BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/VV/PSS/2023-24/28469

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

In respect of Noticee
Arun Panchariya
(AEVPP6125N)

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

A. BACKGROUND

1. Securities and Exchange Board of India ("**SEBI**") had conducted investigation against several Indian companies including Nakoda Limited that had issued Global Depository Receipts ("**GDR**") in overseas markets. In this regard, Show Cause Notice ("**SCN**") dated January 17, 2018 was issued by the then Adjudicating Officer Mr.Sahil Malik to the Arun Panchariya (hereinafter "**Noticee**"/"**AP**") and others. The said SCN culminated into Adjudication Order dated August 30, 2022 passed by the Undersigned whereby penalty of Rs.50 lakhs was imposed upon the Noticee. The Noticee preferred an appeal before the Hon'ble Securities Appellate Tribunal ("**SAT**") against the said adjudication order. SAT vide its final order dated March 28, 2023 ("SAT order") remitted the matter to the Adjudicating Officer to pass a fresh order after providing SCN and opportunity of hearing to the Noticee. The relevant excerpt from the SAT order is as under:

> *"12. In view of the aforesaid, we are of the affirmed view that the matter proceeded ex-parte against the appellant without serving a show cause notice and without giving an opportunity of hearing. The impugned order consequently is violative of the principles of natural justice and cannot be sustained. All the impugned orders insofar as the appellant is concerned are quashed. The appeals are allowed. The matter is remitted to the AO to pass a fresh order after providing a show cause notice and after providing an opportunity of hearing to the appellant. All the misc. applications are accordingly disposed* of."

B. APPOINTMENT OF ADJUDICATING OFFICER

2. Pursuant to the order of the Hon'ble SAT remanding the matter back to AO, SEBI has appointed the Undersigned as the Adjudicating Officer vide order dated April 6, 2023 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 ('**Adjudication Rules**') to inquire into and adjudge under section 15HA of the SEBI Act.

C. SHOW CAUSE NOTICE

3. It was directed by SAT order that the appellant (Noticee) or the learned counsel for the appellant (Noticee) will appear before the AO on 10th April, 2023 on which date the AO will serve the show cause notice upon the appellant or his learned counsel and from there onwards the matter will proceed in accordance with law. Accordingly, on April 10, 2023, SCN dated January 17, 2018 was handed over to the Authorized Representative of the Noticee. It is pertinent to mention here that SCN dated January 17, 2018 was also sent to the email id of the Authorized Representative of the Noticee Advocate Sandeep Wadhawan on April 6, 2023 by digitally signed email.

4. The contents of the SCN dated January 17, 2018 are summarised as under:-

    4.1) SEBI had conducted investigation against several Indian companies that had issued GDRs 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, M/s. Vintage FZE ("**Vintage**"), now 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:

A) GDRs were issued with the intention of defrauding Indian investors

B) Shares underlying GDRs were issued with proper consideration and

C) Appropriate disclosures with respect to Listing Agreement, if any were made

Details of issuance of GDRs

4.2) Nakoda issued 20,00,000 GDRs (US$ 24.25 million approximately INR 108.00 crores) on November 26, 2010. Summary of the GDR issue is tabulated below:

GDR issue date	No. of GDRs issued (mn.)	Capital raised (US$ mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
26-11-2010	2.00	24.25	DBS Bank, Mumbai	6,00,00,000 equity shares of Rs.5 each at a price of Rs.18 per share (30 shares each for every GDR)	The Bank of New York Mellon	Prospect Capital Ltd., London	EURAM Bank, European American Investment Bank AG, Austria	Luxembourg Stock Exchange

Subscribers and source of funds for GDR issues:

4.3) Nakoda vide letter dated August 05, 2015 submitted to SEBI the list of subscribers to its GDRs were as follows. The company further informed that the subscriber details were received from lead manager i.e. Prospect Capital Ltd. However the company had not produced any evidence that the list of subscriber to GDRs was received from the lead manager.

Sl. No.	Name of the subscriber	Country of subscriber	Amount in US$
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

Sl. No.	Name of the subscriber	Country of subscriber	Amount in US$
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

4.4) During the course of investigation, it was observed that Vintage signed a Loan Agreement dated November 12, 2010 with EURAM Bank for payment of subscription amount of US$24.25 million, the bank with which the GDR proceeds of Nakoda were deposited in the escrow account. It was further observed that Nakoda signed a Pledge Agreement dated November 12, 2010 with EURAM Bank, on the same date on which Vintage signed a loan account with Euram Bank, to pledge GDR proceeds as collateral against the loan availed by Vintage.

4.5) It is observed that Nakoda opened a retail bank account (a/c no. 580034) with EURAM Bank. During the course of investigation, it was observed from the escrow account details obtained from the EURAM bank that, on November 25, 2010, the company received US$ 24.25 million the amount from VINTAGE FZE and not from the above seven subscribers. Further total amount of US$ 24.25 million was received as a single amount and not as bifurcated as mentioned in the above table. It is also observed that since Nakoda pledged entire GDR proceeds with EURAM Bank for single subscriber i.e. Vintage FZE and was also aware of the fact that the GDR issue was subscribed by Vintage FZE only. Despite knowing, false list of above mentioned subscriber were informed by Nakoda to stock exchange as evidenced from Bombay Stock Exchange's email dated March 01, 2017.

<u>Loan Agreement:</u>

4.6) Vintage FZE ("Vintage") opened a loan account (a/c no. 540012-068-8) with EURAM Bank and obtained loan of US$ 24.25 mn for subscribing to GDRs of Nakoda by entering into a loan account dated November 12, 2010. The said loan agreement was signed by Mukesh Chauradiya as Managing Director on behalf of Vintage FZE on November 24, 2010. On perusal of copy of Know Your customer documents (signed on June 6,

2007) of Vintage available with EURAM Bank, it is observed that as on June 6, 2007 Noticee Arun Panchariya is the beneficial owner & director of the Vintage FZE and Mukesh Chauradiya is one of the director authorised to sign on behalf of Vintage. From the above, it is clear that Noticee and Mukesh Chauradiya were managing affairs of Vintage FZE and they were responsible for all acts and deeds of Vintage FZE.

Pledge Agreement:

4.7) A Pledge Agreement dated November 12, 2010 was signed between Nakoda (as Pledger) and EURAM Bank (as Bank). Agreement was signed by Mr.D.B. Jain on behalf of Nakoda. It was observed that subscription of GDRs was done through loan availed by Vintage from EURAM Bank. On perusal of pledge agreement and loan agreement, it is observed that bank account which GDR proceeds were held, was in the name of Nakoda but the amount deposited in the account was not at the disposal of the Nakoda as the same was kept as collateral. It was observed that board of Nakoda had authorized one of the directors viz., Mr.D.B. Jain and B.G. Jain to sign/execute any agreement and other papers as required by EURAM Bank and authorized EURAM Bank to use the funds deposited in its bank account as a security in connection with loans. On the basis of authorization given by the Board, Mr.D.B. Jain signed the pledge agreement which was an integral part of loan agreement entered into between Vintage and Euram bank thereby acted as security to the loan availed by Vintage FZE for subscription of GDRs. It was observed from the company reply dated March 04, 2017 that Noticees D.B.Jain , B.G.Jain and S.K.Bhoan have attended the board meeting dated September 23, 2010. It is also observed that during November 2011, Nakoda acknowledged and accepted the reduction of interest rate from 1.00% to 0.25% pa, towards deposit made with EURAM bank pursuant to the pledge agreement dated November 12, 2010. Hence, it is evident that, Nakoda was aware about the pledge agreement.

