<u>BEFORE THE ADJUDICATING OFFICER</u>

<u>SECURITIES AND EXCHANGE BOARD OF INDIA</u>

[ADJUDICATION ORDER NO. Order/SM/AD/2023-24/28465]

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

In respect of:

Mr. Arun Panchariya
[PAN: AEVPP6125N]

In the matter of GDR Issue of Teledata Technology Solutions Ltd.

<u>BACKGROUND</u>

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation into the alleged irregularities in the issuance of Global Depository Receipts (hereinafter referred to as "**GDRs**") by Teledata Technology Solutions Ltd (hereinafter referred to as "**Teledata/TTSL/Company**") during the period from February 01, 2010 to March 31, 2010. Teledata was a company whose shares were listed on the BSE Ltd. (hereinafter referred to as "**BSE**") and National Stock Exchange of India Ltd. (hereinafter referred to as "**NSE**"). The focus of investigation was to ascertain whether shares underlying GDRs were issued with proper consideration and whether appropriate disclosures were made by Teledata with respect to its GDRs.

2. The investigation revealed that Teledata had issued 3.5 million GDRs amounting to USD 36.96 million on March 12, 2010 and the said issue was subscribed by one entity viz. Vintage FZE (now known as Alta Vista International FZE) (hereinafter referred to as "**Vintage**"). It was observed that the subscription amount was paid by Vintage by obtaining a loan from

European American Investment Bank AG, Austria (hereinafter referred to as "**EURAM Bank**") by entering into loan agreement dated February 26, 2010 with EURAM Bank However, it was observed during the investigation that Teledata submitted a wrong list of GDR subscribers to BSE.

3. It was observed that directors of Teledata in its Board Meeting held on January 30, 2010, had passed Board Resolution, *inter alia,* authorizing the opening of an account with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue of Teldata and had also authorized EURAM Bank to honour all cheques, Draft, Bills of Exchanges, Promissory notes and other negotiable instruments signed, drawn, accepted or made on behalf of the Company severally by Mr. K. Padmanabhan, Authorized Signatory of the Company and to act on any instructions so given relating to the said Account whether the same to be overdrawn or not or relating to any transactions of the Company. Subsequently, Mr. K. Padmanabhan, in his capacity as Authorized Signatory of Teledata, signed a pledge agreement dated February 26, 2010 with EURAM Bank, pledging GDR proceeds as collateral against the loan availed by Vintage. It was observed that vide the said pledge agreement, Teledata had pledged the GDR proceeds against the loan availed by Vintage for subscribing to GDRs of Teledata, thus securing Vintage's loan. In light of the aforesaid observations, it was alleged that the scheme of issuance of GDRs by Teledata was fraudulent.

4. It was also observed that the proceeds of the GDR issue were deposited in Teledata's account held with EURAM Bank, out of which Teledata had transferred some part to its subsidiary, Bitech International. Out of the proceeds, EURAM Bank adjusted the GDR amount equivalent to the unpaid loan by Vintage, i.e., an amount of USD 32.53 million. Therefore, it was observed that GDRs to the tune of USD 32.53 million was issued by Teledata to Vintage without any consideration. It was also observed that Mr. Arun Panchariya (referred to as **'Noticee')** was the key person responsible for structuring the aforesaid fraudulent scheme of GDR issue of Teledata through his connected entities.

5. SEBI, therefore, initiated adjudication proceedings, *inter alia*, against the Noticee, under Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**) for the alleged violation of the provisions of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a),(b),(c),(d) and 4(1) of SEBI (Prohibition of Fraudulent and

Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**").

6. SEBI appointed Shri B. J. Dilip (also referred to as "**erstwhile AO**") as the Adjudicating Officer under Section 19 of SEBI Act read with Section 15I and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as `**SEBI Adjudication Rules'**) and under Sub-section (1) of Section 23-I of SCRA and Rule 3 of (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**SCRA Adjudication Rules'**) to inquire into and adjudge the aforementioned violations alleged to have been committed, *inter alia,* by Noticee. [Both SEBI Adjudication Rules and SCRA Adjudication Rules are hereinafter collectively referred to as "**Adjudication Rules"**]. Subsequent to the transfer of Shri B. J. Dilip, vide order dated December 29, 2020, the undersigned was appointed as the Adjudicating Officer in the matter.

7. A show cause notice dated July 24, 2020 (hereinafter referred to as '**SCN**') was issued, *inter alia*, to Noticee by erstwhile AO under Rule 4 of Adjudication Rules to show cause as to why an inquiry should not be initiated against him and penalty, if any, not be imposed upon him for the aforesaid violations alleged to have been committed by him. Vide Adjudication Order bearing reference no. Order/SM/AD/2022-23/16841-16848 dated May 31, 2022 (hereinafter referred to as "**Adjudication Order dated May 31, 2022**"), adjudication proceedings were concluded by the undersigned, imposing monetary penalty, *inter alia,* on Noticee.

