

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO: Order/GR/KG/2020-21/9271-9273]

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

In respect of:

1. Mr. Sanjay Agarwal [PAN: AAFPA4428F]
2. Mr. Mukesh Chauradia [PAN: AAVPC0966A]
3. Mr. Arun Pachariya [AEVPP6125N]

In the matter of GDR Issue by Aqua Logistics Limited

BACKGROUND IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted investigations into the alleged irregularities in the GDR (Global Depository Receipts) Issue by Aqua Logistics Limited (hereinafter referred to as “Company” /”AQUA”) during the period from January 15, 2011 to February 28, 2011 (hereinafter referred to as “Investigation Period”).
2. AQUA is a company whose shares are listed on the NSE and BSE Ltd. The investigations, *prima facie*, revealed that AQUA had issued 4.112 million GDRs (amounting to USD 62.379

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Million, approximately Rs. 284.32 Crore at RBI exchange rate of Rs. 45.58 per USD) on February 10, 2011, equivalent to 9,45,76,000 equity shares of Re. 1 each, and the said issue was subscribed by one entity viz. Vintage FZE (now known as Alta Vista International FZE) (hereinafter referred to as "Vintage"). It was observed that the subscription amount was paid by Vintage by obtaining a loan from European American Investment Bank AG (**EURAM Bank**) by entering into Loan Agreement dated February 3, 2011 with EURAM Bank. It was observed that directors of AQUA in its board meeting held on September 9, 2010, had passed board resolution *inter alia* authorizing the opening of an account with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue of AQUA and also for using the funds deposited in the said bank account as security in connection with loans, if any. AQUA had signed a pledge agreement dated February 3, 2011 with EURAM Bank pledging GDR proceeds as collateral against the loan availed by Vintage, executed by Mr. M.S. Sayad, Whole Time Director (hereinafter referred to as "WTD") of AQUA. Vide the said loan agreement, AQUA had pledged the GDR proceeds against the loan availed by Vintage FZE for subscribing to GDRs of AQUA, thus securing Vintage FZE's loan.

3. Therefore, it was alleged that the scheme of issuance of GDRs was fraudulent. Annual Report of AQUA for FY 2010-11 was examined and it was observed that 12 board meetings of AQUA were held in the FY 2010-11 and three directors namely 1) Mr. Rajesh G Uchil 2) Mr. M.S.Sayad and 3) Mr. Harish G Uchil had attended all the 12 board meetings of AQUA held in FY 2010-11. Therefore, it is observed that two directors namely Mr. Rajesh G Uchil and Mr. Harish G Uchil had attended the AQUA's board meeting dated September 09, 2010 and authorized EURAM Bank to use the GDR proceeds in connection with loan, if any and Mr. M.S.Sayad was authorized to sign the agreement related to GDR issue of the AQUA.

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Further, Mr. Mukesh Chauradiya had signed the Loan Agreement dated February 3, 2011 on behalf of Vintage in the capacity of its Managing Director and on a perusal of copy of Know Your Customer documents (signed on June 06, 2007) of Vintage available with EURAM Bank, it was observed that Arun Panchariya was the beneficial owner of Vintage. Further it was observed that Mr. Sanjay Aggarwal, the beneficial owner of 'Sea Dragons Worldwide Limited' who had acted as a conduit of Arun Panchariya and Vintage in the instant case through whom monies were routed to Vintage. It was therefore alleged that AQUA and the individuals named above had acted as parties to the fraudulent scheme.

4. SEBI had, therefore, initiated adjudication proceedings *inter alia* against Mr. Sanjay Aggarwal, Mr. Mukesh Chauradiya and Mr. Arun Panchariya (hereinafter collectively referred to as the "Noticees" and individually as "Noticee No.1, 2 and 3" respectively) under Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act, 1992") for the alleged violation of the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003 (hereinafter referred to as "PFUTP Regulations").

5. **APPOINTMENT OF THE ADJUDICATING OFFICER**

Earlier, Shri Biju S, Chief General Manager, was appointed as Adjudicating Officer (AO) in the matter, which was communicated to the AO vide communiqué dated May 17, 2018, to inquire into and adjudge under Section 15HA of the SEBI Act, 1992 and Section 23E of the SCRA the aforesaid violations alleged to have been committed by the Noticee. Subsequently,



vide Order dated July 06, 2018, Shri Satya Ranjan Prasad was appointed as the Adjudicating Officer in the matter in the place of Shri Biju. S. Thereafter, the undersigned was appointed as the Adjudicating Officer in the instant case, which was communicated vide communique dated May 22, 2019. These proceedings are therefore been carried forward where they had been left off by the previous AO, and an opportunity of personal hearing was granted as detailed hereinafter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. Show Cause Notices No. EAD4/ADJ/SRP/HKS/OW/P/33563/1/2018 dated December 7, 2018 (hereinafter referred to as "SCN") was issued to the Noticees in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "SEBI Adjudication Rules") for the alleged violation of the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations. The said SCNs had returned undelivered from the addresses of the Noticees with the postal remarks "*left*" for Shri Arun Panchariya and "*not known*" for the other two Noticees.
7. Thereafter, subsequent to the handing over of the proceedings to the undersigned, the email addresses of the Noticees were obtained from the Unique Client Codes provided by the BSE and the scanned copy of the SCNs addressed to them were mailed to the said addresses with digital signature of the undersigned vide email dated March 11, 2020 (including the official liquidator for AQUA, who was appointed by the Hon'ble Bombay High Court vide order dated January 4, 2013 as a liquidator of Aqua Logistics Limited) and an opportunity of

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8. Vide letter dated August 14, 2020, Mr. Sanjay Aggarwal (Noticee No. 1) responded by stating that the copy of the original SCN may be supplied to him along with the documents relied upon to enable him to respond to the same. He further stated that he could not understand that the SCN and other documents earlier received by him were in fact addressed to him. He sought an extension of time for two months to file his reply to the same. Thereafter, vide email dated August 24, 2020, a copy of the SCN along with the annexure were once again served upon the Noticees. Subsequently, vide email dated September 10, 2020, the Noticees were provided the last and final opportunity of personal hearing on September 22, 2020.