4.8) Hence, it is clear that the manner & circumstances of signing the pledge agreement by Mr.D.B.Jain shows that the entire scheme of issuance of

GDR's architectured by the company, Arun Panchariya and his associates, in furtherance of common intention of issuance of GDR's without real inflow of money into the company. Further from the Nakoda's request for transfer of interest amount US$ 218,581 dated August 23, 2012 evident that D.B. Jain and B.G. Jain were aware of the fact that all accounts held under customer number 580034 are pledged as security for loan K121110-002 Alta Vista International FZE ("Earlier called as "Vintage FZE") according to Pledge Agreement dated 12 November 2010.

Loan DEFAULT by Vintage FZE

4.9) EURAM bank vide its letter dated September 17, 2012 informed to Nakoda that, the loan of Alta vista International FZE under loan agreement no K121110-002 was due on May 25, 2012. Despite multiple demands for repayment Alta Vista International FZE has not repaid the outstanding loan amount of US$ 24.25 million plus interest amounting to US$ 72,413.20. Therefore, the bank informed that it will realize balances of time deposit account held under customer number 580034, as per the pledge agreement dated November 12, 2010 and amendment to pledge agreement dated November 17, 2011 to repay the outstanding loan of Alta Vista International FZE. The EURAM bank further advised Nakoda to pay the outstanding debt of US$ 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. The EURAM Bank further sought consent of Nakoda on or before October 01, 2012. On October 18, 2012, it is observed that, the bank transferred US$ 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".

4.10) 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.

Copy of the Nakoda's e-mail dated March 24, 2017 accepting no specific disclosures were made informing to BSE & NSE regarding write off of US$ 24.32 million is available on record. However, company informed that it had written off entire amount under profit and loss account statement during the annual report 2015. Therefore, Nakoda is responsible for the loss to the shareholders to the tune of US$ 24.32 million which was written off by Nakoda through a fraudulent scheme wherein Nakoda 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.

<u>Cancellation of GDRs (conversion into equity shares) and sale of equity shares in India</u>

4.11) On perusal of the details of GDR transactions provided by EURAM Bank, it is observed that on April 04, 2011 Vintage FZE Alta Vista FZE had transferred 14,500 GDRs to India Focus Cardinal Fund ("IFCF"). IFCF had converted these GDRs into 4,35,000 equity shares on April 07, 2011. This is termed as cancellation of GDRs. These shares were sold in the Indian Capital Market. DBS Bank email dated August 22, 2016 provided conversation details of GDRs.

4.12) IFCF sold 4,35,000 equity shares (which it received post cancellation of GDRs) in Indian securities market for Rs.56,04,582.29 during the period from April 25, 2011 to May 02, 2011. Details of the sale of shares of Nakoda was sought from BSE on March 01, 2017. BSE vide e-mail dated March 02, 2017 provided details of sale of shares of Nakoda by IFCF.

4.13) EURAM Bank was registered as Foreign Institutional Investor (FII) in India (during the period November 21, 2008 to November 20, 2011). IFCF was registered as sub account of FII (FPI) - EURAM Bank from December 12, 2008 to July 19, 2011. IFCF was incorporated on August 22, 2008 in Mauritius. It is observed that no other sub account was registered with EURAM Bank except IFCF. Hence, EURAM Bank, registered as FII only to facilitate IFCF to become its sub a/c and off loaded the converted shares in the Indian securities market.

4.14) Since, IFCF sold underlying shares pertains to 14,500 GDRs were bought without consideration, IFCF has acted as conduit to AP to off load shares of Nakoda. AP was the beneficial owner of Vintage FZE and IFCF. AP arranged loan for the subscription to GDRs and sell the GDRs to FII-Sub account which, in turn, dump the converted equity shares in the Indian securities market. Considering the fact that Vintage FZE was sole subscriber of GDRs and it has defaulted on the loan repayment, it is evident that shares sold by IFCF, and the shares sold by Bank of New York Mellon (BNY Mellon) (post termination of GDR programme) were issued without consideration and were created through fraudulent scheme. The sale of shares through IFCF was also part of the scheme, thereby, AP, Vintage FZE, and IFCF also party to the fraudulent scheme and their acts are in violation of section 12A (a), (b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.

4.15) In an nutsheel, D.B.Jain signed the Pledge Agreement into with EURAM Bank. The aforesaid Pledge Agreement was an integral part of Loan Agreement entered into between Vintage FZE and EURAM Bank. These agreements enabled Vintage FZE to avail the loan from EURAM for subscribing GDRs of Nakoda. The GDR issue would not have subscribed had the Company not given any such security towards the loan taken by Vintage FZE. 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 …" which made investors believe that the said GDR issue was genuinely subscribed. The arrangement of Pledge Agreement and Loan Agreement resulted in subscription of GDR issue of the company which was not disclosed but reported misleading news to the stock exchange which contained information in a distorted manner and might have influenced decision of investors. Thereby, the scheme of issuance of GDRs was fraudulent. Further, an amount of US$24.32 million was invoked as security by EURAM Bank towards the non-repayment of the loan of Vintage FZE. Considering the fact that Vintage FZE was the sole subscriber to the GDR issue and it has defaulted in repayment of Loan, it is therefore evident that GDRs in turn the underlying equity shares were acquired by Vintage FZE without payment of consideration.

TERMINATION OF GDR ISSUE BY GLOBAL DEPOSITORY:

4.16) On October 25, 2012 and November 20, 2012 Nakoda written two letters to Bank of New York Mellon (Global Depository) (hereinafter referred as '**BNY Mellon**') informing that Nakoda became pledgee of 19,85,500 GDRs and requested that no shares were transferred or sold without its consent. On October 26, 2012 and November 30, 2012 BNY Mellon informed that, it cannot take note a pledge on GDRs and in case anyone approaches for conversion of GDRs, BNY Mellon will direct to Nakoda. Apart from writing two letters to BNY Mellon, Nakoda has not taken any steps to protect interest of its shareholders. It is also shows that, Nakoda was aware about the fact that it entered pledge agreement with EURAM Bank.

4.17) It is observed that, BNY Mellon has sent a resignation letter dated December 06, 2013 to Nakoda informing the termination of GDR program and asked to appoint a successor depositary bank on or before April 07, 2014 failing which it will terminate the GDR program and notify such termination. Even though company was pledgee of GDRs, it has not taken any steps for appointing new Global Depository. Since the company did not appoint any depositary bank, and therefore on April 16, 2014, BNY Mellon announced its termination notice publicly. As per the termination notice, DR holders had two options i) take the possession of underlying shares or ii) receive the sale proceeds of shares once BNY Mellon sold underlying shares in Indian Stock exchanges. On July 14, 2014 BNY Mellon, further announced that it would no longer accept deposits of shares for GDR issuance or cancellation of GDRs effective July 17, 2014.

4.18) BNY Mellon, the Global Depository bank vide email dated March 01, 2017, informed to SEBI that, it sold 5,95,65,000 shares of underlying 19,85,500 GDRs from January 2015 to October 2015 for Rs.1,81,83,538.71 in accordance with termination of GDR agreement. In accordance with Clause 21 of the Terms & Conditions of the Deposit Agreement 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 underlying shares through DBS Bank (Local custodian). DBS Bank vide email dated February 22, 2017 informed to SEBI that, based on the instruction of BNY Mellon, DBS bank sold 5,95,65,000 shares of Nakoda for Rs. 1,81,83,538.71 (including income tax). It is further observed that, DBS bank remitted sale proceeding of Rs. 1,11,32,108.18 to BNY Mellon. Later BNY Mellon remitted back Rs. 1,11,32,108.18 sale proceedings to DBS Bank pursuant to SEBI interim order dated June 16, 2016. The GDR program was terminated by BNY Mellon (Global Depository Bank) on April 16, 2014. As on the date of termination of program, 19,85,500 GDR's (5,95,65,000 shares) were outstanding, which was a material event. Nakoda failed to inform Indian stock exchanges about termination of GDR program.

