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceeding and penalty will not be ordinarily imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute.*

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

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

disproportionate to the gravity of the misconduct would be violative of Art. 14 of the Constitution. The point to note and emphasis is that all powers have legal limits."

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

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

44) *Further, in light of aforesaid order dated August 02, 2019 of Hon'ble SAT in the matter of P G Electroplast vs SEBI. it is submitted that the vide Order dated September 05, 2017, Hon'ble Whole Time Member of SEBI has restrained us issuing equity shares or any other instrument convertible into equity shares or any other security for a period of ten years from the date of that Order . Hence, before imposing the penalty, without prejudice, your goodself should consider the said restrained order.*

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

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

47) *It is submitted that the aforesaid explanations make it quite clear that we have not violated any provisions of the SEBI Act and PFUTP Regulations and therefore the directions and findings of the Notice must be quashed and set aside with immediate effect. The Notice is uncalled for and unjust since there is no justification*

in subjecting us to such harsh and baseless allegations. It is submitted that, we have not committed any wrong and no charge has been established against us on prima facie, to warrant any action. Therefore, it will be unfair on unwarranted directions under the SEBI Act and PFUTP Regulations against our Company.

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

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

8. The hearing took place through Video Conference mode using Webex platform. The Authorised Representatives (ARs) viz. Mr. Pulkit Sharma, Advocate and Mr. Jitendra Sharda, Advocate reiterated the submissions made by the KSS vide its reply dated October 26, 2020 and the alleged violations were accepted by the ARs. Further, with regard to para 11 of the KSS reply dated October 26, 2020, it was clarified during the hearing that copy of Board resolution dated October 01, 2009 which had connection with the Pledge Agreement dated October 08, 2009 (2nd GDR Issue) was already provided in Annexure 5 to the SCN.

9. Authorised Representative of the KSS vide email dated October 29, 2020 submitted post hearing submissions as under-

I. Please refer to your goodself' letter dated October 09, 2020 in the captioned matter, vide which your goodself had granted the Noticee an opportunity of personal hearing on October 27, 2020 at 03:00 P.M. The said hearing was duly attended by us on behalf of the Noticee. The Noticee is profoundly thankful to your goodself for providing it with a patient hearing.

II. At the outset, the Noticee submits that all the allegations mentioned in the Notice, are baseless, bald, sweeping, vague, unfounded, misconceived and speculative, based on assumptions, surmises and conjectures and are completely contrary to factual position on record.

III. Before proceeding to provide additional submissions, the Noticee would like to submit that the Noticee had also erroneously due to typographical and clerical *mistake had mentioned at the paragraph no. 37 (F) (v) on page number 32 of the reply that "in share price of the Company was remain same hovering around Rs. 3 throughout period of six months from First GDR and Rs 1.3 to 1.5 throughout period of six months from Second GDR." In this regard, it is humbly submitted that the correct factual sentence to be replaced in our reply is as follows "in the share price of the Company was hovering around Rs. 38 throughout period of 30 days the First GDR issuance and around Rs. 20 throughout period of 30 days the Second GDR issuance." It is further submitted that there is no significant change in the share price of the Company due to GDR issuance and accordingly request your goodself to kindly ignore the typography error of the Noticee in its reply dated October 26, 2020.*

IV. In this regard, the Noticee would like to submit that considering its reply dated October 26, 2019 and arguments made by the Authorised Representative at the time of schedule hearing dated October 27, 2020 in the captioned matter, the Noticee would like to summarize its submissions cum additional reply in the captioned matter hereunder:

V. The Noticee humbly submit that it can be seen from the Notice that there is no specific averment, allegation or statement against them as to the nature of fraud which has been alleged or in fact there has been no allegation that which provisions of law or regulations does the GDR Issuances violate for being conducted and issued in the manner that is has been alleged in the Notice.

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

VII. The Noticee humbly submit that they had no relation/connection with the AP entities/persons mentioned in the Notice other than Noticees at relevant time of issuances of GDRs or with any of the counterparties to sell trades sub-Account's trades.

VIII. The Noticee humbly submit that they do not have any agreement with Vintage, Euram and any arrangement with AP or with any entity for the subscription of the GDRs. In this regard, the Noticee humbly submit that they still standby with their denial that they do not have any agreement with Vintage, Euram and AP or any entity for the purpose of financing of GDR issue. A copy each of the alleged Agreement between Vintage and Euram, provided by SEBI, to Notice, the contents of which are self-explanatory.

IX. Furthermore, with respect to the allegation that the Noticee did not inform Bombay Stock Exchange or shareholders of the Company about signing the

Pledge Agreement and Loan Agreement. In this regard, the Noticee reiterate its submissions that the Noticee was not aware of the said agreements. Without prejudice, the Noticee humbly submit that the non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Since there is no specific requirement of such disclosure is mandated under the law, no disclosure of Pledge agreement to BSE made and which cannot be considered as a fraud as alleged by SEBI.

X. The Noticee further submit that the proceeds of the First GDR were utilized to fund the production (or co-production) and/or for the acquisition of further movies/television, to fund the requirement of working capital to acquire distribution rights for movies made and exhibited and to invest in its subsidiary company in Dubai and the proceeds of the Second GDR were utilized interalia for investment in fixed assets and working capital (the same has been submitted to SEBI vide the Noticee letter date April 22, 2011 and March 26, 2012), if the Noticee had given the security for the loan availed by Vintage then the said proceeds cannot be utilized for their purpose.

XI. Further, the Noticee deny that any capital of the Company was unavailable for its use on account of the said Pledge Agreement dated October 30, 2007 and the Pledge Agreement dated October, 16 2009. Vide its letter dated March 26, 2012, had provided SEBI with a detailed statement on the usage of the GDR proceeds along with FIRC copy. It is evident from the said statement that the GDR proceeds were in fact received by the Company and deployed for the purposes set out in the offer documents. Till deployment, the said funds have been kept in an Interest bearing fixed deposit in a foreign bank. The Noticee repeat, reiterate and submit that Noticee's Company has received all the proceeds of the GDRs issued in 2007 and 2009 into their bank accounts in India and have filed the required reports with the RBI. The copies of the same have already been provided to SEBI.

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

XIII. The Noticee humbly submit that the Hon'ble Supreme Court in the case of SEBI v. Pan Asia Advisors Ltd. laid down that SEBI has jurisdiction to take action against companies issuing GDRs only if such issue has an adverse impact on the Indian securities markets. In other words, unless it is shown by SEBI that the issue of GDRs by a company adversely impacted the Indian securities market, it would have no jurisdiction to proceed against a company for alleged manipulation or violations committed it in respect of a GDR issue. In the present case, while in the captioned Notice issued by SEBI there is no specific allegation that alleged activities in respect of the GDR issued by the Noticee adversely impacted the

Indian securities market as such, it merely makes bald statements to the effect that the Noticee did not inform BSE or shareholders of the company about signing the Pledge Agreement and Loan Agreement.

