BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No.: Order/AP/SK/2021-22/11544-11547]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.

In respect of:

Noticee No.	Name of the Noticee	PA No.
1.	Mr. Kalpesh Patel	ADFPP0505K
2.	Mr. Kaushik Bhatt	ABXPB2109D
3.	Mr. Mukund Bakshi	ABXPB7925R
4.	Mr. Dinesh Patel	AGQPP3633A

In the matter of Kemrock Industries & Exports Ltd.

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1. Securities and Exchange Board of India ("SEBI") conducted an investigation in the matter of Kemrock Industries & Exports Ltd. (hereinafter referred to as 'KIEL') during the period from April 01, 2010 to May 31, 2010 and observed the following:

   a) On April 29, 2010, KIEL had issued 4.83 million GDRs (amounting to USD 50.00 million) equivalent to its 48,27,200 equity shares. Escrow Account Statement showed that Vintage FZE ("Vintage") was the only entity to have subscribed to the entire 4.83 million GDRs.

   b) Subscription amount for GDRs was paid by obtaining loan of USD 50.00 million from European American Investment Bank AG, Austria ("EURAM Bank") which had granted the loan specifically for subscription of GDRs of KIEL. Financial Market Authority ("FMA") Austria vide email dated March 01, 2016 also confirmed that as submitted by EURAM Bank, Vintage was the sole subscriber to said 4.83 million GDRs of KIEL amounting to USD 50.00 million.

   c) Vintage had opened a loan account (a/c no. 540012-030-1) and KIEL had opened a retail account (a/c no. 580020) with EURAM Bank.

   d) Vintage obtained the loan of USD 50.00 million for subscription of GDR issue of KIEL by entering into a Loan Agreement dated April 23, 2010 with EURAM Bank. The Loan Agreement was signed by Mr. Arun Panchariya in the capacity of Managing Director of Vintage. The loan was granted subject to pledge of the securities held in the account no. 540012 of Vintage with

EURAM Bank and also the account no. 580020 of KIEL held with EURAM Bank as collateral against the loan availed by Vintage from EURAM Bank as set out in a pledge agreement which was integral part of the Loan Agreement. On the same day, Mr. Kalpesh Patel (Chairman and Managing Director of KIEL) executed a Pledge Agreement dated April 23, 2010 and the same was part of the Loan Agreement. The Loan Agreement and the Pledge Agreement were executed concurrently, prior to the GDR issue of KIEL, and were integral part of each other.

e) From the Pledge Agreement and Loan Agreement also, it was observed that entire 4.83 million GDRs issued by KIEL were subscribed by Vintage by availing the loan from EURAM Bank. Further, the bank account in which GDR proceeds were deposited, was in name of the KIEL but the amount deposited in the account was not at the free disposal of the KIEL as the same was kept as collateral for the loan availed by Vintage. Pursuant to the Pledge Agreement dated April 23, 2010 KIEL pledged GDR proceeds of USD 50.00 million as collateral against loan availed by Vintage from with EURAM Bank for subscription of GDRs, prior to issuance of GDRs. On perusal of KIEL's retail account statement and Vintage's loan account statement with EURAM Bank, it was observed that GDR proceeds of USD 50,000,137.60 were deposited in KIEL's account no. 580020 on April 29, 2010.

f) From the certified copy of KIEL's Board Resolution dated March 16, 2010 (certified to be true by directors Mr. Kaushik Bhatt and Mr. Mukund Bakshi and Company Secretary Mr. Dinesh Patel) as provided by EURAM Bank, it was observed that the board of directors of KIEL had authorized EURAM Bank to use KIEL's GDR proceeds deposited with EURAM Bank as security in connection with loan, if any, and authorized Mr. Kalpesh Patel - Chairman & Managing Director of KIEL and Mr. Shailesh Patel - Manager Accounts of KIEL to sign, execute, any application, agreement etc. as may be required by EURAM bank. The said board resolution stated that:

> *"RESOLVED THAT a bank account of Kemrock Industries and Exports Limited (Company) be opened with EURAM Bank ("the Bank") or any branch of EURAM Bank, including the Offshore Branch, outside India for the purpose of receiving subscription money in respect of the Global Depository Receipt issue (GDRs) of the Company.*
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> *RESOLVED FURTHER THAT, Mr. Kalpesh Patel, the Chairman & Managing Director and Mr. Shailesh Patel, the Manager Accounts, the Authorized Signatories of the Company, be and are hereby severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.*

RESOLVED FURTHER THAT, Mr. Kalpesh Patel, the Chairman & Managing Director and Mr. Shailesh Patel, the Manager Accounts, the Authorized Signatories of the Company, be and are hereby severally authorized to draw cheques and other documents, and to give instructions from time to time as may be necessary to the said EURAM Bank or any of branch of EURAM Bank, including the Offshore Branch, for the purpose of operation of and dealing with the said bank account and carry out other relevant and necessary transactions and generally to take all such steps and to do all such things as may be required from time to time on behalf of the Company.

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."

g) It was observed that KIEL's authorization to EURAM Bank to use the funds so deposited in the said bank account as security in connection with loan, if any, depicts that the abovementioned board resolution was to provide security in connection with loan availed by Vintage from EURAM Bank.

h) On April 30, 2010, KIEL had made a corporate announcement to BSE Ltd. ("BSE") that:

"…the Company, on April 29, 2010, raised US$ 50 million through issue of 4,827,200 Global Depositary Receipts (each representing one Equity Share of par value of Rs. 10/-) at an issue price of US$ 10.358 per Global Depositary Receipt. Each GDR represents one underlying equity share in the Company…".

i) On perusal of the said corporate announcements, it was observed that KIEL did not inform stock exchanges with regard to entering into Pledge Agreement with EURAM Bank and pledging of GDR proceeds against the loan availed by Vintage for subscription of GDRs of KIEL which was price sensitive information and could have impacted the price of the scrip.

j) Vintage had repaid the loan to EURAM Bank in several installments from July 2010 to February 2011. It was further observed that only after Vintage repaid the loan installments, on same day or later date, equal/ less amount of money was transferred (barring three instances i.e. October 29, 2010, December 02, 2010 and February 03, 2011, when more money was transferred on account of availability of surplus money in KIEL's account) from KIEL's account to: i) KIEL's bank account in India; and ii) Other entities abroad. Thus, the amount transferred from KIELs account was as dependent on the repayment of loan by Vintage. Details of transfer of GDR proceeds (along with the interest earned on it) are tabulated below as Table A and details of repayment of loan by Vintage to EURAM Bank are tabulated below as Table B:

TABLE – A

(Source: KIEL's EURAM bank a/c statement)

Date of transfer of funds	Amount of funds transferred from KIEL's EURAM Bank a/c to KIEL's bank account in India (USD)	Amount of funds transferred to other entities (USD)
06.07.2010	10,000,000.00	
23.08.2010		1,960,000.00 Langten Limited, UAE
3.09.2010		2,086,000.00 Langten Limited, UAE
7.09.2010		1,943,000.00 Langten Limited, UAE
13.09.2010		2,081,000.00 Langten Limited, UAE
15.09.2010		1,839,000.00 Langten Limited, UAE
05.10.2010	2,923,000.00	
22.10.2010		3,820,000.00 Ultimate Trade Limited, Liechtenstein
29.10.2010		3,850,000.00 Ultimate Trade Limited, Liechtenstein
08.11.2010		3,839,000.00 Ultimate Trade Limited, Liechtenstein
15.11.2010		2,000,000.00 Ultimate Trade Limited, Liechtenstein
19.11.2010		3,800,000.00 Ultimate Trade Limited, Liechtenstein
23.11.2010		3,777,000.00 Ultimate Trade Limited, Liechtenstein
02.12.2010		3,745,000.00 Ultimate Trade Limited, Liechtenstein
23.12.2010		678,766.00 Ultimate Trade Limited, Liechtenstein
28.12.2010		1,295,548.00 Langten Limited, UAE
03.02.2011		575,700.00 Ultimate Trade Limited, Liechtenstein
Total	**12,923,000.00**	**37,290,014.00**