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of the fraud as alleged. He further submitted that there exists a gap of almost seven months between the date of GDR issue and the transfer of funds done by the Noticee No.1 which was wholly unrelated to the GDR issue. He sought some time for filing his written submissions and was granted time till September 28, 2020 to do so. Vide email dated September 28, 2020 (received on 22:39 Hours, i.e, well past the business hours) the Noticee No. 1 submitted the following which is reproduced herein below:

This is with respect to the matter of Aqua Logistics Ltd., in which hearing was held on September 22, 2020. Despite our repeated requests for granting us a period of one month for filing our written reply, only 4 working days, i.e. till September 28, 2020, was granted to us.

I submit that I had received the show cause notice and the Annexures in the following tranches-

- 1. Two emails received on August 21, 2020 containing the Show Cause Notice, Annexures 1 to 7 and Annexures 11 to 25.*
- 2. One email dated August 24, 2020 containing Annexures 8 to 10.*

Following the above, during the finalisation of my reply, we observed that the SCN had a total of 31 Annexures but I had received only 25 Annexures, as mentioned in the above points. I therefore submit that I have not yet received Annexures 26 - 31.

In the view of the same, I would request your kind self to provide me with Annexures 26 - 31, and grant me a time of two weeks after the date of receipt of the same to submit my reply.

I require your kind and sympathetic consideration in this regard. The inconvenience caused is sincerely regretted.

[emphasis supplied]



10. I note from the records that vide email dated August 24, 2020 (digitally signed by the undersigned) the documents referred to at Annexures No. 26-31 were also provided to the Noticee No.1. The said mail had not bounced back. Therefore, I hold that the said annexures were duly served upon the Noticee No.1 by email dated August 24, 2020. Further, I also note that the Noticee No.1 sent his submissions well past the working hours on the last day, i.e., September 28, 2020, that too citing a false and frivolous ground for seeking documents which have already been provided to him. I also note that subsequent to the receipt of the scanned copy of the SCN and all the annexure by August 24, 2020, the Noticee never raised the issue of non-receipt of all annexure by him prior to September 28, 2020. In fact, in its reply dated September 20, 2020, it had not mentioned the non-receipt of all the annexure to the SCN. The said issue was raised through the aforesaid email dated September 28, 2020, i.e., on the last date for filing his written submissions. As already noted above, even the Annexures No. 26-31 were provided to him vide email dated August 24, 2020, contrary to his submissions. I therefore observe that the conduct of the Noticee No. 1 (Mr. Sanjay Aggarwal) is frivolous and suggests *mala fide* intending to unnecessarily delay the present proceedings.
11. The Noticee No.3 has not responded to any of the emails sent to him despite his receipt of the same. The Noticee No.2 although had initially responded to the email on filing of the written submissions, had also not responded to any of the subsequent emails in these proceedings. Both the Noticees No. 2 and 3 had failed to attend the personal hearing and to file their written submissions. I therefore proceed on the basis of available material with respect to the Noticees No. 2 and 3.



CONSIDERATION OF ISSUES

12. I have carefully examined the allegations against the Noticees, and the reply of the Noticee No.1 to the SCN and the documents / material available on record. The issues that arise for consideration in the present case are :

- I. Whether the Noticees have violated the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations?
- II. Does the violation, if established, attract monetary penalty under Section 15HA of the SEBI Act, 1992?
- III. If yes, then what should be the quantum of penalty?

OBSERVATIONS AND FINDINGS

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

SEBI Act, 1992:

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

12A. No person shall directly or indirectly –



- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the Rules or the Regulations made thereunder;”

PFUTP Regulations, 2003:

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange.
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a

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recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

Issue I : Whether the Noticees have violated the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations?

14. From the material available on record, I note that AQUA had issued 4.112 million GDRs (amounting to USD 62.379 million) on February 10, 2011, equivalent to 9,45,76,000 equity shares of Rs.10 each. Summary of the aforesaid GDRs issued by AQUA as submitted by the custodian bank ICICI vide its letter dated June 2, 2016 and as obtained from the 'offering Circular' of AQUA, is tabulated below.

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
10-Feb-	4.112 (at	62.38	ICICI Bank	9,45,76,000	Deutsche Bank	Prospect Capital	EURAM Bank,	Luxembourg Stock

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2011	USD			equity	Bank	Ltd.	Austria	Exchange
	15.17			shares	Trust			(LSE)
	each			of Rs.10	Compa			
	GDR)			each	ny,			
					NY,			
					USA			

15. BSE vide email dated November 14, 2017, provided list of subscribers to GDRs of AQUA as submitted by AQUA to BSE and the list is tabulated as under:

Sl. No.	Name of the subscriber	No. of GDRs	No. of Shares
1	Calculus Capital Limited	4,10,000	94,30,000
2	Comet Group Holdings Limited	4,30,000	98,90,000
3	Icon Holdings Limited	3,95,000	90,85,000
4	Micromax Corporation	4,15,000	95,45,000
5	Prism International Holdings Limited	3,00,000	69,00,000
6	Quantum Capital Limited	4,10,000	94,30,000
7	Ribber Partners Limited	4,75,000	1,09,25,000
8	Santis Family Holdings Inc	4,52,000	1,03,96,000
9	Tieze Group Holdings Limited	4,05,000	93,15,000
10	Ying Yang Finances Limited	4,20,000	96,60,000
	Total	41,12,000	9,45,76,000