XIV. Further, the Noticee humbly submit that there are some vital points in the present matter, which make them deferent from other matter like Maars International, Bhoruka Aluminium Limited, Sybly Industries Ltd, Jindal Cotex Limited and etc. (in which with respect to Adjudicating Orders in the matter of GDRs Matter,) and the same have been dealt with herein under:

Sr. No.	In other Adjudicating Orders	Applicability in The Present Case
1.	GDRs proceeds not utilised	In the present case, GDR proceeds have been utilised as explain above.
2.	The Loan amount has defaulted	In the present case, it is not alleged that loan amount defaulted and repaid by the Noticee.
3.	The connection between the entities/fund transfer	In the present case, there is no connection between the alleged entities and fund transfer. The same is not alleged in the Notice.
4.	Shareholders were not aware of the bank account	In the present case, shareholders were aware about the bank account.
5.	The significant change in price and volume of the share of the Company,	In the present case, there is no significant change in price and volume of the share of the Company as explained above
6.	No information/ wrong information provided by the Company	The Noticee had submitted copies of Bank statements and furnished all the relevant information which are available with them and the same was duly acknowledged by SEBI, the contents of which are self-explanatory, if any information was being not submitted to SEBI it was due to certain situations which were out of their control as the Noticee as the Noticee was being defrauded by their previous Managing Director i.e. Sanjay Lai and due to long gap of time of five years between the transactions taken place and summons issued by SEBI.

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

XVI. Further, in light of aforesaid provisions, it is submitted that the vide Order dated September 05, 2017, Hon'ble Whole Time Member of SEBI has restrained us issuing equity shares or any other instrument convertible into equity shares or any other security for a period of ten years from the date of that Order .

Hence, before imposing the penalty, without prejudice, your goodself should consider the said restrained order.

XVII. Further, the Noticee humbly submit that due to Covid-19 pandemic, there was complete lockdown in country. Since the Noticee's business come under the cinema industry, the Noticee's business completely locked down for nearly 9 months and accrued huge losses. Hence, the Noticee was under huge financial distress and not even in a position to pay salaries, rent, electricity and other expenses and therefore the Noticee humbly submits that the Noticee will not be able to pay any penalty if so imposed by your goodself. Also, it is submitted that the Noticee company is running into huge losses since last many years the copy of the balance sheets of last 3 years is already provided to your goodself. Therefore, it is humbly submitted to your goodself, that it will take a years to recover and recoup our losses in order to survive in the cinema market due to Covid-19 adverse effect on the Noticee's business. Hence, it is humbly prayed to your good self that before imposing the any minimal penalty, without prejudice, your goodself should consider the Noticee economic distress situation due to the said Covid-19 pandemic situation.

XVIII. It is submitted that the aforesaid explanations make it quite clear that we have not violated any provisions of the SEBI Act and PFUTP Regulations and therefore the directions and findings of the Notice must be quashed and set aside with immediate effect.

10. SCN sent to Shri Hussain Sattaf through SPAD had returned 'unclaimed'. Subsequently, the said SCN was sent for service through affixture however, notice could not be affixed and returned back with the comment "consignee shifted".

11. SCN sent to Shri Rajesh Pavithran through SPAD had returned with the comment 'left'. Subsequently the said SCN was sent for service through however, notice could not be affixed and returned back with the comment 'consignee shifted'.

12. Thereafter, SCN and hearing notice were served on Shri Hussain Sattaf and Shri Rajesh Pavithran vide Newspaper Publication dated October 01, 2019 in Mumbai Edition (*viz*. Hindustan Times, Navbharat Times and Times News). The hearing was scheduled on October 15, 2019. However, Shri Hussain Sattaf and Shri Rajesh Pavithran neither filed reply nor attended the hearing on October 15, 2019.

In view of the above reasons, I am compelled to proceed further in the matter on the basis of facts/material available on record.

13. In this context, I would like to place reliance on the Order dated February 11, 2014 passed by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Sanjay Kumar Tayal and Ors. vs SEBI (Appeal No 68 of 2013), wherein SAT had observed that *"........................... As rightly contended by Mr. Rustomjee, the learned senior counsel for respondents, appellants have neither filed any reply to the show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted the charges leveled against them in the show cause notices ......"*

14. After taking into account, the allegations levelled in the SCN, and other evidences / material available on record, I hereby proceed to decide the case on merits.

CONSIDERATION OF ISSUES AND FINDINGS:

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

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

b. KSS / KSS by its failure to submit the required information as well as by making false submissions before SEBI, has violated the provisions of Section 11C(3) read with 11C(6) of SEBI Act.

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

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

b. Whether KSS / KSS has violated the provisions of Section 11C(3) read with Section 11C(6) of SEBI Act?

c. If yes, whether Noticees i.e. KSS and its directors are liable for penalty?

d. If yes, what should be the quantum of penalty that should be imposed on them?

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

<u>SEBI Act</u>

<u>Investigation.</u>

<u>11C.</u>

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

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

…….

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

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

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

12A. No person shall directly or indirectly—

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

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

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

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

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

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

18. Before moving forward, I would deal with certain preliminary issues raised by KSS in its reply dated October 26, 2020 and October 29, 2020. KSS has contended that the Hon'ble Supreme Court in the case of SEBI v. Pan Asia Advisors Ltd. laid down that SEBI has jurisdiction to take action against companies issuing GDRs only if such issue has an adverse impact on the Indian securities markets.

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

"*63. Going by the definition under Section 2(h)(i) 'security' would include other marketable securities of a like nature of any incorporated company. Therefore* *reading Section 2(h)(i) and 2(h)(iii) together and apply the same to GDRs, having regard to the fact that the issuance of GDRs are always based on the underlying Indian shares deposited with the Domestic Custodian Bank and thereby the GDRs possess in it right, as well as, interest in the shares, scripts etc., it will have to be straight away held that all GDRs would fall within the definition of 'securities' as defined under Section 2(h) of the 1956 Act.*". I note that Hon'ble Supreme Court of India also made the following observations: "*We are therefore convinced that having regard to the nature of allegations in the interests of investors in securities as well as the statutory obligation/duty cast upon SEBI to protect their interests, SEBI has got every jurisdiction to proceed against the respondents as well as the issuing company.*"

Therefore, in terms of above observations of Hon'ble Supreme Court of India, I hold that it is a settled position that SEBI has jurisdiction in respect of GDR issue as the same fall within the definition of 'securities' under SCRA. As a consequence, SEBI also has jurisdiction to enquire about end use of funds to check if the same were used as per the objective of the respective GDR issues. In this regard I also note from the IR that the major portion of GDR proceeds was not received by KSS in India. I further note from the IR that the funds were transferred directly to either its subsidiary in U.A.E or to other foreign based entities linked with AP GDR Scheme. I also note from the record that two summons dated March 14, 2012, April 12, 2012 and May 29, 2012 were sent to KSS seeking details regarding utilization of GDR proceeds by KSS and it was observed that KSS had failed to provide critical information like the particulars of end use of GDR proceeds by its foreign subsidiaries.

