BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/VV/AK/PSS/2022-23/18792-18796

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

In respect of:

Noticee No.	Name of the Noticee	PAN
1.	Nakoda Ltd	AAACN7282L
2.	Mr. D B Jain	ADTPJ4655Q
3.	Mr. B G Jain	ABNPJ1251A
4.	Mr. Arun Pachariya	AEVPP6125N
5.	Mr. Mukesh Chauradiya	AAVPC0966A

In the matter of **Disclosures by Nakoda Ltd in respect of its GDR issue**.

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*(Noticees 1 to 5 are individually known by their respective name or Noticee no. and collectively referred to as the "**Noticees**")*

A. BACKGROUND

1. Securities and Exchange Board of India ("SEBI") had conducted investigation against several Indian companies that had issued Global Depository Receipts ("GDR") in overseas markets. In this regard, on an enquiry with European American Investment Bank ("Euram Bank") about the loan taken by initial GDR subscribers, it has been informed that in respect of GDR issue of Nakoda

Limited(“Nakoda”/“the Company”), M/s. Vintage FZE (“Vintage”), also known as Alta Vista International FZE had availed loan against the GDR proceeds of Nakoda. Accordingly, SEBI had investigated the GDR issue of Nakoda during the issuance of GDR i.e, November 01, 2010 to December 31, 2010 (hereinafter referred to as Investigation Period (“IP”)) to ascertain as to whether:

1) GDRs were issued with the intention of defrauding Indian investors ;
2) Shares underlying GDRs were issued with proper consideration ; and
3) Appropriate disclosures with respect to Listing Agreement, if any were made.

2. During the course of investigation, it was observed that:

I. The scheme of issuance of GDRs was fraudulent as Nakoda, the Company, had entered into a Pledge Agreement with the bank, EURAM Bank for a loan that had been availed by Vintage, towards the subscription of GDRs issued by the Company. The Pledge Agreement was not disclosed to the stock exchanges, which made the investors believe that the said GDR issue was genuinely subscribed by foreign investors. Vintage was a party to this fraudulent scheme. Noticee No. 2, D.B. Jain, who was the Joint Managing Director of Nakoda, signed the Pledge Agreement with EURAM Bank, whereby the account holding the GDR proceeds was given as security for the loan availed by Vintage from EURAM Bank for subscribing to the GDRs of Nakoda. D.B. Jain along with Noticee No. 3 (B.G. Jain) and S.K. Bhoan, who were also Directors on the Board of Nakoda, in the board meeting dated September 23, 2010 authorized D.B. Jain and B.G. Jain to sign the Pledge Agreement allowing EURAM bank to use the GDR proceeds account as security for the loan availed by Vintage. Noticee No. 5, Mukesh Chauradiya signed the Loan Agreement on behalf of Vintage for the subscription of GDRs of the Company. Noticee No. 4, Arun Panchariya was director and beneficial owner of Vintage.

II. India Focus Cardinal Fund (“IFCF”) was a sub-account of FII EURAM Bank. Arun Panchariya was the beneficial owner of IFCF. FII sub-account IFCF received GDRs, converted them and sold the converted equity shares of Nakoda in the Indian stock exchanges.

III. The Company came out with the issuance of 20,00,000 GDRs amounting to USD 24.25 million on November 26, 2010. A bank account was opened by Nakoda with EURAM Bank under the client number 580034 to deposit the GDR proceeds. Accordingly, a total of USD 24.25 million was credited to this account. Vintage had subscribed to the total GDR issue of Nakoda.

IV. It was observed during investigation that of the total 24.25 million USD taken as loan by Vintage, it did not repay any amount. Subsequently, it defaulted on the said loan, and the funds in the GDR proceeds account were appropriated by EURAM Bank by invoking the Pledge Agreement for satisfaction of the amount owed by Vintage. Considering that Vintage was the only subscriber of the GDR issue, and the Company had in effect paid for Vintage owing to the default by it in servicing the loan, and the same being satisfied from the GDR proceeds account of Nakoda, it was concluded that the GDRs, and the underlying equity shares in turn, to the tune of 24.25 million USD, were issued by Nakoda to Vintage without any consideration, at the cost of shareholders / investors of Nakoda. This is the fraudulent scheme that had been conceived.

V. On September 23, 2010, the Board of Directors of Nakoda passed a resolution resolving that a bank account be opened with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue of the Company. Also, at the said board meeting, EURAM Bank was authorized to use the GDR proceeds as security against loans, if any.

VI. Vintage entered into a loan agreement dated November 12, 2010 with EURAM Bank for a loan facility of USD 24.25 million, so as to "provide funding enabling Vintage FZE to take down GDR issue of 20,00,000 Luxembourg public offering and may only be transferred to EURAM account no.580034, Nakoda."

VII. On November 12, 2010, a Pledge Agreement was executed between Nakoda (as pledger) and EURAM Bank and the same was signed by Noticee no.2

D.B. Jain of Nakoda. As per the Pledge Agreement, Nakoda's designated account with EURAM Bank bearing no. 580034 would be held in pledge by EURAM Bank to secure the obligations of Vintage under the Loan Agreement.

VIII. The aforesaid Pledge Agreement was an integral part of the Loan Agreement entered between Vintage and EURAM Bank and vice versa and both were executed concurrently. The Pledge Agreement had the reference to the Loan Agreement entered between Vintage and EURAM Bank by virtue of which EURAM Bank provided the loan facility to Vintage for the purpose of subscribing to the GDRs of Nakoda. As already stated, the GDR proceeds to the tune of 24.25 million USD were deposited in the Company's bank account bearing number 580034 maintained with EURAM Bank.

IX. As Vintage had defaulted, an amount of USD 24.32 million (USD 24.25 million along with accrued interest of USD 0.07 million) was adjusted from the account of Nakoda, in conformity with the Pledge Agreement dated November 12, 2010, towards the outstanding loan amount owed by Vintage.

X. Even though consideration had not effectively passed from Vintage to Nakoda, the GDRs issued were, however, allowed to be converted into equity shares, and these shares were sold in the Indian capital market on April 04, 2011, Vintage had transferred 14,500 GDRs to FII-sub account, IFCF i.e. Noticee No. 8. On April 07, 2011, 14,500 GDRs were converted into 4,35,000 equity shares by IFCF.

XI. Further, India Focus Cardinal Fund was registered as sub account of FII, EURAM Bank. IFCF was the only sub account to be registered with EURAM Bank. Also, as an FII, EURAM Bank did not make investment in India, except for the sale of shares in the Indian capital market, pursuant to the conversion of GDRs by IFCF. The FII, namely, EURAM Bank facilitated the sale of the equity shares, received by way of fraudulent issue of GDRs.

XII. On October 25, 2012 and November 20, 2012, Nakoda wrote two letters to Bank of New York Mellon (Global Depository) (hereinafter referred to as `BNY Mellon') requesting that no shares be transferred or sold without its consent.

XIII. BNY Mellon sent a resignation letter dated December 06, 2013 to Nakoda informing it of the termination of GDR program, and asked Nakoda to appoint a successor depository bank on or before April 07, 2014, failing which it would terminate the GDR program. On April 16, 2014, BNY Mellon announced its termination notice publicly. As per the termination notice, the GDR holders had two options i.e., to take the possession of underlying shares or to receive the sale proceeds of shares once BNY Mellon sold underlying shares in Indian Stock exchanges.

XIV. Thereafter, BNY Mellon began to sell the shares underlying the GDRs held in its custody account in January 2015 and completed the sale of shares in October 2015. BNY Mellon sold the underlying shares through DBS Bank (Local custodian). DBS Bank vide email dated February 22, 2017 informed SEBI that, based on the instruction of BNY Mellon, it had sold 5,95,65,000 shares of Nakoda for Rs. 1,81,83,538.71 (including income tax).

