



भारतीय प्रतिभूति
और विनियम बोर्ड
Securities and Exchange
Board of India

DEPUTY GENERAL MANAGER
INTEGRATED SURVEILLANCE DEPARTMENT

30286/9
ISD/DB/ /2014
October 21, 2014

To,

The Noticee(s) numbered from 1 to 12 mentioned below, address of whom is provided in Annexure-1:

- 1 IKF Technologies Ltd
- 2 Seazun Ltd (now known as Clifford Capital Partner AG SA)
- 3 Sunil Kumar Goel
- 4 Mukesh Kumar Goel
- 5 R. P. Singh
- 6 Pankaj Garg
- 7 A. P. Saxena
- 8 Pradeep Dutta
- 9 Green/Open Technologies Pvt Ltd
- 10 Shree Assets Reconstruction Ltd
- 11 Premium Linkers Ltd
- ✓ 12 N.V. Simhadri

Sub: Show Cause Notice under sections 11, 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 (the SEBI Act) read with regulation 11 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (the PFUTP Regulations)

1. Vide an ad interim ex-parte Order dated September 21, 2011 (hereinafter referred to as "the Interim Order"), Securities and Exchange Board of India (hereinafter referred to as "SEBI") directed IKF Technologies Ltd (hereinafter referred to as "IKF" (noticee at sr. no. 1) not to issue equity shares or any other instrument convertible into equity shares or alter their capital structure in any manner, in view of the irregularities observed in the issuances of Global Depository Receipts (hereinafter referred to as "GDRs") of IKF.
2. Subsequently, SEBI vide order dated December 30, 2011, while confirming the said directions, allowed conversion of outstanding warrants issued by IKF, if any prior to the Interim Order. Pursuant to the said order, investigation has been completed and the relevant



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extract of the report based on the aforesaid investigation (hereinafter referred to as "**Investigation Report/IR**") is enclosed as **Annexure-2**. The important findings of investigation as enumerated in the Investigation Report are given below:

3.

- i. IKF issued GDRs on March 2007 and May 2009
- ii. In March 2007, the original subscriber of GDRs was a British Virgin Island based entity viz, Seazun Ltd (now known as Clifford Capital Partners AG SA and hereinafter referred to as "**Seazun**" (noticee at sr. no. 2)).
- iii. IKF however misled SEBI by stating that the following entities were the original investors of the GDR issue of March 2007:
 - a. Unicorn Asset Management Limited
 - b. Investec Bank (Switzerland) AG
 - c. Animar Ltd,
 - d. Albert Enterprises Ltd.

A copy of letter dated May 10, 2011 received from IKF informing the above is enclosed as **Annexure-3**.

- iv. Seazun did not invest any of its own funds in the GDRs of IKF. The entire GDR issue was financed by a Portugal based bank viz, Banco Efisa (hereinafter referred to as "**Banco**") through a loan to Seazun. Seazun entered into an agreement with Banco on March 27, 2007 which enabled it to avail a loan of USD 1,10,00,000 for the purpose of subscribing to the GDRs of IKF on March 30, 2007. The copy of aforesaid agreement (hereinafter referred to as "**Credit Agreement**") is enclosed at **Annexure-4**.
- v. This Credit Agreement is an integral part of another bipartite agreement; namely Account Charge Agreement, signed between IKF and Banco. The Credit Agreement (signed between Seazun and Banco) and Account Charge Agreement (signed between IKF and Banco) enabled Seazun to obtain loan from Banco to subscribe to GDR issue of IKF. Copy of the Account Charge Agreement dated March 27, 2007 between IKF and Banco is enclosed as **Annexure-5**.
- vi. In terms of the Account Charge Agreement, IKF deposited the entire GDR subscription proceeds received from the subscriber, i.e. Seazun, as security for the loan availed by Seazun from Banco for the subscription of GDRs of IKF. Details of credit and account charge agreements are described in the Investigation Report.
- vii. The Account Charge Agreement dated March 27, 2007 has been signed by Shri Mukesh Kumar Goel (noticee at sr. no. 4), on behalf of IKF. It is further observed



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that Shri Mukesh Kumar Goel was the authorized signatory of the bank account of IKF with Banco (Copy of KYC document of IKF furnished by Banco is enclosed as **Annexure -6**). A copy of the Resolution passed by the Board of Directors of IKF at its meeting dated January 30, 2007 authorising Shri Mukesh Kumar Goel for the above action is placed at **Annexure -7**. Copy of the said resolution as obtained from Banco was signed by Shri Mukesh Kumar Goel.