<u>DELISTING OF GDRS</u>

4.19) GDRs were listed on Luxembourg Stock Exchange ("LUX") w.e.f. November 29, 2010 and delisted w.e.f. October 15, 2014. Corporate announcements made by Nakoda in the month of October 2014 were examined and it was observed that Nakoda did not inform stock exchange about delisting of GDRs on LUX. Shareholding pattern available on BSE website for the quarter ended December 2014, depicts that 5,95,65,000 shares were outstanding at the time of delisting of GDRs. Even though Nakoda was pledge of the GDRs, it did not take any steps to get back shares underlying GDRs. However, Annual report of Nakoda for FY 2014-15 mentions that GDRs are listed on Delisting of GDRs and termination of GDR programme by global depository were material events as there was a possibility of sale of shares by Global Depository as well as price sensitive information which could have impacted the price of the scrip. Nakoda did not inform BSE about delisting of GDRs on LUX and termination of GDR programme.

Noticee Arun Panchariya's involvement in the fraudulent issuance of GDRs

4.20) It is observed that Noticee/AP had devised and structured fraudulent GDR scheme of the company through entities connected to him. According to an Administrative Fine Statement available on Dubai Financial Services Authority (DFSA) website, AP held positions with Pan Asia Advisors Ltd. (now known as Global Finance and Capital Ltd.), Vintage FZE (now known as Alta Vista International FZE) and IFCF (Mauritius). Summary of the connection/ association of AP with various Noticees related to present investigation matter is tabulated below:

Sl. No.	Name of Noticee	Connection/association of AP with Noticee
1	Vintage FZE (now known as Alta Vista International 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 connected Pan Asia Advisors Ltd. had joint venture with EURAM Bank namely 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.
6	Mr. John Behar	AP and Mr. John Behar were director in Pan Asia Advisors Ltd. AP- promoter/ director (April 24, 2006 to September 29, 2011)- Mr. John Behar was director (April 24, 2006 to September 29, 2011) of Pan Asia Advisors Ltd. Mr. John Behar provided professional advice to AP regarding Pan Asia Advisors Ltd.
7	Prospect Capital Limited	Prospect Capital Limited is wholly owned and managed by Mr. John Behar. Mr. John Behar is connected to AP.

4.21) From the preceding paragraphs, it is clear that IFCF, EURAM Bank, Vintage FZE and Mukesh Chauradiya are connected to each other and AP was holding ownership in Vintage FZE, IFCF, Euram Bank Asia Limited. Therefore, it is apparent that AP was main part of the fraudulent scheme of issuance of GDR's. Further, email dated October 09, 2010, of Ms. Mona Vora that the company was advised to send documents for opening of bank account with Euram Bank to AP.

4.22) Since, IFCF sold underlying shares pertain to 14,500 GDRs were bought without consideration, IFCF has acted as conduit to AP to off load shares of Nakoda. AP was the beneficial owner of Vintage FZE and IFCF. AP arranged loan for the subscription to GDRs and sell the GDRs to FII-Sub account which, in turn, dump the converted equity shares in the Indian securities market. Considering the fact that Vintage FZE was sole subscriber of GDRs and it has defaulted on the loan repayment, it is evident that shares sold by IFCF, and the shares sold by Bank of New York Mellon (BNY Mellon) (post termination of GDR programme) were issued without consideration and were created through fraudulent scheme. The sale of shares through IFCF was also part of the scheme architecture of AP.

4.23) From the material it is observed that Prospect Capital Limited, London was the lead manager. D.B.Jain in his statement before investigating authority on March 03, 2017 stated that all documentation work for GDR issue was done by Lead Manager. Prospect Capital Ltd. advised through all the phases of the offer process from preparation of the GDR offer documents till listing of GDRs. Vide email dated December 23, 2015, Mr. John Behar provided details of Prospect Capital Ltd. and his connection with AP. From the examination of the information provided by John Behar it is observed that Prospect Capital Limited was incorporated in November 2004 and is wholly owned and managed by Mr. John Behar. With respect to connection with AP, Mr. John Behar submitted that he had provided professional advice to AP in applying for Financial Services Authority (FSA) UK (predecessor of Financial Conduct Authority UK) for authorization of AP's company Pan Asia Advisors Limited. Subsequently, from October 17, 2006 to November 09, 2007, Mr. John Behar was contracted to provide in-house compliance oversight for Pan Asia Advisors Limited. Copy of Mr. John Behar's email dated December 23, 2015, evidencing above is also available on record. From the above, it is observed that Mr. John Behar was connected to AP since 2006.

4.24) In view of the above, it is alleged that AP had structured the fraudulent GDR issue through his connected Noticees and thereby has allegedly violated the provision of Section 12A(a),(b) and (c) of the Act read with Regulations 3(a),(b), (c), (d) and 4(1) PFUTP Regulations.

D. REPLY AND HEARING

5. Noticee has filed his reply dated May 30, 2023 in response to the SCN. Noticee has availed the opportunity of hearing on June 1, 2023 wherein Authorized Representative of the Noticee Mr.Sandeep Wadhawan appeared before the Undersigned via video-conferencing and made submissions on behalf of the Noticee.

6. The key submissions made by the Noticee vide reply dated May 30, 2023 are summarized as under :-

6.1) There is an inordinate and unexplained delay in issuing Show Cause Notice qua the noticee to the extent of more than 8 years. Further, there is also an inordinate and unwarranted delay in taking up the Adjudication Proceedings.

6.2) The corporate announcement made by the company to the BSE reported misleading news which might have influenced the decision of investors and was, therefore, alleged to be fraudulent in nature. In this regard, it is submitted that assuming the company had published information at the Stock Exchange, as per the SEBI, and then it might not have influenced the decision of the investors. Therefore, if the company has not informed the Stock Exchange or has misinformed the Stock Exchange, the Noticee cannot be held liable for any act on behalf of the company. Under such circumstances, had the company informed the Stock Exchange, there was no occasion for a SEBI to allege anything against the Noticee. Even otherwise, it is the company who has to be held liable and on the other hand, if any default having been occurred subsequently, the same cannot be attributed to the Noticee. Noticee relies on judgment of the Hon'ble Supreme Court in *Civil Appeal No.380 of 2020 titled as Securities and Exchange Board of India Versus Adi Cooper*, wherein, the Hon'ble Supreme Court observed that the transactions become fraudulent considering the fact that neither the arrangement nor the Resolution was ever disclosed to the shareholders of the company or the investors of the security markets through BSE. Noticee also relies on judgment dated 19.07.2022 in *Appeal No.745 of 2021 titled as M/s. Winsome Yarns Ltd. Vs, SEBI,* passed by *Hon'ble Tribunal*, wherein it has been held that the responsibility lies with the company to forward such information which is true and the blame cannot be passed to another entity.

6.3) In so far as Vintage FZE is concerned, in the chart in Para no.70 it is alleged that AP was Managing Director as on June 6, 2007 and beneficiary owner while referring to Annexure 8 and one Alkarni holding Ltd was shareholder of Vintage as on December 28, 2010. Whereas, the transactions in the present case were held in November 2010 and even the Noticee had already resigned from the Vintage in August 2010. Therefore, though the noticee is disputing all the said documents but still the said documents are not sufficient to connect noticee with the Vintage as on the date of transaction in November 2010.

6.4) The Lead Manager Prospect Capital Ltd. is not related in any manner with the noticee Arun Panchariya. Even as per the Annexure 28, in response to query No.7 it has been replied that there is no relationship of any kind nor has there been any relationship of any kind between Prospect Capital Ltd or Arun Panchariya.

6.5) Vintage FZE or the Lead Manager were never made a party in the present proceedings. In the absence of the said entities having made parties, the allegations of connection against the noticee fall to the ground and cannot sustain the test of legality or of fairness.