B. APPOINTMENT OF ADJUDICATING OFFICER

3. Mr.Sahil Malik was appointed as the Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and under section 23E of Securities Contracts (Regulation) Act, 1956 (“SCR Act”) read with rule of the SCR(Procedure for Holding Inquiry and Imposing Penalties) 2005 (hereinafter both referred to as the ‘Adjudication Rules’) to inquire into and adjudge under section 15HA of the SEBI Act and section 23 of Securities Contracts (Regulation) Act, 1956 (“SCR Act”). Subsequent to the transfer of Mr. Sahil Malik, the Undersigned has been appointed as the Adjudicating Officer in the present matter vide order dated August 09, 2019.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice dated December 20, 2020 (hereinafter be referred to as the “SCN”) was duly served upon the Noticees under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against Noticee no.1 under the provisions under section 15HA of SEBI Act and section 23E of SCR Act for the alleged violation of section 12A (a) , (b),

(c) of SEBI Act r/w Regulations 3(a), (b), (c) and (d) , 4(1), 4(2)(f),(k) and (r) of PFUTP Regulations and section 21 of SCR Act r/w clauses 32, 36(7) and 50 of Listing Agreement and against Noticee nos.2 to 5 for violation of section section 12A (a) , (b), (c) of SEBI Act r/w Regulations 3(a), (b), (c) and (d) , 4(1) of PFUTP Regulations.

5. I note, from available records, that the SCN was duly delivered to all the Noticees. I note that Noticees no.2 , 3 and 5 have filed reply to the SCN and appeared for hearing. Noticees no.1 and 4 have neither filed any reply to the SCN nor appeared for hearing. Details relating delivery of SCN , hearing Notice, reply by entities and appearance for hearing are tabulated as under :

Noticee no.	SCN	Reply	Hearing Notice	Hearing attended
1	SPAD	No Reply	SPAD	No
2	SPAD	Dated 02-12-2021 , 19-03-2022, 06-04-2022 , 27-04-2022	SPAD	Dated 22-03-2022, 04-05-2022
3	SPAD	Dated 02-12-2021 , 19-03-2022, 06-04-2022 , 27-04-2022	SPAD	Dated 22-03-2022, 04-05-2022
4	Email	No Reply	Email	No
5	SPAD	29-01-2018 , 12-02-18 , 27-02-2018 , 26-02-2018 , 19-03-2018	SPAD	04-02-2020

6. I note that principles of natural justice have been complied with, since sufficient opportunities have been provided to the Noticees no.1 and 4 to submit replies and to appear for personal hearing. I am, therefore, of the view that the Noticees no. 1 and 4 have nothing to submit in terms of rule 4(7) of the Adjudication Rules. In view of the facts and circumstances of the case, I am compelled to decide this matter ex-parte qua Noticees no.1 and 4 based on the documents/material and information available on record.

7. The Hon’ble SAT in the matter of *Classic Credit Ltd. v. SEBI [2007] 76 SCL 51 (SAT - MUM) inter alia* held that – “*the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them”*. Similarly, the Hon'ble SAT also, in the case of *Sanjay Kumar Tayal & Ors. v. SEBI (in appeal No. 68/2013)* decided on February 11, 2014, held that *“…appellants have*

neither filed reply to 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 charges levelled against them in the show cause notices".

8. Although, the allegations levelled in the SCN are assumed to be admitted by the Noticees no. 1 and 4, I will be deciding the instant matter on merits based on the documents/material and information available on record.

9. Noticee no.2 and 3 vide their common reply dated 27-04-2022 have made their submissions. The key submissions made by the said two Noticees are summarized as under:-

    i) Complete material/document/information in support of the allegations against the Noticees have not been made available to them. The unavailability of all such material has left the Noticees ill-equipped to defend the charges levelled against them in the SCN effectively.

    ii) There is no specific averment, allegation or statement against the Noticees 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 violated. The SCN 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 GRD issuance. In this regard, Noticees have relied upon two judgments of the Hon'ble Supreme Court ("SC") namely, (1) Gorkha Security Services vs Govt of NCt of Delhi (2014 9 SCC 105) and (2) S.L.Kapoor vs Jagmohan & Ors (1980 4 SCC 379).

    iii) There has been a long and unexplained delay in the initiation of proceedings against the. It is a fact on record that the SCN was issued in the year 2018 and the alleged acts committed in the year 2010, i.e. after a lapse of nearly more than 8 years from the date of issuance of GDRs. In this regard, Noticees have relied upon the following order/judgments by Higher Court namely, (1) HB Stock Holdings Limited vs SEBI dated 27-08-2013 , (2) Khandwala Securities vs SEBI dated 07-09-2012 , (3) Shubhkam Securities Pvt Ltd vs SEBI (Appeal no. 73 of 2012).

iv) SEBI has jurisdiction to take action against companies issuing GDRs only if such issue has an adverse impact on the Indian Securities Markets. In the SCN issued by SEBI, there is no specific allegation that alleged activities in respect of the GDR issued by the Company adversely impacted the Indian Securities Market as such, it merely makes statements to the effect that the Company did not inform BSE or shareholders of the Company about signing alleged agreements. In this regard, Noticees have relied upon two judgments of the Hon'ble Supreme Court ("SC") namely, (1) SEBI vs Pan Asia Advisors Ltd and (2) SEBI vs Kanaiyala Baldevbhai Patel.

v) Noticees deny the signing of such pledge agreement with Euram Bank. The Loan Agreement is dated November 12, 2010 but the acceptance of it by Mr. Mukesh Chauradiya (Authorized Representative of Vintage FZE) was only on November 24, 2010 and thus the Loan Agreement came into effect on November 24, 2010. Hence, the Pledge Agreement could not have been signed on November 12, 2010 because an arrangement of pledge of security/funds to secure a loan could be entered only after an arrangement for lending of money has been determined.

vi) Since, the proceeds of the GDR issue were never in existence at the time when the alleged pledge agreement is purported to be entered into, it cannot be said that the Noticees created/entered into any agreement thereby pledging something or providing something as a security which was neither existent at the relevant time nor there was any reasonable certainty of its existence in the future. In support of this argument, Noticees have relied on judgment passed by the Hon'ble Madras High Court namely Chief Controlling Revenue Authority, Madras vs Sundarsanam Picture, Madras (AIR 1968 MAD 319).

vii) The Pledge agreement is a fraudulent afterthought agreement, which has been created in connivance of EURAM Bank AG, Arun Panchariya, Mukesh Chauradiya and Prospect Capital Limited in order to siphon off the money rightly belonging to the Company.

viii) The authorized representatives of the Company on November 12, 2010 were not in India and there is no way that such a pledge agreement could have been entered on November 12, 2010.

ix) Noticee No. 1 received a copy of the Pledge Agreement from EURAM Bank vide letter dated September 10, 2012. Thereafter, the Company Secretary of Noticee No. 1 had immediately challenged the authenticity of the pledge agreement.

x) Alleged non-disclosure of the Pledge Agreement to the shareholders of the Company and thereby perpetuating a fraud on the investors of the Company is hereby denied and it is respectfully submitted that the alleged non-disclosure is based on the fact that the Noticees have entered into any of the alleged Pledge Agreement with EURAM Bank AG. The Noticees request to conduct a forensic analysis of the signature on the Pledge Agreement which would prove that the Noticees have not signed the document and it is a forged signature thereby proving the innocence of the Noticees.