8. Thereafter, an appeal, bearing Appeal No. 138 of 2023, was filed by Noticee before Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**Hon'ble SAT**"), challenging Adjudication Order dated May 31, 2022 passed in respect of Noticee, grounds of appeal, *inter alia*, being that he was neither served with the SCN nor was given any opportunity of personal hearing. The Hon'ble SAT, on being satisfied that Noticee was not served with SCN, vide order dated March 28, 2023 (hereinafter referred to as "**SAT Order**"), set aside the Adjudication Order dated May 31, 2022, with respect to Noticee and remitted the matter for fresh adjudication proceedings after providing a copy of SCN and providing an opportunity of personal hearing to Noticee. Further, it was directed in the SAT Order that the "*the appellant or the learned counsel for the appellant 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*."

APPOINTMENT OF ADJUDICATING OFFICER

9. Subsequent to the SAT Order and in furtherance to the direction given in the said Order, the undersigned was appointed as Adjudicating Officer (AO), vide order dated April 04, 2023, in terms of Rule 3 of SEBI Adjudication Rules read with Section 15-I of the Act to inquire and adjudge under Section 15HA of the SEBI Act, the alleged violations by Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

10. As directed by Hon'ble SAT, the authorized representative of Counsel for the Noticee visited office of AO on April 10, 2023 and collected the SCN in the matter. Therefore, I note that the SCN was served through hand-delivery on Noticee on April 10, 2023 and the same was duly acknowledged. Noticee was given fourteen (14) days' time from the date of receipt of the SCN to make his submissions in respect of the allegations against him made in the SCN.

11. Thereafter, in the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the SEBI Adjudication Rules, an opportunity of personal hearing was given to Noticee as per the details given below:

Hearing Notice (HN) dates	Dates of Hearing	Mode of delivery of Hearing Notices	Status of personal hearings
June 13, 2023	June 19, 2023	Email dated June 13, 2023	Hearing adjourned on the request of Noticee
June 14, 2023	July 05, 2023	Email dated June 14, 2023	Hearing adjourned due to official exigency on part of the undersigned
July 05, 2023	July 06, 2023	Email dated July 05, 2023	Hearing adjourned o n request of Noticee
July 05, 2023	July 07, 2023	Email dated July 05, 2023	Hearing attended.

12. Vide email dated July 04, 2023, Learned Counsel for Noticee, Mr. Sandeep Wadhwan (hereinafter referred to as "**AR**") filed reply to the SCN on behalf of Noticee. Thereafter, on July 07, 2023, AR attended the personal hearing granted to Noticee. AR reiterated and explained the contents of the reply dated July 04, 2023. It was also stated in the Noticee's reply dated July 04, 2023 that his previous replies in the matter should also be considered.

13. The reply of Noticee to SCN is summarized hereunder:

- *Noticee cannot be made liable for any misinformation supplied by Company to stock exchange*
- *Connection of Noticee with various entities especially Vintage, IFCF, EURAM Bank and Mr. Mukesh Chauradiya, is just an afterthought and based upon conjectures and surmises without there being any evidence.*
- *It is wrongly held that Noticee is the perpetrator of the alleged irregularities and beneficiary of alleged fraud.*
- *Further, as per interim order 29.09.2011, Noticee, Pan Asia, EURAM Bank and IFCF were already banned from dealing in the securities market.*
- *The SCN fails to explain the rationale and/or manner in which the alleged loss was caused to the shareholders of Teledata.*
- *The primary obligation of Company and SEBI in the GDR issue was ignored. Teledata Company was required to call back GDRs.*
- *Post the year 2011, the Noticee 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.*
- *There is no allegation against the Noticee that he advised any of the companies to execute such Resolutions or Pledge GDRs in order to generate capital or equity or advised the company to set off the Pledged deposits of GDR proceeds with the outstanding loan of Vintage.*
- *It is wrong to allege that the Noticee (through Vintage) controlled certain sub-accounts Viz. IFCF or HBS etc.*
- *There was inordinate and unexplained delay in the issuance of SCN.*

14. Taking into account the observations in the preceding paragraphs, I am satisfied that sufficient opportunities of hearing have been provided to Noticee which was duly availed by him and thus, I am of the view that principles of natural justice have been duly followed in the present proceedings.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

15. I have carefully perused the charges levelled against Noticee, replies filed by Noticee and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

    Issue No. I: Whether Noticee has violated the provisions of Section 12 A(a), (b), (c) of SEBI Act, read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations?

    Issue No. II: Do the violations, if any, attract monetary penalty under Sections 15HA of SEBI Act?

    Issue No. III: If the answer to issue no. II is in affirmative, then what should be the quantum of monetary penalty?

16. The text of relevant provisions of the law which are alleged to have been violated by the Noticee is reproduced below:

SEBI Act

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

12A. No person shall directly or indirectly –

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

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

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

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

Issue No. I. Whether Noticee has violated the provisions of Section 12A(a), (b), (c) of SEBI Act, read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations?

17. Before proceeding with the merits of the matter, it would be appropriate to first deal with certain preliminary objections raised by Noticee in the matter.