16. SEBI Investigations observed that subscription to the GDR was obtained through a loan agreement as well as a pledge agreement, details of which are discussed in the following paragraphs, and therefore, it was alleged that the GDR issuance was done through a fraudulent arrangement amounting to a self-financing of the subscription to the GDRs by AQUA.
17. Investigations further observed that an entity viz. Vintage FZE (now known as Alta Vista International FZE) (hereinafter referred to as “Vintage”) had obtained a loan of USD 62.379 million by entering into a Loan Agreement dated February 3, 2011, with EURAM Bank to subscribe to the GDRs of AQUA. The aforesaid Loan Agreement was signed by the Noticee No. 2 in the capacity of Managing Director of Vintage. On perusal of the Loan Agreement, I note that the following has been *inter alia* mentioned therein –

1. Currency and the amount of facility:

USD 62,379,000.-

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

2. Nature and purpose of facility:

To provide funding enabling Vintage FZE to take down GDR issue of 4,112,000 Luxembourg public offering and may only be transferred to EURAM account nr. 580035, Aqua Logistics Limited’



(The specific purpose of the loan/ draw down was for the purpose of subscribing to the GDR issue of AQUA. 580035 is the client account number of AQUA. (Explanation supplied).

6.Security

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

- *Pledge of certain securities held from time to time in the Borrower's account no. 540012 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement. (emphasis supplied)*
- *Pledge of the account no. 580035 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.*



18. From the aforesaid Loan Agreement, I note that Vintage had availed a loan facility to the extent of USD 62.379 million from EURAM Bank to subscribe to the GDRs of AQUA.

19. From the certified true copy of AQUA's Board Resolution dated September 9, 2010 provided by EURAM Bank, it is observed that the following resolution was *inter alia* passed in the said meeting—

“RESOLVED THAT a bank account be opened with EURAM Bank (“the Bank”), Palais Esterhazy, Wallnerstrasse 4, 1010, Vienna, Austria 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 the Company hereby authorizes Mr. S. Sayed, Director,

1) to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.”

2. *****

3. 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”. [Emphasis supplied]

20. From the aforesaid resolution of the board meeting it is observed that the Board of Directors of AQUA had authorized, Mr. M. S. Sayed, Director, to sign, execute any application, agreement and other paper from time to time as may be required by EURAM Bank. For this

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purpose, Mr. M. S. Sayed was *inter alia* authorized to carry and use the seal of AQUA. In the said resolution, the Board of Directors had further authorized EURAM Bank to use the funds deposited in the bank account opened with EURAM Bank in the manner of subscription money in respect of the GDR issue of the company, as security in connection with loans, if any.

21. I note from the records made available by EURAM Bank that subsequently AQUA had entered into a Pledge Agreement with EURAM Bank on February 3, 2011. The said Pledge Agreement was signed by Mr. M.S. Sayed on behalf of AQUA, in the capacity of WTD of AQUA. The salient Clauses of the Pledge Agreement are *inter alia* as under:

1. Preamble

By loan agreement K021210-002 (hereinafter referred to as the "Loan Agreement") dated 3 February 2011, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahmadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates ("the Borrower") in K021210-002 and acknowledges and agrees to its terms and conditions."

“2. Pledge

2.1 In order to secure any and Aqua obligations, present and future, whether conditional or unconditional of the Borrower towards the Bank under the Loan Agreement and any and Aqua respective amendments thereto and for any and Aqua 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 bill 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 Aqua 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 USD 62,379,040 existing from time to time at present or hereafter on the securities account(s) no. 580035 held with the Bank (hereinafter referred to as the "Pledged Securities Account") and Aqua amounts credited at any particular time therein.

2.1.2 Aqua 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. 580035 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and Aqua 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 Aqua dividends, interest and other payments, distributions of cash or other property resulting from the Pledged Securities and funds.

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

6. Realisation of the Pledge:



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

22. I note that the Pledge Agreement refers to the Loan Agreement dated February 3, 2011 between the borrower i.e. Vintage, and EURAM Bank, whereby Vintage was granted a loan of USD 62,379,000, and it is stated that the Pledgor i.e. AQUA has received a copy of the said Loan Agreement and acknowledges and agrees to its terms and conditions. By signing the Pledge Agreement, AQUA is deemed to be clearly aware that Vintage was the subscriber to the GDR issue. On perusal of the contents of the Pledge Agreement, it is noted that the



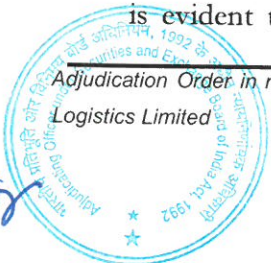
Pledgor had agreed to pledge Aqua its rights, title and interest in and to the securities deposited in the Pledge Securities Account and funds in Pledged Time Deposit Account so as to secure the present and future obligations of Vintage. As already reproduced above, the Pledge Agreement also expressly states that:

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

Regarding the dates, it is noted that the Pledge Agreement and the Loan Agreement were both dated February 3, 2011. Further, I also note that the Loan Agreement expressly states that the Pledge Agreement was an integral part of the Loan Agreement.

23. From the Loan Agreement and the bank account statement of Vintage, I note that Vintage had availed a loan from the EURAM Bank to the extent of USD 62,379,000 to subscribe to the GDRs of AQUA. From the statement of Vintage's bank account and the escrow account for the GDR issue, it is observed that vide letter dated February 3, 2011, Vintage had instructed EURAM to transfer an amount of USD 62,379,000 from its account and to credit it into the escrow account of AQUA. The said amount was credited to the account of AQUA on February 9, 2011. The bank account statement of AQUA clearly shows that the said amount as received from one entity only, i.e. Vintage. Further, Financial Market Authority (FMA) Austria vide email dated March 01, 2016 had informed that EURAM Bank has submitted that Vintage was the sole subscriber to GDR issue of AQUA. From the above, it is evident that GDR subscription money was received from only one entity i.e. Vintage.