TABLE - B

(source: Vintage's loan account statement with EURAM Bank)

Date of transfer of funds	Amount repaid by Vintage (USD)	Amount of funds transferred from KIEM's EURAM Bank a/c to 1) KIEM's bank account in India and 2) other entities
06.07.2010	10,051,000.00	10,000,000.00
23.08.2010	1,952,000.00	1,960,000.00
3.09.2010	2,086,000.00	2,086,000.00
7.09.2010	1,944,000.00	1,943,000.00
10.09.2010	2,081,000.00	
13.09.2010		2,081,000.00
15.09.2010	1,839,000.00	1,839,000.00
05.10.2010	2,929,000.00	2,923,000.00
21.10.2010	3,820,000.00	
22.10.2010		3,820,000.00
29.10.2010	3,839,000.00	3,850,000.00
08.11.2010	3,839,000.00	3,839,000.00
15.11.2010	2,000,000.00	2,000,000.00
19.11.2010	3,800,000.00	3,800,000.00
23.11.2010	3,777,000.00	3,777,000.00
01.12.2010	3,714,000.00	
02.12.2010		3,745,000.00
23.12.2010	1,980,000.00	678,766.00
28.12.2010		1,295,548.00
02.02.2011	349,137.60	

Date of transfer of funds	Amount repaid by Vintage (USD)	Amount of funds transferred from KIEM's EURAM Bank a/c to 1) KIEM's bank account in India and 2) other entities
03.02.2011		575,700.00
Total	**50,000,137.60**	**50,213,014.00**

From the above Table-A and Table-B, it is observed that out of the GDR proceeds of USD 50.00 million (along with the interest earned on it), KIEL transferred USD 12.92 million to its bank account in India and USD 37.29 million to certain entities situated abroad in the guise of investment/ purchase of machinery and the amount transferred from KIEL's EURAM Bank account was dependent on the repayment of the loan by Vintage.

2. In view of the above, it has been alleged that the GDR issue would not have been subscribed had KIEL not given any such security towards the loan taken by Vintage and the entire scheme involving entering into Pledge Agreement, making corporate announcement that the GDRs were subscribed without disclosing the arrangement to the investors resulted in publication of misleading news to the stock exchanges which contained information in a distorted manner so as to influence the decision of the investors by creating a make belief picture that the GDR issue was genuinely subscribed. It is further alleged that the scheme of issuance of GDRs by KIEL was fraudulent and the announcement made by it has misled Indian retail investors and induced investors to deal in shares of KIEL in Indian capital market. It was also alleged that KIEL has not complied with the provisions of Section 21 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as 'SCRA') read with Clause 36 (7) of the erstwhile Equity Listing Agreement for not-informing BSE regarding entering into Pledge Agreement with EURAM Bank for giving security towards the loan taken by Vintage from EURAM Bank which was a price sensitive information so as to impact the price of the scrip of KIEL. Therefore, in view of the said facts, it was alleged that KIEL has violated the provisions of Section 12A (a), (b) and (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with Regulation 3 (a), (b), (c), (d) and Regulation 4(1) and 4 (2) (f), (k) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations') and Section 21 of SCRA read with Clause 36 (7) of the erstwhile Equity Listing Agreement.

3. It was further alleged that director of KIEL Mr. Kalpesh Patel ("Noticee No. 1") who executed the Pledge Agreement and directors Mr. Kaushik Bhatt ("Noticee No. 2") and Mr. Mukund Bakshi ("Noticee No. 3") and Company Secretary Mr. Dinesh Patel ("Noticee No. 4") whom have certified the board resolution submitted to EURAM Bank to be true, acted as party to the fraudulent scheme as aforesaid leading to violation of the provisions of Section 12A (a), (b) and (c) of SEBI Act read

with Regulation 3 (a), (b), (c), (d) and Regulation 4(1) of PFUTP Regulations. The text of the said provisions read as under:

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;.
(d) …..

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 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.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.
(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—
(a) ……

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities; an intermediary predating or otherwise falsifying records such as contract notes.

(g) ……

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

(l) …..

(r) planting false or misleading news which may induce sale or purchase of securities.

(s) …..

SCRA

Conditions for listing

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

Equity Listing Agreement

36. *Apart from complying with all specific requirements as above, the Issuer will intimate to the Stock Exchanges, where the company is listed immediately of events such as strikes, lock outs, closure on account of power cuts, etc. and all events which will have a bearing on the performance / operations of the company as well as price sensitive information both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the security holders and the public to appraise the position of the Issuer and to avoid the establishment of a false market in its securities. In addition, the Issuer will furnish to BSE on request such information concerning the Issuer as the BSE may reasonably require. The material events may be events such as:*

(1) …..

(7) Any other information having bearing on the operation/performance of the company as well as price sensitive information which includes but not restricted to;

(i) Issue of any class of securities.

(ii) Acquisition, merger, de-merger, amalgamation, restructuring, scheme of arrangement, spin off of setting divisions of the company, etc.

(iii) Change in market lot of the company's shares, sub-division of equity shares of the company.

(iv) Voluntary delisting by the company from the stock exchange(s).

(v) Forfeiture of shares.

(vi) Any action which will result in alteration in the terms regarding redemption/cancellation/retirement in whole or in part of any securities issued by the company.

(vii) Information regarding opening, closing of status of ADR, GDR or any other class of securities to be issued abroad.

(viii) Cancellation of dividend/rights/bonus, etc.

The above information should be made public immediately.

4. In view of the above, the competent authority in SEBI *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate upon the aforesaid violations by KIEL and Noticee No. 1 to 4. By a *communication-order* dated August 21, 2018, Shri Santosh Shukla was appointed as Adjudicating Officer ('erstwhile AO') under Section 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') and under Section 23-I of the SCRA read with Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as 'SCRA Adjudication Rules') to inquire into and adjudge under Section 15HA of the SEBI Act and under Section 23E of the SCRA the alleged violations by the aforesaid entities. The said provisions of SEBI Act and SCRA read as under:

SEBI Act

Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty [1] [which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher].*

SCRA

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. *If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be [2] [liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees].*

5. Subsequent to the transfer of the erstwhile AO, vide a *communication order* dated January 07, 2020, the case was transferred to undersigned. It has been advised that except for the change of the Adjudicating Officer, the other terms and condition of the original orders (whereby the aforesaid

[1] Substituted for the words "twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.

[2] Substituted for the words "liable to a penalty not exceeding twenty-five crore rupees" by the Securities Laws (Amendment) Act, 2014, w.e.f 08-09-2014.

Adjudicating Officers was appointed) '*shall remain unchanged and shall be in full force and effect'*. It has also been advised that '*I should proceed in accordance with the terms of reference made in the original orders.*'.