6.6) In so far as IFCF is concerned, the noticee had already resigned in October, 2010 whereas, the transactions in the present case are of November 2010 and conversion of the GDRs by IFCF are after 2011 or 2012. In fact the ownership rights of the GDRs as well as shareholding pattern of Class A share belongs to Euram Bank, Austria.

6.7) Euram Bank, Asia had nothing to do with Euram Bank Austria. Euram Bank, Austria was the FII of IFCF and the noticee had no control at all over Euram Bank, Austria. Even Euram Bank Austria had also denied any connection with the noticee.

6.8) As per the interim order dated 29.09.2011 passed by the SEBI, Arun Panchariya, Pan Asia, Euram Bank and IFCF were already banned from dealing in Securities Market. Post the year 2011, Arun Panchariya was full time Consultant General and was not at all director in any of the companies nor holding any office of profit with any other companies. The case set up by the SEBI is that Vintage repaid the loan amount to the extent of USD 218581(approx.) from 2011 to 2012 and thereafter, defaulted on the repayment of outstanding loan on account of which Euram Bank had adjusted the outstanding amount to the extent of USD 24.25 million and therefore, the shareholders of Nakoda Pvt. Ltd had suffered the loss. In this regard, it is submitted that it is not discernible as to how the noticee is being connected post 29.09.2011 with the funds and other entities. All the conversions of the GDR was done by the said entities post 29.09.2011 which cannot be attributed to the noticee. It is not discernible as to how any proceeds, profits or gain could go to Arun Panchariya especially when he was already restrained from dealing in Security Markets in the year 2011 itself.

6.9) Since the noticee had already resigned from the Vintage FZE and thereafter Mukesh Chauradiya had taken over as Managing Director, the noticee has no relationship with said Mukesh Chauradiya nor any documents are there on record to show any connection between the noticee and Mukesh Chauradiya. In order to connect Mukesh Chauradiya with noticee, a reference has been made to Annexure 25 to allege that the noticee was a Director in Ramsai Investment Holding Pvt Ltd from 04.02.2008 to 18.08.2010 and Mukesh Chauradiya was Director in Ramsai Investment from 17.08.2010 to 17.03.2016. This is a very hypothetical and illusionary way of connecting noticee with Mukesh Chauradiya. Firstly the noticee categorically deny any connection with Mukesh Chauradiya. Secondly, simply because the noticee and Mukesh Chauradiya were having common period of Directorship of one day in Ramsai Investment does not lead to conclusion that noticee is connected to Mukesh Chauradiya. Further it is pertinent to mention that the noticee had resigned from the Vintage FZE in the year 2010 and it is alleged that Vintage FZE had transferred 14500 GDR to IFCF to April 4, 2011. As per the Annexure 25 itself in the list of shareholder as on 30.09.2011, the noticee was not even a shareholder of the Vintage FZE as the shareholding of Vintage FZE was of the Mukesh Chauradiya or Vintage itself.

6.10) Arun Panchariya never controlled any broker, any Fund or contacted for any purpose of conversion or sale of GDR or underlying shares

D. REVELANT PROVISIONS

7. 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:

SEBI Act,1992

<u>Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.</u>

***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;

PFUTP Regulations, 2003

***Regulation** 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

***Regulation 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.

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 twenty five crore rupees or three times the amount of profits made out of such failure, whichever is higher.*

E. ISSUES

8. I have carefully perused the allegations levelled against the Noticee in the SCN, the reply of the Noticee and also the documents/evidence available on record. The following issues arise in the matter :-
   i) Whether Noticee Arun Panchariya has violated section 12A (a), (b) and (c) of SEBI Act r/w Regulations 3(a), (b), (c) and (d) and Regulation 4(1), of PFUTP Regulations ?
   ii) If the answer to Issue No.(i) is in affirmative, do the violations, if any on the part of the Noticee would attract monetary penalty ?
   iii) If the answer to Issue No.(ii) is in affirmative, what would be quantum of the monetary penalty that should be imposed upon the Noticee ?

F. CONSIDERATION AND FINDINGS

9. I note that the Noticee has raised preliminary objection and it would be first appropriate to deal with the said preliminary objection raised by Noticee in the matter as under :-

Delay in issuance of SCN

10. The Noticee has averred that there is an inordinate and unexplained delay in issuing Show Cause Notice qua the noticee to the extent of more than 8 years and that there is also an inordinate and unwarranted delay in taking up the Adjudication Proceedings. In this regard, it is pertinent to note that SEBI had investigated issue of GDRs in the overseas markets by the Indian companies on receipt of a complaint, in the year 2009, regarding misuse of GDR route by few companies. The investigation prima facie had revealed that in many of the GDR issues, money for subscribing to GDR was availed as a loan by the subscribers, from an overseas Bank wherein the issuer company gave security for such loan taken by the subscribers, by pledging/creating charge on the GDR issue proceeds. It was also observed that such subscribers subscribed the GDRs without any valid consideration and sold the underlying shares in the securities market in India. Accordingly, where such modus operandi were prima facie observed such GDR issues were examined, SEBI initiated investigation as soon as SEBI came to know that such companies have adopted the modus operandi

as referred to above. Since, the GDRs are issued abroad and related transactions were carried out outside India, SEBI had to call information from the various entities situated abroad in such large number of fraudulent GDR issues. Such information inter alia included seeking information on diversion of funds and subsequent tracing of proceeds from large number of entities and the details of (a) GDR issuer companies, (b) custodian of securities, (c) overseas depository, (d) overseas banks, (e) subscribers of GDR issue (mostly overseas), (f) lead manager, (g) various layers of transactions, etc., which was not readily forthcoming. Therefore, SEBI had to collect information and documents from various sources including approaching the foreign regulators for assistance in procuring information and documents from the concerned entities situated outside India from many jurisdictions.

11. The foreign regulators had also to collect this information from the concerned entities and then to furnish to SEBI. Thus, the process of collection of information in the matter was complex, tedious and time consuming. It is noted that in most of these cases Mr. Arun Panchariya (Noticee) and his connected entities were found to be involved. It is noted from SEBI order dated June 16, 2016 that investigation was initiated in respect of 59 GDR issues made by 51 Indian Companies during the period 2002 to 2014. Nakoda was one such GDR issuer where such modus operandi were also observed. 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. I note that after completion of the investigation, the SCN was issued to the Noticee dated January 17, 2018. Therefore, the time taken for completion of collective investigation into a large number of similar cases and also for issuing SCNs to a large number of Noticees is fairly understandable and cannot be ignored.

12. 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.

13. 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 investigation was required to be done beyond the borders of India which took time."*

14. In view of the above, I am inclined to reject the contention of delay raised by the Noticee as the Hon'ble SAT has accepted the complexity involved in the investigation process of said GDR issues and held that such matters are bound to take longer than usual time as various entities from other jurisdictions are also involved. Accordingly, I do not accept that there is delay in the matter that would vitiate the proceedings.

15. Having addressed the aforesaid preliminary issue, I shall now proceed to examine the key issues to determine the veracity of allegations raised against the Noticee :-

Issue no. (i)

16. It is alleged in the SCN 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. It has been alleged in the SCN that AP had devised and structured fraudulent GDR scheme of the company through entities connected to him.

17. 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

18. 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. It is not in dispute that 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 i.e. Vintage, and that Nakoda and its directors were aware of the same.

19. 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. April 04, 2011 – Vintage transferred 14500 GDRs to IFCF.

f. April 07, 2011 – IFCF converted 14500 GDRs in to 4,35,000 equity shares.

g. April 25 2011 to May 02, 2011 – IFCF sold 4,35,000 equity shares in Indian securities market for Rs.56,04,582.29.

h. 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.

i. 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)

j. 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.

k. 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.

l. 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"*.

m. 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.