20. I note that KSS has also contended long and unexplained delay in the initiation of the present adjudication proceedings. In this regard, I note that the GDRs under consideration in the present proceedings were issued in March 2007 and May 2009. However, I note that the present matter is complex involving investigation of various entities registered under foreign jurisdiction. The same, *inter alia*, required collaboration with foreign regulators by SEBI and collection of information. In this regard, I note that Hon'ble SAT in its order dated February 05, 2020 in the matter of Jindal Cotex Ltd. vs. SEBI had made the following observations: "*Arguments on delay in investigation and consequently affecting natural justice are also devoid of any merit in the matter since this Tribunal is aware of the complexity involved in the entire manipulative GDR issue; how long it took SEBI to gain information relating to the various entities from multiple jurisdictions in the matter of PAN Asia Advisors Limited (Supra) and Cals Refineries Limited (Supra) etc.*"

    In this regard, I also note that proceedings in respect of the GDR issue of KSS were initiated by SEBI as early as 2011, wherein SEBI passed an interim order dated September 21, 2011. Thereafter, pursuant to complete investigation in the matter, vide final order dated September 05, 2017, directions were passed against KSS and its directors.

    Having dealt with the preliminary objections raised by the Noticees, I now proceed to deal with the allegation against the Noticees in the subsequent paras.

    a. Whether Noticees *viz*. KSS, Shri Hussain Sattaf and Shri Rajesh Pavithran in light of their role in GDR issues of KSS, have been responsible for

fraudulent issues of GDRs and, as a consequence, whether Noticees have violated the provisions of Section 12A(a), (b) (c) of SEBI Act read with 3(b), (c), (d), 4(2)(c), (f), (k) & (r) of PFUTP Regulations?

21. I note from the IR that, KSS had come up with its GDR issue on 2 separate occasions. First GDR Issue was of 47,61,900 GDRs (amounting to USD 25 Million) and issue closed on November 02, 2007 (hereinafter referred as '**first issue**'). Second GDR Issue was of 44,75,238 GDRs (amounting to USD 29.98 Million) and issue closed on October 16, 2009 (hereinafter referred to as '**second issue**'). Further, Pan Asia was the Lead Manager of both GDR issues of KSS.

22. I further note from the IR that by appointing Pan Asia as Lead Manager, KSS decided to raise funds from investors outside India through the issuance of GDRs. Consequently, on November 02, 2007, KSS issued 4,76,19,000 equity shares which resulted in allotment of 47,61,900 GDRs having total value of USD 25 Million. The said GDRs, issued by KSS, were fully subscribed and the issue closed on November 02, 2007 itself. Similarly, on October 16, 2009, KSS issued 13,42,57,140 equity shares which resulted in allotment of 44,75,238 GDRs having total value of USD 29.98 Million. The said GDRs, issued by KSS, were fully subscribed and the issue closed on October 16, 2009 itself.

23. From the IR I note the following details regarding GDR issues of KSS:

Sr. No	Issuer	Date of GDR Issue	Pre GDR equity	Shares issued under GDR	% GDR to Pre GDR equity	Market Cap prior to GDR issue (Rs Crore)	Capital raised by GDR Issue (Rs. Crore)	% Capital raised to pre GDR Market Cap
1	KSS	November 02, 2007	19512625	47619000	203.91%	71.02	98.42	138.58%
2.	KSS	October 16, 2009	67131624	13425714 0	199.99%	137.95	138.73	100.57%

Thus, I note from the above data that the capital raised under the first issue was 138.58% of market capital of the company prior to first issue. Further, the capital raised under the second issue was 100.57% of market capital of the company prior to second issue.

24. I note from the IR that SEBI, on the basis of investigation in the scrip of KSS, alleged that the complete process of GDR issuance by KSS, on both the occasions, was devised and structured by AP in connivance with KSS to the detriment of the Indian investors, wherein AP arranged for loans for the subscription of GDRs by Vintage, a Dubai based company, was allegedly 100% owned and controlled by AP. KSS, in turn, helped AP in arrangement of those funds by signing two separate pledge agreements, with European American Investment Bank AG (hereinafter referred to as '**Euram Bank**'), a bank based in Vienna, Austria, thereby, providing security for such loans taken by Vintage at the time of both first and second issues. Thereafter, these GDRs were converted into underlying shares and sold to Indian investors with the help of certain FIIs registered with SEBI or their Sub-Accounts as well as certain Indian entities connected to AP. At the same time, KSS misled the Indian investors by not disclosing information regarding pledge agreements signed by Shri Rajesh Pavithran and Dinesh Bhanusali, at the time of first issue and signed by Shri Hussain Sattaf at the time of second issue, whereby the funds received by KSS under the respective GDR issues were given as collateral for the loans taken by Vintage. In light of this, it is alleged that the activities of Noticees, KSS and its Directors, in connivance with AP and his connected entities, involved in the whole

scheme, created a wrong impression before the Indian investors that foreign investors were interested in investing in KSS due to its reputation and future prospects and therefore, defrauded them.

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

1st GDR Issue

26. Firstly, I note that the Board of Directors of KSS, in its meeting dated July 31, 2007, had passed the following resolution :

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

RESOLVED FURTHER THAT Mr. Rajesh Pavithran, Managing Director and Mr. Dinesh Bhanusali, Authorised Signatory be and are hereby authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) jointly from time to time as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.

RESOLVED FURTHER THAT Mr. Rajesh Pavithran, Managing Director and Mr. Dinesh Bhanusali, Authorised Signatory be and are hereby authorized to draw cheques and other documents, and to give instructions jointly from time to time as may be necessary to the said Euram Bank or any of branch of Euram Bank, including the Offshore Branch, for the purpose of operation of and dealing with the said bank account and carry out other relevant and necessary transactions and generally to take all such steps and to do all such things as may be required from time to time on behalf of the Company.