- viii. On September 28, 2007, IKF sent a letter to Banco authorizing a transfer of USD 46,49,000 from the account of IKF to the account of Seazun towards settlement of the loan taken by Seazun from Banco for subscribing to the GDRs of IKF. The aforesaid letter was signed by Shri Mukesh Kumar Goel, the authorised signatory of IKF. Thus Shri Mukesh Kumar Goel, on behalf of IKF, utilised the funds of IKF to settle the outstanding loan of Seazun. The copy of aforesaid letter is enclosed at **Annexure-8**. This arrangement effectively enriched Seazun to the detriment of investors of GDRs and shares of IKF and is prima-facie fraudulent in nature.
- ix. Similarly, in May 2009, the original subscriber of GDRs was a Dubai based entity viz, Vintage FZE (now known as Alta Vista International FZE and hereinafter referred to as "**Vintage**"), which was under control of Shri Arun Panchariya (hereinafter referred to as "**Panchariya**")
- x. Vintage did not invest any of its own funds in the GDRs of IKF. Vintage entered into an agreement with a Austria based bank viz, European American Investment Bank AG (hereinafter referred to as "**Euram**") on April 28, 2009 to avail a loan of USD 1,09,88,487.44 for the purpose of subscribing to the GDRs of IKF on May 15, 2009. The copy of aforesaid agreement (hereinafter referred to as "**Loan Agreement**") is enclosed at **Annexure-9**.
- xi. This Loan Agreement is an integral part of another bipartite agreement; namely Pledge Agreement, signed between IKF and Euram. The Loan Agreement (signed between Vintage and Euram) and Pledge Agreement (signed between IKF and Euram) enabled Vintage to obtain loan from Euram to subscribe to GDR issue of IKF. Copy of the Pledge Agreement dated April 28, 2009 between IKF and Euram is enclosed as **Annexure-10**.
- xii. In terms of the Pledge Agreement, IKF deposited the GDR subscription proceeds of USD 1,09,88,487.44, received from the subscriber, i.e. Vintage, as security for the loan availed by Vintage from Euram for the subscription of GDRs of IKF. Details of Loan and Pledge Agreements are described in the Investigation Report.
- xiii. The Pledge Agreement dated April 28, 2009 has been signed by Shri Sunil Kumar Goel (noticee at sr. no. 3), who was the whole time director and promoter of IKF at that time, on behalf of IKF. It is further observed that Shri Sunil Kumar Goel was



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the authorized signatory of the bank account of IKF with Euram (Copy of KYC document of IKF furnished by Euram is enclosed as **Annexure-11**). A copy of the Resolution passed by the Board of Directors of IKF at its meeting dated January 30, 2008 authorising Shri Sunil Kumar Goel for the above action as obtained from Euram is placed at **Annexure -12**. The said resolution was signed by Shri Pradeep Dutta, Executive Director of IKF (noticee at Serial No. 8).

- xiv. The above explained arrangements entered into by IKF with foreign banks and other entities are specifically prohibited under Indian law. As per section 77(2) of the Companies Act, 1956, "No public company, and no private company which is a subsidiary of a public company, shall give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or in its holding company". IKF has therefore prima-facie violated Section 77(2) read with Section 77(4) of the Companies Act 1956.
- xv. Such arrangements appear to be fraudulent in nature and the same appear to have acted as an inducement for other persons to offer to buy the shares of IKF in the Indian securities market.
- xvi. Moreover, the result of Account Charge Agreement and Pledge Agreement signed by IKF was that at the completion of the GDR issues on March 30, 2007 and May 15, 2009, IKF did not have any free capital available from issuance of GDRs as the capital raised by GDRs were provided as security against loan taken by Seazun and Vintage from Banco and Euram, respectively. However, IKF concealed this crucial information and portrayed that GDR issues have been successfully subscribed by few foreign investors and IKF has large amount of free funds (USD 1,10,00,000 after GDR issue of 2007 and USD 1,09,88,487.44 after GDR issue of 2009)
- xvii. Even though the GDR issuance was by means of an illegal and fraudulent arrangement and no genuine capital was raised in the process, as explained above and elsewhere in the IR, IKF informed BSE Limited (hereinafter referred to as "BSE") that the GDR issues were fully subscribed by foreign investors. Thus, IKF filed false information regarding initial investors of GDR issue with BSE and SEBI. Further, as explained above and in the IR, the information provided regarding original subscribers by IKF to BSE and SEBI were false as the only original subscriber to the GDRs issued in 2007 and 2009 was Seazun and Vintage respectively. IKF and its directors and promoters were fully aware of Seazun and Vintage being the only subscribers to the GDR issues of 2007 and 2009, respectively, as is clear from the Account Charge Agreement, Credit Agreement, Loan Agreement and Pledge Agreement documents available with SEBI. A copy of disclosures made