6. After receipt of records of these proceedings, it was noted that the erstwhile AO had issued the notice to show cause no. EAD-2/SS-SKS/OW/26010/2018 dated September 17, 2018 (hereinafter referred to as 'the SCN') to KIEL and Noticee No. 1 to 4 in terms of Rule 4(1) of the SEBI Adjudication Rules read with section 15I of the SEBI Act and Rule 4(1) of the SCRA Adjudication Rules read with section 23I of the SCRA calling upon them to show cause as to why an inquiry should not be held against them in terms of Rule 4 of the SEBI Adjudication Rules and Rule 4 of the SCRA Adjudication Rules penalty be not imposed for the aforesaid alleged violations under Section 15HA of the SEBI Act and Section 23E of the SCRA. The SCN sent to the Noticees was duly served.

7. It is pertinent to mention that vide Adjudication Order No. EAD-2/SS/SK/2018-19/1789 dated December 31, 2018, the erstwhile AO had disposed of the proceedings without going into the merits of the case *qua* KIEL on the ground that there is no material on record to suggest that leave of the Court / Tribunal has been obtained to commence these proceedings against KIEL which was to be wound up in terms of order dated May 04, 2015 passed by Hon'ble High Court of Gujarat and concluded that the present adjudication proceedings against KIEL which is under liquidation cannot be proceeded with.

8. As regards the Noticees in the instant matter, it is noted that Noticee No. 1 to 4 have filed their respective replies and availed the opportunity of hearing granted by the erstwhile AO on various dates during the period from November 01, 2018 to January 25, 2019. As the hearing in respect of the SCN was granted by the erstwhile AO as aforesaid, the undersigned deemed it fit to grant the Noticees another opportunity of personal hearing in the interest of the principle of natural justice. Accordingly, in terms of Rule 7 (b) of the SEBI Adjudication Rules, the Noticees were notified about personal hearing granted to them by the undersigned through WebEx platform on March 19, 2021. The notice of hearing was sent to the respective e-mail IDs of the Noticees as available on record. Noticee No. 1 failed to avail the opportunity of hearing granted to him on March 19, 2021. However, he availed the another opportunity of hearing granted to him on April 09, 2021. Noticee No. 2 and 3 both availed the opportunity of hearing granted to them on March 19, 2021. Noticee No. 4, belatedly vide e-mail dated March 29, 2019, requested to consider his status as that he has already made submissions (i.e. vide his letters dated October 05, 2018 and November 07, 2018) in the matter and hence, waived the opportunity of hearing granted to him.

9. During the hearing, Noticee No. 1 made oral submissions on the lines of written reply filed by him vide his letter dated December 06, 2018. Noticee No. 2 made oral submissions on the lines of written reply filed by him vide his letters dated November 26, 2018 and January 28, 2019. Similarly, Noticee No. 3 made oral submissions on the lines of written reply filed by him vide his letters dated October 30, 2018 and November 26, 2018. Noticee No. 4 had already made submissions vide his letters dated October 05, 2018 and November 07, 2018.

10. The reply / submissions of the Noticees are summarized as follows:

Noticee No. 1:

a) He was Promoter of the Company holding 4.59% of the total share capital. He is a technocrat with special expertise in the field of plastics technology, mechanical engineering & electrical engineering and was serving on the board of directors of the Company between November 1991 to May 2015.

b) The SCN pertains to alleged violations during the period April, 2010 - May 31,2010. However, the same has been issued on September 17, 2018, i.e., after a delay of about 8 years. Such inordinate delay has caused great prejudice to him as since he resigned from the post of Chairman and Managing Director of the Company and has no access to any relevant documents for the purposes of filing of an effective reply. Further, the persons in the knowhow of the affairs and the persons responsible for maintaining relevant documents pertaining to the GDR issue have left the Company, thus making it impossible to trace and collate relevant documents and materials.

c) Vide his letter dated October 29, 2018, he had, *inter alia*, sought an inspection of all relevant documents in SEBI's records. Vide SEBI letter dated November 2, 2018, his request was rejected on the ground that all documents relied on by SEBI have been provided to him along with the SCN. Thus, denying him inspection on the ground that all documents which were relied on in framing the charges against him have been provided to him is against the principles of natural justice.

d) SEBI has no jurisdiction over GDR issued in foreign jurisdiction unless the same has an adverse effect in Indian Securities Market, due to allied transactions in the underlying shares post conversion of GDRs. The SCN does not make such allegation and GDR issue was compliant with Foreign laws, hence it is not SEBI's jurisdiction to allege that such scheme of issuance of GDR was fraudulent.

e) GDR issue was done for financing the expansion needs of the Company (relating to carbon fibre production) and repayment of certain loans, hence they engaged a consultant who brought Vintage, an entity who was willing to subscribing to GDR issue of the Company. It was conveyed by this consultant, that Vintage was willing to subscribe to GDRs issued by the Company and thus, become an investor therein as it was immensely interested in investing in the upcoming products being planned by the Company including but not limited to carbon fiber. The process of issuance of GDRs was finalized as per such consultant and the Managing Director of Vintage's directions and GDRs of the Company were issued on April 29, 2010.

f) The Pledge Agreement was executed as per the advice of the consultant to the Board of Directors who advised that the same was compliant with all laws. Relevant disclosures about GDR issue have been made, therefore, as far as disclosure of Pledge Agreement is concerned, it becomes the discretion of the Board of Directors as to what needs to be disclosed. He had further relied on Clause 36 of the Listing Agreement to further support his argument and contended that such decision is protected by the Business Judgement Rule. Further, it was a collective decision of the board of directors of the Company and no special role with regards thereto has been ascribed to him in the SCN.

g) Vide board resolution dated March 16, 2010, he was authorized by the board of directors of the Company, at the behest of the advsiors appointed for the GDR Issuance, to draw cheques and other documents, and to give instructions from time to time as may be necessary to EURAM Bank or any branch of EURAM Bank, including the Offshore Branch for the purpose of operation of and dealing with the said bank account and Carry out other relevant and necessary transactions and generally to take all such steps and to do all such things as may be required from time to time on behalf of the Company.

h) He has admitted having signed the Pledge Agreement in furtherance of the authorization by the Board of Directors. He has not made any unlawful gain and has not sold shares even after price of the shares of the Company went high and rather, he had bought shares subsequently.

Noticee No. 2:

a) He joined the company as a non-executive Independent Director with effect from February 10, 1996 based on the request made by Noticee No. 1 who was the Chairman & Managing Director of the company. He accepted the request in good faith so as to benefit the company out of legal knowledge and experience which he had gained over the years. He was never a Promoter nor was covered under the Promoter's group category.

b) He was never in charge of the day-to-day operations of the company and that he was never in control of the Management of the company and or any operations, affairs and activities of the company.

c) He had resigned on April 01, 2014. He has enclosed E Form DIR 12 in support of his resignation.

d) The Resolution in question was first adopted by the Board of Directors in their meeting held on March 16, 2010. Noticee No. 1 approached him on April 20, 2010 and requested him to sign the said resolution just as "Certified True Copy" since a certified copy of the resolution was required to be submitted by the company to EURAM Bank. When the said true copy of resolution was brought to him for his signature, it was already signed by Noticee No. 3, Director and Noticee No. 4, Company Secretary. He therefore signed the said resolution - as a third signatory - believing in the requirement of the company.

e) He never participated in any roadshow or by other ways for GDR issue made by the company in the year 2010 and that after the certified copy of the resolution was given to EURAM Bank, he was not made aware of further developments. He had no knowledge about banking operations and also about the subsequent transactions that might have taken place in the company's account with EURAM bank. He had never signed / executed any other papers/documents of whatsoever nature including any Pledge Agreement or any other Agreement/s with EURAM Bank and / with any other entity in the matter of issue of GDRs by KIEL. He had not gained / benefited or took any advantage from the GDRs issue of the Company either directly or indirectly

f) Noticee No. 1 had personally handled all the activities relating to GDRs issue and interacted with the persons, banks and authorities involved in the said issue.

g) He is a practicing lawyer in Vadodara for the last 40 years and in that capacity, he had rendered certain professional services to the company in their cases from 1996 to 2014. The Company had paid legal & professional fees to him for legal services rendered by him to it.