20. The above chronology brings out that there was a clear understanding among the AP and other entities 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."*

21. 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."*

22. 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 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.

23. I now proceed to deal with the contentions raised by the Noticee in his reply.

Connection with Vintage FZE

24. In his reply, Noticee has taken the contention that he had resigned from Vintage in August 2010. Noticee in his submissions has denied being the beneficial owner of Vintage FZE and submitted that the documents are not sufficient to connect noticee with the Vintage as on the date of transaction in November 2010.

25. In this regard, I observe that the loan agreement and pledge agreement in question were executed on November 12, 2010. The loan agreement was signed by Mukesh Chauradiya as managing director on behalf of Vintage. I note that as per the KYC documents of Vintage submitted with EURAM Bank (Annexure 8), Noticee no.4 Arun Panchariya was the beneficial owner. The said document is dated June 6, 2007. From the same document, it is also clear that AP was also a director in Vintage as on June 6, 2007. Also, from the admission of the Noticee itself it is established that he was a Director in Vintage FZE till August 2010. It is pertinent to note here that cessation of directorship in the Vintage does not mean cessation of beneficial ownership of Vintage.

26. Further, from the perusal of the Administrative Fine Statement (Annexure 23) passed by the Dubai Financial Services Authority ("DFSA") against Arun Panchariya (by way of which, a fine of USD 12,000 was imposed on him), I note that on February 19, 2009 Arun Panchariya had disclosed that he was controller/director/partner in three firms, including Vintage FZE. From the aforesaid documents, it is clear that AP was beneficial owner of Vintage till atleast February 19, 2009.

27. I also note that a share certificate bearing no.49754 in respect of Alta Vista International FZE (Alta Vista/Formerly Vintage FZE) issued by Jebel Ali Free Zone Authority is available on record as part of Annexure 8. The said certificate is dated November 4, 2010 and a verification seal of EURAM Bank dated April 11, 2012 is also affixed on the said certificate. The said certificate declares that Alkarni Holding Limited ("Alkarni") is the registered owner of Alta Vista. From the aforesaid document, it is clear that Alkarni Holding Limited had acquired Vintage FZE on or before November 4, 2010 and the said shareholding continued atleast till April 11, 2012.

28. Further, I note from para 9.3 of the Administrative Fine Statement passed by DFSA that AP became director of Alkarni in July 2008 and remains a director. It is pertinent to mention here that the said fine statement has been passed after January 11, 2011. Hence, it is evident that AP held position of director in Alkarni Holding Limited during the period of GDR issuance and execution of loan and pledge agreements.

29. With regard to connection of AP with Alkarni, I also note that the Hon'ble Securities Appellate Tribunal ("SAT") has in its previous order has established connection of AP with Vintage and Alkarni. In this connection, I find it appropriate to refer to the order dated October 25, 2016 of the Hon'ble SAT wherein vide para 4(h) , the Hon'ble SAT has held as under :-

> *"Till October 2010, 100% shares of Vintage were held by Arun Pancharia (AP) and thereafter 100% shares of Vintage are held by Alkarni Holdings Ltd. <u>It is not in dispute that 100% shares of Alkarni Holdings Ltd. are held by AP and his relatives</u>. Thus, AP on one hand got GDRs of Asahi (valued at 5.98 Million USD) issued as Lead Manager and on the other hand as a Shareholder, Managing Director and Authorized Signatory of Vintage took loan of 5.98 Million USD from Euram Bank for subscribing (take down) to GDRs to be issued by Asahi and made Asahi to sign a Pledge Agreement, whereby Asahi inter alia agreed to secure the loan of 5.98 Million USD taken by Vintage from Euram Bank for subscribing to the GDRs of Asahi…""*

30. In this connection, I find it appropriate to refer to bylaws of the Dubai also which are applicable on Free Zone Establishments ("FZEs"). In this regard, I have perused the Implementing Regulations No.1/92 issued by Jebel Ali Free Zone Authority pursuant to Law no.9 of 1992 ("Implementing Regulations"). I note that under the said regulations the term "Owner" is defined as under :-

> "*The person, whether an individual, company or other establishment, which is the single shareholder of any Free Zone Establishment formed and registered in accordance with these Implementing Regulations*."

31. Further, I note that Clause 18 of the said Regulations states that, "*No Free Zone Establishment shall have more than one shareholder*." From the above, it is clear that there cannot be more than one shareholder of an FZE. Hence, it can be said that only AP held the alienation rights of Vintage FZE. From the reply, it is also made out that Noticee has not contended that he was not the owner of Vintage at any point of time. It is also evident from Annexure 8, as discussed above, that AP was beneficial owner of Vintage as on June 6, 2007. I note that Noticee has not produced any document to show that he had transferred the ownership of Vintage FZE to any other entity due to which he may have ceased to be the owner of Vintage. No contradictory evidence is put forth before me by Noticee which shows that he was not the beneficial owner of Vintage during this period. On the other hand, there are sufficient documents available on record pointing that AP held beneficiary position with respect to Vintage FZE during the period of loan and pledge agreement.

32. Noticee has also contended that he was not a shareholder of the Vintage FZE and that the shareholding of Vintage FZE was of the Mukesh Chauradiya or Vintage itself. In this regard, I note from Clause 20 of the Implementing Regulations as follows: "*20. No Free Zone Establishment may acquire its own shares. However any Free Zone Establishment may own all of the shares in any other Free Zone Establishment or shares in any company or other establishment subject to compliance with all applicable laws*". A perusal of the said Regulations clarifies that Vintage could not have owned its own shares. So far as shareholding of Vintage by Mukesh Chauradiya is concerned, I note that I have

not come across a single document indicating that Mukesh Chauradiya held the position of benefical ownership in Vintage.

33. In light of the aforementioned, I conclude that AP held the position of beneficial ownership with respect to Vintage FZE and, accordingly, the contention of the Noticee that there are no sufficient documents to connect him with Vintage FZE is devoid of any merit

Connection with Mukesh Chauradiya

34. Noticee in his reply has also disputed his connection with Mukesh Chauradiya. It is not in dispute that the loan agreement dated November 12, 2020 was signed by Mukesh Chauradiya as managing director on behalf of Vintage FZE. Although the connection between AP and Mukesh Chauradiya has been established with respect to Vintage FZE, it is observed from Annexure 25 that AP and Mukesh Chauradiya have remained directors in an Indian Company. Annexure 25 contains documents from Ministry of Corporate Affairs indicating directorship details of AP and Mukesh Chauradiya in Indian Companies. I note that AP and Mukesh Chauradiya have remained directors in an Indian Company named Ramsai Investment Holdings Pvt Ltd (earlier Vintage FZE Investment Holdings Pvt Ltd) ("Ramsai"). I also note from Annexure 25 that Ramsai is an Indian subsidiary of Vintage and that Vintage owns 99.99% shares of Ramsai. AP has been a director in Ramsai from 04/02/2008 to 18/08/2010 and Mukesh Chauradiya has been director in the same Company from 17/08/2010 to 17/03/2016. I note that AP and Mukesh Chauradiya have been directors in Ramsai together for 2 days on 17-18/08/2010. Noticee has contended that simply because the noticee and Mukesh Chauradiya were having common period of Directorship of one day in Ramsai Investment does not lead to conclusion that noticee is connected to Mukesh Chauradiya. In this regard, I observe that their common period of directorship, however small, can be taken as a corroborative piece of evidence especially considering that there are other substantive pieces of evidence connecting Noticee with Mukesh Chauradiya. Apart from the above, I also note from list of shareholders of Ramsai (Annexure 25) that AP and

Mukesh Chauradiya have remained shareholders of Ramsai as on 30.09.2009 and 30.09.2010. In view of the same, AP's connection with Mukesh Chauradiya cannot be controverted.