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by IKF to BSE regarding successful subscription of GDRs by foreign investors is enclosed at **Annexure -13**.

xviii. IKF misled SEBI and BSE by stating that the following entities were the original subscribers of the GDR issue of May 2009 :

- a. Echelon India Investments Ltd
- b. Imagination Network
- c. Knightbridge Management Inc
- d. Tradetec Corporation
- e. Trendsetter Enterprises Cops.

A copy of letter dated May 23, 2009 and May 10, 2011 received from IKF informing the above is enclosed as **Annexure-13** and **Annexure 3** respectively. Shri Pradeep Dutta (Noticee No. 8) had submitted this misleading declaration to the Stock Exchange

xix. It was further observed that the addresses of the initial investors. provided by IKF for the GDR issue in 2009 were found to be invalid by SEBI and the foreign regulators in those jurisdictions. (print out of the emails received from the Regulators enclosed as **Annexure-14**)

xx. IKF has therefore caused false information to be published and disclosed by BSE that GDR issuances were successfully subscribed by foreign investors, and used this artifice and misleading information to induce the investors in India to deal in the shares of IKF.

xxi. In view of the above, IKF has, prima facie, violated section 12A(a),(b) and (c) of the SEBI Act read with regulation 3 (b), 3(c), 3(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations. The promoters and directors who were in charge of IKF and were responsible for the conduct of its business during the said period are also prima facie liable for the violation of the aforesaid provisions.

4.

- i. It was observed that around 68.70% of total capital raised via second GDR issue was routed to a foreign subsidiary, Biofuel FZE. In order to examine the utilization of the GDR proceeds, SEBI sought information from IKF vide summons dated January 12, 2012, letter dated April 20, 2012 and e-mails dated April 18, 2012, April 19, 2012 and April 20, 2012. IKF was non-compliant to summons issued by SEBI as it furnished wrong information and concealed material information from SEBI in their replies to SEBI (Copy of correspondence between SEBI and IKF is enclosed as **Annexure 15**). There was, thus, mala-fide intention on the part of IKF to hamper



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and mislead the investigation carried out by SEBI. Following Paragraphs provide details of information falsified by IKF:

- ii. IKF stated vide letters dated February 1, 2012, February 10, 2012 and April 24, 2012 to the summons issued by SEBI that IKF did not have any agreement with Euram for any other services except for escrow agreement. IKF also denied having any agreement with any entity regarding financing for the purpose of subscription by initial investors of GDRs. These statements are misleading as IKF has concealed the information that it had entered into a Pledge Agreement with Euram and Account Charge Agreement with Banco. The letters dated February 1, 2012 and February 10, 2012 were signed by Shri Mukesh Kumar Goyal, Chief Executive Officer (Noticee No. 4). Shri N.V. Simhadri (Noticee No. 12), then Chairman who appeared on behalf of IKF in response to summons also arranged for submission of the above misleading submission.
- iii. IKF further stated in its reply dated February 1, 2012, February 10, 2012 and April 24, 2012 that it did not have any agreement/understanding with Vintage or Shri Arun Panchariya. This statement is misleading as the Pledge Agreement signed between IKF and Euram is an integral part of the Loan Agreement signed between Vintage and Euram. Similarly it is mentioned in the Pledge Agreement that the Pledgor has received the Loan Agreement and agrees to its conditions.
- iv. In response to a specific question in summons dated January 12, 2012 whether there were any conditions regarding the withdrawal of funds from the account with Euram, IKF in its aforesaid letter dated February 1, 2012 did not disclose the conditions imposed on IKF because of the Pledge Agreement between IKF and Euram.
- v. Following information was not provided by IKF to SEBI despite repetitive attempts by SEBI to seek information from IKF:
 - i. Bank Account Statements of Biofuel FZE required to examine utilisation of GDR proceeds by Biofuel FZE.
 - ii. Bank account statement of subsidiary from inception
 - iii. Details of nature of business and Audit reports of Biofel for March 2010 and March 2011.
 - iv. Details like name of entities involved, amount used, and purpose behind the purchases, expenses and payments done by Biofel.
 - v. Address of subsidiary, contact person and contact number of the subsidiary