18. I note that Noticee in his submissions has contended that adjudication proceedings initiated against him in the present matter should be dropped due to inordinate delay in issuance of SCN. I note that the SCN in the present matter was issued in the year 2020 and pertains to the GDR issue of Teledata which occurred in the year 2010. In this regard, I note that SEBI initiated multiple investigations in the 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,* revealed that in many of the GDR issues, money for subscribing to GDR was availed as a loan by the subscribers, from overseas bank wherein the issuer companies 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 to the GDRs without any valid consideration and sold the underlying shares in the securities market in India. It is noted that investigation was initiated in respect of 59 GDR issues made by 51 Indian Companies during the period 2002 to 2014 involving

the same *modus operandi,* as discussed above. In these investigations, since the GDRs were issued abroad and related transactions were carried out outside India, SEBI had to call for information from various entities situated abroad in such large number of fraudulent GDR issues. Such information, *inter alia,* included 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. Since these information were not readily forthcoming, 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. The foreign regulators had also to collect this information from the concerned entities and then had to furnish the same to SEBI. Thus, the process of collection of information in the matter was complex, tedious and time consuming. Teledata was one such GDR issuer where a similar *modus operandi,* as discussed above, was observed during investigation. On account of the multiple entities involved, many of which were based overseas and the complexity of data to be gathered and collated, the investigation, which was initiated in the instant matter in the year 2016, was completed in April, 2019. I note that after completion of the investigation, adjudication proceedings were initiated with appointment of Shri B.J. Dilip as Adjudicating Officer and the SCN was issued, *inter alia*, to Noticee on July 24, 2020.

19. In the facts and circumstances of the present matter, I note that the investigation has been conducted and proceedings have been initiated in a reasonable time. Further, I note that in Jindal Cotex Ltd. and others Vs. SEBI (Appeal No. 376 of 2019 decided on 05.02.2020) while dealing with an appeal emanating from the similar GDR issue wherein a plea of delay was also taken by the appellant therein, Hon'ble SAT held that*"..............Arguments on delay in investigation and consequently affecting natural justice are also devoid of any merit in the matter since this Tribunal is aware of the complexity involved in the entire manipulative GDR issue; how long it took SEBI to gain information relating to the various entities from multiple jurisdictions in the matter of PAN Asia Advisors Limited (Supra) and Cals Refineries Limited (Supra) etc................"*

20. In view of the above, and considering the facts and circumstances and placing reliance on the aforementioned order of Hon'ble SAT, I note that there was no delay in the issuance of SCN in the matter as argued by the Noticee. In his submissions, Noticee has also quoted the judgments of Hon'ble SAT in the matter of Mr Rakesh Kathotia & others vs SEBI (Appeal

no 7 of 2016 decided on May 27, 2019), Ashok Rupani vs SEBI (Appeal no 417 od 2018 along with connected appeals decided on August 22, 2019), Sanjay Jethalal Soni & ors vs SEBI (appeal no 102 of 2019 and other connected appeals decided on November 14, 2019), Ashlesh Gunvantbhai Shah vs SEBI (Appeal no 169 of 2019) decided on 31.01.2020. However, I note that the facts and circumstances of the present case are clearly distinguishable from those of the aforementioned decisions and therefore, not applicable to the present matter.

21. Further, Noticee in his submissions has contended that SEBI has no territorial jurisdiction to investigate over entities located outside India and which are governed by laws of other countries and also over non-resident Indians. In this regard, Noticee has submitted that he has been residing outside India for the last more than 17 years and does not have any business activity in India. With regard to the aforementioned contention, I note that it has been clearly settled by the Hon'ble Supreme Court of India in its decision in SEBI vs. Pan Asia Advisors Ltd. & Anr (Civil Appeal No. 10560/2013 dated July 06, 2015) in a similar matter involving GDR issue that SEBI has adequate jurisdiction to try foreign entities involved in market manipulation involving GDRs which were issued on the basis of underlying shares which are governed by Indian Law. The relevant extracts of the aforementioned judgment are reproduced hereunder:

"*Therefore, we are unable to see any violation of exercise of its jurisdiction since the underlying shares of GDR were created and dealt with as well as traded in the stock market of Indian Territory. Any act which caused any infringement in such trading of those underlying shares by virtue of any malfeasance or misfeasance or misdeeds committed by any person under the Act which worked against the interests of the investors in securities and the securities market, the SEBI was entitled to proceed against such persons who are involved in any of those allegations."*

22. Further, I also note that Hon'ble SAT in its decision in Prospect Capital Ltd & Ors vs. SEBI (Appeal No. 632 of 2021 and other connected appeals) dated March 21, 2022, while dealing with question of jurisdiction of SEBI over appellants based in United Kingdom in a matter involving similar GDR Issue had dismissed the contention of appellants that SEBI do not have jurisdiction over them, by placing reliance on aforementioned decision of Hon'ble Supreme Court in Pan Asia Advisors Ltd(supra).