Connection with Prospect Capital Ltd

35. I note from the reply that Noticee has denied his connection with the Lead Manager Prospect Capital Ltd ("Prospect") also. Noticee states that Prospect is not related in any manner with the noticee Arun Panchariya and that as per the Annexure 28, in response to query No.7 it has been replied that there is no relationship of any kind nor has there been any relationship of any kind between Prospect or Arun Panchariya.

36. In this regard, I have perused email dated December 23, 2015 from John Behar (Annexure 28) whereby he on behalf of Prospect has provided answers to certain queries. It is not in dispute that John Behar was owner of Prospect. Vide the said email, Prospect had stated they have no relationship with GDR subscribers in the sense that they have no relationship other than the business of GDR subscription. Further, Prospect is referring to the initial GDR subscribers and not Vintage, to which the GDRs were transferred by initial subscribers. Noticee's interpretation of the said reply of the Prospect is erroneous as the same has to be read in consonance with the whole reply. Further, I note from the Annexure 28 itself that Prospect has admitted connection of John Behar with AP as under:-

> *"For several years there has been no relationship between PCL or its directors, promoters or major shareholder with Mr Arun Panchariya. Previously in the four months prior to October 2006 Mr John Behar, a director of PCL, provided professional advice to Mr Panchariya in applying for UK FSA authorization for his company Pan Asia Advisors. Subsequently Between 17th October 2006 and 9th November 2007 Mr Behar was contracted to provide in-house compliance oversight for that firm."*

37. I also note from the SCN that AP and John Behar were directors in Pan Asia Advisors Ltd from April 24, 2006 to September 29, 2011. I note that Noticee's reply is silent about the aforesaid facts of connection of AP with John Behar, the

owner of Prospect. In view of the above, Noticee's contention that he was not connected to Prospect, cannot be accepted.

Noticee's contention that Vintage and Prospect have not been made party to the proceedings

38. Noticee has contended that in the absence of the Vintage and Prospect having made parties to the present proceedings, the allegations of connection against the noticee fall to the ground and cannot sustain the test of legality or of fairness. With respect to the aforesaid submission, I note that Vintage and Prospect, being separate legal entities, can be proceeded against separately and SEBI had already taken appropriate actions against Vintage vide WTM order dated October 14, 2021. Further, it has not been brought out clearly and specifically by the Noticee as how the absence of Vintage or Prospect in the present proceeding prejudices his defence and validity of instant proceedings considering the fact that Noticee was holding position of beneficial ownership with respect to Vintage.

39. Also, for the said purpose, I note that, the concept of 'lifting of corporate veil' is a commonly employed mechanism to apply in such cases to find out the person/s acting for the legal corporate entities or their role in the contraventions committed by the corporate entities. The concept of *'lifting of corporate veil'* is also incorporated in the SEBI Act, 1992 as follows :

> *"27. Contravention by companies.*
> *(1)…*
> *(2) Notwithstanding anything contained in sub-section (1), <u>where an contravention under this Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.</u> (emphasis supplied)"*

40. Further, as discussed earlier, according to the Implementing Regulations applicable on FZEs, the can be only one shareholder of FZE. Hence, AP being beneficial owner of Vintage, his presence in the instant proceedings is sufficient.

41. In this connection, I find it appropriate to reproduce observations of the Hon'ble SAT in order dated October 25, 2016 passed in the the matter *of PAN Asia Advisors and Arun Panchariya vs SEBI* as under :

> *"14. Similarly, if fraud is said to have been committed by AP on the investors in India by subscribing to the GDR outside India by entering into Loan Agreement/ Pledge Agreement outside India through the entities with which AP was connected, then, even if the GDRs were validly issued and even if the Loan Agreement/ Pledge Agreement were valid, proceedings could be initiated against AP for committing fraud on the investors in India without impleading the entities who issued the GDRs and without impleading the entities who were parties to the Loan Agreement/ Pledge Agreement. In other words, whether the Loan Agreement/ Pledge Agreement were validly entered into or not, proceedings could be initiated against AP if the very act of AP in subscribing to the GDRs through his connected entities constituted fraud on the investors in India. In such a case, the entities which issued the GDRs viz. Overseas Depository Banks or the entities who were parties to the Loan Agreement/ Pledge Agreement are not required to be impleaded as parties to the proceedings initiated against AP for committing fraud on the investors in India. Therefore, the argument of the appellants that without impleading the Overseas Depository Banks/ parties to Loan Agreement & Pledge Agreement as parties to the proceedings initiated against the appellants, no order could be passed against the appellants cannot be accepted."*

42. In view of the above, contention of the Noticee, that the allegations of connection against the noticee fall to the ground in absence of having the said entities made party to the present proceedings, cannot be accepted.

Connection with Euram Bank and IFCF

43. It is stated in the SCN that on April 04, 2011 Vintage had transferred 14,500 GDRs to India Focus Cardinal Fund (IFCF). IFCF had converted these GDRs into 4,35,000 equity shares on April 07, 2011. IFCF sold 4,35,000 equity shares (which it received post cancellation of GDRs) in Indian securities market for Rs.56,04,582.29 during the period from April 25, 2011 to May 02, 2011. EURAM Bank was registered as Foreign Institutional Investor ("FII") in India (during the period November 21, 2008 to November 20, 2011). IFCF was registered as sub

account of FII (FPI) - EURAM Bank from December 12, 2008 to July 19, 2011. IFCF was incorporated on August 22, 2008 in Mauritius. It is observed that no other sub account was registered with EURAM Bank except IFCF. Since, IFCF sold underlying shares, pertaining to 14,500 GDRs, were bought without consideration, IFCF has acted as conduit to AP to off load shares of Nakoda. AP was the beneficial owner of Vintage FZE and IFCF. AP arranged loan for the subscription to GDRs and sell the GDRs to FII-Sub account which, in turn, dump the converted equity shares in the Indian securities market.

44. It is stated in the SCN that AP was director and president of Euram Bank Asia Limited and that he resigned on September 22, 2011. AP was holding ownership in EURAM Bank Asia. Further, it is stated in the SCN that AP connected entity Pan Asia Advisors Ltd had joint venture with EURAM Bank EURAM Bank Asia Limited. From the Annexure 24, I note that PAN Asia Advisors Ltd held 49% stake in EURAM Bank Asia and EURAM Bank held 51% stake.

45. The aforesaid facts have not been challenged by the Noticee, however, it has been contended that Euram Bank, Asia had nothing to do with Euram Bank Austria and that Euram Bank, Austria was the FII of IFCF and the noticee had no control at all over Euram Bank, Austria. It is also contended that even Euram Bank Austria had also denied any connection with the noticee.

46. In this regard, I observe that contention of Noticee that Euram Bank Austria had denied connection with the Noticee cannot be accepted. From the perusal of Annexure 24, I note that Euram Bank has specifically admitted that Vintage FZE held account/securities with Euram Bank and that there exist unpaid debts. Futher, with regard to the contention of Noticee that Euram Bank Asia had nothing to do with Euram Bank Austria, I note that the SCN itself does not allege that Euram Bank Asia had taken any part in the present GDR scheme. The SCN only alleges connection of Noticee with Euram Bank Asia to emphasize that Noticee is very well connected with Euram Bank Austria and IFCF. The said fact of connection of Noticee with Euram Bank Asia has not been denied by the Noticee. Similarly, with respect to IFCF it is stated in the SCN that IFCF was

incorporated on August 22, 2008 in Mauritius. Noticee was director in IFCF from August 22, 2008 to October 28, 2010. IFCF was registered as sub account of FII (FPI) - EURAM Bank from December 12, 2008 to July 19, 2011. IFCF sold 14500 GDRs of Nakoda from April 25, 2011 to May 2, 2011 i.e. while IFCF was a sub-account of Euram Bank. It is observed that no other sub account was registered with EURAM Bank except IFCF. In view of the above, Noticee's connection with IFCF also cannot be controverted.