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- vi. IKF thus did not provide any information to indicate the utilisation of the GDR proceeds by its subsidiaries. IKF has prima-facie sought to mislead SEBI and also not cooperated with the investigation by withholding crucial information as stated above.
5. The aforementioned activities of IKF and other noticees in charge of IKF are manipulative and deceptive, which is in contravention of the SEBI Act and has operated as fraud and deceit upon investors in the Indian securities markets.
6. Therefore, the arrangement employed by IKF with regard to financing the subscription of the GDR issue and thereafter misleading investors by making false announcements regarding successful subscription of GDRs by foreign investors, providing misleading information and not providing information to SEBI which it was summoned to answer and then facilitating foreign entity (Seazun) at the cost of its investors, prima facie, is in violation of Section 77(2) read with section 77(4) of the Companies Act, 1956 and Sections 12A(a), (b) and (c) of the SEBI Act read with regulations 3 (b), 3(c), 3(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2) (r) of the PFUTP Regulations. IKF also failed to provide correct information in response to the summons issued by SEBI and thereby prima facie violated Section 11(C)(3) of the SEBI Act.
7. Shri Mukesh Kumar Goyal (noticee at sr. no. 4) , as signatory to the Account Charge Agreement in 2007 and Shri Sunil Kumar Goel (noticee at sr. no. 3) as signatory to Pledge Agreement in 2009 have prima-facie violated 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. It is observed that Shri Mukesh Kumar Goyal was also Executive Director in 2009.
8. Shri R P Singh (noticee at sr. no. 5 and Chairman in 2007 and 2009), Shri N.V. Simhadri (noticee at sr. no. 12) and Shri Mukesh Kumar Goyal(noticee at sr. no. 4) failed to provide correct information in response to the summons issued by SEBI. Shri R. P. Singh , Shri N.V. Simhadri and Shri Mukesh Kumar Goyal have therefore prima-facie violated Section 11(C)(3) of SEBI Act, 1992.
9. Seazun(noticee at sr. no. 2) as party to the illegal and fraudulent arrangement as stated above has prima-facie violated 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.
10. Under Section 27 of the SEBI Act, where an offence under the SEBI Act has been committed by the company, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director , manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed guilty of the offence and shall be liable to be proceeded against and punished accordingly. Accordingly, it is observed that the noticees from Serial no 3 to 8 were the directors of IKF and are thus liable to be proceeded against. It is thus alleged that the noticees from Serial no. 3 to 8 have prima-facie violated Section 12A(a), (b) and (c)

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of the SEBI Act read with regulations 3 (b), 3(c), 3(d) and 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations

11. Further, it is observed on perusal of the quarterly shareholding pattern for the quarter ended March 31, 2007 as available on BSE web-site - www.bseindia.com, that the noticees at serial no 3 and 9 were promoters of IKF at the relevant time i.e. during the GDR issue in March 2007. Similarly, on perusal of the quarterly shareholding pattern available on BSE web-site for the quarter ended June 30, 2009 that the noticee at sr. no. 3 and noticees number 9 to 11 were promoters of IKF during the GDR issue in May 2009. As such prima-facie they controlled IKF and were responsible for the conduct of business of IKF and are thereby liable to be proceeded against. It is thus alleged that the noticees at sr. no. 3, 9, 10 and 11 have prima-facie violated 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. (copy of quarterly share holding pattern with regard to promoters, filed by IKF for the quarter ended March 31, 2007 and June 30, 2009 is enclosed at **Annexure 16**)
12. In view of the above, you are called upon to show cause as to why suitable directions should not be passed under sections 11, 11(4) and 11B of the SEBI Act, 1992 read with regulation 11 of the PFUTP Regulations for the alleged violations committed by you.
13. Your reply, if any, should reach us within 21 days of the date of receipt of this notice. While replying, you may also indicate whether you desire to be personally heard in this case. In case no reply is received from you, within the above specified period, it shall be presumed that you have no further explanations/submissions to offer in this regard and action may be initiated as per law.

Yours faithfully,

Debashis Bandyopadhyay

Encl.: A/a