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

27. I further note from the subscriber's side, as part of the GDR scheme that, a Loan agreement was also signed between Vintage and Euram bank on October 30, 2007 in relation to first GDR issue of K Sera. The following is stated in the Loan Agreement dated October 30, 2007.

6. Security

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

- *Pledge of certain securities held from time to time in the Borrower's account no. 540 019 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*
- *Pledge of the account no. 540 019 of the Borrower held with the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement."*

28. Similarly, a Pledge Agreement was signed between K Sera and Euram on October 30, 2007. I note that the preamble of the pledge agreement states as follows-

"1. Preamble
By loan agreement (hereinafter referred to as "Loan Agreement") dated October 30, 2007, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates ("the Borrower") in the amount of $ USD 24,999,975.00. <u>The Pledgor has received a copy of the Loan Agreement and acknowledges and agrees to its terms and conditions</u>."

29. Further, I note that the "pledge" created vide the above Pledge Agreement reads as below:-

" *2. <u>Pledge</u>*

*2.1 In order to secure any and all obligations, Present and future, whether conditional or unconditional of the **<u>Borrower</u>** towards the bank under the Loan Agreement and any and all respective amendments thereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the **<u>Loan Agreement</u>** – 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") **<u>the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:</u>***

*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 24,999,975.00 existing from time to time at present or hereafter on the **securities account(s) no. 540 019** held with the Bank (hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein.*

2.1.2 all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 540 019 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account ") and all amounts credited at any particular time therein.

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

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

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

"*6. Realization of the Pledge*

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

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

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

31. KSS has denied that it was aware of any Loan Agreement signed between Vintage and Euram. KSS further contended that there is no Pledge Agreement dated

October 30, 2007 signed between KSS and Euram and that they have never authorized Shri Rajesh Pavithran to sign any such pledge agreement on behalf of the Company. A similar contention with respect to authorizing directors to sign any pledge agreement has been raised by KSS in respect of the 2nd GDR also. I have considered this argument of KSS while dealing with the arguments concerning 2nd GDR issue. From a perusal of copy of resolution on record, I note that the same is certified true copy of the resolution passed by the Board of Directors of KSS on July 31, 2007 printed on the letter head of the company and signed by Company Secretary and two Directors, whereby Shri Rajesh Pavithran and Mr Dinesh Bhanusali were appointed as the authorized signatory on behalf of the company and to execute all the transactions with the Banks. I further note from copy of pledge agreement dated October 30 2007, the pledge agreement entered into by and between KSS and Euram Bank on October 30, 2007 was signed by Shri Rajesh Pavithran and Mr. Dinesh Bhanusali for KSS. I note the signatures are the same as found in the application to open an account / securities account submitted to Euram for opening Corporate Trust account by K Sera Sera Productions Ltd. Further, regarding KSS's contention that they have not entered into any loan agreement, I observe that though KSS may not have entered into any loan account, *per se*, however, I note that the Pledge Agreement dated October 30, 2007 refers to the Loan Agreement dated October 30, 2007 signed between the borrower i.e. Vintage and Euram, whereby Vintage was granted a loan of USD 2,49,99,975. I also note from the pledge agreement that the pledgor i.e. KSS has received a copy of the loan agreement and has acknowledged and agreed to its terms and conditions. Therefore, I observe that, while signing the Pledge

Agreement, KSS was clearly aware that Vintage had acquired a loan of USD 2,49,99,975 and the same was being secured by way of money deposited by KSS in its bank account with Euram. Thus, I find no merit in the aforesaid contentions of KSS. Therefore, in view of the above points, I hold that both the loan agreement and pledge agreement are intertwined with each other and support each other. Therefore, one cannot be read in isolation of the another.

2nd GDR Issue

32. The Loan agreement and Pledge Agreement signed 2nd time were exactly similar to the 1st Loan Agreement and Pledge Agreement. The Loan agreement dated October 06, 2009 states that Euram has agreed to make available a loan of USD 29984094.60 to Vintage (referred to as "the Borrower"). The nature and purpose of the loan facility is to provide funds enabling Vintage to take down GDR issue of K Sera and may only be transferred to Euram account no: 540019 for "K Sera Sera Production Ltd". The following is stated in the Loan Agreement dated October 06, 2009.

"6.Security

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

- *Pledge of certain securities held from time to time in the Borrower's account no. 540 019 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*
- *Pledge of the account no. 540 019 of the Borrower held with the Bank as set out in a <u>separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement</u>." (Emphasis Supplied)*

33. I note that KSS has contended that they had never authorized by any means Shri Hussain Sattaf to sign any such agreement on behalf of the Company and SEBI had wrongly placed a Board Resolution dated October 01, 2009 for opening of Bank Account in Euram, as the aforesaid Board Resolution has no connection with the Pledge agreement dated October 08, 2009*.* From a perusal of copy of resolution on record, I note that the same is the extract of the minutes of the meeting of the Board of Directors of KSS held on October 01, 2009 printed on the letter head of the company and signed by Managing Director, Shri Sanjay Lai, and Director, Shri Hussain Sattaf whereby Shri Hussain Sattaf was appointed as the authorized signatory on behalf of the company for all the transactions with the Banks. I further note from copy of pledge agreement dated October 06, 2009, entered between KSS and Euram Bank, was signed by Shri Hussain Sattaf as Authorized Signatory of KSS.

34. I further note from the contents of the Pledge Agreement dated October 06, 2009, that KSS had agreed to pledge all its rights, title and interest in and to the funds deposited in its designated bank account as well as the interest accrued therein so as to secure the present and future obligations of Vintage. The Preamble of the Pledge Agreement also expressly states that:

"By loan agreement K061009-002(hereinafter referred to as "Loan Agreement") dated October 06 ,2009, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates ("the Borrower") in the amount of $ USD 2,99,84,094.60. <u>The Pledgor has received a copy of the Loan Agreement and acknowledges and agrees to its terms and conditions</u>." (Emphasis Supplied)

From the above preamble to Pledge Agreement, it is clear that KSS was aware of the loan agreement and acknowledged and agreed to its terms and conditions. Further, the pledge created in the Pledge Agreement states as below:-

" *2. <u>Pledge</u>*

*2.1 In order to secure any and all obligations, Present and future, whether conditional or unconditional of the **<u>Borrowe</u>**r 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 **<u>Loan Agreement</u>** – 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") **<u>the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:</u>***

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 2,99,84,094.60 existing from time to time at present or hereafter on the securities account(s) no. 540 019 held with the Bank (hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein.