Noticee No. 3:

a) He was appointed as an Independent/Non-Executive Director in 2004. On account of his professional commitments and his unavailability to devote time to attend to the affairs of KIEL, he had resigned on August 28, 2010 owing to professional commitments and lack of time. He has enclosed Form 32 in support of his resignation.

b) He was not involved in day-to-day affairs of the Company and was unable to attend the Board Meetings regularly and to the best of his knowledge, he did not attend meetings pertaining to GDR issue.

c) The alleged fraudulent arrangement pertaining to GDR issue was not brought to his notice and he was not aware of the manipulative designs and was not part of discussions pertaining to signing of documents between KIEL, Vintage and EURAM Bank.

d) He was informed by the Company that it is in the process of opening a bank account outside India with EURAM Bank and that the copy of Board Resolution approving GDR issue and opening a bank account is to be certified by two Independent Directors as per the requirement of EURAM Bank. It is only in this context that he had certified a copy of the resolution as true and that he had no knowledge or information in respect of the modus operandi of the GDR issue and other developments in the matter

e) He has not received any remuneration from KIEL for attending any of the meetings at which the proposal for GDR issuance was considered or any other meetings by the Board of Directors of KIEL

f) All the compliances with respect to the Listing Agreement was all along done by the Company Secretary Shri Dinesh Patel i.e. Noticee No. 4 as per the requirements of Listing Agreement.

g) He has sought information from Company and MD vide several letters sent to them, however, no information has been received from them.

h) Since the affairs of the Company is now vested with the official liquidator appointed by the Hon'ble Ahmedabad High Court, he had sought the relevant information from the office of the Official Liquidator by a letter dated October 30, 2018. however, no information has been received from the official liquidator.

<u>Noticee No. 4:</u>

a) The Board Resolution dated March 16, 2010, of KIEL, as its plain reading suggests, was prima facie and specifically meant for opening of the Company's bank account outside India for the purpose of receiving of GDR subscription money and for its operation. He was neither connected with its actual implementation nor was aware of the alleged transactions entered into by the Company in pursuance of the said resolution. He was unaware of the Pledge Agreement or Loan Agreement and he was only aware of passing of the alleged Board Resolution and was merely certifying the copy in a mechanical/clerical manner.

b) His appointment and role at KIEL was as a "Company Secretary" which is typically limited to performance of administrative and ministerial functions and they did not extend to management of the company. He has relied on Section 383A (1) of the Companies Act, 1956, to emphasise that on this issue.

c) He did not have any knowledge as to whether and how far the management of the Company had acted and carried into effect the powers and decisions contained in the said board resolution. The only grievance that he had certified the copy of the said resolution as true is in no way fasten upon him any responsibility or liability as to the acts done by the management of the Company.

d) He had resigned as a company secretary of the Company from the close of business hours on April 30, 2012 w.e.f., May 01, 2012.

11. I have carefully considered the allegations levelled in the terms of reference, the reply/submissions of the Noticees and the relevant material available on record. Before, examining the matter on merits, it is deemed fit to deal with technical objections raised by Noticee No. 1. The Noticee No. 1 has contended that inordinate delay in issuance of the SCN has caused great prejudice to him as he resigned from the post of Chairman and Managing Director of the Company. In this regard, it is relevant to mention that the instant proceedings are mandated pursuant to the approval of the competent authority on July 13, 2018. The said decision is taken subsequent to the detailed

investigation carried out by the concerned department in SEBI in few other cases of GDR issues based on some complaints that one Mr. Arun Panchariya, in connivance with different issuer companies and their promoters/directors, had conceived fraudulent schemes to help those companies to issue GDRs in certain overseas markets. While investigating those cases, information was sought by SEBI from several entities including the Regulators of other countries. After analysing the information received from various sources, it was noticed that similar *modus operandi* were also followed in several other GDR issuances by the Companies listed in India.

12. Under the circumstances, as mentioned above, the scope of investigations was expanded and scrip wise investigation was undertaken by SEBI into a large number of GDR issue cases spanning over different years. Since a large number of scrips and issues were taken up for investigation collectively for which information had to be collected from different entities, mostly from the authorities situated outside India through regulatory coordination/arrangements with different overseas Regulators, it consumed ample time for completion of the investigation. Further, constraining factor was the non-cooperative approach of most of such companies which also delayed the completion of investigation into such a large number of GDR cases undertaken by SEBI and these facts cannot be ignored while considering the defence of delay, if any, so happened in this case in issuing the SCNs to the Noticees. I also note that major portion of the relevant information in this regard was received from FMA, Austria in March 2015. I further note that SEBI had passed an order dated June 16, 2016 in which it had recorded that investigation was initiated in respect of 59 GDR issues made by 51 Indian Companies during the period 2002 to 2014. It is seen that KIEL was also one such scrip in respect of which the investigation was undertaken and after completion of investigation SCN was issued to the Noticees on September 17, 2018. Therefore, the time taken for completion of collective investigation into a large number of similar cases and thereafter issuing SCNs to a large number of Noticees, including the Noticees in this case, is reasonable. Thus, in order to ascertain as to whether there has been actually any delay in the matter, the date when the violation came to the notice of the SEBI should be the relevant point and not the date of violation. Moreover, adding to all the events above, due to the extraordinary situation of covid pandemic, the matter could not be proceeded further during the intermittent period which contributed in taking time in disposal of the matter. I, therefore, hold that there is no inordinate delay as contended and hence, the contention of the Noticee No. 1 in this regard is rejected.

13. Noticee No. 1 had also, *inter-alia*, contended that as the Company is in liquidation, he has no access to documents for the purposes of filing of an effective reply. I note that he has merely made a bald statement that since the Company has gone into liquidation, he has no access to documents,

however he has failed to show as to what concrete steps / efforts have been taken by him to gather relevant material for his defence. Therefore, the contention of the Noticee No. 1 in this regard is not acceptable and hence rejected.

14. Noticee No. 1 contended that his request for inspection was rejected on the ground that all documents relied on by SEBI have been provided to him along with the SCN and hence, it is against the principles of natural justice. In this regard, I note that all the relied upon copies of the documents in the matter were provided to the Noticee along with the SCN. I am of the view that since the copies of the relevant and relied upon material which is the information provided by EURAM Bank *viz.* KIEL's board resolution dated March 16, 2010, KIEL's EURAM bank account statement, Vintage's loan account statement, Pledge Agreement, Loan Agreement, Escrow Agreement, e-mail dated March 01, 2016 received from FMA, extract of KIEL's Annual Report for the FY 2009-10 and KIEL's corporate announcement on BSE. As these documents relevant for the Noticee No. 1 were given to him along with the SCN, no prejudice is caused to him on this account. In this context, it is a settled position of law that only the relied upon documents has to be provided for inspection to the Noticee and the same position has been upheld by the Hon'ble Supreme Court in the matter of *Kanwar Natwar Singh v. Directorate of Enforcement [(2010) 2 SCC 497], Chandrama Tewari Vs. Union of India, Through General Manager, Eastern Railways, (1988) 1 SCR 1102* and *M/s Haryana Financial Corporation vs. Kailashchand Ahuja* [2008(9) SCC31], Hon'ble Delhi High Court Delhi High Court in its order dated 30.08.18 in the matter of *PRAR Holding Private Limited Vs. SEBI* and also by the Hon'ble SAT in number of its rulings. In the recent ruling of Hon'ble Securities Appellate Tribunal ('SAT') in the case of *Shruti Vora Vs. Securities and Exchange Board of India, in* Appeal Number 28 of 2020 decided on February 12, 2020 held that *"…The contention that the appellant is entitled for copies of all the documents in possession of the AO which has not been relied upon at the preliminary stage when the AO has not formed any opinion as to whether any inquiry at all is required to be held cannot be accepted. A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon…"* It is also noted that documents annexed with the SCN were the documents of KIEL and the original of these were with the company of which Noticee No. 1 was the Managing Director. I further note from the 11B Order dated January 27, 2021, the Noticee No. 1 had carried out inspection of the documents relied upon in the SCN on February 26, 2019. In view of the identical set of facts,