xi) There is no allegation or observation regarding mis-appropriation of any funds, especially from the GDR issue by the Company or any fact indicating that the Noticees had taken any undue advantage or benefit out of the GDR issue or any interest created by the dealing/trading by any entity connected to Mr.Arun Panchariya and, hence, there is no base for establishing or substantiating any allegations against the Noticees and hence the allegations against the Noticees warrant to be dropped.

xii) The allegations of fraud require a high level of proof and establishment of mens rea. Other than pointing out the fact that the Noticees had carried part of the Board Meetings and allegedly signatory to the agreements, no further proof has been provided of any wrong doing to establish that they were carried out intentionally. In this regard, Noticees have relied on following judgments/orders of higher courts:-

a) Union of India vs Chaturbai M.Patel (AIR 1976 SC 712)

b) Parsoli Corporation vs SEBI (SAT dated 12-08-2011)

c) Sterlite Industries vs SEBI (SAT dated 22-10-2001)

d) KSL Industries Ltd vs SEBI (SAT dated 30-09-2009)

e) Union of India vs H.C.Goel (AIR 1964 SC 364)

f) LD Jaisinghani vs Naraindas N Punjabi (AIR 1976 SC 373)

g) Razikram vs J.S.Chauhan (AIR 1975 SC 667)

h) M.S. Bindra vs VoI (1998 1 SCC 310)

i) Ambalal vs Union of India (AIR 1961 SC 264)

j) Seth Gulabchand vs Seth Kudilal (AIR 1966 SC 1734)

xiii) Noticees have also relied on the following judgments/orders of higher courts:-

a) KII Industries vs SEBI (SAT dated 08-06-2018)

b) Hindustan Steel vs State of Orissa (AIR 1970 SC 253)

c) Ex-Naik Sardar Singh vs Union of India (1991 3 SCC 212)

d) Ranjit Thakur vs Union of India (AIR 1987 SC 2386)

e) Adjudicating Officer vs Bhavesh Pabari (SC dated 28-02-2019)

f) PG Electroplast vs SEBI (SAT dated 02-08-2019)

g) Alkan Projects Pvt Ltd vs SEBI (SAT)

10. Noticee no.5 vide his reply dated 26-02-2018 has made his submissions. The key submissions made by the said Noticee are summarized as under:-

i) The Noticee has sought Investigation Report and several other documents from SEBI.

ii) The Implementing Regulations No. 1/92 (Pursuant to Law No. 9 of 1992) of Free Zone Enterprise in Jebel Ali Free Zone Authority, UAE (JAFZA), under which Vintage FZE was registered, required that there shall be a single owner, and it was Arun Panchariya who was the legal and beneficial owner of Vintage.

iii) In the Shareholder's list as on September 30, 2009/ 2010/ 2011/ 2012/ 2013 in relation to Ramsai Investment Holding Private Limited (later known as Vintage FZE Investment Holding Private Limited), it can be clearly seen that Arun Panchariya held more than 99% of the shares, so Arun Panchariya was the beneficial owner of the company.

iv) Administrative fine statement passed by the Dubai Financial Services Authority (DFSA) impoosing fine of USD 12,000 on Arun Panchariya also indicates that Arun Panchariya was the Licensed Director in relation to Vintage FZE.

v) Arun Panchariya was initially the sole director. Subsequently, somewhere in 2010, Ashok Panchariya, his brother, replaced him as the Director of Vintage FZE.

vi) The copy of the JAFZA Visa of Arun Panchariya for the period January 12, 2010 to January 11, 2013 shows his designation to be Managing Director.

vii) The Noticee has never been the Director or Managing Director of Vintage FZE, as alleged in the SCN, and that he only held the position of Manager.

viii) The copies of the Noticee's resident-permits for the period September 14, 2005 to September 9, 2017 show that his designation/position was General Manager and not Director or Managing Director.

ix) The Employment Card issued to the Noticee by JAFZA shows that he has always been an employee of Vintage FZE, and not a Director or Managing Director.

x) The decisions to subscribe to the GDRs issued by Nakoda and to obtain loan from Euram Bank for subscribing to the GDRs was taken by Arun Panchariya as the Director/sole owner of Vintage FZE, and the Noticee, as an employee, had no role to play in it.

xi) In respect of the loan agreement signed by the Noticee, it has been stated by the Noticee that he signed the document, on instructions from Arun Panchariya, owing to the conflict of interest that existed as Arun Panchariya was the Director and President of Euram Bank Asia, and he held a stake in Euram Bank Asia.

xii) The title "Managing Director" was pre-printed or part of the proforma of the Bank, and it was by oversight continued to be so.

xiii) The loan availed by Vintage from Euram Bank was for the sole purpose of subscribing to the GDR of Nakoda, and the same was applied for the purposes for which it was obtained.

xiv) Taking a loan for subscribing to a GDR issue per-se is not a violation of any laws, especially that of UAE and JAFZA, and also is not a violation of any Indian laws.

xv) The Noticee was not aware of any arrangement that Arun Panchariya may have had with Nakoda in arranging the loan and its repayment, and that the Noticee had no role to play in the said transaction.

xvi) The Noticee being a nominee director in some of the subsidiaries is true, though the same has nothing to do with the allegations contained in the present matter of GDR issue is concerned.

D. REVELANT PROVISIONS

11. It is relevant to reproduce the provisions of laws which have been attracted and invoked in the SCN and the same are quoted here under:

SCRA
Section 21*:*

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

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 recognized 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 recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

Section 3. *Prohibition of certain dealings in securities*

No person shall directly or indirectly-
(a) *buy, sell or otherwise deal insecurities 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 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*

Section 4. *Prohibition of manipulative, fraudulent and unfair trade practices*

(1) *Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
(2) *Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—*
(f) *publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;*
(k) *an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;*
(r) *planting false or misleading news which may induce sale or purchase of securities.*

<u>Listing agreement</u>

Clause 36
"…The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/ operations of the company as well as price sensitive information. The material events may be events such as:

(1)….
(7) Any other information having bearing on the operation/performance of the company as well as price sensitive information which includes but not restricted to:…,
…The above information should be made public immediately."

***Clause 50**:*

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

Clause 32

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

***Accounting Standard ('AS') -3 – Cash Flow Statements** – inter-alia reads as follows:*
*"**Cash** comprises cash on hand and demand deposits with bank.*
***Cash equivalents** are short term, highly liquid investments that are readily convertible into known amounts of cash and which are subject to an insignificant risk of changes in value."*

***AS 29 – 'Provisions, Contingent liabilities and Contingent Assets'** inter-alia reads as follows:*

"10.4 A contingent liability is:
a) a possible obligation that arises from past events and the existence of which will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the enterprise; or
b) a present obligation that arises from past events but is not recognised because:
i. it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation;
ii. a reliable estimate of the amount of the obligation cannot be made.

"27. A contingent liability is disclosed, as required by paragraph 68, unless the possibility of an outflow of resources embodying economic benefits is remote."
"68. Unless the possibility of any outflow in settlement is remote, an enterprise should disclose for each class of contingent liability at the balance sheet date a brief description of the nature of the contingent liability and, where practicable:
a) an estimate of its financial effect, measured under paragraphs 35-45
b) an indication of the uncertainties relating to any outflow; and
c) the possibility of any reimbursement."

"71. Where any of the information required by paragraph 68 is not disclosed because it is not practicable to do so, that fact should be stated."

***Section 15HA of the SEBI Act, 1992**:*

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

Section 23 E of SCR Act, 1956:

23E. If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty five crore rupees.