2.1.2 all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 540 019 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account ") and all amounts credited at any particular time therein. The interest rate on deposit in the amount of the facility amount of the loan will be fixed at 2.5% p.a

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

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

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

"*6<u>. Realization of the Pledge</u>*

*6.1 In the case that the **<u>Borrower fails to make payment</u>** on any due amount, or default in accordance with the Loan Agreement, The Pledgor herewith grants its express consent and the Bank is entitled **<u>to apply the funds in the Pledged Accounts to 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. ''

35. KSS has denied that it had authorized Shri Hussain Sattaf to sign any such agreement on behalf of KSS. Further KSS had contended that SEBI had wrongly placed a Board Resolution for opening of Bank Account in Euram, as the aforesaid Board Resolution has no connection with the Pledge agreement. In this regard, I note, while placing such argument, KSS has not produced any evidence before me to prove otherwise. On perusal of the Board resolution dated October 01, 2009, it is noted that the same had authorized the reopening of KSS's bank account with Euram. The resolution pertaining to the 2nd GDR issue which was passed on October 01, 2009, has a specific mention about the retail banking account no. 5400190101. I further note that the GDR subscription funds of 2nd GDR issue were received in this account. Similarly, I find the board resolution dated July 31, 2007 was passed for opening bank account with EURAM Bank as mentioned above. Thus, I note that the board resolution(s) to open a bank account with EURAM Bank is one of the formal initial steps to implement the GDR scheme as has been discussed without which resolution, the plan could not have been kick started. I note from the perusal of the records with respect to the 2nd GDR that the Pledge Agreement and the Loan Agreement that both of them were dated October 06,

2009. I note that the pledge agreements were signed by the authorized directors of KSS. Further, I note that the Definition Clause of the Pledge Agreement clearly defines loan agreement in the terms quoted above. Therefore, in view of this, I hold that both the loan agreement and pledge agreement are intertwined with each other and support each other. Therefore, one cannot be read in isolation of the another. I also note that only by virtue of the pledge agreement executed by KSS, Vintage was granted loan by Euram. Without the said loan, the GDR subscription itself would not have happened. Thus, I note that the loan and pledge agreements played the central role in the 2nd GDR issuance. In light of the aforesaid facts and circumstances, I find the contentions of KSS that its directors were not authorized to sign the pledge agreements lack any merits more so KSS has not produced any documentary evidence establishing the powers granted to its directors to sign the pledge agreements. I note that KSS is a joint stock company, an artificial juristic person and has to necessarily act through its human resources. I note that the directors have signed the pledge agreements as authorized signatories and thereby calling for an authorization by the board of directors. I note that KSS has generally argued in regard to authorizing its directors to sign pledge agreements without any documentary evidence in support of its arguments to negate the facts as set out in the SCN. Therefore, I find no merits in the arguments of KSS in this regard.

36. I further note that the GDR proceeds of KSS were not freely held unencumbered fund and further KSS was not allowed to withdraw the same without prior written approval of Euram. In this regard I note the observations of the Hon'ble SAT,

incorporated in its Order dated October 25, 2016 in the matter of Pan Asia Advisors Limited vs. SEBI as follows:

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

37. With regard to KSS contending that the GDR proceeds were in fact received by the Company and deployed for the purposes set out in the offer documents, I note from the IR that the major portion of GDR proceeds was not received by K Sera in India. I further note that the funds were transferred directly to either subsidiary in U.A.E or to other foreign based entities linked with AP GDR Scheme. I also note that the summons were sent to K Sera seeking details regarding utilization of GDR proceeds by KSS and it was observed that K Sera had failed to provide critical information like the particulars of end use of GDR proceeds by its foreign subsidiaries that the summons were sent to K Sera seeking details regarding utilization of GDR proceeds by KSS and it was observed that K Sera had failed to provide critical information like the particulars of end use of GDR proceeds by its foreign subsidiaries.

38. KSS has also denied that any capital of the Company was unavailable for its use on account of the said Pledge Agreement dated October 30, 2007 and the Pledge

Agreement dated October, 16 2009. It has further contended that vide its letter dated March 26, 2012, had provided SEBI with a detailed statement on the usage of the GDR proceeds along with Foreign Inwards Remittance Certificate (FIRC) copy. It is evident from the said statement that the GDR proceeds were in fact received by the Company and deployed for the purposes set out in the offer documents. Till deployment, the said funds have been kept in an Interest bearing fixed deposit in a foreign bank.

From a perusal of the said letter dated March 26, 2012 as enclosed with the SCN at Annexure VI 'Copy of Correspondence between SEBI and K Sera', I note that the annexures to letter dated March 26, 2012, as relied upon by KSS, were not enclosed in its reply dated October 29, 2020. Upon a perusal of the copy of covering letter dated April 22, 2011, I note that the details of the utilization of proceeds as detailed in the letter are as under-

"The fund has been utitlized for the following purposes:

a) Company's subsidiary at Dubai viz. K Sera Sera Productions FZ LLC;

(b) In the business of exhibition / theatres (Miniplex) and Digital Cinema through its 100% subsidiary;

(c) Working Capital;

(d) Fixed assets;

(e) Print, Publicity and Promotion of the various films like Ek- The Power of One, Kisse Pyaar Karoon and Chal Chala Chal etc

(f) Joint production of Television Content- Serials TAKE ONE, ROCK ON, ROOTS & STRETCH etc."

From the same, I observe that KSS has merely claimed to have utilized the GDR proceeds without production of evidences supporting the above. Similarly, I note that KSS has merely submitted the copy of letter dated March 26, 2012 without any supporting evidences. In view of the same vide email dated January 08, 2021 KSS was specifically advised to submit the letters dated April 22, 2011 and March 26, 2012 along with the annexures as referred in its submissions dated October 29, 2020. However, KSS vide its email dated January 11, 2021 stated that "*the person who handles the matter is on medical leave, as soon as possible, he will join, we will promptly provide the copy which are available with us. At this juncture, our best of efforts we are able to find out the scan copy of the said letters, please find the same. Further, kindly note that the said letter was part of WTM proceedings and it is very old records. In any event, we request your goodself to refer our WTM Proceeding documents only with respect to said letters and it's annexures for your goodself satisfaction in the present matter and compliance of the email dated January 08, 2021*."

Thus, the contention of the KSS stating that the GDR proceeds were in fact received by the Company and deployed for the purposes set out in the offer documents is not acceptable for want of supporting evidences.