circumstances and allegations and grounds in both the SCNs, there was no need to grant further inspection. Therefore, the contention of the Noticee No. 1 in this regard is not acceptable and hence rejected.

15. Noticee No. 1 further contended that SEBI has no jurisdiction over GDR issued in foreign jurisdiction unless the same has an adverse effect in Indian Securities Market, due to allied transactions in the underlying shares of GDR issue. It has also been submitted that the SCN does not make such allegation and that the GDR issue was compliant with Foreign laws, hence it is not SEBI's jurisdiction to allege that such scheme of issuance of GDR was fraudulent. In this regard, I note that the SCN has spelt out the allegations about how the Noticees by their acts have engaged in a fraudulent scheme for issuance of GDR in an overseas market in order to mislead the shareholders and public at large, that have resulted in violation of Indian Securities Market Laws i.e. provisions of SEBI Act and PFUTP Regulations. A company listed in India is bound to follow all the statutory provisions and regulations of SEBI and has to make true and adequate disclosures in terms of the Listing Agreement and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and is not to engage in any activity that can amount to defrauding the investors in breach of provisions of PFUTP Regulations. As the SCN has been issued with respect to violations of various specific provisions of Indian Securities law, the Noticee No . 1's claim that the present proceedings lack jurisdiction is untenable. Further, the question of jurisdiction of SEBI over GDR issue was deliberated by Hon'ble Supreme Court in the case of *SEBI v. PAN Asia Advisors Ltd & anr., (2015) 14 SCC 71* in which the observations of the Hon'ble Supreme Court in the matter squarely cover the issue as far as jurisdiction of SEBI is concerned. The relevant extracts of the judgment of Hon'ble Supreme Court dealing with the said issue are as under:

"80. ....It is true that the creation of GDR and its trading in the global market are governed by the respective laws of the country in which they are dealt with. But one special feature to be borne in mind is that in the case on hand, the allegations levelled against the issuing company in connivance with the respondents are that a make believe affair was created, as though there was genuine creation of GDRs and its investments by the foreign investors on the very date when the GDRs were issued and thereby the global performance of the issuing company in the local market of the issuing company had a boost in the commercial sector, which lured the local investors to develop their keen interest to make the investments on a higher share value by virtue of the investment made by the foreign investors and in that process it is alleged that the issuing company itself provided every scope for the foreign investments to be financed and in reality the ultimate investment was made by Indian investors viz., the ordinary shareholders. The said fact would certainly call for a probe at the hands of SEBI on whom a duty is cast under Section 11(1) to protect the interest of investors in securities and the security market…………

81…….

82. We are therefore convinced that having regard to the nature of allegations in the interests of investors in securities as well as the statutory obligation/duty cast upon SEBI to protect their interests, SEBI has got every jurisdiction to proceed against the respondents as well as the issuing company. The contention made on behalf of the respondents that the only authority which can proceed against the issuing company can be only for violation of the FEMA Act or the RBI Act is therefore not appealing to us.............

86. 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. Therefore, the reference to those provisions contained in other enactments in our considered opinion does not cause any impediment for SEBI to proceed against the respondents in exercise of its jurisdiction under the SEBI Act, 1992...........”

For the aforementioned reasons, I do not find any merit in the submissions of Noticee No. 1 that the instant matter does not comes under the jurisdiction of SEBI and hence, rejected hereby.

16. Now, coming to the merits of the case, it is of paramount importance to understand the scheme deployed by KIEL and the Noticees. As mentioned in the preceding paragraphs, the Company had issued 4.83 million GDR on April 29, 2010 for raising USD 50.00 million and for this purpose, the Board of KIEL had passed a resolution in its Meeting held on March 16, 2010, wherein, inter alia, a decision was taken to open an account with EURAM Bank for the purpose of depositing the GDR Proceeds therein and also to authorize EURAM Bank to use the GDR proceeds as security against the loan. On a perusal of the aforesaid Board Resolution, I note that the said resolution was approved by the Board on March 16, 2010 for, inter alia, opening of a bank account with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue of the Company. According to the resolution, Noticee No. 1 - Mr. Kalpesh Patel Chairman & Managing Director of the Company and another Mr. Shailesh Patel, Manager Accounts were authorized to sign, execute any application, agreement, etc., as may be required by the EURAM Bank. Accordingly, the Company had opened an account no. 580020 in its name in EURAM Bank. It was further resolved by the Board to authorize the EURAM Bank to use the funds so deposited in the said bank account of the Company as security in connection with loans, if any. A comprehensive reading of all the above said Board Resolutions clearly suggest that a decision was taken by the Board of the Company as far back as on March 16, 2010, related to the proposed

issuance of GDR, including a decision that was taken at that very stage itself to open a bank account with EURAM Bank. Further, the Board had also contemplated on the date of passing of the said resolution itself, that the funds/proceeds of the proposed GDR issue to be received in their EURAM Bank account, would be used as a security for loans by the EURAM Bank. The said contemplation of using the GDR proceeds as security for loan was sans any reason and contrary to the commonly accepted commercial practice. No reasons have been assigned by the Company for passing such a resolution. Further, putting the GDR proceeds as a security against a loan clearly suggests that the Company did not have any need for the GDR proceeds to be put to immediate use for the objects for which the GDR were to be issued. On the one hand, the Company, instead of raising funds from the domestic sources, thought it proper to explore the possibility of raising funds offshore, while on the other hand, it did not seem to have any genuine intention to immediately use such funds for the business requirement of the Company. Apparently, this act of the Company gives an impression that the Company did not have any serious and urgent need of funds to meet its business requirement. In this regard, it is noted that the information with regard to the aforesaid Board Resolution, particularly the resolution for keeping the GDR proceeds as a security against loan if any, was never disclosed to the Stock Exchange or to the Shareholders of the Company, which amounted to concealing of such an important information from the knowledge of the shareholders and other domestic investors and consequently preventing them from taking an informed decision.

17. It is further noted that Vintage had signed a Loan Agreement dated April 23, 2010 with EURAM Bank for availing a loan of up to USD 50,000,137.60 so as to be in a position to subscribe to the full amount of the GDR issue of KIEL worth USD 50.00 million. It is relevant to mention that there I no material on record to establish that the said sole subscriber, i.e. Vintage was otherwise, (even in the absence of the said loan that was facilitated to it from EURAM Bank by the Company), financially capable to subscribe to the entire GDR issue. In this regard it is pertinent to note some of the relevant clauses of the said Loan Agreement, which are cited as under:

> *"1. Currency and Amount of Facility*
>
> *USD 50,000,137.6*
>
> *2. Nature and Purpose of Facility*
>
> *To provide funding enabling Vintage FZE to take down GDR issue of 4,827,200 Luxembourg public offering and may only be transferred to EURAM account no. 580020, Kemrock Industries and Exports Limited.*

<u>3. Draw down</u>

The Bank makes the Facility available to the Borrower subject to the fulfillment of the conditions precedent as set out in section 9 of this Loan Agreement <u>and solely for the purpose as set forth above.</u>

…………………………..