23. In view of the ratio laid by the aforesaid judgements of Hon'ble Supreme Court and Hon'ble SAT, I find no merit in the contention of Noticee that SEBI has no territorial jurisdiction over him.

24. Now I proceed to deal with issue on merits in this case. It is an undisputed fact that Teledata had issued 3.5 million GDRs amounting to USD 36.96 million on March 12, 2010. I note from the available records that the aforementioned issue of GDRs had been disclosed by Teledata in its annual report for Financial Year (FY) 2009-10. The details of the GDR Issue as noted from the email dated January 22, 2019 received by SEBI from HSBC Bank, the local custodian for the GDR Issue, are as given hereunder:

GDR issue date	No, of GDRs issued (mn.)	Capital raised (USD mu.)	Local custodian	No, of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR Proceeds deposited	GDRs listed On
12-March-2010	35,37,505	36.96	HSBC Bank	35,37,50,500	The Bank of New York Mellon,	Ikon Capital Ltd.	EURAM Bank, Austria	Luxembourg Stock Exchange

25. I note from material available on the record that for the purpose of its GDR issue, the Board of Directors of Teledata had passed a resolution dated January 30, 2010 (also referred to as "**Board Resolution**"), wherein they, *inter alia*, approved of opening of current account with EURAM Bank for the purpose of its GDR Issue. Further, vide the Board Resolution, Board of Directors of Teledata, authorized EURAM Bank to honour all cheques, Draft, Bills of Exchanges, Promissory notes and other negotiable instruments signed, drawn, accepted or made on behalf of the Company severally by Mr. K. Padmanabhan, Authorized Signatory of the Company and to act on any instructions so given relating to the said Account whether the same to be overdrawn or not or relating to any transactions of the Company. I also note from records that for the purpose of the GDR Issue, Teledata, Ikon and EURAM Bank had entered into an Escrow Agreement dated February 26, 2010.

26. Further, I note from the available records that Vintage had signed a loan agreement dated February 26, 2010 (hereinafter referred to as "**Loan Agreement**") with EURAM Bank relating to a dollar term loan facility of USD 36.96 million for the purpose of subscribing to the GDR issue of Teledata. The relevant extracts of the Loan Agreement is reproduced hereunder:

"To provide funding enabling Vintage FZE to take down GDR issue of 35,37,505 Luxembourg public offering and may only be transferred to EURAM account nr. 580 016, Teledata Technology Solutions Ltd."

Security

it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be demanded by the Bank:

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. 580016 held with the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement."

27. I note that the Loan Agreement was signed by Noticee in his capacity as the Managing Director of Vintage. I note from records that Noticee was the Managing Director of Vintage at the time of GDR issue of Teledata. This was also admitted by Noticee in his reply to SCN. I further note that Alkarni Holding Ltd was the shareholder of Vintage and Noticee was the sole shareholder of Alkarni Holding Ltd.

28. I note that Noticee in his reply to the SCN has disputed his signature on the Loan Agreement on the grounds that Loan Agreement does not bear the date where the signature of Noticee were shown and that all pages of the Loan Agreement do not bear the signature of the parties to the Loan Agreement. With regard to the aforementioned contention of Noticee, I find that Loan Agreement was dated February 26, 2010, when Noticee was the Managing Director of Vintage. Noticee has not disputed the fact that he had signed the Loan Agreement but has only contended that the Loan Agreement does not bear the date of his signature. I am of the view that the burden was on Noticee to put the date when he signed the Loan Agreement and to put signature on all pages of Loan Agreement. Since the Noticee neglected to do so, he is no longer in position to challenge the evidence provided by SEBI. Further, he has not produced any documentary evidence to show that Loan Agreement was signed on some other date or to show that Loan Agreement was signed by someone else. Therefore, I am unable to accept the aforementioned contention of Noticee.

29. I also note from the available records that Teledata had entered into pledge agreement with EURAM Bank dated February 26, 2010 (hereinafter referred to as "**Pledge Agreement**"), which is also a part of the Loan Agreement entered into between Vintage and EURAM Bank. The relevant features of Pledge Agreement is reproduced hereunder:

"

1. Preamble

'By Loan Agreement K260210-007 (hereinafter referred to as the "Loan Agreement") dated 26 February, 2010 the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH -213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel AH, Dubai, United Arah Emirates (the "Borrawer") in the amount of USD 36,966,927.25. The pledger has received a copy of the Loan Agreement No K260210-007 and acknowledges and agrees to its terms and conditions,"

2. Pledge

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

2.1.1. all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount USD 36,966,927.25 existing from time to time at present or hereafter on the securities account(s) no. 580016 held with the Bank (hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein.

2.2.2. all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 580016 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and all amounts credited at any particular time therein...

(The pledged Securities Account and the Pledged Time Deposit Account hereinafter referred to as the "Pledged Accounts', the Pledged Securities and the Pledged Accounts hereinafter collectively referred to as "Collateral")

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

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

………………………………..