39. KSS has contended that it had never, directly or indirectly, employed any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange. Therefore, it was contended that there is no violation of Section 12A of SEBI Act or PFUTP Regulations. KSS has further contended that it had neither concealed any facts

after having knowledge or belief of the fact which would have induced any entity to trades in the shares of our Company. It also contended that the SCN failed to establish any facts that it has induced any person in the captioned matter. KSS has also contended that the share price of the Company was hovering around Rs. 38 throughout period of 30 days the First GDR issuance and around Rs. 20 throughout period of 30 days the Second GDR issuance. KSS has contended that the SCN merely makes bald statements to the effect that they did not inform BSE or shareholders of the company about signing the Pledge Agreement and Loan Agreement. KSS has contended that they never planted any news which could induce sale or purchase of securities. In support of its contention KSS has placed reliance on Securities and Exchange Board of India Vs. Kanaiyalal Baldevbhai Patel (Kanaiyalal Judgment).

40. In regard to the above arguments I find it relevant to note the corporate announcements of KSS as available on BSE website and the concerned extracts are as below:

1st GDR Issue-

"Outcome of Board Meeting disseminated on November 02, 2007 at 14:32:26 hrs - K Sera Sera Productions Ltd has informed BSE that the Company has successfully concluded placement of 4,761,900 Global Depositary Receipts at USD 5.25 per Global Depositary Receipt (Representing 47,619,000 Underlying Equity Shares of Rs 10/- each). The Company has received about US $ 25 Million in the said issue. The said GDRs are being listed with Luxembourg Stock Exchange (LuxSE). The Board of Directors at its meeting held on November 02, 2007 has approved and allotted 4,761,900 Global Depositary Receipts and 47,619,000 Equity Shares of Rs 10/- each represented in the said GDR".

2nd GDR Issue-

"Conclusion of Global Depositary Receipt (GDRs) disseminated on October 16, 2009 at 16:32:03 hrs - K Sera Sera Productions Ltd has informed BSE that the Company has successfully concluded placement of 44,75,238 Global Depositary Receipts at USD 6.70 per Global Depositary Receipt (Representing 13,42,57,140 Underlying Equity Shares of Rs. 10/- each). The Board of Directors at its meeting held on October 16, 2009 has approved and allotted 44,75,238 Global Depositary Receipts and 13,42,57,140 underlying Equity Shares of Rs. 10/- each representing the said GDR".

41. With regard to the concealment of backend arrangement involving loan and pledge agreements in the 1st and 2nd GDR issues, I note that the Hon'ble SAT, in its order dated February 05, 2020, in the matter of Jindal Cotex Ltd. vs. SEBI, has clearly delineated the importance of disclosure of loan agreement and pledge agreement and the requirement of their disclosures in the following terms:

"*When the company has lent the entire proceeds of the GDR issue to the tune of US$ 38.75 million as security for a third party abroad to avail a loan on the basis of that security and thereby potentially jeopardizing the entire proceeds is not a non-event but an important material information affecting all the stakeholders. We would hold that such events have to be disclosed in bold letters so that the investors of the company as well as those who are subscribing to its GDR issue etc. should be fully aware of those highly material facts.*

…… The basic question to be answered is whether the issue was subscribed by a loan taken by Vintage on the basis of pledging the proceeds of the GDR issue as security for the said loan taken by a third party and that too a party located abroad and whether sufficient disclosures of material events associated with the issue was

properly done. We are of the considered view that the method adopted by the appellants was vitiated through fraud………"

Therefore, in light of the above observations of Hon'ble SAT, I am of the view that disclosure of loan agreements and pledge agreements on both the occasions were not done so as to create a fraudulent impression in the minds of the public investors that the said GDR issues were genuine in nature and the company had received the funds and the same were available for the free use of KSS. In view of the above, I note that the scheme of arrangement of KSS, in allotting GDR issue to only one entity on each of the two occasions, i.e. Vintage during both 1st and 2nd GDR issue which subscribed to the GDR issue by obtaining loans from Euram and which were secured by KSS by pledging its GDR proceeds, seen along with the GDRs issued and allotted without disclosing the crucial details to BSE pertaining to the aforesaid Loan and Pledge Agreements which were price sensitive information and capable of inducing investors, lead to a conclusion that the same were done in a fraudulent manner. In view of the above, I am unable to accept the contentions of KSS.

42. Further, with regard to contention of KSS that it had not planted any news which could induce purchase or sale of shares. However, I note that the corporate announcements made by KSS had the capacity to create an impression of a genuine subscription of its GDR issue, thus impacting Indian investors. In this regard, I note that the Hon'ble Supreme Court in its Order dated July 06, 2015, SEBI (Appellant) vs. Pan Asia Advisors Ltd. (Respondent) had observed that –

> *"81. Therefore, it is for the respondents as well as the Indian issuing company to demonstrate that any of the allegations made by the appellant in relation to the so called fraud or fictitious creation of GDRs at the global level to mislead*

the local investors was totally baseless and that therefore no action was called for. …. It is common knowledge that in the commercial sector, companies which are in the field of manufacturing or any other business activity are able to gain the confidence of the investors by virtue of their appreciable performance in the respective manufacturing or other business activities and while controlling and developing the growth in their respective field of business, aspire to make further excellence by drawing the attention of foreign investors to make investments and thereby broad base their business venture also endeavour to sustain their development in the concerned business in which they are involved. Any such initiative taken by any entrepreneur would develop an appreciable trend in the share market which would draw the attention of the local investors to stake their claim in such well established, well grown business ventures with a view to earn better profits on whatever investments they wish to make. Therefore, if there is going to be a false pretext or misleading information circulated with a view to lure both the foreign investors as well as Indian investors and in that process the very purpose of creation and trading in GDRs are found to be not true or bona fide, it cannot be said that simply because creation of such GDRs and its trading is in global market, SEBI should keep its mouth shut on the ground that it cannot extend its long statutory arm beyond Indian territory to control any such misdeeds deliberately committed with a view to defraud the Indian investors and thereby their interest in the investment of securities and its protection is at great stake."

In view of the above, I am unable to accept the contentions of KSS.

43. KSS has also contended that the list of initial investors, as provided by the Depository Bank and Lead Manager to the issue, was submitted to the Stock Exchanges. However, I do not accept the above contention of KSS as its director(s) on behalf of KSS had executed the pledge agreement corresponding to the loan agreement between Vintage and Euram Bank wherein it was clearly mentioned that the loan was being given to Vintage only to subscribe to the GDR issue of KSS and the proceedings of the loan agreement may only be transferred to Euram Bank Account no. 540 019 (bank account of KSS). Therefore, in view of the scheme of the GDR issue as described in the initial paragraphs of this order, I note that, from

the beginning, KSS and its directors were aware of the fact that Vintage was the only initial subscriber of the GDR issue. In light of the whole scheme of things as explained it only stands to reason that despite clear knowledge of the subscriber to the GDR issue KSS and its directors have disclosed non-factual information which buttresses their *malafide* intention behind withholding the correct actual information. Therefore, in light of the above observations and the fact that KSS itself had secured the loans taken by Vintage for the subscription of its GDR and the documents related to that were signed by its directors, I am of the view that, from the initial stage, KSS and its directors were well aware that the GDRs were subscribed only by Vintage.