<u>6. Security</u>

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

- *Pledge of certain securities held from time to time in the Borrower's account no. 540012 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*
- *<u>Pledge of the account no. 580020 held with the Bank</u> as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*

………..…………………………………………………………"

18. From the above, it is apparent that based on the strength of the authorization given by the Board to that effect to *"use the funds so deposited in the aforesaid bank account as security in connection with loans if any",* the Noticee no. 1 - Mr. Kalpesh Patel, Chairman & Managing Director of the Company had signed a *Pledge Agreement* with EURAM Bank dated April 23, 2010 therein giving an undertaking on behalf of KIEL to deposit in its designated account with EURAM Bank an amount not exceeding the loan availed by Vintage for subscribing to the GDR of KIEL and further to keep the deposited amount as a security against the loan obligations of Vintage under the above mentioned Loan Agreement. On a careful examination of the contents of the relevant clauses of the "Loan Agreement" signed by Vintage with EURAM Bank and the "Pledge Agreement", signed by Noticee No. 1 on behalf of KIEL with EURAM Bank, following observations are made: -

   a) The Pledge Agreement was executed mainly to secure the obligations of the borrower i.e. Vintage, which was granted a loan for USD 50.00 million by EURAM Bank. The preamble of the Pledge Agreement mentions that the Pledgor received a copy of the Loan Agreement and acknowledges the terms of the Loan Agreement. Further, the Pledge Agreement also mentions that the Pledgor (KIEL) pledges to EURAM Bank, all the rights, title and interest in the securities deposited and balance of funds up to USD 50.00 million in the A/C no. 580020 maintained with EURAM Bank (hereinafter referred to as "Pledged Accounts").

b) The account no. 580020 was the account of KIEL where the GDR proceeds of KIEL were to be deposited and the same was pledged by KIEL as security against the loan taken by Vintage vide Pledge Agreement dated April 23, 2010 executed by KIEL before the actual GDR issue that took place on April 29, 2010.

c) In terms of the clause 6 of the Pledge Agreement (pertaining to realization of the pledge), KIEL had given consent to the EURAM Bank to apply the funds in the Pledged Accounts in the event of default of repayment by the borrower, i.e. Vintage for settling their obligations as a borrower. Consequent to such pledge terms, it is noted that even after the GDR issue, KIEL could not get the GDR proceeds at its disposal for utilization until repayment of the loan was made by Vintage.

d) Both the agreements (viz. the Loan Agreement and the Pledge Agreement) are dated April 23, 2010. The Pledge Agreement was incorporated in the Loan Agreement and was annexed to the Loan Agreement, indicating that the EURAM Bank signed the Loan Agreement with Vintage only after the Company signed the Pledge Agreement with it, thereby committing to Pledge the GDR proceeds as a security against the loan to be sanctioned to Vintage. Accordingly, the Pledge Agreement contains suitable clauses and stipulations fastening the liability on the Company as a pledger against the borrowing by Vintage.

e) As per clause 2 and 3 of the Loan Agreement, it is evident that the said loan was sanctioned only for the purpose of subscribing to the GDR issue and the sanctioned amount could be transferred only to the account of KIEL with EURAM Bank bearing Account No. 580020, however, the same would not be available for use by KIEL until the borrower/subscriber makes the payment of the loan availed by it to subscribe the GDR of KIEL.

f) Further, clause 6 of the Pledge Agreement authorized the EURAM Bank to realize the proceeds lying in the account of KIEL to settle the loan liability of Vintage, in the event of default by the borrower. The clause further authorized the EURAM Bank to realize the said GDR proceeds lying as security in the account of the Company, in the event also, when the Bank has a reason to believe that the payment by borrower/subscriber is contestable. Thus, the Noticee

Company has, by signing the Pledge Agreement authorized that in all eventuality, in case of any default or potential default by the borrower i.e. Vintage, the security including proceeds of GDR lying deposited in its designated account, can be used by EURAM Bank to its absolute liberty to satisfy its outstanding loan advanced to a purportedly unrelated borrowing entity.

19. I further note that vintage had repaid the loan to EURAM Bank in several installments from July 2010 to February 2011. In this regard, it is further observed that only after Vintage repaid the loan installments, on same day or later date, equal/ less amount of money was transferred (barring three instances i.e. October 29, 2010, December 02, 2010 and February 03, 2011, when more money was transferred on account of availability of surplus money in KIEL's account) from KIEL's account to: i) KIEL's bank account in India; and ii) Other entities abroad. Thus, the manner in which GDR proceeds were received by the Company in its Indian bank account/by other entities indicates that the utilisation of GDR proceeds by the Company was essentially dependent on the repayment of loan by Vintage. It is thus found that the Loan Agreement and Pledge Agreement were inextricably connected in a manner that clearly points out that the Noticee Company, KIEL (the Pledgor) had consciously facilitated the loan to Vintage so as to ensure success of issuance of GDR, so as to create a good market impact about the stock of the Company, knowing well that the GDR proceeds cannot be put to its business use, until and unless the repayment is made by the borrower i.e. Vintage.

20. The execution of Loan Agreement and Pledge Agreement on the same day i.e. on April 23, 2010 and well before the issuance of GDR, which took place on April 29, 2010 clearly shows that Vintage was already pre-decided to be the sole subscriber to the GDR issue and the Company was well aware about its would-be subscriber before the actual issuance of GDR and the same is also evident from the submissions made by the Noticee no. 1, wherein, he has admitted to have knowledge of the would be subscriber of the GDR i.e. Vintage. It further shows that KIEL was also aware that the proceeds to be realized against the issuance of GDR would be kept as security towards the loan amount availed by Vintage and by executing the said Pledge Agreement, Company had consciously restrained itself from using the proceeds of the issuance of GDR.

21. At this juncture, it may be noted here that the Company had informed BSE on April 30, 2010 that *"…the Company, on April 29, 2010, raised USD 50 million through issue of 4,827,200 Global Depositary Receipts (each representing one Equity Share of par value of Rs. 10/-) at an issue price of USD 10.358 per Global Depositary Receipt. Each GDR represents one underlying equity share in the Company."* However, despite being aware about the specific entity who would be subscribing to whole of its GDR issue as per its premeditated arrangement with the entity, the crucial material facts surrounding the Loan and

Pledge Agreements and also about the single subscriber were knowingly concealed from the investors. The investors were never allowed to know that the GDR proceeds would be arranged to be kept as a security against the loan facilitated to the sole subscriber and in case of default by the subscriber, the proceeds would be eventually utilized by the EURAM Bank to settle the loan obligations of the borrower/subscriber. Under the extant domestic securities laws, a Company listed in India is required to make true, fair and proper disclosures of all material information about its affairs to the Shareholders and to the Securities Market at large. It is thus abundantly clear that KIEL has not made its disclosure to the Stock Exchange in a fair and transparent manner and has rather concealed the very crucial material information pertaining to its agreements / transactions with EURAM Bank and Vintage in connection with the GDR issue, from its Shareholders and from the Public at large. Thus, the investors were not aware about the artifice created by KIEL through which it enforced the successful subscription to its GDR. In this context, I place reliance on the observation of Hon'ble Supreme Court of India in *SEBI vs. PAN Asia Advisors Ltd & anr.,* (2015) 14 SCC 71 wherein Hon'ble Supreme Court, while dealing with issue of GDR by way of a similar arrangement of Loan and Pledge Agreement had observed the following;

"*the most relevant fact which is to be borne in mind is that the existence of GDRs is always dependent upon the extent of underlying ordinary shares lying with the Domestic Custodian Bank……………..*

….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……….