E. ISSUES

12. I have carefully perused the allegations levelled against the Noticees in the SCN, the replies of the Noticees and also the documents/evidence available on record. The following issues arise in the matter :-

    i) Whether Nakoda (Noticee no.1) has violated section 12A (a), (b) and (c) of SEBI Act r/w Regulations 3(a), (b), (c) and (d) and Regulation 4(1), 4(2) (f), (k) and (r) of PFUTP Regulations and Section 21 of SCR Act r/w Clauses 32, 36(7) and 50 of Listing Agreement ?

    ii) Whether Noticees no.2, 3, 4 and 5 have violated section 12A (a), (b) and (c) of SEBI Act, r/w Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations ?

    iii) If the answer to Issue No.(i)&(ii) is in affirmative, do the violations, if any on the part of the Noticees would attract monetary penalty ?

    iv) If the answer to Issue No.(iii) is in affirmative, what would be quantum of the monetary penalty that should be imposed upon the Noticees ?

F. CONSIDERATION AND FINDINGS

13. I note that the Noticees have raised certain preliminary objection and it would be first appropriate to deal with certain preliminary objections raised by Noticees in the matter as under :-

Delay in issuance of SCN

14. The Noticees have averred that there has been considerable delay in issuance of SCN. In this regard, it is seen from the record that documents *inter-alia* in the captioned matter were obtained from the Financial Market Authority, Austria in

2016. Details were also obtained from entities like BNY Mellon across jurisdictions. Consequent to the receipt of documents as above, investigation was initiated into the GDR issue of Nakoda and the said investigation was completed in the year 2017. After the completion of investigation in the matter, a Show-Cause Notice dated January 17, 2018 was issued to the Noticees. Once the said Show-Cause Notices were served on all the Noticees, personal hearings were granted to the Noticees who had sought for the same.

15. In this regard, it is worth mentioning that in another GDR matter, namely **Jindal Cotex Limited and Ors Vs. SEBI** (Date of Decision: February 5, 2020, SAT Appeal No. 376 of 2019), the Hon'ble SAT held that arguments on delay in investigation and consequently affecting natural justice were devoid of any merit. In the aforesaid matter, the Hon'ble Tribunal, while dismissing the ground of delay acknowledged the complexity involved in the entire manipulative GDR issue and appreciated the time taken by SEBI to gain information relating to the various entities from multiple jurisdictions.

16. Again, in the matter of **G.V. Films Ltd. Vs. SEBI** (Date of Decision: February 15, 2021, SAT Appeal No. 168 of 2020), the Hon'ble SAT opined on the issue of delay in a similar matter pertaining to issue of GDR's as follows:

> *"Having heard the learned counsel for the parties on this issue, we find that there is no doubt that there has been a delay in the issuance of the show cause notice after 10 years from the date of the GDRs issue. However, on this ground of delay, the proceedings cannot be quashed for the reasons that we find that an <u>investigation was required to be done beyond the borders of India which took time</u>."*

17. In view of the above, I do not accept that there is delay in the matter that would vitiate the proceedings.

Specificity of Violations Alleged in the SCN

18. The Noticees have also averred that there is no specific averment, allegation or statement against the Noticees 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 violated. In this regard, it is further noted that the SCN

issued to the Noticees has clearly spelt out the provisions under which the desired preventive/remedial measures, etc. if found necessary, would be issued and also clearly indicate the specific nature of violations that have been alleged against it in terms of different provisions of the PFUTP Regulations, 2003. Therefore, it is observed that specific allegations were unambiguously conveyed to the Noticees and further, opportunity was given to the Noticees for tendering their response thereto. It is, therefore, incumbent on the part of the Noticees to explain their position with support of relevant evidence in response to various allegations made against it in the SCN. The judgments of the Hon'ble SC that have been relied upon by the Noticees have been perused by me and I find that these judgments are of no help to the Noticees in the instant matter.

Investigation Report/ Documents Not Provided by SEBI:

19. The Noticees have submitted that a copy of the Investigation Report and other documents on the basis of which the SCN was issued, was not provided to them despite the request made by them. From the SCN and Annexures, I find that all the relevant and relied upon documents in support of the SCN and also the findings of the investigation captured in the SCN have been forwarded to the Noticees. Further, on a comparison of the SCN and the Investigation Report, it is observed that the SCN has largely reproduced the contents of the Investigation Report.

20. In this regard, it would be appropriate to refer to the *Order of Hon'ble SAT dated February 12, 2020 in Shruti Vora vs. SEBI (Appeal No. 28 of 2020)* wherein, it was observed that: "*The contention that the appellant is entitled for copies of all the documents in possession of the AO which has not been relied upon at the preliminary stage when the AO has not formed any opinion as to whether any inquiry at all is required to he held cannot be accepted. A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find*

that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon." In view of the aforesaid, I find that the contention of the Noticee that SEBI has not provided complete documents is untenable.

21. Accordingly, I now proceed to deal with the other issues in the matter.

Issue no. (i)

22. The SCN has alleged that the issuance of GDRs by Nakoda was fraudulent as the Company had entered into a Pledge Agreement with EURAM Bank for a loan that had been availed by Vintage towards the subscription of GDRs issued by the Company. The Pledge Agreement was not disclosed to the stock exchanges which, the SCN alleges, made the investors believe that the said GDR issue was genuinely subscribed by the foreign investors.

23. In this regard, I note that Nakoda vide letter dated August 05, 2015 submitted the list of subscribers to its GDRs to SEBI, which is summarized as follows:

Sl. No.	**Name of the subscriber**	**Country of subscriber**	**Amount in USD**
1	Creative Stone Holdings Ltd.	Hong Kong	37,58,750
2	Sholari Investment Ltd	Singapore	36,37,500
3	Uranus Global Ltd	Singapore	33,95,000
4	Scheme Capital Ltd	Hong Kong	31,52,500
5	ALTG Holdings Ltd	Hong Kong	33,95,000
6	Santis Family holdings Inc	UAE	35,16,250
7	Icon Holdings Ltd	UAE	33,95,000
		TOTAL	2,42,50,000

24. However, it was observed from the escrow account details obtained from EURAM bank that, on November 25, 2010, Nakoda had received USD 24.25 million from one entity viz., i.e., Vintage and not from the above list of seven entities. Further the total amount of USD 24.25 million was received as a lump sum amount in a single transaction. During investigation, the Noticees had stated that they were informed of the list of subscribers by Prospect Capital Ltd., the

Lead Manager to the issue. However, the Investigation Report states that the Company had not produced any evidence that the list of subscribers to GDRs was received from the Lead Manager. In this regard, the Noticees have not provided any document before me evidencing that list of subscribers to GDRs was received from the Lead Manager. Moreover, as discussed above, Nakoda received the entire subscription amount from only one entity i.e. Vintage. Hence, it is clear that that there was only one subscriber to the issue, and that Nakoda and its directors were aware of the same.

25. To consider the allegations made in the SCN, it is relevant to place a chronology of the events associated with the GDR issue :-

a. **September 23, 2010** – The Board of Directors of Nakoda passed a resolution whereby it resolved to open an account with EURAM Bank for the purpose of receiving subscription money in respect of the Company's GDR issue. The excerpts from the said Board Resolution are reproduced hereunder:

"...RESOLVED FURTHER THAT ANY ONE of Shri BG Jain and Shri DB Jain, Directors of the Company, be and are hereby severally and singly authorized to sign, execute, any application, agreement, escrow agreement, documents, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required…"

" RESOLVED FURTHER THAT 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."

b. **November 12, 2010** – Vintage entered into a Loan Agreement with EURAM Bank dated November 12, 2010 (signed by Mr. Mukesh Chauradiya as Managing Director on behalf of Vintage on November 24, 2010) for availing a loan facility of USD 24.25 million with respect to the subscription of GDRs issued by Nakoda.

c. **November 12, 2010**– Nakoda entered into a Pledge Agreement with EURAM Bank, whereby the GDR proceeds received by the Company from Vintage was pledged as collateral for the loan availed by Vintage from EURAM Bank. The GDR proceeds became the security for all the obligations of Vintage under the loan agreement.

d. **November 25, 2010** – In the Escrow Account maintained by Nakoda with EURAM Bank to receive the proceeds of the GDR issue, a deposit of USD 24.25 million was made. The said amount had been deposited by Vintage for subscription of 100% of the GDR issue.

e. **November 17, 2011** – EURAM Bank vide its letter dated November 17, 2011 informed to Nakoda that:

"We refer to our recent discussion and inform you that the interest rate on deposit in the amount of the current outstanding facility amount of the Loan Agreement will be changed to 0.25% p.a. (interest calculation method ACT/360) effective with 25th November 2011.