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Accordingly, I note that the GDR issue of AQUA comprising 4.112 million GDRs amounting to USD 62.379 million, was subscribed by only one entity, i.e. Vintage, and not by the ten entities (mentioned in the preceding paragraphs) as informed by AQUA to BSE. I further note that the loan agreement between Vintage and EURAM was signed on February 3, 2011 and on the same date Vintage had instructed EURAM to transfer the said amount of USD 62.379 million from its account to that of AQUA and that AQUA's account was pledged with EURAM Bank under the Pledge Agreement.

24. It is observed from Vintage's loan account statement with EURAM Bank that Vintage repaid the loan amount to the extent of USD 41.64 million in nineteen instalments by February 03, 2012 and thereafter defaulted on the repayment of balance loan amount. Details of repayment of loan by Vintage as observed from information provided by EURAM Bank are tabulated below:

Date	Loan Amount repaid by Vintage (USD)	Date	Transfer of funds from AQUA's EURAM Bank a/c to AQUA HK (USD)	Cumulative Loan Amount repaid by Vintage (USD)	Cumulative Transfer of funds from AQUA's EURAM Bank a/c to AQUA HK (USD)
22/02/2011	1877000	04/05/2011	195000	1877000	195000
29/06/2011	300000	01/07/2011	400000	2177000	595000
20/07/2011	4000000	20/07/2011	2000000	6177000	2595000
-	0	21/07/2011	2000000	6177000	4595000
28/07/2011	2000000	28/07/2011	2000000	8177000	6595000



03/08/2011	2500000	03/08/2011	2500000	10677000	9095000
11/08/2011	2000000	11/08/2011	2000000	12677000	11095000
30/08/2011	1250000	30/08/2011	1290000	13927000	12385000
07/09/2011	1250000	07/09/2011	1250000	15177000	13635000
15/09/2011	2350000	15/09/2011	2385000	17527000	16020000
03/11/2011	1250000	03/11/2011	1250000	18777000	17270000
07/12/2011	3000000	07/12/2011	3000000	21777000	20270000
13/12/2011	2500000	13/12/2011	2500000	24277000	22770000
10/01/2012	2500000	10/01/2012	2500000	26777000	25270000
13/01/2012	2500000	13/01/2012	2500000	29277000	27770000
17/01/2012	2465000	17/01/2012	2500000	31742000	30270000
20/01/2012	2500000	20/01/2012	2500000	34242000	32770000
27/01/2012	2500000	27/01/2012	2500000	36742000	35270000
31/01/2012	2400000	31/01/2012	2400000	39142000	37670000
03/02/2012	2500000	03/02/2012	2500000	41642000	40170000

On perusal of the AQUA's EURAM Bank account statement and Vintage's loan account statement, it was observed that only after Vintage repaid loan installments, lesser amount of money was transferred from AQUA's EURAM Bank account to AQUA HK's bank account. From the above, it is evident that the amount transferred from AQUA's EURAM Bank account was dependent on the repayment of the loan by Vintage.

25. Vintage repaid loan amount of USD 41.64 million and thereafter defaulted on the repayment of balance loan amount of USD 20.79 million (includes interest on loan amount). It is observed from EURAM Bank's letter dated August 14, 2012 that an amount of USD 20.79



million (USD 20,737,040- Principal + USD 49,682.49- Interest) was due from Vintage, an amount of USD 20.74 million was adjusted by EURAM Bank on August 13, 2012 and an amount of USD 25,026.57 was due from Vintage. During the course of the investigation, it was further observed that vide letter dated July 09, 2012 signed by Mr. M. S. Sayad AQUA had submitted to EURAM Bank that-

"..We Aqua Logistics Ltd,^{5th} Floor, B wing, Trade Star, Andheri, Mumbai, India were informed by Alta Vista International FZE of your letters dated May 09, 2012 and 25th May 2012 that the loan in the amount of USD 20,737,040 is due and the loan has to be repaid within 10 days, otherwise the pledged cash deposit will be set off with the outstanding loan amount plus any outstanding interest.

We hereby confirm that the pledge agreement entered into by and between Aqua Logistics Limited and European American Investment Bank AG is valid was duly signed by Aqua Logistics Limited.

Further, we confirm that the right of European American Investment Bank AG to set off the pledged cash deposit with the outstanding loan amount 20,737,040 USD.

As soon as European American Investment Bank AG has exerted its right to set off, Aqua remaining GDR's regarding Aqua Logistics Limited (ISIN: US03837W1027) held in deposit no: 540012 1 E of Alta Vista International FZE with European American Investment Bank AG shall be transferred by European American Investment Bank AG to the following deposit account:

Beneficiary Bank: Julius Bear & Co. Ltd., Singapore

Euro clear No of Bank: 13469

Contact details at bank: Mr. Roy Lin, roy.lin@juliusbaer.com, Phone: +65 68271838



....After such transfer has been effected, you shall close Aqua of Aqua Logistics Limited's accounts held with European American Investment Bank AG..."

26. EURAM Bank vide letter dated August 14, 2012 had intimated AQUA that-

"...We confirm receipt of your letter dated 09 July 2012 and kindly inform you that we have realized the balances of your pledged time deposit account held under customer number 580035 with EURAM Bank AG, in conformity with the pledge agreement dated 03 February 2011 in the total amount of USD 20,761,695.82 in order to repay part of the outstanding loan no. K021210-002 of Alta Vista International FZE.....After realization of the pledged time deposit account Aqua accounts held under customer number 580035 were closed.....According your instructions we have transferred 890350 GDRs Aqua Logistics Ltd..... to Bank Julius Baer & Co., Singapore for further credit to account no. 3104410 Sea Dragon Worldwide Limited".