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…."

22. In the above judgement, Hon'ble Supreme Court had further observed the following;

"*The expression 'fraud' is defined under the PFUTP Regulations…………..*

……….from the aforesaid definition it is absolutely clear that if a person by his act either directly or indirectly causes the investors in the securities market in India to believe in something which is not true

and thereby induces the investors in India to deal in securities, then that person is said to have committed fraud on the investors in India. In such a case, action can be taken under the PFUTP Regulations against the person committing the fraud, irrespective of the fact any investor has actually become a victim of such fraud or not……..

…….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, PAN Asia as a Lead Manager and AP as Managing Director of PAN Asia 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".

23. Therefore, based on the material available on record and observations made in the preceding paragraphs, I find that the entire scheme created by the Company (KIEL) starting with passing of Board Resolution, followed by entering into the Pledge Agreement to permit use of the funds deposited in its account with EURAM Bank as a security against a loan, making an announcement on April 30, 2010 that the GDR have been successfully allotted and then not disclosing to the Public about the relevant Board Resolutions, details of Pledge Agreement and its arrangement with the sole subscriber to secure the obligation of its loan liability, etc. have cumulatively resulted in misleading the investors at large. Such a scheme and arrangement have in it, all the ingredients that comprise a fraudulent activity in the securities market. Thus, KIEL is guilty of fraud and is in violation of Section 12A (a), (b) and (c) of the SEBI Act read with Regulation 3 (a), (b), (c), (d) and Regulation 4(1) and 4 (2) (f), (k) and (r) of the PFUTP Regulations and Section 21 of SCRA read with Clause 36 (7) of the erstwhile Equity Listing Agreement. However, since KIEL is dissolved and discharged vide Adjudication Order No. EAD-2/SS/SK/2018-19/1789 dated December 31, 2018, no further view is being taken against KIEL. However, this case needs to be proceeded against Noticee No. 1 to 4 in this Order. Therefore, I proceed to deal with the role of Noticee No. 1 to 4. I note that during the relevant time of issuance of GDRs, the Noticee no. 1 was the Chairman & Managing Director of KIEL while the Noticees no. 2 and 3 were the Directors on the Board of the Company. I note that Noticee no. 1, on the basis of authorisation given by the Board of the Company, in the Board Meeting held on March 16, 2010 by passing the enabling resolutions on the said date, has signed the Pledge Agreement on behalf of the Company, which provided, *inter alia*, for GDR proceeds to be kept as a security against the loan availed by Vintage for subscription to the GDR of the company. Further, Noticee no. 2 and 3, Independent Directors, along with Noticee no. 4 who was the Company Secretary of the Company at relevant point of time have certified the

copy of the aforesaid Board resolutions to be used for opening bank account with EURAM Bank. I also note that none of these Directors and the Company Secretary have disputed their signature on the said certified copy of Board Resolution.

24. Admittedly, Noticee no. 1 was the Managing Director of KIEL and was in-charge of its day-to-day affairs. As per the Board Resolution dated March 16, 2010, the GDR proceeds were authorized/permitted to be kept as a security against the loans if any, and in this case the said loan was not availed by the Company but by the sole subscriber i.e. Vintage which was an unrelated third party. In conformity with the said Board Resolution, I note that an amount of USD 50 million, which were raised through GDR issue, were pledged with the EURAM Bank and was not made available to KIEL for its immediate utilisation. I note that no material has been submitted by Noticee no. 1 in his defence to support that the intent of the aforesaid Board Resolution was something else and not to employ any fraudulent scheme for ensuring successful subscription of the GDRs of KIEL. Therefore, in the absence of any other contingency or business exigency, I am inclined to take a view that there could be any other reason to keep the GDR proceeds as a security against the loan availed by Vintage for subscription to the GDR of KIEL. Instead, it is abundantly clear that as on April 23, 2010, when the Loan Agreement and Pledge Agreement were signed, the Noticee no. 1 being the Managing Director and in charge of the day to day affairs of the Company as well as being the authorised signatory to the Pledge Agreement, knew very well that the GDR subscription amount was liable to be kept as a security against the loan taken by the sole subscriber of the GDR i.e. Vintage from EURAM Bank. I also note that the Pledge Agreement signed and executed by the Noticee no. 1 contains clauses mentioning about the Loan Agreement and accordingly in the clauses of the Pledge Agreement suitable stipulations have been made, whereby the Noticee Company has undertaken to discharge the liability of the borrower, in the event the Borrower defaults in paying the loan availed by it from EURAM Bank to subscribe to the GDR of the Company. Hence, contrary to the submissions made by the Noticee no. 1, I am of the view that he is guilty of the violations as alleged in the SCN.

25. Noticee No. 1 in fact admitted to have signed the Pledge Agreement and that disclosure pertaining to execution of the said Pledge Agreement was decided to be not relevant as per the Board of Directors, hence the same was not disclosed to the stock exchange. The Noticee No. 1 has further submitted that the decision pertaining to not disclosing the aforesaid facts about signing of the agreements and Vintage being the sole subscriber, was the call taken by the Board of Directors of the Company. However, no evidence, in support of the said submission has been provided by him. Noticee No. 1 has not explained as to why the Company and the Directors agreed to indulge in a fraudulent scheme to ensure successful subscription to the GDR issue of the Company by resorting

to such an artifice, whereby they facilitated the sole subscriber i.e. Vintage to avail the finances (on the basis of the Pledge Agreement) to subscribe to the entire issue of the GDR. In the absence of any plausible explanation forthcoming from the Noticee No. 1 to justify the circumstances warranting for indulging in such fraudulent scheme for ensuring the subscription to the GDR and not disclosing the true and correct facts to the Shareholders of the Company, I am inclined to conclude that the same was done only to mislead the Indian investors at large.

26. It also becomes clear that Noticee no. 1 was very much aware of the intent behind the Board Resolution passed on March 16, 2010 pursuant to which he has signed the Pledge Agreement to secure the loan taken by the Vintage for subscribing to the GDR of KIEL. Noticee no. 1, being the Managing Director and responsible for the day to day affairs of KIEL, has the primary duty to come out completely clean before the Board with all the facts, strategy, steps to be followed and compliances to be made with respect to the proposed GDR issue, before moving a Resolution before the Board. Therefore, merely stating that it was a collective decision of the Board of Directors who were convinced that the GDR issue was compliant with all laws, will not absolve him from the consequences of his actions. He has not even brought on record any documents to show to what extent the Board of Directors was aware of the entire scheme and which Directors were specifically involved in the said scheme. He, being in the helm of the affairs, ought to have clarified to the Board Members about the pre-arrangement with the sole subscriber and about the proposed Pledge Agreement that was devised to be executed with the Bank. Noticee no. 1, the Managing Director and responsible for the day to day affairs of KIEL, is answerable to the Board for not sharing or disclosing the true implications behind moving the aforesaid Board Resolution and the intention behind signing the Pledge Agreement which he executed without disclosing the same to the Public. Therefore, he cannot take shelter under the plea that he signed the documents as authorised by the Board of Directors and as convinced by the consultant to the GDR issue, more so, considering the fact that neither the Company nor the Noticee Directors have apparently taken any legal action against the consultant. despite having been served with a SCN in the instant matter. His reliance on authorisation of the Board of Directors for executing the Pledge Agreement also appears to be an afterthought to evade accountability for his own actions while the facts in the case clearly indicate that he was actively involved in the fraudulent arrangement for the GDR issue of the Company. Therefore, having considered the allegations and the evidence available on record, in my view all the charges made against him in the SCN i.e. violation of the provisions of Section 12A (a), (b) and (c) of the SEBI Act read with Regulation 3 (a), (b), (c), (d) and Regulation 4(1) of the PFUTP Regulations are found be established.