All other terms and conditions of the original **pledge agreement dated 12th November 2010** *will remain unchanged".* (emphasis added)

This letter had been acknowledged by Nakoda, notarized at Surat and sent to EURAM bank on December 27, 2011.

f. **August 09, 2012 to August 14, 2012 –** on August 9, 2012 Nakoda requested a transfer of interest earned, *i.e.,* USD 2,75,000 from Euram Bank. On the same day, one Julia Batliner (Julia.Batliner@eurambank.coni) replied to Rashmi Bhatt (bhattrt@yahoo.co.in) and BG Jain (bgjain@nakoda.co.in) of Nakoda, stating:

"in respect of your transfer request received today we have to inform you that only an amount of USD 218,581— can be transferred due to the fact that all accounts held under customer number 580034 are **pledged as security for loan K121110002 Alta Vista International FZE according Pledge Agreement dated 12 November 2010***. If you want to transfer USD 218,581— please send new transfer request and confirm with your codeword."* (emphasis added)

g. **August 20, 2012** – D.B. Jain requested transfer of USD 2,18,581.00 (transfer effected on August 23, 2012) to Nakoda's bank account number 0336261002307 maintained with Canara Bank, Prime Corporate Branch II, Fort Mumbai in India. Thus, D.B. Jain and B.G. Jain were aware of the fact that all accounts held under customer number 580034 were pledged as security for loan to Vintage (now known as Alta Vista International FZE) according to Pledge Agreement dated November 12, 2010.

h. **September 17, 2012** – A letter was issued by EURAM Bank informing Nakoda that the loan of Vintage under loan agreement no K121110-002 was due on May 25, 2012 and that despite multiple demands for repayment, the outstanding loan amount of USD 24.25 million plus interest amounting to USD 72,413.20 had not been repaid. EURAM bank informed that it would therefore realize the balances of time deposit account held under customer number 580034 (held in the name of Nakoda), as per the pledge agreement dated November 12, 2010 and amendment to pledge agreement dated November 17, 2011. EURAM bank further advised Nakoda to pay the outstanding debt of USD 24.32 million and assume the position as pledgee regarding 19,85,500 GDRs of Nakoda, which were held as additional security by EURAM Bank.

i. **October 18, 2012** – EURAM Bank transferred USD 24.32 million from the account of Nakoda to Vintage with remarks *"Realization of pledge in respect of the loan K121110-002"*.

j. **October 19, 2012** – EURAM Bank informed Nakoda that it had proceeded to realize the balances of pledged deposit account held under the customer number 580034 (Nakoda) in conformity with the pledge agreement dated November 12, 2010 for a total amount of USD 24.32 million, in order to repay the outstanding loan of Vintage.

26. The above chronology brings out that there was a clear understanding among the Noticees to bring about this fraudulent scheme. In this regard, specific mention is made of the Loan Agreement entered into by Vintage with EURAM Bank for availing a loan facility of USD 24.25 million on November 12, 2011. It is

pertinent to note that the loan as per the said Loan Agreement was granted to Vintage on the pledge of the following assets:

> *"....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 deemed by the Bank:*
>
> *1)Pledge of certain securities held from time to time in the Borrower's a/c 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.*
>
> *2)Pledge of the account no. 580034 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."*

27. It is stated that the separate pledge agreement as mentioned above, which forms an integral part of the Loan Agreement, is the Pledge Agreement entered between Nakoda and EURAM Bank. The Pledge Agreement provided that the purpose of the pledge was "…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…" So, the purpose of the Pledge Agreement is to secure the obligations of the Borrower i.e., Vintage under the Loan Agreement. Further, the Pledge Agreement provides the circumstances in which EURAM Bank would invoke the Pledge. The said circumstances are:

> "*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 Pledge 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."*

28. Thus, from a conjoint reading of the above-mentioned terms of the Loan Agreement and the Pledge Agreement, it is quite clear that the pledging of the proceeds of the GDR issue by way of a Pledge Agreement to allow the said deposit account to be used as security for all the obligations of Vintage under the Loan Agreement, was a pre-condition for the grant of the loan to Vintage. The simultaneous execution of both the Loan Agreement and the Pledge Agreement indicates that Nakoda was itself financing the subscription of its GDR issue. Once the loan facility was activated, an amount of USD 24.25 million was received from Vintage on November 25, 2010 in the Escrow Account maintained by Nakoda in EURAM Bank for the GDR proceeds. As noted above, on October 18, 2012, EURAM Bank transferred USD 24.32 million from the account of Nakoda to M/s Alta Vista International FZE with remarks *"Realization of pledge in respect of the loan K121110-002".* It was observed from an examination of the annual report of Nakoda for Financial Year (FY) 2014-15 that Nakoda had written off USD 24.32 million (USD24.25 million + accrued interest of USD 0.07 million) on account of loan default by Vintage for which it had provided the pledge. However, Nakoda's disclosures made on BSE during FY 2011-15 were examined and it was observed that Nakoda did not disclose the write off details to its investors.

29. Noticee no.2 and 3 have stated that the pledge agreement has been forged; I am, however, not convinced with their averment for the following reasons:

   a. The notarized copy of the amendment dated November 17, 2011 to the pledge agreement refers to the pledge agreement dated November 12, 2011. In this regard, it has been submitted that Noticee No. 2 had signed the said amendment letter thinking that the same was required in continuation of his witnessing the agreement signed on October 14, 2010 by EURAM Bank AG. However, the date of the pledge agreement is clearly mentioned therein.

   Further, the subject of the letter was *"Re: Client number 580034, Amendment No.I, To Pledge Agreement dated 12th November 2010".* It cannot be accepted that the Noticees could have been so callous as to not make any enquiries regarding the contents of the same.

b. The emails dated August 13, 2012 and August 9, 2012 (which was also marked to Noticee no.3) from Euram Bank to Nakoda clearly mention that all accounts under customer number 580034 (Nakoda) were pledged as security for loan taken by Vintage according to Pledge Agreement dated November 12, 2011. The bank informed Nakoda that due to the pledge, only an amount of USD 2,18,581.00 could be transferred. Rather than objecting to the same, on August 20, 2012, Noticee no.2 requested transfer of USD 2,18,581.00 (transfer effected on August 23, 2012) to its bank account number 0336261002307 maintained with Canara Bank, Prime Corporate Branch II, Fort Mumbai.

30. The above facts show that the entire consideration received from Vintage, for the GDRs subscribed by it, was pledged and ultimately used for repayment of the loan taken by Vintage to subscribe to the GDR. Post cancellation of GDRs/ conversion into shares, IFCF converted 14,500 GDRs and sold 4,35,000 shares of Nakoda for INR 56,04,582.29 (pre-termination of GDR scheme) in the Indian securities market. Considering the fact that Vintage FZE was the sole subscriber of GDRs and it defaulted on the loan repayment, it was concluded that shares sold by IFCF were also issued without consideration.