27. From the details of fund transfer stated immediately above, I observe that only after Vintage repaid loan installments to EURAM Bank, that AQUA could make payments from its account maintained with the same bank and such payments were exactly for the same amount/ lesser amount that Vintage repaid to EURAM Bank except for adjustments on account of bank charges/ interest earned by AQUA. Therefore, it is evident that the amount transferred from AQUA's EURAM Bank account was dependent on the repayment of the loan by Vintage to EURAM Bank.

28. Also, from the details of the fund transfer and the correspondences between AQUA and EURAM Bank stated above, proves the genuineness of the said pledge agreement. I note that the correspondence from EURAM Bank to AQUA was addressed to AQUA itself and not to any individual Director/ employee of AQUA. I observe that the said pledge agreement was signed by Mr. M.S. Sayed in his capacity as the WTD of AQUA. From the Board resolution

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dated September 9, 2010, it is clearly evident that Mr. M.S. Sayed was authorized to carry out Aqua such acts which may be necessary for dealing in the said accounts maintained with EURAM Bank. In the said resolution the bank was authorized to use the GDR subscription monies inter alia "*as security in connection with loans if any..*". Therefore, it is inferred from these facts that Mr. M.S. Sayed did have the requisite authorization from AQUA to enter into the said pledge agreement which related to the subscription to its GDR issue. Therefore, the signing of the said pledge agreement by Mr. M.S. Sayed is deemed to be an act done by AQUA (the principal) through its agent (Mr. M.S. Sayed) and the same cannot be disowned by AQUA at this stage. Further, the GDR proceeds received by AQUA was gradually transferred to its Hong Kong based wholly owned subsidiary, Aqua Logistics HK Private Limited ("Aqua HK") within a span of 12 months between February 2011 and February 2012.

29. It is further observed from the aforesaid letter dated August 14, 2012, that the EURAM Bank has informed AQUA that it has realized an amount of USD 20,761,695.82 from AQUA's pledged deposit account in order to repay part of the outstanding loan of Vintage. The aforementioned letter further stated that according to AQUA's instructions, EURAM Bank has transferred 890350 GDRs of Aqua Logistics Ltd to Bank Julius Baer & Co., Singapore for further credit to account no. 3104410 Sea Dragon Worldwide Limited. On request from SEBI, Monetary Authority of Singapore ('MAS'), Singapore's central bank and financial regulatory authority, *inter-alia*, has obtained the information from Bank Julius Baer & Co. Ltd., Singapore with regard to the 'account number-3104410 Sea Dragons Worldwide Ltd.' and submitted the copy of Know Your Customer Information (KYC) & bank account statement of a/c no-3104410 to SEBI vide letter dated January 17, 2017. On perusal of KYC



of bank account having number 3104410 with Julius Baer & Co. Ltd, Singapore (Singapore), it was observed that the aforementioned bank account was opened in the name of the “Sea Dragons Worldwide Ltd” (“Sea Dragons”) on August 12, 2011 and closed on January 17, 2013. Mr. Sanjay Raghunath Aggarwal (**“Sanjay Aggarwal”/ Noticee No. 1**) was the authorized representative of the bank account and the beneficial owner of Sea Dragons.

30. On perusal of Noticee No. 1’s bank account statement with Juluis Baer (a/c no: 3104410), it was observed that the Noticee No. 1 has transferred amount from its bank account no: 3104410 with Julius Baer to Vintage’s bank account no: 540012 with EURAM Bank for repayment of loan availed by Vintage for subscription of GDRs of AQUA.
31. It was observed that subsequent to receipt of money from the Noticee No.1, Vintage has repaid part of the loan to the extent of amount received from him and an amount to the extent of loan repaid by Vintage was transferred from AQUA’s account with EURAM Bank (account no: 580035) to AQUA HK’s bank account having number 400762217838 with HSBC bank in Hong Kong. Further, it was observed that amount transferred to AQUA HK’s bank account was further transferred to the Noticee No.1’s bank account (3104410) with Juluis Baer.
32. The flow of funds from the Noticee No.1 to Vintage, Vintage to Euram Bank, AQUA’s EURAM account to AQUA HK and AQUA HK to the Noticee No.1 is tabulated below:



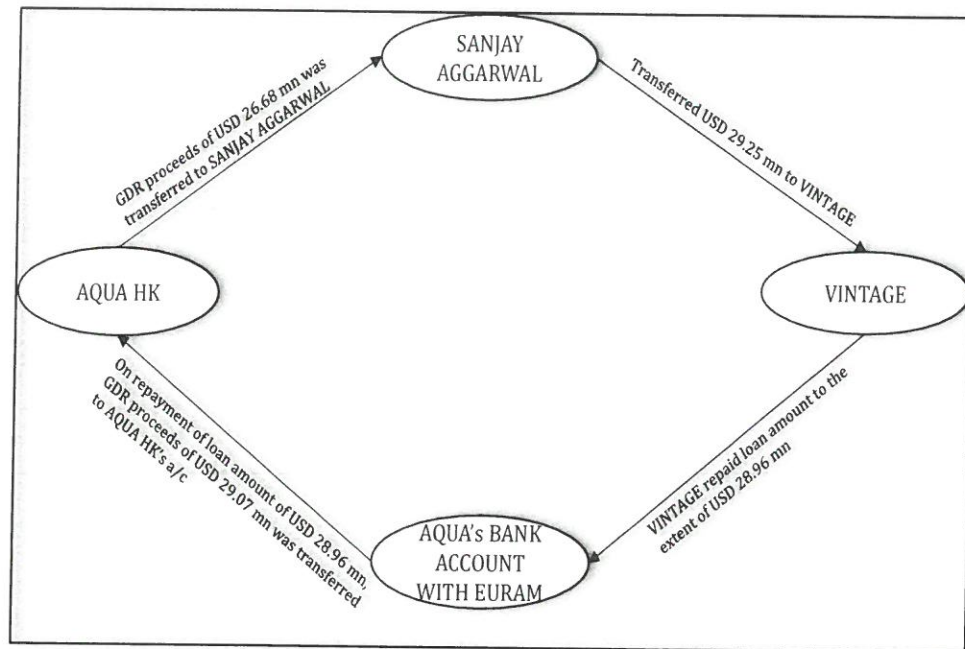
Date of transfer by Sea Dragons	Amount transferred by Sanjay Aggarwal to Vinatge (USD)	Date of credit to Vinatge Bank account no 540012 with EURAM	Amount credited to Vintage's bank account no 540012 with EURAM	Date of repayment of Loan by Vinatge	Loan amount repaid by Vinatge (USD)	Date of transfer of GDR proceeds from AQUA EURAM a/c to AQUA HK	Amount transferred from AQUA's EURAM a/c to AQUA HK (USD)	Date of transfer by AQUA HK to Sea Dragons	Amount transferred by AQUA HK to Sanjay Aggarwal subsequent to receipt of funds from AQUA EURAM a/c
29/08/2011	1,250,275.00	30/08/2011	1,250,116.58	30/08/2011	1,250,000.00	30/08/2011	1,290,000.00	-	-
07/09/2011	1,250,200.00	07/09/2011	1,250,044.61	07/09/2011	1,250,000.00	07/09/2011	1,250,000.00	-	-
15/09/2011	2,350,250.00	15/09/2011	2,350,098.98	15/09/2011	2,350,000.00	15/09/2011	2,385,000.00	16/09/2011	1,249,975.00
								20/09/2011	1,099,975.00
02/11/2011	1,250,200.00	03/11/2011	1,250,048.10	03/11/2011	1,250,000.00	03/11/2011	1,250,000.00	04/11/2011	1,274,975.00
07/12/2011	3,000,000.00	07/12/2011	2,999,852.14	07/12/2011	3,000,000.00	07/12/2011	3,000,000.00	09/12/2011	1,249,975.00
								09/12/2011	1,249,975.00
								12/12/2011	499,975.00
13/12/2011	2,500,200.00	13/12/2011	2,500,052.78	13/12/2011	2,500,000.00	13/12/2011	2,500,000.00	14/12/2011	1,249,975.00
								15/12/2011	1,249,975.00
09/01/2012	2,500,248.00	10/01/2012	2,500,107.99	10/01/2012	2,500,000.00	10/01/2012	2,500,000.00	11/01/2012	1,249,975.00
								12/01/2012	1,249,975.00
12/01/2012	2,500,400.00	13/01/2012	2,500,260.10	13/01/2012	2,500,000.00	13/01/2012	2,500,000.00	17/01/2012	1,249,975.00
								17/01/2012	1,244,975.00
17/01/2012	2,650,290.00	17/01/2012	2,650,149.52	17/01/2012	2,465,000.00	17/01/2012	2,500,000.00	18/01/2012	1,249,975.00
								19/01/2012	1,249,975.00
19/01/2012	2,500,525.00	20/01/2012	2,500,383.86	20/01/2012	2,500,000.00	20/01/2012	2,500,000.00	25/01/2012	1,249,975.00
								26/01/2012	1,249,975.00
27/01/2012	2,500,355.00	27/01/2012	2,500,212.64	27/01/2012	2,500,000.00	27/01/2012	2,500,000.00	30/01/2012	1,249,975.00
								30/01/2012	1,249,975.00
30/01/2012	2,500,525.00	31/01/2012	2,500,380.40	31/01/2012	2,400,000.00	31/01/2012	2,400,000.00	01/02/2012	1,249,975.00
								02/02/2012	1,149,975.00
02/02/2012	2,500,525.00	03/02/2012	2,500,380.97	03/02/2012	2,500,000.00	03/02/2012	2,500,000.00	06/02/2012	1,249,975.00
								06/02/2012	1,249,975.00
								09/02/2012	152,725.00
								28/02/2012	13,225.00
TOTAL	29,253,993.00		29,252,088.67		28,965,000.00		29,075,000.00		26,685,400.00

It can be seen from the above table that an amount of USD 29.25 million was transferred by the Noticee No.1 to Vintage during the period August 29, 2011 to February 02, 2012. Pursuant to receipt of USD 29.25 million from him, Vintage repaid the loan amount of USD 28.96 million during the period August 30, 2011 to February 03, 2012. Subsequent to receipt of repayment of loan by Vintage, an amount of USD 29.07 million was transferred from AQUA's bank account with EURAM Bank to AQUA HK's bank account with HSBC during the period August 30, 2011 to February 03, 2012. Further, an amount of US 26.68 million was received by the Noticee No.1 from AQUA HK's bank account during the period September 16, 2011 to February 28, 2012. From the above, it is clear that the Noticee No.1 was acting as a conduit to Vintage.

The above mentioned flow of funds is pictorially presented below:

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33. The entire trail of funds from the bank account of Vintage to that of AQUA/ Aqua HK and the pattern of subsequent disbursements as already narrated above, when seen as a whole, strongly establishes collusion between Vintage and AQUA with respect to the subscription of the said GDR issue of AQUA. In this regard, it is appropriate to refer to the Hon'ble SAT Order dated July 14, 2006, in the case of *Ketan Parekh vs. SEBI* (Appeal no. 2/2004), wherein, Hon'ble SAT has observed that:

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

[Emphasis supplied]

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

35. I note that as and when, loan repayments were made by Vintage, AQUA used to transfer funds from its EURAM Bank account to the account of Aqua HK. In view of the above, I note that every transfer from AQUA to Aqua HK is in sync with the date and amount of loan repaid by Vintage to EURAM Bank (the details pertaining to this have already been tabulated in the preceding paragraphs). Therefore, I note that the amount transferred from AQUA's EURAM account to its Hong Kong subsidiary was dependent on the repayment of the loan by Vintage. It also establishes that the purpose of the Pledge Agreement was to facilitate the subscription of GDR issue and securing the loan obtained by Vintage.