44. With regard to the allegations that the directors of KSS were part of the entire scheme, I note that Shri Rajesh Pavithran and Dinesh Bhanusali were directors and the Authorized Representative of KSS for all the purposes of 1st GDR issue. At the same time, the pledge agreement was signed by Shri Rajesh Pavithran and Dinesh Bhanusali in their capacity as the Authorized Representative of KSS. They were also the authorized person on behalf of KSS to execute other documents in relation to the 1st GDR issue.

45. I further note that Shri Hussain Sattaf was Director of KSS and was authorized to execute all the documents for all the purposes of 2nd GDR issue of KSS. At the same time, the pledge agreement was signed by Shri Hussain Sattaf in his capacity as the Authorized Signatory and Director of KSS. He was also the authorized person on behalf of KSS to execute other documents in relation to the 2nd GDR issue.

46. In this regard, as the Authorized Representative of KSS, Shri Rajesh Pavithran and Dinesh Bhanusali were central to the whole scheme on part of KSS at the time of 1st GDR issue. In the same way, Shri Hussain Sattaf was central to the whole scheme on part of KSS at the time of 2nd GDR issue. I note that Shri Hussain Sattaf Shri Rajesh Pavithran and Shri Dinesh Bhanusali being the directors of KSS, had been vested with substantial powers in connection with the issue of GDRs of KSS, an artificial juristic person, and the directors assume the character as "officer in default" for any violation. In this regard it is pertinent to rely upon the provisions of Section 5 of the Companies Act, 1956 (section 2(60) of the Companies Act, 2013) read with Section 27 of the SEBI Act. Additionally, I would also like to quote the observations of the Hon'ble Supreme Court of India in the matter of Shri N. Narayanan vs. SEBI decided on 26.04.2013, wherein it was observed that - *"... Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence.".* Further, Hon'ble High Court of Madras in Madhavan Nambiar vs Registrar of Companies (2002 108 CompCas 1 Mad) has held that – "*… Section 5 of the Companies Act defines the expression "officer who is in default". The expression means either (a) the managing director or managing directors ; (b) the whole-time director or whole-time directors ; (c) the manager ; (d) the secretary ; (e) any person in accordance with whose directions or instructions the board of directors of the company is accustomed to act; (f) any person charged by the board with the responsibility of complying with that provision ; (g) any director or directors who may be specified by the board in this behalf or where no director is so specified, all the directors.*

… Section 29 of the Companies Act provides the general power of the board….Therefore it follows there cannot be a blanket direction or a blanket indemnity in favour of the

petitioner or other directors who have been nominated by the Government either ex officio or otherwise. Hence the second point deserves to be answered against the petitioner…. There may be a delegation, but ultimately it comes before the board and it is the board and the general body of the company which are responsible...”

47. Further, I note that Section 27 of SEBI Act also deals with offences by Companies. In the said provision, Section 27(1) says that, in case of a default by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

48. In light of the above discussions regarding the scheme of GDR issues of KSS, I am of the view that Shri Hussain Sattaf and Shri Rajesh Pavithran had played a major role from the side of KSS as, by virtue of the respective Board Resolutions mentioned above, they were given authority to open the bank account with Euram Bank and sign relevant documents. Further, I note that it is Shri Rajesh Pavithran who had signed everywhere on behalf of KSS be it KYC document or the pledge agreement / account charge agreement at the time of 1st GDR issue. Further, Shri Rajesh Pavithran was given the authority to operate the said bank account with Euram. Similarly, I also note that it is Shri Hussain Sattaf respectively who had signed everywhere on behalf of KSS be it KYC document or the pledge agreement at the time of 2nd GDR issue. Further, he was given the authority to operate the said bank account with Euram Bank. Therefore, in view of the above I hold Shri Hussain Sattaf and Shri Rajesh Pavithran to be equally liable for the abovementioned frauds carried out by KSS, in collusion with AP, on the Indian

investors. With regard to the role played by Shri Dinesh Bhanusali, I note that the same will be dealt in a separate order in accordance with the law.

Thus, KSS, Shri Hussain Sattaf and Shri Rajesh Pavithran have violated the provisions of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(b), (c), (d) and 4(2)(c), (f), (k), (r) of PFUTP Regulations.

c. Whether KSS has violated the provisions of Section 11C(3) read with Section 11C(6) of SEBI Act?

49. It is alleged that KSS, by its failure to submit the complete and correct information regarding the GDR issues of KSS has violated the provisions of Sections 11C(3) read with 11C(6) of SEBI Act. In this regard, it is observed that there are two allegations against KSS viz.:

a. Misleading submissions of information

b. Non-submission of information

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

51. In this regard, I note that SEBI had issued different summons to the Managing Director, KSS on March 14, 2012, April 20, 2012 and May 29, 2012, wherein he was advised to submit certain documents listed therein.

52. In this regard, it is alleged that KSS, in its replies to the Summons, submitted certain wrong information. Therefore, adjudication proceedings under Section

15A(a) has been initiated against KSS. The details of the said alleged wrong information as per the IR are given as below:

a. K Sera made wrong submission that it did not have any agreement with Vintage. It was clearly mentioned in the Loan Agreement signed between Vintage and Euram that Pledge Agreement signed between K Sera and Euram is part of the Loan Agreement.

c. K Sera has submitted that it did not have any arrangement with AP for subscription of GDRs. As explained the complete GDR issuance was done on the basis of AP GDR Scheme.

d. K Sera denied having any agreement with Euram, other than the Escrow account agreement.

e. K Sera denied having any agreement with any of the entity for the purpose of financing of the GDR issue. It specifically denied having any agreement with Vintage and AP.