31. Thus, I find that Nakoda, in connivance with Vintage, devised a fraudulent scheme whereby Vintage received GDRs without paying any consideration, at the cost of shareholders/ investors of Nakoda. Accordingly, I find that the allegation that Nakoda and Vintage have violated Section 12A(a), (b) and (c) of SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) & 4(1) of SEBI (PFUTP) Regulations, 2003, stands established.

32. Additionally, it has been alleged that Nakoda had made wrong disclosures to the stock exchanges regarding the investment in GDRs by foreign investors. As already brought out, the Loan Agreement had reference to the Pledge Agreement entered into between Nakoda and EURAM Bank by virtue of which EURAM Bank provided a credit facility to Vintage for the purpose of subscribing to the GDRs of Nakoda. So, the GDR issue would not have been subscribed in its entirety had the Company not given security towards the loan taken by Vintage through the Loan Agreement. These should have been reported to the Stock

Exchanges. However, the Company reported to the stock exchange on November 26, 2010 that "…*the GDR Committee of Board of Directors of the Company at their meeting held on November 26, 2010, have allotted 6,00,00,000 Equity shares of Rs. 5/- each at a price of Rs. 18/- per share underlying 2,000,000 GDRs ...*" without disclosing the pledge/loan arrangement that it had with regard to the subscription of its GDR issue. Such a disclosure may have led the investors to believe that the said GDR issue was genuinely subscribed. Therefore, in my view, such publication/disclosure of information, as seen above, was misleading and contained distorted information which induced investors to deal in the shares of Nakoda. Accordingly, I find that Nakoda has violated Regulation 4(2) (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003.

33. From the discussions above, I find that Nakoda/Company was aware and party to the fraudulent scheme to subscribe to the GDRs issued by it. Moreover, I also find that the existence of such a scheme was concealed by it from the market and its shareholders. Further, it is observed from examination of the annual report of Nakoda for FY 2014-15 that Nakoda had written off US$ 24.32 million on account of loan default by Vintage FZE for which pledge was provided by Nakoda. However, Nakoda's disclosures made on BSE during FY 2011-15 were examined and it was observed that Nakoda did not disclose write off details to its investors. I note that by not disclosing the fact of pledge agreement and write off of, Nakoda has violated Clause 36(7) of the Listing Agreement.

34. As mentioned in pre-paras, Nakoda had pledged its GDR proceeds of $24.25 Million against the loan availed by Vintage for subscription of GDRs. In the Instant matter, I note that Nakoda could not utilize its GDR proceeds due to the pledge agreement and loan availed by Vintage. Further, there was a possible obligation on Nakoda in the event of default by Vintage which is a contingent liability in nature.

35. Subsequently, it is noted that Vintage had defaulted in the repayment of loan amount of $ 24.32 million(including interest). Therefore, a contingent liability to the extent of $24.32 million was required to be disclosed by Nakoda in its financial statements. From the examination of the Annual Reports of Nakoda, it

is noted that Nakoda did not disclose the aforementioned amounts as contingent liabilities in its financial statements thereby violating Account Standard AS29. In view of the same, I conclude that, Noticee no.1 Nakoda has failed to comply with the provision of clause 50 of Equity Listing Agreement.

36. Further, I note that Nakoda in its Annual Reports for the year ending Dec 2012 and Dec 2013 has shown cash and cash equivalent as Rs. 225.22 crores and Rs. 244.73 crores respectively. These cash and bank balances includes fixed deposit held with EURAM Bank. Noticee no.2 in his email dated March 24, 2017 confirmed that cash and bank balances includes amount of US$ 24.25 million received from GDR proceeds. However, on Sep 17, 2012, an amount of US$ 24.32 million was invoked as security by EURAM bank towards the non-repayment of the loan of Vintage FZE. Even though Nakoda's fixed deposit was invoked by EURAM bank, Nakoda has shown the same as cash and bank balances.

37. I note that the Nakoda in its annual reports for the year ending Dec 2012 and Dec 2013 misrepresented cash and bank balances, thereby annual reports failed to show true and fair view of the accounts. Hence, by not complying with the provisions of Account Standard AS3, the Noticee no.1/Nakoda has violated the provisions of clauses 32 of the Listing Agreement.

38. In view of the above paragraphs, I conclude that, Nakoda did not comply with the conditions of the Listing Agreement and, thereby, has violated section 21 of SCR Act, 1956.

Issue no. (ii)

Noticee nos.2 and 3

39. During the investigation period, as seen from the Annual Report, B.G. Jain (Noticee No.3) was the Chairman & Managing Director (CMD) and D.B. Jain (Noticee No.2) was the Joint Managing Director (JMD). By way of the Board Resolution dated September 23, 2010, Noticee Nos. 2 and 3 were authorized to sign, execute any application, agreement, escrow agreement, document, undertaking etc. as may be required by EURAM Bank. By way of the said Board

Resolution, the above-named directors were also authorized to draw cheques and generally to take all such steps and do all such things as may be required from time to time on behalf of the Company.

40. It is further noted that the Pledge Agreement entered into by Nakoda with EURAM Bank, whereby a deposit account of Nakoda maintained with EURAM Bank having USD 24.25 million was given as security for all the obligations of Vintage under the Loan Agreement, had been signed by Noticee no.2 D.B. Jain. The letter dated November 17, 2011 from EURAM Bank regarding the change in interest rate which clearly mentions the Pledge Agreement dated November 12, 2011 also had been signed by D.B. Jain. The email dated August 9, 2012 from Euram Bank which states that all the accounts of Nakoda are pledged as security for the loan taken by Vintage was marked to B.G. Jain.

41. Noticee no.2 and 3 have submitted that the Pledge Agreement was forged. However, as noted above, in several correspondence subsequent to the same, the Pledge Agreement has been mentioned. In fact, when vide email dated August 9, 2012 the Company was informed that all its accounts were pledged as security for loan given to Vintage, they did not dispute the same. Rather they requested Euram to transfer the exact amount of USD 2,18,581 to its bank account number 0336261002307 maintained with Canara Bank, Prime Corporate Branch II, Fort Mumbai, which Euram had stated was available after accounting for the principal amount and interest due from Vintage. The Noticees did not raise any query regarding the same.

42. The Noticees no.2 and 3 have stated that they challenged the pledge agreement and had written to Euram Bank regarding the same from September 13, 2012 onwards. However, from the above paras, I note that Nakoda and its directors were aware of the pledge agreement much prior to that. Further, not only were they aware of the same, their conduct of requesting Euram to transfer the available amount of USD 2,18,581 to its bank account number 0336261002307 maintained with Canara Bank, Prime Corporate Branch II, Fort, Mumbai (as discussed in para 5.19(b) above), attests to their acceptance of the existence of the pledge agreement. Moreover, the Noticees have not submitted details of any

complaints made to any law enforcement agency, which further shows their involvement, especially given that a substantial amount of USD 24.32 million was at stake.

43. Noticee Nos. 2 and 3 have also submitted that they could not have pledged the proceeds on November 12, 2010 as the amount was received in the account only on November 25, 2010. However, it is evident that since Euram, Vintage, Nakoda and the Noticee directors were all involved in the scheme, all parties were assured that the amount would be received in the relevant account.

44. Further, The Noticee nos.2 and 3 have requested to conduct a forensic analysis of the signature on the Pledge Agreement. I note that the conduct of the Noticees as discussed in the preceding paragraphs goes to show that the pledge agreement was signed by the director of the Company i.e. Noticee no.2. I note that there is no need to conduct any forensic analysis of the signature on the pledge agreement.