36. I also note that with regards to the subscription of GDR issues of certain other listed Indian companies through the aforesaid *modus operandi* viz. involving arrangement of Loan Agreement and Pledge Agreement, the Hon'ble Securities Appellate Tribunal ("SAT") in its Order dated October 25, 2016 in Appeal No. 126 of 2013 in the matter of **Pan Asia Advisors Limited vs. SEBI** had observed:

"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. In the present matter, I note that the GDR subscription amount of USD 62.379 million was not available to AQUA for utilization until the loan taken by Vintage for subscribing to the GDRs was repaid to the EURAM Bank. I also note that after the subscription of GDR on February 10, 2011, a partial amount of USD 195,000 could be made available to AQUA only on May 4, 2011, i.e. after a period of almost 3 months since the subscription money for the GDR issue was received in the EURAM Bank account of AQUA. The last installment towards amount of USD 62.379 million along with accrued interest was available to AQUA only in February 3, 2012, when the loan was fully repaid by Vintage to EURAM Bank. Subsequently, the said GDR proceeds along with the interests accrued thereupon less bank charges was transferred to the account of its Hong Kong based subsidiary by AQUA.
38. Moreover, it is noted that AQUA had provided incorrect information to BSE wherein it had stated that the GDR issue was subscribed by ten investors, as already named in the preceding paragraphs. However, from the documents available on record, it is observed that the GDRs were subscribed by one entity only, viz. Vintage. I also note that the Pledge Agreement dated February 3, 2011, which was specifically signed by the authorized representative of AQUA makes reference to Vintage. The same also clearly shows that AQUA was aware that the subscriber to the GDR issue was Vintage. Such actions also indicate *mala fide* intention on the part of AQUA and Vintage.
39. As discussed above, false and misleading corporate announcements were made by AQUA and it had also suppressed the material and price sensitive information viz. (i). execution of pledge agreement dated February 3, 2011 by AQUA in favor of Euram Bank pledging the GDR proceeds for providing security to the loan taken by Vintage, (ii) linking of the aforesaid pledge agreement to the loan agreement dated February 3, 2011 by Vintage for



obtaining loan from the Euram bank for subscribing the GDR issue of AQUA and (iii) Vintage was the only subscriber of GDR issued by AQUA. I find that Aqua these three events were price sensitive information and could have impacted the scrip price of AQUA. I find that the corporate announcements made by AQUA on February 10, 2011, stating that 'issued and allotted 4,112,000 GDR', might have mislead the investors and created a false impression in the minds of the investors that the GDR issue was fully subscribed whereas AQUA had itself facilitated subscription of its GDR issue wherein the subscriber (Vintage) obtained loan from the Euram Bank for subscribing the GDR issue of AQUA and AQUA secured that loan by pledging the GDR proceeds with the Euram Bank. In this regard, I note that the Hon'ble Supreme Court in its judgment in the matter of **Kanaiyalal Baldevbhai Patel v. SEBI** has also observed that that:

"if Regulation 2(c) of the 2003 Regulations was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or not, by any person while dealing in securities to induce another person to deal in securities would amount to a fraudulent act. The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities".

I note that the Hon'ble Supreme Court in the same judgment, has also observed that *"that the provisions of Regulations 3 (a), (b), (c), (d) and 4(1) are couched in general terms to cover diverse situations and possibilities. Once a conclusion, that fraud has been committed while dealing in securities, is arrived at, Aqua these provisions get attracted in a situation...."*



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

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

41. In view of the above, I note that the scheme of arrangement of AQUA, in allotting GDR issue to only one entity i.e. Vintage which subscribed the GDR issue by obtaining loan from Euram Bank and the same was again secured by the AQUA by pledging its GDR proceeds, seen along with the false and misleading corporate announcements made by AQUA on February 3, 2011, stating that the GDR was issued and allotted, without disclosing the crucial details pertaining to the aforesaid loan and pledge agreements which were price sensitive information, lead to conclusion that the same were done in a fraudulent manner with a view



to influence the decision of the investors and to induce the sale or purchase of its scrip. In this entire fraudulent scheme, Vintage had played a crucial role in coordination with the Noticee No.1, as already detailed in the preceding paragraphs.

42. In the present matter, Vintage was sole subscriber of GDR issue of AQUA and subscription was arranged through a loan availed from EURAM Bank to the extent of USD 62.379 million for which security was provided by AQUA by pledging its GDR proceeds. The Noticee No.2 had signed the Loan Agreement in capacity of the Managing Director of Vintage. Further, Vintage defaulted in repayment of loan to the extent of USD 20.74 million, thereby GDR proceeds to that extent were adjusted by EURAM. Hence, it is evident that Vintage acquired GDRs of AQUA to the tune of USD 20.74 million at free of cost. On perusal of copy of Know Your Customer documents (signed on June 06, 2007) of Vintage available with EURAM Bank, it is observed that the Noticee No.3 is the beneficial owner of Vintage.
43. I find that the Noticee no. 2 had aided and abetted the fraudulent scheme of self-financing of the GDR issue of AQUA by acting on behalf of Vintage in the capacity of its Managing Director by executing the loan agreement on behalf of Vintage with EURAM Bank. I note that the Noticee No.3 was the beneficial owner of Vintage FZE in which the Noticee No.2 had served as Managing Director. Therefore, the Noticee No. 2 was connected with the Noticee No.3. The role played by Vintage in the fraudulent scheme has already been brought out in details in the preceding paragraphs. From the above, it is observed that the Noticee No. 2 held key position in Vintage (was Managing Director and authorized signatory of Vintage) and was in knowledge of the Noticee No.3's scheme of subscribing to GDR issues