53. At this juncture, it is relevant to mention that the Hon'ble Supreme Court of India, in Civil Appeal No. 5859 of 2006 in the matter of Bonanza Biotech Ltd Vs SEBI and other connected appeals examined the issue as to whether the Adjudicating Officer (AO) under Section 15A of the SEBI Act is authorized to impose penalty when the documents/information called for and furnished are false or whether the power of the said AO to impose penalty on the person/entity is limited and exercisable only in the event of failure to furnish information/details/documents. I note that the above appeal was filed in the context of an Order dated June 16, 2008 in the matter of Bonanza Biotech Ltd vs SEBI wherein Hon'ble SAT had upheld the levy of penalty imposed by the AO on Bonanza Biotech Ltd (the appellant) under Section

15A for submission of false information /details to the investigating authority of SEBI. In its order dated March 7, 2017, in Civil Appeal No 5859 of 2006, the Hon'ble Supreme Court, *inter alia*, referred to the observation of the expert group constituted by SEBI under the chairmanship of Late Mr. Justice M. H. Kania, former Chief Justice of India, which was relied upon by the appellant, which mentioned that-

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

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

"*It appears that the only question in this matter is whether the Adjudicating Officer Under Section 15A of the Securities and Exchange Board of India Act, 1992, is authorized to impose penalty on the ground that the documents which have been asked for and have been furnished are false or whether power of the Adjudicating Officer to impose penalty is limited and can be exercised only in the event of failure to furnish documents.*

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

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

55. Further, it is also alleged that KSS has failed to submit the following information to SEBI despite repeated issuance of summons:

    1. Complete Bank account statements of its subsidiaries from inception till date. Vide email dated June 26, 2012, K Sera Sera Ltd. was once again asked to provide complete bank account statements of its subsidiaries, yet it did not provide the same.
    2. K Sera also did not provide details like name of payee entity, purpose of money paid by foreign subsidiaries.

56. KSS has contended that the records of its Dubai based subsidiaries are missing due to malafide conduct of the pervious Managing Director i.e. Mr. Sanjay Lai, due to that it was compelled to remove the Managing Director i.e Mr. Sanjay Lai from the post of Managing Director. It had also filed FIR no. 70/2012 with Amboli Police

Station in Mumbai against pervious Managing Director and also a case was registered in Dubai. KSS further contented that it had given instructions to the then Whole Time Director late Mr. Brigadier Vinod Ahuja - an ex-army men and also to Mr. Shrikant Maheshwari then Chief Financial Officer of the Company, a qualified chartered Accountant to extend full cooperation and assistance to the Investigation team. SEBI. They were also authorized to appear, plead and argue before the Investigation team SEBI and were also authorized to submit and furnish any document/paper/statement that may be required by the Investigation team of SEBI. It is most pertinent to mention that at the relevant time, the Investigation team, SEBI had not raised any grievance on any non-compliance or on non-furnishing of information by our said authorized representatives. In this regard, I note that the copy of FIR is not brought on record thus I am not dealing with the same. However, from a perusal of statement dated June 18, 2012 of Mr. Brigadier Vinod Ahuja (Mr. Ahuja), annexure VI to the SCN, *interalia* I note that in response to the query regarding the major beneficial owner of the company, Mr. Ahuja had agreed to revert by June 25, 2012, further with regard to the query for bank statement of foreign subsidiary, Mr. Ahuja had agreed to provide the information by June 19, 2012. In this regard, I note from the IR (relevant extracts of IR were annexed to the SCN) that vide email dated June 26, 2012, KSS was once again advised to provide complete bank account statements of its subsidiaries, however KSS had failed to provide the information sought by the Investigating Authority. Thus, the contentions of KSS in this regard are devoid of any merits.

57. Thus, due to the deliberate non-submission of the above information by KSS, SEBI could not investigate from the angle of utilization of GDR issue proceeds and the same has hampered a very crucial aspect of investigation in GDR issue of KSS. Therefore, I hold that KSS has failed to furnish the above sought information and thereby hampered the investigation of SEBI; thereby, has violated the provision of Section 11C(3) of SEBI Act. However, I note that the power to try an entity and punish accordingly, if required, under Section 11C(6) lies with some other forum and the same is outside the purview of an Adjudication Proceedings. Therefore, I hold that the provisions of Section 11C(6) of SEBI Act will not be applicable in the present adjudication proceedings.

d. If yes, whether KSS, Shri Hussain Sattaf and Shri Rajesh Pavithran are liable for penalty?

58. As established in the pre-paragraphs, KSS, Shri Hussain Sattaf and Shri Rajesh Pavithran have violated the provisions of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(b), (c), (d) and Regulations 4(2)(c), (f), (k) and (r) of PFUTP Regulations. Therefore, KSS, Shri Hussain Sattaf and Shri Rajesh Pavithran are liable for a penalty under Section 15HA of SEBI Act. The text of the said provision of law is being reproduced below:

<u>SEBI Act</u>

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._

59. It has further been established that KSS has violated the provisions of Section 11C(3) of SEBI Act. Therefore, KSS is liable for penalty under Section 15A(a) of SEBI Act. The text of the said provision of law is being reproduced below:

SEBI Act

Penalty for failure to furnish information, return, etc.

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

(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

60. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the 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.

61. With regard to the above factors, it may be noted that the investigation report has not quantified the profit made or the loss caused to general investors on account of the violations committed by KSS, Shri Hussain Sattaf and Shri Rajesh Pavithran. Further, I note that the violation of KSS under Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(b), (c), (d) and Regulations 4(2)(c), (f), (k) and (r) of PFUTP Regulations was a repeated violation as the same modus operandi was

employed by KSS in the both GDR issues leading to defrauding Indian investors on two different occasions.

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

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

63. Further, in light of recent order dated August 02, 2019 of Hon'ble SAT in the matter of P G Electroplast vs SEBI and I also note that, vide order dated September 05, 2017, Hon'ble Whole Time Member of SEBI also prohibited KSS, Shri Hussain Sattaf and Shri Rajesh Pavithran from accessing the capital market directly or

indirectly, and dealing in securities or instruments with Indian securities as underlying, in any manner whatsoever, for a period of ten years.

<u>ORDER</u>

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

Name of the Noticee	**Penal Provision**	**Penalty**
K Sera Sera Limited	Section 15HA of SEBI Act	Rs. 12,00,00,000/- (Rupees Twelve Crore only)
	Section 15A(a) of SEBI Act	Rs. 10,00,000/- (Rupees Ten Lakh only)
Shri Hussain Sattaf	Section 15HA of SEBI Act	Rs. 1,00,00,000/- (Rupees One Crore only)
Shri Rajesh Pavithran	Section 15HA of SEBI Act	Rs. 1,00,00,000/- (Rupees One Crore only)

65. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees.

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

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

68. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees viz. KSS Ltd., Shri Hussain Sattaf and Shri Rajesh Pavithran and also to the Securities and Exchange Board of India.

Place: Mumbai
Date: January 25, 2021

K SARAVANAN
CHIEF GENERAL MANAGER
AND ADJUDICATING OFFICER