Realisation of the Pledge:

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

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

30. I note from the above that the Pledge Agreement refers to the Loan Agreement between the borrower i.e. Vintage, and EURAM Bank, whereby Vintage was granted loan of USD 36.96 million and it is stated in the Pledge Agreement that the Pledgor i.e. Teledata had received a copy of the Loan Agreement and acknowledges and agrees to its terms and conditions.

Therefore, by signing the Pledge Agreement, Teledata was clearly aware of Loan Agreement and its terms and conditions. This also shows that Teledata knew that Vintage was the subscriber to the GDR issue. On perusal of the contents of the Pledge Agreement, I note that the Teledata had agreed to pledge all its rights, title and interest in and to the securities deposited in the Pledge Securities Account and funds in Pledged Time Deposit Account so as to secure the present and future obligations of Vintage. The Pledge Agreement also expressly states that: "*In the case that the Borrower fails to make payment on any due amount, or defaults in accordance with the Loan Agreement, the Pledgor herewith grants its express consent and the Bank is entitled to apply the funds in the Pledged Accounts to settle the Obligations*". Thus, I find that vide the Pledge Agreement, Teledata pledged the GDR proceeds as collateral against the loan availed by Vintage from EURAM Bank. Further, I also note that Clause 6.1 of the Loan Agreement specifies that the Pledge Agreement was an integral part of the Loan Agreement. Therefore, it is clear that issuance and subscription of GDRs was done through loan availed by Vintage from EURAM Bank which Teledata was aware of. Further, I find that though GDR proceeds were deposited in the bank account of Teledata, the amount deposited in the account was not at the disposal of Teledata, as the same was kept as collateral for the loans availed by Vintage even prior to issuance of GDRs.

31. It is an undisputed fact that GDR subscription money was received from only one entity i.e. Vintage. Thus, I find that EURAM Bank granted loan to Vintage specifically for subscription of GDRs of Teledata and the entire GDR issue of Teledata (35.37 million GDRs amounting to USD 36.96 million) was subscribed/funded by only one entity, i.e., Vintage. However, I note that vide letter dated March 16, 2010 to BSE, Teledata had provided following list of entities as allottees to its GDR Issue:

Sl. No.	**Name of the subscriber**	**No. of GDRs allotted**	**No of shares underlying**
1	Axinite Capital Inc.	2,72,727.27	2,72,72,727
2	Cruise Waterford Investments Ltd.	344497.61	3,44,49,761
3	Creative Stone Holdings Ltd.	302574.16	3,02,57,416
4	Tieze Group Holdings Ltd.	296650.72	2,96,65,072
5	Trapezius Capital Ltd.	306465.07	3,06,46,507

6	Imagination Group Holdings Ltd.	282296.65	2,82,29,665
7	Trendsetter Capital Inc.	315789.47	3,15,78,947
8	Flamboyant International Ltd.	263200.00	2,63,20,000
9	Knightsbridge Management Inc.	293485.86	2,93,48,586
10	Flagstaff Investments Ltd.	296650.72	2,96,65,072
11	Echelon India Investments Ltd.	282009.57	2,82,00,957
12	Dynamic Holdings Investment Corp	236157.89	2,36,15,789
		3537505.00	**35,37,50,500**

Thus, Teledata had submitted wrong list of GDR subscribers to BSE.

32. I note from the bank statement of Teledata's EURAM Bank account that GDR proceeds of USD 36.96 million were deposited in Teledata's account no. 580016 held with EURAM Bank on March 11, 2010. I also note from the bank account statement of Teledata that out of GDR proceeds of USD 36.96 million, Teledata had transferred USD 4.63 million (includes the interest earned on money market instruments) to its subsidiary, Bitech International.

33. I find that due to the existence of Pledge Agreement, transfer of amount from Teledata's EURAM Bank account was dependent on the repayment of the loan by Vintage. Details of repayment of loan by Vintage and transfer of fund by Teledata in its bank account in India, as provided by EURAM Bank are tabulated below:

Date of Loan Amount repaid by Vintage	Loan Amount repaid by Vintage (USD)	Date of Transfer of funds from Teledata's EURAM Bank a/c to Bitech International	Transfer of funds from Teledata's EURAM Bank a/c to Bitech International (USD)	Cumulative Loan Amount repaid by Vintage (USD)	Cumulative Transfer of funds from Teledata's EURAM Bank a/c to Bitech International (USD)
19/04/2010	5,05,000	19/04/2010	5,00,000	5,05,000	500000
27/04/2010	5,00,500	27/04/2010	5,00,000	10,05,500	1000000
07/05/2010	5,00,000	07/05/2010	5,00,000	15,05,500	1500000
10/05/2010	13,600	-	-	15,19,100	-
18/05/2010	5,00,000	18/05/2010	5,00,000	20,19,100	2000000
20/05/2010	5,00,000	20/05/2010	5,00,000	25,19,100	2500000
06/07/2010	60,000	-	-	25,79,100	-
15/09/2010	6,25,000	15/09/2010	6,25,000	32,04,100	3125000
22/09/2010	13,25,000	23/09/2010	8,75,000	45,29,100	4000000
23/09/2010	29,000	23/09/2010	5,00,000	45,58,100	4500000

18/11/2011	50,000	09/11/2011	1,30,000	46,08,100	46,30,000
				46,08,100	46,30,000

34. I note from the above table that only after Vintage repaid the loan amounts, in instalments, an equal or less amount of money was transferred from Teledata's EURAM Bank account to Bitech International.