through Loan Agreement and defaulting on repayment of loan in several GDR issues (as the Noticee No. 2 had signed the Loan Agreements and Vintage's redemption of loan amount requests for repayment of Vintage's loan). Therefore the Noticee No. 2 acted as an aide to the Noticee No.3 and facilitated the fraudulent scheme by executing the Loan Agreement of AQUA in capacity of the Managing Director of Vintage. Thus, the Noticees No. 2 and 3 being the key managerial personnel/ owner of Vintage, are squarely responsible for the fraud perpetrated and I hold them to have violated section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.

44. For the role played by the Noticee No. 1 in aiding and abetting the other Noticees in their routing of monies received from the GDR proceeds of AQUA as already detailed in the preceding paragraphs, I also hold him to have violated section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.

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

45. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund** held that:

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



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

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

47. The Noticees had jointly and in close connivance with each other, had acted as the one part of the entire fraudulent scheme by arranging for the subscription of the GDRs through Vintage using the pledge agreement signed on behalf of AQUA to obtain a loan from the EURAM Bank and then to dispose the shares acquired through such GDRs, routing of the monies received from the HK based subsidiary of AQUA, thereby creating an elaborate façade of demand for the securities of AQUA.

48. Thus, the violation of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations by the Noticees make them liable for imposition of penalty under Section 15HA of the SEBI Act, 1992, which reads as below –

SEBI Act, 1992

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Logistics Limited



“Penalty for fraudulent and unfair trade practices.

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

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

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

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

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

49. In this regard, the provisions of Section 15J of the SEBI Act, 1992, Rule 5 of the SEBI 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.

50. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that AQUA had misled the Indian investors by concealing the information of entering into Pledge Agreement and informing GDR related news in a distorted manner to stock exchange which made investors believe that GDRs were genuinely subscribed. Out of the GDR proceeds of USD 62.379 million, an amount of USD 40.17 million was transferred to AQUA HK and USD 20.74 million were adjusted by EURAM against the loan of Vintage. It is also observed that GDR proceeds to the extent of USD 26.68 million which were transferred by AQUA to AQUA HK was transferred back to Sanjay Aggarwal. Therefore, GDRs to the extent of USD 47.42 million {USD 26.68 mn+ USD 20.74 mn} were issued at free of cost to Vintage (headed and managed by the Noticees No. 2 and 3) aided by the Noticee No.1., and this had caused a loss to the shareholders to the tune of USD 47.42 million. The said subscription of the GDRs by Vintage was funded by AQUA itself, through the Noticees. The magnitude of the fraud committed by the Noticees is enormous as is evident from the issue size of USD 62.379 million.

51. Following is the summary of the past action against the Noticees-

Client Name	Action Taken/ Initiated	Case Name

Adjudication Order in respect of Arun Panchariya, Mukesh Chauradiya and Sanjay Aggarwal the matter of GDR issue by Aqua Logistics Limited



Client Name	Action Taken/ Initiated	Case Name
Mr. Arun Panchariya	Vide order dated June 20, 2013, Mr. Arun Panchariya was prohibited from accessing the capital market directly or indirectly for a period of 10 years from date of the order.	Alleged market manipulation using GDR issues
	Vide order dated November 13, 2009, Adjudicating Officer imposed a monetary penalty of R. 5 lakh. Numerous other orders of penalty have also been passed in similar cases of manipulation in GDR issues.	Alka India Ltd. (case II)
Mr. Mukesh Chauradiya	Vide ad interim ex-parte order dated September 24, 2014, Mr. Mukesh Chauradiya was restrained from accessing the securities market and further prohibited from buying, selling or dealing in securities or any instrument exchangeable or convertible into securities, directly or indirectly, in any manner whatsoever, till further directions. The aforesaid directions were confirmed vide order dated March 23, 2015.	Rasoya Protein Ltd.
	Numerous other orders of penalty have also been passed in similar cases of manipulation in GDR issues.	
Mr. Sanjay Aggarwal	Vide 11B order no WTM/AB/IVD/ID4/8241/2020-21 dated July 14, 2020, in a similar case of GDR issue of Farmax India Ltd., he has been restrained from accessing the securities market and further prohibited from buying,	Farmax India Ltd.

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Client Name	Action Taken/ Initiated	Case Name
	selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of two years from the date of this order. During the period of restraint, the existing holding of securities including units of mutual funds of him shall also remain frozen.	

ORDER

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

Entity	Violation	Penal Provisions	Penalty (Rs.)
Mr. Sanjay Agarwal, Noticee No. 1	Penalty imposed under Section 15HA of the SEBI Act, 1992 for violation of the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of		Rs. 15,00,000/- (Rupees Fifteen Lacs only)

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	PFUTP Regulations	
Mr. Mukesh Chauradia, Noticee No. 2	Penalty imposed under Section 15HA of the SEBI Act, 1992 for violation of the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations	Rs. 10,00,000/- (Rupees Ten Lacs only)
Mr. Arun Pachariya, Noticee No. 3	Penalty imposed under Section 15HA of the SEBI Act, 1992 for violation of the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations	Rs. 10,00,00,000/- (Rupees Ten Crore only)

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

ENFORCEMENT ☐ Orders ☐ Orders of AO ☐ PAY NOW

54. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – 1 of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

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

55. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties

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

Place: Mumbai

Date: September 29, 2020


G. Ramar
Adjudicating Officer