45. Noticee nos.2 and 3 have submitted that SEBI has jurisdiction to take action against companies issuing GDRs only if such issue has an adverse impact on the Indian Securities Markets and that in the SCN issued by SEBI, there is no specific allegation that alleged activities in respect of the GDR issued by the Company adversely impacted the Indian Securities Market. I note that the aforesaid submission of the Noticees is incorrect. I note that the text of the SCN describes in detail the allegations against the Noticees and their impact on the Indian Securities Markets.

46. Noticee nos. 2 and 3 have further submitted that there is no allegation or observation regarding mis-appropriation of any funds, especially from the GDR issue by the Company or any fact indicating that the Noticees had taken any undue advantage or benefit out of the GDR issue. The aforesaid submission of the Noticees is erroneous considering that the instant matter revolves around the fact of misappropriation of funds received by the Company as GDR proceeds. It has already been established that GDRs of Nakoda were in effect sold without consideration owing to the pledge agreement. In view of the above and in light of the preceding paragraphs, the submission of the Noticees cannot be accepted.

47. Noticee nos.2 and 3 have also submitted that the allegations of fraud require a high level of proof and establishment of mens rea. In this regard, Noticees have relied on various judgments/orders of higher courts. I have perused the judgments/order relied upon by the aforesaid Noticees and I am of the view that the facts of the instant case are different and distinguishable from the facts of the cited judgments/orders and the same shall not be of any help to the Noticee.

48. In view of the above, I am of the view that the directors of the Company, namely D.B. Jain, (Noticee No.2), B.G. Jain (Noticee No.3) have violated the provisions of Section 12A(a), (b) and (c) of the SEBI Act 1992 read with Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

Noticee no.4

49. The SCN alleges that Noticee no.4 was connected to various entities involved in the GDR issue. Details of the same are given below:-

Sl. No.	**Name of entity**	**Connection/association of Arun Panchariya ("*AP*") with entity**
1	Vintage FZE	AP was Managing Director as on June 06, 2007 as well as beneficial owner.
2	India Focus Cardinal Fund (IFCF)	AP was director from August 22, 2008 to October 28, 2010, Investment Officer (100% shareholder) and beneficial owner.
3	EURAM Bank, Austria	AP was connected to Pan Asia Advisors Ltd. Pan Asia Advisors Ltd. had a joint venture with EURAM Bank, which was known by the name of EURAM Bank Asia Limited.
4	Euram Bank Asia Limited	AP was director and president (resigned on September 22, 2011)
5	Mr. Mukesh Chauradiya	AP was beneficial owner of Vintage FZE in which Mr. Mukesh Chauradiya served as Managing Director and director.

50. From the above, it was noted that IFCF, EURAM Bank, Vintage and Mukesh Chauradiya were connected to each other and Noticee no.4 Arun Panchariya was holding ownership in Vintage, IFCF, Euram Bank Asia Limited.

51. Noticee no.4 has neither submitted any reply to the SCN nor has appeared for hearing. I note that as per the KYC documents of Vintage submitted with EURAM Bank, Noticee no.4 Arun Panchariya was the beneficial owner and Managing Director of Vintage FZE as on June 6, 2007. Perusal of the Administrative Fine Statement passed by the Dubai Financial Services Authority against Arun Panchariya (by way of which, a fine of USD 12,000 was imposed on him), that on February 19, 2009 Arun Panchariya had disclosed that he was controller/director/partner in three firms, including Vintage FZE. Further, from the Annexure to Form 20B filed by Ramsai Investment Holding Private Limited, I note that the list of shareholders of Ramsai Investment Holding Private Limited for the period 2009-2013, shows that Vintage held more than 99% shares of the said company through its director, Arun Panchariya. Hence, Arun Panchariya was named as the director of Vintage till atleast 2013.

52. Thus, from the above, it is concluded that during the period when the process for issue of GDRs was initiated and the announcement of allotment of GDRs was done, Arun Panchariya had a controlling position in Vintage. Thus, I find that Arun Panchariya was involved in the running of the business during the process of issuance of GDRs, held a controlling position in Vintage and being the sole beneficial owner had benefitted from the illegal scheme.

53. In addition to the above, I note that Arun Panchariya and his connected entities have been found in several other matters pertaining to GDR Issues of listed Indian Companies, including Nakoda. Arun Panchariya was central to and instrumental in the fraud perpetrated on the investors in the Indian securities market. Arun Panchariya had influence at several stages of GDRs i.e. he was connected to Euram Bank, which was the FII and also gave the loan for GDR subscription on pledge of the GDR proceeds; he was connected to Vintage, which was the sole subscriber of the GDR issue; he was also connected to IFCF which sold converted shares in the Indian securities market.

54. In view of the above, I find that Noticee no.4 has violated Section 12A(a), (b) and (c) of the SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

Noticee no.5

55. It has been alleged in the SCN that Mukesh Chauradiya served as Managing Director and director of Vintage. Mukesh Chauradiya in his reply has submitted to SEBI has refuted the allegations made in the SCN. The same have been captured in the previous part of this order, and accordingly are not being reproduced here. It shall, however, be relevant to briefly mention herein the important grounds of defense taken by the said Noticee in respect of the allegations made in the SCN –

a. He has never been the Director or Managing Director of Vintage FZE, and he only held the position of Manager;
b. The decisions to subscribe to the GDRs and obtain loan from Euram Bank for subscribing to the GDRs was taken by Arun Panchariya and the Noticee had no role to play in it; and
c. The Noticee did not gain any other advantage, monetary or otherwise for any of the acts done by him as an employee of Vintage FZE, working under Arun Panchariya.

56. In this regard, reference is made to the Loan Agreement entered into by Vintage with EURAM Bank. The said agreement has been signed by Noticee no.5 Mukesh Chauradiya on behalf of Vintage, and in the space for providing the "Title" of the signatory, Managing Director has been mentioned. In addition to the above, the UAE Residence Permits submitted by the Noticee show his profession during the period September 14, 2008 to September 13, 2014 as General Manager. Further, the Employment Card for entry into the Jebel Ali Free Zone mention his occupation as General Manager.

57. It is seen from the above that the Noticee no.5 has represented himself to be the Managing Director/General Manager. Having thus represented himself, the Noticee cannot seek relief from the consequences of such representation by asserting that he was merely an employee. The circumstances indicate that

Mukesh Chauradiya was playing an important role in the affairs of Vintage during the relevant period. In this regard I note that a similar contention had been raised by Mukesh Chauradiya before the Hon'ble SAT in **Mukesh Chauradiya vs. SEBI** (Date of Decision: January 7, 2021 Appeal No. 260 of 2020) wherein it was argued that he was never a managing director of Vintage FZE; he was initially only a Manager and later on a General Manager. It was contended that he was never a beneficial owner of the company Vintage FZE and he has never benefited anything in the alleged violation as he was only a salaried employee of Vintage FZE. In the matter, the Hon'ble SAT held as follows:

> *"It is an undisputed fact that the appellant has signed as Managing Director as we also note at page 94 of the Memo of appeal. It is not that he signed "for managing director" or "on behalf of managing director" etc. Therefore, irrespective of the dispute relating to the designation as contended by the appellant, the appellant was undoubtedly having the power to sign as managing director. In the certificate given by the JAFZA only 3 names [and 4 designations, with the sole Director, being named as the Secretary also] are indicated who are responsible people in Vintage FZE and appellant was one of them. Therefore, the dispute as to what was the exact designation of the appellant is irrelevant in the context that admittedly the appellant signed as Managing Director of Vintage FZE. It is also important to clarify here that using a designation in other jurisdictions, such as UAE in the instant case, or elsewhere, for comparison to similar designations in India is also not relevant because designations vary widely even with respect to similarly placed officials across multiple jurisdictions. What is relevant is only whether the appellant was holding a position in which he could put his signature, that too in a loan agreement for USD 13.24 million with a bank under the designation of Managing Director. In any case designation of a person and whether a person is "an officer in default" in an organization etc are irrelevant when the charge is that of aiding and abetting fraud under the PFUTP Regulations, which is the case herein.*