35. I note from the material available on record that out of the total loan amount of USD 36.96 million, Vintage repaid the loan amount to the extent of USD 4.60 million in 11 installments from April 19, 2010 to November 18, 2011 and thereafter, defaulted on loan repayment. I also note from the available records that EURAM Bank adjusted USD 32.53 million on June 30, 2016 against the loan default by Vintage. In light of the above, I find that GDRs to the tune of USD 32.53 million were issued by Teledata to Vintage without any consideration.

36. I further note that GDRs were converted into equity shares and these shares were sold in the Indian Capital Market. I note from material available on record that from April 08, 2010 and as on May 12, 2011, 23,20,000 GDRs were cancelled and converted into equity shares of Teledata. Post cancellation of GDRs, FII-sub-accounts namely India Focus Cardinal Fund (hereinafter referred to as '**IFCF**') received total 23,20,00,000 shares on conversion of 23,20,000 GDRs.

37. I note that vide email dated January 24, 2019, NSDL and vide email January 24, 2019, ICICI Bank (custodian of HBSF and APSIRE) had provided transaction details of entities which sold converted equity shares of Teledata's GDRs i.e. FII-sub accounts namely HBSF and ASPIRE. Summary of the sales is given below:-

<u>Sale of equity shares by IFCF</u>:

Name of entity	No, of shares sold		Total no.of shares sold	Trade value (')		Total trade value (Rs,')
	BSE	NSE		BSE	NSE	
IFCF	11, 72,48,369	11,47,51,631	23,20,00,000	12,80,78,789	18,77,02,011	31,57,80,800
Total	**11, 72,48,369**	**11,47 51,631**	**23,20,00,000**	**12,80,78,789**	**18,77,02,011**	**31,57,80,800**

I note that IFCF sold entire 23,20,00,000 shares allotted to it for a value of Rs. 31.57 Crores

Name of sub a/c	Period of registration	Name of FIJ under which sub a/c is registered	Period of registration with Fil
India Focus Cardinal Fund	12/12/2008 to 19/07/2011	European American Investment Bank	21/11/2008 to 20/11/2011
	20/07/2011to19/06/2017	Cardinal Capital Partners	20/06/2011 to 19/06/2017

38. I note that IFCF was incorporated on August 22, 2008 in Mauritius and was registered as sub account of FII-EURAM Bank from December 12, 2008 to July 19, 2011. IFCF was granted transfer from EURAM Bank to Cardinal Capital Partners (hereinafter referred to as "**CCP**") on July 20, 2011 and was registered as sub-account of CCP for the period July 20, 2011 to June 19, 2017. I also note that no other sub-account was registered with EURAM Bank except IFCF. As FIIs, both EURAM Bank and CCP did not make investment in India except through their sub-account IFCF which sold shares of Teledata in the market.

39. The scheme that emerges from the observations in the preceding paragraphs, is that GDR subscription of Teledata was structured in a manner whereby Vintage, which was controlled by Noticee, acquired the GDRs without payment of full consideration, since the GDR proceeds were pledged by Teledata against the loan availed by Vintage. Thus, no funds actually flowed to the company i.e. Teledata until Vintage repaid the loans. While Vintage repaid part of the loan, and funds to that extent did flow to Teledata, Vintage defaulted in its loan obligation to the extent of USD 32.35 million, i.e., 88% of the subscription amount. Hence, Teledata did not get equivalent funds against the equity it had issued, leading to a loss to shareholders of Teledata, whose valuations were diluted by the expanded equity capital. Further, the Loan and Pledge Agreements were not disclosed to the stock exchanges and to the Indian investors by the company. Also, the disclosure made by the company to the BSE was false and misleading as the investors were not informed that the GDR was subscribed by only one entity.

40. I note that vide Adjudication Order dated May 31, 2022, the scheme of GDR issue of Teledata has been held to be fraudulent and it has been established that Teledata along with its directors have violated Section 12A(a), (b), (c) of SEBI Act, read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations. I also note that in parallel proceedings initiated by the SEBI involving same matter, Learned Whole Time Member of SEBI, vide order dated August 13, 2021, has also held for the same reason that the scheme of GDR issue of Teledata was fraudulent.

Role of Noticee

41. It has been alleged in the SCN that Noticee was the key person who devised and structured the fraudulent GDR issue in connivance with Teledata. As per the SCN, entities connected with Noticee were involved at the majority of stages of GDR issue.