Noticee's contention that he cannot be held liable for events after 29.09.2011

47. Noticee has contended that vide the interim order dated 29.09.2011 passed by the SEBI, Arun Panchariya, Pan Asia, Euram Bank and IFCF were already banned from dealing in Securities Market and that conversions of the GDR was done by the entities post 29.09.2011 which cannot be attributed to the noticee. It is important to clarify here that the interim order being referred to by the Noticee was passed on 21.09.2011 and not on 29.09.2011. as has been submitted by the Noticee In this regard, I note that in the instant case, as discussed above, on April 04, 2011 Vintage had transferred 14,500 GDRs to IFCF. IFCF had converted these GDRs into 4,35,000 equity shares on April 07, 2011. IFCF sold 4,35,000 equity shares (which it received post cancellation of GDRs) in Indian securities market for Rs.56,04,582.29 during the period from April 25, 2011 to May 02, 2011.

48. I note that AP was banned from India Securities Market from 21.09.2011, whereas the aforesaid 14500 GDRs of Nakoda were sold by Vintage from April 25, 2011 to May 02, 2011 i.e. before the date of interim order. After the default by Vintage in paying loan amount, on 19.10.2012, Euram bank realized its dues from the pledged GDR proceeds of Nakoda. After realization of its dues, Euram Bank transferred the position of pledgee to Nakoda with respect to 19,85,000 GDRs of Nakoda. The subsequent sequence of events is provided in paras 55 to 59 of the SCN which are reproduced as under :

> *"55. On October 25, 2012 and November 20, 2012 Nakoda written two letters to Bank of New York Mellon (Global Depository)*

(hereinafter referred as 'BNY Mellon') informing that Nakoda became pledgee of 19,85,500 GDRs and requested that no shares were transferred or sold without its consent. On October 26, 2012 and November 30, 2012 BNY Mellon informed that, it cannot take note a pledge on GDRs and in case anyone approaches for conversion of GDRs, BNY Mellon will direct to Nakoda. Apart from writing two letters to BNY Mellon, Nakoda has not taken any steps to protect interest of its shareholders. It is also shows that, Nakoda was aware about the fact that it entered pledge agreement with EURAM Bank.

56. It is observed that, BNY Mellon has sent a resignation letter dated December 06, 2013 to Nakoda informing the termination of GDR program and asked to appoint a successor depositary bank on or before April 07, 2014 failing which it will terminate the GDR program and notify such termination. Even though company was pledgee of GDRs, it has not taken any steps for appointing new Global Depository. Since the company did not appoint any depositary bank, and therefore on April 16, 2014, BNY Mellon announced its termination notice publicly. As per the termination notice, DR holders had two options i) take the possession of underlying shares or ii) receive the sale proceeds of shares once BNY Mellon sold underlying shares in Indian Stock exchanges. On July 14, 2014 BNY Mellon, further announced that it would no longer accept deposits of shares for GDR issuance or cancellation of GDRs effective July 17, 2014.

57. BNY Mellon, the Global Depository bank vide email dated March 01, 2017, informed to SEBI that, it sold 5,95,65,000 shares of underlying 19,85,500 GDRs from January 2015 to October 2015 for Rs.1,81,83,538.71 in accordance with termination of GDR agreement. Copy of the reply is placed at Annexure 29.

58. In accordance with Clause 21 of the Terms & Conditions of the Deposit Agreement 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 underlying shares through DBS Bank (Local custodian). DBS Bank vide email dated February 22, 2017 informed to SEBI that, based on the instruction of BNY Mellon, DBS bank sold 5,95,65,000 shares of Nakoda for Rs. 1,81,83,538.71 (including income tax). It is further observed that, DBS bank remitted sale proceeding of Rs. 1,11,32,108.18 to BNY Mellon. Later BNY Mellon remitted back Rs.

1,11,32,108.18 sale proceedings to DBS Bank pursuant to SEBI interim order dated June 16, 2016.

59. The GDR program was terminated by BNY Mellon (Global Depository Bank) on April 16, 2014. As on the date of termination of program, 19,85,500 GDR's (5,95,65,000 shares) were outstanding, which was a material event. Nakoda failed to inform Indian stock exchanges about termination of GDR program."

49. From the chronology of events as discussed above, I note that there are no allegations made against the Noticee of connection with the entities involved in events happening after 21.09.2011. The sale of 14500 GDRs through IFCF and default of Vintage in paying the loan amount to Euram Bank happened to be the last nails in the coffin and as a consequence of the same, shares sold by IFCF, and the shares sold by Bank of New York Mellon (BNY Mellon) (post termination of GDR programme) were issued without consideration and were created through fraudulent scheme. In light of the above, contention of the Noticee is devoid of any merit.

50. The averment of the Noticee that Vintage repaid the loan amount to the extent of USD 218581(approx.) from 2011 to 2012, is completely incorrect. I note from the SCN that the said amount of USD 2,18,581 received by Nakoda was the interest amount that had accumulated on GDR proceeds of USD 24.25 million. The proceeds of GDR were pledged and the same were not at the disposal of Nakoda, however the interest generated on the said proceeds was at the disposal of Nakoda which was received by it on August 23, 2012 in its Indian bank account. Accordingly, I conclude that Vintage had completed defaulted and had not repaid any part of the loan amount to Euram Bank.

Noticee's contention that fraud is caused due to non-disclosure by Nakoda

51. In his reply, Noticee has contended that if the Company had published information at the Stock Exchange, then it might not have influenced the decision of the investors and that the Noticee cannot be held liable for any act on behalf of the Company. Noticee further submits it is the company who has to be held

liable and if any default having been occurred subsequently, the same cannot be attributed to the Noticee.

52. In this regard, I note that the allegation of non-disclosure of the pledge agreement and the loan agreement to the stock exchange is not made out against the Noticee. The said allegation is made out against the Company Nakoda and a penalty has also been imposed on it vide the Adjudication Order dated August 30, 2022 for the said violations. I also note that, it is important to view the scheme in its entirety rather than observing/mentioning events in isolation. In the present proceedings, I note that, allegation against the Noticee is that of fraud under Regulation 3 (a), (b), (c), (d) and 4(1) PFUTP Regulations, 2003. In this regard, the definition of 'fraud' provided under PFUTP Regulations, 2003 is as under:

> "Reg. 2(c) *"fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—*
>
> *(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*
>
> *(2) a suggestion as to a fact which is not true by one who does not believe it to be true;*
>
> *(3) an active concealment of a fact by a person having knowledge or belief of the fact;*
>
> *(4) a promise made without any intention of performing it;*
>
> *(5) a representation made in a reckless and careless manner whether it be true or false;*
>
> *(6) any such act or omission as any other law specifically declares to be fraudulent,*
>
> *(7) deceptive behaviour by a person depriving another of informed consent or full participation,*
>
> *(8) a false statement made without reasonable ground for believing it to be true.*
>
> *(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.*
>
> *And "fraudulent" shall be construed accordingly"*

53. Perusal of the definition as given under Section 2 (1) (c) of the PFUTP Regulations, 2003 indicates that inducement is an essential ingredient for establishing fraud. In the instant matter Vintage was the sole subscriber to its GDR issue and it had subscribed to the GDRs through a loan obtained from EURAM Bank to the extent of USD 24.25 million which it later defaulted in repaying to the extent of USD 24.32 million (including accrued interest of USD 0.07 million). I note that in the above manner, the obligation of Vintage under the Loan Agreement was secured by Nakoda through the Pledge Agreement, and accordingly, the subscription of the GDR issue was facilitated in the above manner by Vintage. Further, I note that due to such pledging of the GDR proceeds, the funds were not available at Nakoda's disposal. In this manner, the GDRs were not issued in a genuine manner, but rather through a fraudulent arrangement. This created a false impression on the minds of investors that the GDRs of Nakoda were genuinely subscribed, which was not the case. In view of the above, judgments relied on by the Noticee in support of his contention are of no help to the Noticee. Noticee is main part of the fraudulent scheme of issuance of GDRs which the Noticee had structured through his connected Noticees. In view of the above, I hold that Noticee cannot offload his liability on the company and for the same reason is contention is devoid of merit.