58. As held by the Hon'ble SAT, the exact designation of the present Noticee is not relevant. What is relevant is whether the Noticee was holding a position in which he could put his signature in the Loan Agreement with EURAM Bank under the designation of Managing Director. From the facts of the case, it is apparent that the Mukesh Chauradiya was holding a position by way of which he could execute

binding agreements on behalf of Vintage. Accordingly, I am of the opinion that Mukesh Chauradiya held key position in Vintage and cannot plead ignorance of the scheme of manipulation. In view of the same, I find that Mukesh Chauradiya in has violated Section 12A(a), (b) and (c) of the SEBI Act 1992 r /w Regulations 3 (a), (b), (c), (d) and 4(1) of the SEBI (PFUTP) Regulations, 2003.

Issue no.III

59. The violations committed by the Noticees as detailed in previous paras wherein a fraudulent scheme of GDR issue was carried out jointly and in close connivance with each other, had acted as one part of the entire fraudulent scheme by arranging for the subscription of the GDRs through Vintage using the pledge agreement to obtain a loan from the EURAM Bank and then to dispose the shares acquired through such GDRs, thereby creating an elaborate façade of demand for the securities of Nakoda and mislead the Indian investors, which was prejudicial to the interest of the investors and the securities market, calls for imposition of monetary penalty as contemplated under section 15HA of SEBI Act, 1992 against Noticee no.1 to 5 and for contravention of listing conditions, Noticee no. 1 is also liable for imposition of penalty under section 23E of SCRA.

60. Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund { [2006]5 SCC 361 } held that "*In our considered opinion ,penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not*.''

61. In view of the above, I conclude that the Noticee no.1 has become liable for monetary penalty under Section 15HA of the SEBI Act and section 23E of the SCR Act and Noticee nos.2, 3, 4 and 5 have become liable for monetary penalty under Section 15HA of the SEBI Act.

62. Further, with reference to the violations of section 21 of SCRA read with clause 50, 32 and 36(7) of the Equity Listing Agreement makes Noticee no. 1 liable for monetary penalty under section 23E of SCRA. In this regard, I note that, the Hon'ble SAT in the matter of **Suzlon Energy Ltd. and Anr. vs. SEBI** (Appeal No. 201 of 2018) dated May 03, 2021 has held the following:

> "*Section 23E provides that where a Company fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof then penalty would be a minimum of Rs. 5 lakh upto maximum of Rs. 25 crore. The words "fails to comply with the listing conditions" cannot mean failure to comply with the conditions in the Listing Agreement. One of the requirements in the Listing Agreement which is required to be complied with is Clause 36 whereas Section 23E refers to the conditions which are imposed upon a Company when it is applying for its shares to be listed on the stock exchange platform. Section 23E has to be read along with Rule 19 of the Securities Contracts (Regulation) Rules, 1957 ('SCRR' for short). Rule 19 of the SCRR provides certain requirements with respect to a listing of securities on a recognized stock exchange. Rule 19A provides that a Company has to continuously maintain listing requirements. Rule 21 provides conditions for delisting of securities. Failure to comply with the listing conditions which are stated in Rule 19 would entail a penalty as provided under Section 23E. Thus, in our view violation of Clause 36 of the Listing Agreement will attract Section 23A(a) of the SCRA and will not attract Section 23E….."* (emphasis supplied)

63. Further, I note that an appeal has been filed by SEBI before the Hon'ble Supreme Court against the aforesaid order vide civil appeal no. 4741 of 2021. Also, a stay application has been filed before the Hon'ble Supreme Court by SEBI with respect to the findings of Hon'ble SAT in paragraphs 19 of the aforesaid order. In the view of the above, I note that the aforesaid stay application and the appeal is pending. It is important to highlight that vide orders in the matter of **M/s NDTV vs. SEBI** (Appeal no. 358 of 2015) dated August 07, 2019, and **Oasis Securities Ltd. & Ors. Vs. SEBI** (Appeal no. 316 of 2018), dated March 17, 2020, the Hon'ble SAT has upheld the imposition of penalty

under section 23E of SCRA on the appellant companies therein for the violation of clauses of the listing agreement. The limited purpose of going into the issue of violation of listing agreement by the Company is to determine if the Company has violated the provisions of the listing agreement, and if yes, to impose penalty, however, the enforcement of penalty with respect to the violation under section 23E of SCRA shall be subject to the outcome of the aforesaid appeal before the Hon'ble Supreme Court.

Issue no. IV

64. While determining the quantum of penalty under Section 15HA of SEBI Act it is important to consider the factors stipulated in Section 15J of SEBI Act, which reads as under:

> **"15J - Factors to be taken into account by the adjudicating officer**
> *While adjudging quantum of penalty under section 15-I, 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.*
> ***Explanation:***
> *For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F,15G,15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."*

65. Having regard to the factors listed in section 15J of SEBI Act read with Rule 5(2) of the SEBI Adjudication Rules and in the light of Supreme Court's judgment in the matter of SEBI vs Bhavesh Pabari [(2019) 18 SCC 246], it is noted from the material available on record that any quantifiable gain or unfair advantage accrued to Noticees or the extent of loss suffered by the investors as a result of the default in this case cannot be computed. There are no investors' complaints on record arising out of such defaults. However, it would be appropriate to once again 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 *"…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."*

66. With respect to repetitive nature of default, I note that actions have been taken by SEBI in the past against Noticee Nos. 4 and 5 for their involvement in similar fraudulent GDR schemes.

G. ORDER

67. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with rule 5 of the SEBI Adjudication Rules and in the exercise of powers conferred upon me under section 23-I of SCRA,1956 read 5 of the SCRA Adjudication Rules, I hereby impose following penalty on Noticees no.1 to 5 for the aforementioned violations, as discussed in this order.

Noticee No.	Name of the Noticee	Provision	Penalty (Rs.)
1	Nakoda Ltd	Section 15HA of SEBI Act	25,00,000 (Twenty Five Lakhs)
		Section 23E of SCR Act	5,00,000 (Five Lakhs)
2	Mr. D B Jain	Section 15HA of SEBI Act	20,00,000 (Twenty Lakhs)
3	Mr. B G Jain	Section 15HA of SEBI Act	15,00,000 (Fifteen Lakhs)
4	Mr. Arun Pachariya	Section 15HA of SEBI Act	50,00,000 (Fifty Lakhs)
5	Mr. Mukesh Chauradiya	Section 15HA of SEBI Act	10,00,000 (Ten Lakhs)

***** *As noted above, in light of the fact that an appeal has been before the Hon'ble Supreme Court in the Suzlon Energy (supra) matter, the monetary penalty imposed on the Company under section 23E of the SCRA shall be payable depending upon the outcome of the aforesaid appeal before the Hon'ble Supreme Court.*

68. In my view, the said penalty is commensurate with the violation committed by these Noticees in this case.

69. 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

70. The Noticees shall forward the said demand draft or the details/ confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-1, DRA-1, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

71. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this order, consequential proceedings including, but not limited to, 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.

72. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order shall be sent to the Noticees and also to the Securities and Exchange Board of India.

Date: August 30, 2022 **VIJAYANT KUMAR VERMA**
Place: Mumbai **ADJUDICATING OFFICER**