42. With regard to the allegations in the SCN, Noticee in his reply to the SCN has, *inter alia,* contended that he cannot be held liable for any misinformation supplied by Company to stock exchange. With respect to the aforementioned contention of Noticee, I find that it is not SEBI's case that Noticee was liable for the misinformation supplied by company to stock exchange. The allegation in the SCN with respect to Noticee is that he was the key person in structuring the fraudulent issue of GDRs by Teledata. In light of the aforesaid reasons, I find that the aforementioned contention of Noticee lacks any merit.

43. Further, Noticee in his reply to the SCN has disputed his connection to entities like Vintage, IFCF, EURAM Bank and Mr. Mukesh Chauradiya as alleged in the SCN. In this regard, the summary of connection/association of Noticee with various entities related to the present matter as noted from the Administrative Fine Statement available on Dubai Financial Services Authority(DFSA) website is tabulated below:

Sl. No.	**Name of entity**	**Connection/association of AP with entity**
1	Vintage FZE (now known as Alta Vista International FZE)	AP was beneficial owner (as on June 06, 2007) and Managing Director (as on June 06, 2007 and May 12, 2010). Alkarni Holdings Ltd. was sole shareholder of Vintage as on December 28, 2010 and AP was sole director of Alkarni as on April 21, 2014.
2	India Focus Cardinal Fund	AP was director from August 22, 2008 to October 28, 2010, Investment Manager (as on July 12, 2010) and 100% shareholder (January 01, 2009 to May 31, 2010) and beneficial owner since August 22, 2008
3	Cardinal Capital Partners	AP was 100% shareholder and Chief Investment Officer (as on July 12, 2010). Noticee no. 12 held 100% shares of Noticee no. 4.
4	EURAM Bank	AP connected Pan Asia Advisors Ltd. had joint venture with EURAM Bank namely EURAM Bank Asia Ltd. (incorporated on August 23, 2009, dissolved in December 30, 2013).
5	EURAM Bank Asia Ltd.	AP was director and president. AP resigned as president and member of board of the EURAM Bank Asia Ltd. on September 22, 2011.

44. I note that Vintage was controlled fully by Noticee through a 99.99% shareholding control. It is further noted that IFCF was registered as sub account of FII-EURAM Bank from December 12, 2008 to July 19, 2011 and IFCF was granted transfer from EURAM Bank to CCP on July 20, 2011 and was registered as sub account of FII, CCP, for the period July 20, 2011 to June 19, 2017. It is further observed that during the period January 2009 to May 31, 2010, CCP held 100% shares of IFCF and Noticee held 100% shares of CCP. Thus, Noticee was 100% shareholder of IFCF. I also note from records Noticee also served as Chief Investment Officer of CCP in 2010. It is also noted that Noticee was director in IFCF from August 22, 2008 to October 28, 2010 and was also its Investment Officer.

45. Noticee has contested his connection with Vintage by stating that the Annexures to the SCN are not sufficient to connect him with Vintage as on the date of default i.e. November 18, 2011 and that Mukesh Chauradiya was the Managing Director of Vintage. Further, Noticee has disputed his connection with IFCF by stating that he had resigned from IFCF in October 2010. Noticee has also submitted that he had no control over EURAM Bank. I note that it has been admitted by Noticee in his reply that he was the Managing Director of Vintage at the time of issuance of GDR by Teledata and at the time of entering into Loan Agreement. Thus, subsequent resignation of Noticee from Vintage cannot be used by him to distance himself from the allegations in the SCN. Similarly, subsequent resignation of Noticee from IFCF also cannot be used by him to dispute his connection with the aforementioned entity. Moreover, it is not SEBI's case that Noticee was connected to Vintage at the time of default. I also note that Noticee has not produced any documentary evidence to contradict the connection of Noticee with the entities as noted by SEBI from Administrative Fine Statement available on Dubai Financial Services Authority (DFSA) website. I am of view that details as brought out in record is sufficient to establish connection of Noticee with the aforementioned entities. Thus, I cannot accept the aforementioned contention of Noticee.

46. Noticee in its reply to SCN has further contended that SEBI had wrongly considered Noticee as perpetrator and beneficiary of alleged fraud in the GDR issue of Teledata. Further, Noticee has contended that SCN has failed to explain the rationale and manner in which alleged loss was caused to shareholders of Teledata or how such alleged loss was attributable to Noticee.