54. In the case of ***N. Narayanan v. SEBI*** [(2013) 12 SCC 152], the Hon'ble Supreme Court observed that Section 12-A of the SEBI Act read with Regulations 3 and 4 of the PFUTP Regulations, 2003 specifically aim to curb market manipulations which can have an adverse effect on investor confidence and the healthy growth of the securities market. It was held that :

> "*33. Prevention of market abuse and preservation of market integrity is the hallmark of securities law. Section 12-A read with Regulations 3 and 4 of the 2003 Regulations essentially intended to preserve "market integrity" and to prevent "market abuse". The object of the SEBI Act is to protect the interest of investors in securities and to promote the development and to regulate the securities market, so as to promote orderly, healthy growth of securities market and to promote investors' protection. Securities market is based on free and open access to information, the integrity of the market is predicated on the quality and*

the manner on which it is made available to market. "Market abuse" impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abusers. The statutory provisions mentioned earlier deal with the situations where a person, who deals in securities, takes advantage of the impact of an action, may be manipulative, on the anticipated impact on the market resulting in the "creation of artificiality". The same can be achieved by inflating the company's revenue, profits, security deposits and receivables, resulting in price rise of the scrip of the company. Investors are then lured to make their "investment decisions" on those manipulated inflated results, using the above devices which will amount to market abuse."

55. An analogy can be drawn in the instant case wherein the Noticee and his connected entities along with Nakoda designed the instant scheme to create the façade of successful issuance of GDRs wherein the subscription of those GDRs were secured by way of loan and pledge agreements. The said arrangement was never disclosed to the investors. The Noticee in connivance with other entities, attempted to make it appear to the Investors in India that in the global market foreign investors have found great investment potential in the issuing Company.

56. In this connection, the wise words of the Hon'ble Supreme Court in the judgment dated July 6, 2015 (*SEBI vs. Pan Asia Advisors Limited and Another (Civil Appeal No. 10560/2013))* may be referred to wherein object of creating and trading in GDRs outside India has been succinctly summarized :

"60. On a consideration of the 2000 Regulations, the 1993 Scheme and the Master Circular issued by RBI periodically one can discern that for creation of GDRs which can be traded only at the global level, the issuing company should have developed a reputation at a level where the marketability of its investment creation potential will have a demand at the hands of the foreign investors. Simultaneously, having regard to the development of the issuing company in the market and the confidence built up with the investors both internally as well as at global level, the issuing company's desire to raise foreign funds by creating GDRs should have the appreciation of investors for them to develop a keen interest to invest in such GDRs. Mere desire to raise

foreign investments without any scope for the issuing company to develop a market demand for its GDRs by increasing the share capital for that purpose is not the underlying basis for creation of GDRs. In fact for creating of GDRs apart from the desire of the issuing company to raise foreign funds, the marketability of such shares in the form of GDRs should have an applicable potential at the global level. ***To put it differently, by artificial creation of global level investment operation, either the issuing company on its own or with the aid of its Lead Manager cannot attempt to make it appear as though there is scope for trading GDRs at the global level while in reality there is none.*** *The above fact has to be kept in mind when dealing with an issue relating to creation of GDRs, in as much as, when the GDRs gets fully subscribed at the global level providing scope for huge foreign investment, the same will have a serious impact at the internal investment market in the form of high appreciation of share value whereby the issuing company and the investor will be greatly benefited mutually. Such a real growth structurally and financially is the underlying principle in the creation and trading of GDRs at the global level."*

57. The Noticee's owned Vintage took loan of 24.25 Million USD from Euram Bank for subscribing to the GDRs of Nakoda and made Nakoda to pledge to the Euram Bank the GDR subscription amount of 24.25 Million USD as security for the loan taken by Vintage. Thus, the investors in India were made to believe that in the global market the issuer companies have acquired high reputation in terms of investment potential and hence the foreign investors have fully subscribed to the GDRs, when in fact, the GDRs were subscribed by AP through Vintage which was wholly owned by AP. In other words, AP attempted to mislead the investors in India that the GDRs have been subscribed by foreign investors when in fact the GDRs were subscribed by AP through Vintage. Any attempt to mislead the investors in India constitutes fraud on the investors under the PFUTP Regulations.

58. In addition to the above, I note that Arun Panchariya and his connected entities have been found involved in several other matters pertaining to GDR Issues of listed Indian Companies. AP was central to and instrumental in the fraud perpetrated on the investors in the Indian securities market. AP 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. Hence, it can be said that Noticee is the mastermind behind all these fraudulent schemes as Noticee was beneficiary owner of Vintage at the relevant time and can be said to be the acting on behalf of Vintage in furtherance of the common objective.

59. 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 held a controlling position in Vintage and being the sole beneficial owner had benefitted from the illegal scheme.

60. 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.

Issue no.II

61. As detailed in previous paras, the fraudulent scheme of GDR issue was carried out by AP in close connivance with others. AP had acted as an important 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. The pre-determined fraudulent and manipulative acts of a few entities damage the integrity of the market. Further, the genuine investors are put at risk because of the fraudulent artifice employed by the Noticee as observed in this case. The same calls for imposition of monetary penalty as contemplated under section 15HA of SEBI Act, 1992 against Noticee.

62. 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*.''

63. In view of the above, I conclude that the Noticee Arun Panchariya has become liable for monetary penalty under Section 15HA of the SEBI Act.

Issue no. III

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. In the present case, GDRs were subscribed for an amount of USD 24.25 million and I note that Vintage has completely defaulted in paying back the loan amount. It is observed from examination of the annual report of Nakoda for FY 2014-15

that Nakoda had written off US$ 24.32 million (including USD 0.07 million of accrued interest) on account of loan default by Vintage FZE for which pledge was provided by Nakoda. Therefore, Indian investors were at loss to the tune of US$ 24.32 million which was written off by Nakoda pursuant to the fraudulent GDR scheme. I note that numerous orders have been passed by SEBI, both under section 11 and under section 15 of SEBI Act, against the Noticee in matters of GDRs of various other listed companies in the past. In view of the repetitive nature of such acts along with the gravity of fraudulent scheme devised and executed in Indian Markets, which affected the integrity of markets and resulted in huge loss to Nakoda by defaulting the loan repayment by Vintage and consequently its shareholders, the consequences resulting from violations committed by the Noticee are of very grave nature and are prejudicial to the interests of investors in the securities market. If violations of this nature and magnitude are not dealt with seriously with a firm hand, then investors will lose faith in the Indian Securities Market and even good companies will find it extremely difficult to raise capital in future. I am of the view that, in order to meet the ends of justice, exemplary penalty is warranted against the Noticee in terms of Section 15HA of the SEBI Act.

G. ORDER

66. 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, I hereby impose following penalty of Rs.50,00,000 (Rupees Fifty Lakhs) on the Noticee Arun Panchariya for the aforementioned violations, as discussed in this order.

67. In my view, the said penalty is commensurate with the violations committed by these Noticee in this case.

68. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order 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

69. 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.

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

Date: July 31, 2023 **VIJAYANT KUMAR VERMA**
Place: Mumbai **ADJUDICATING OFFICER**