47. With regard to the aforementioned contention, I note that Noticee was the beneficial owner as well as the Managing Director of Vintage at the time of issuance of GDR by Teledata. Vintage, which was the sole subscriber of GDR issue of Teledata, had subscribed to the

GDR issue of Teledata by entering into Loan Agreement with EURAM Bank for which Teledata had pledged its GDR proceeds as security. In the matter of GDR issue of Jindal Cotex (Appeal No. 376 of 2019),the Hon'ble SAT in its order dated February 05, 2020 held that this arrangement itself vitiates the entire issue of GDR as it is through an artificial arrangement supported by the company itself which enables the subscription to the GDR. It has already been established earlier in the order that the Loan Agreement was signed by Noticee in his capacity as the Managing Director of Vintage. It has also been established that default by Vintage resulted in GDRs to the tune of USD 32.53 million (i.e. almost 88% of amount of GDR issue) being issued by Teledata to Vintage without any consideration and Teledata receiving only USD 4.60 million i.e. only about 12% of its total GDR amount. I also note that the connected entity of Noticee i.e., IFCF cancelled the GDRs and sold the converted equity shares on NSE and BSE. Considering the extent of Noticee's involvement in the scheme of GDR issue of Teledata as brought out above, I am not inclined to accept the contention of Noticee that SEBI has wrongly considered him as the beneficiary of the fraud in the GDR issue of Teledata. In this context, I also find it pertinent to note that in several adjudication orders passed by SEBI in similar matters involving GDR scheme of Indian Companies, Noticee has been considered as the key person in devising the fraudulent scheme of GDR issue. I note that in the matter of the Pan Asia Advsors & Ors Ltd v SEBI (Appeal No. 126 of 2013, Decision dated 25.10.2016) the Hon'ble SAT has discussed the role of the Noticee in six GDR matters wherein a similar modus operandi was adopted. In the said matter the Hon'ble Tribunal has observed as follows: "*Even though all GDRs were not converted and sold, it is apparent that the modus operandi adopted by the appellants was not only to create an artificial impression that the GDRs have been subscribed by foreign investors, but also to create an impression that after the GDR issue, investors in India have started subscribing to the shares of issuer companies when in fact the shares were sold and acquired by the entities controlled by AP. In these circumstances inference drawn by SEBI that every stage of the GDR issue, the acts committed by the appellants constituted fraud on the investors in India cannot be faulted."*

48. Further, I find other contentions of raised by Noticee, like it was open to Teledata to call back the remaining GDRs which were held by EURAM Bank or that obligation was on SEBI to instruct Teledata to redeem GDRs issued by it, does not have any bearing on allegations raised against Noticee in the SCN and therefore, do not merit further consideration.

49. In light of the observations in the preceding paragraph, I find that Noticee had devised the entire fraudulent GDR issue in connivance with Teledata, wherein Noticee controlled entity, Vintage received GDRs without paying full consideration and connected entities of Noticee cancelled GDRs and sold the same to Indian Market. I am of the view that the same had misled the Indian investors into believing that GDRs of Teledata were genuinely subscribed while loan default alone caused loss to the shareholders of Teledata to the tune of USD 32.53 million. Therefore, the allegations that Noticee has violated the provisions of Sections 12A (a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations stands established.

Issue II: Do the violations, if any, attract monetary penalty under Sections 15HA of SEBI Act?

50. The allegations levelled against Noticee in the SCN have been established in the preceding paragraphs. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had 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……*"

51. Therefore, in view of the findings and placing reliance on the above judgment of Hon'ble Supreme Court, I find that the aforesaid violations committed by Noticee would attract monetary penalty under Sections 15HA of SEBI Act. The aforesaid provision is reproduced as under:

Section 15HA of SEBI Act :

Penalty for fraudulent and unfair trade practices.

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.

<u>Issue No.III - What should be the quantum of monetary penalty</u>?

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

<u>SEBI Act</u>

Factors to be taken into account by the adjudicating officer.

***Section 15J** - 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.

53. In the instant case, I note that default of Vintage in repaying the loan resulted in GDRs to the tune of USD 32.53 million was issued by Teledata to Vintage without any consideration. Thus, it has resulted in loss of USD 32.53 million to the shareholders of Teledata. Further, I note that Noticee was the key person who devised the fraudulent scheme of GDR issue of Teledata in connivance with the company. I also note that Noticee was part of several cases of fraudulent GDR subscription schemes in which separate adjudication proceedings/Orders have been initiated/passed by SEBI. For instance, I note that in Adjudication Order in respect of Arun Panchariya in the matter of GDR issue of Edserv Softsystems Limited, a penalty of Rupees Twenty Lakhs was imposed on Noticee. I also note that in the Order dated August 13, 2021, the Learned Whole Time Member of SEBI has, *inter alia,* debarred Noticee from accessing securities market and further prohibited from buying, selling or dealing in securities, directly or indirectly, in any manner, whatsoever, or being associated with the securities market in any manner, whatsoever, for a period of two (2) years. I further, note that more than 12 years has elapsed since the impugned issue of GDRs by Teledata. I find the aforementioned factors to be of relevance while determining quantum of penalty to be imposed on Noticee.

ORDER

54. Having considered all the facts and circumstances of the case, the material available on record and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose following penalty on :

Name of the Noticee	Penalty under	Penalty Amount
Mr. Arun Panchariya	Section 15HA of the SEBI Act	Rs.20,00,000/- (Rupees Twenty Lakh Only)

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

56. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

57. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

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

59. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee and also to SEBI.

Place: Mumbai	**SOMA MAJUMDER**
Date: July 31, 2023	**ADJUDICATING OFFICER**