27. Now, coming to Noticee no. 2 and 3, whom have claimed to be associated with the Company as Non-Executive Independent Directors during the relevant period of time, I note that they have submitted that they were not involved in the day to day operations of the Company. They have also submitted that they were not involved in the discussions or documentation pertaining to GDR issue as such, and were unable to attend the Board Meetings regularly and to the best of their knowledge, they did not attend the meetings which deliberated on the GDR issue. I note that the present proceedings qua Noticee no. 2 and 3 have not arisen on account of their involvement in day to day affairs of the Company but due to the fact that they have certified the copy of the Board Resolution submitted to EURAM Bank, based on which the Company has pledged the GDR proceeds in favour of the above said sole subscriber, hence these two Noticees were allegedly aware of the aforesaid Board Resolutions and contents therein. Consequently, these two Noticees were alleged to be party to the fraudulent scheme.

28. I note that, based on the material available on record, it is not ascertainable as to which Directors had attended the Board Meeting dated March 16, 2010 during which the said Board Resolution was passed, authorising the Company to execute the Pledge Agreement. Investigation has observed that several emails were addressed to the Company from 2017-18 onwards in order to ascertain which Directors attended the Meeting on March 16, 2010, however, no response thereto has been received. Further, it has been observed during investigation that the names of the Directors who attended the Meeting on March 16, 2010 could also not be ascertained from the Annual Report 2009-10. I further note that. Noticee no. 2 has contended that he was not able to attend all the Board meetings and for very few times, he had visited the Company Similarly, Noticee no. 3 has claimed to have not attended the Board Meeting pertaining to GDR issue. In this regard, I note from the annual report of the Company available in public domain that during the period of April 2009 to June 2010, twenty (20) Board Meetings were held and out of the said 20 Board meetings, Noticee no. 2 was present in 15 such Board meetings. Similarly, Noticee no. 3 had attended 17 of such Board meetings. It is pertinent to note here that none of the two Directors viz. Noticees no. 2 and 3 has been able to provide any evidence such as their prior intimation seeking leave of absence from attending the Board meeting dated March 16, 2010 (wherein the resolution pertaining to opening of bank account with EURAM Bank was passed by the Board of the Company), to indeed prove that they have not attended the said Board meeting. Even if it is presumed that none of the these two Noticees have attended the Board meeting dated March 16, 2010, none of these two Noticees were able to demonstrate whether they raised pertinent questions before the management as to why they should be certifying the Board Resolution passed by the said Board Meeting during which they were not present, according to their claims.

29. I note that the Noticee no. 3 has resigned from the Company on August 28, 2010 after the completion of the GDR issue on April 29, 2010. He has also stated that the GDR proceeds were received in the month of April 2010 and were utilised from July 2010 till February 2011 indicating the fact that the transactions were mainly carried out after he left the Company. In this regard, though I note that Noticee no. 3 had resigned from the Board of the Company on August 28, 2010, but he had certified the Board Resolution on April 20, 2010 (long before his resignation) on the basis of which, further processes including opening of bank account and Pledge Agreement were executed by the Company with the EURAM Bank through its authorised person i.e. the Noticee no 1. I further note that both the Noticees (Noticees no. 2 and 3) were part of the Audit Committee during the relevant times. For instance, Noticee no. 3 was the Chairman of the Audit Committee till June 30, 2010 and Noticee no. 2 was one of the members of the said Audit Committee during the aforesaid period. Similarly, after the resignation of Noticee no. 3 from the Board of the Company, Noticee no. 2 became the Chairman of the Audit Committee. I note that none of these two Noticees have shown their diligence by raising any red flag or by asking / probing questions to the management, when the whole of the GDR proceeds were not received immediately by the Company for its utilisation after the GDRs were issued on April 29, 2010. I further note that Noticees no. 2 and 3 have not only failed to perform the duties cast upon them as an Independent Directors but also, by not questioning about the delayed GDR proceeds despite being the Chairman / Member of the Audit committee during the relevant point of time or raising any queries even at the time of certifying the above mentioned Board Resolution, they have apparently acted in a manner to promote the unscrupulous design of the Company to perpetrate a fraud upon its Shareholders as well as on the investors of Securities Market. It is thus observed that Noticees no. 2 and 3 in their capacity of Independent Director have failed in protecting the interest of stakeholders and by maintaining a deliberate silence, the Noticees have only facilitated the execution of the Pledge Agreement.

30. In the instant matter, it is admitted by the Noticee no. 1 that Vintage as sole subscriber was well known to the Company and the Board of Directors beforehand, none of these two Noticees 2 and 3 have submitted any evidence to controvert the assumption about their attendance in the crucial Board Meeting held on March 16, 2010, more so when records in public domain show that the Noticee Directors had attended most of the Board meeting held during the relevant period, Noticee no. 2 and 3 were admittedly part of the Audit Committee and have also certified the Board Resolutions to be submitted to the EURAM Bank, which facilitated not only the opening of the escrow account, but also paved the way for the execution of the Pledge Agreement and further authorised EURAM Bank to retain the GDR proceeds as security, till the liability was discharged

by the borrower. Considering aforesaid attendant facts that have remained uncontroverted by the Noticees, in my view, the acts performed by the of Noticee no. 2 and 3 as per records are sufficient to bring them within the fold of the commission of fraud as alleged in the SCN. Therefore, I am of the view that although the Noticees no. 2 and 3 were Independent Directors, at the same time looking at the way they have conducted themselves as Independent Directors, as suggested by the facts of the matter, they have clearly allowed themselves to be a part of the fraudulent scheme and hence, they are in violation of the provisions of Section 12A (a), (b) and (c) of the SEBI Act read with Regulation 3 (a), (b), (c), (d) and Regulation 4(1) of the PFUTP Regulations.

31. As regards Noticee no. 4, the company secretary of KIEL at the relevant times, I note that he has submitted that he is unaware of the Pledge Agreement or Loan Agreement and he was only aware of passing of the alleged Board Resolution and was merely certifying the copy in a mechanical/clerical manner. He has also submitted that the said Board Resolution was prima facie meant for opening of a bank account by KIEL for receiving GDR proceeds and he was not aware of the alleged transactions entered into by KIEL in pursuance of the said Board resolution and claimed that he came to know about the hidden ulterior motive or malafide intention contained in the said Board resolution only after receipt of SCN from SEBI. He has relied upon Section 2 (45) and section 383A (1) of the Companies Act, 1956 and Article 180 of the Articles of Association of the Company persuading that his role was limited to performance of secretarial and administrative functions and did not extend to the management of the Company. He further stressed that certifying the Board Resolutions is one of the most routine functions of a Company Secretary to issue copies of board Resolutions.

32. From the submissions put forth by Noticee no. 4, I note that he has claimed ignorance about the implementation of the alleged transactions in pursuance of the Board Resolution dated March 16, 2010. He has relied on provisions of Companies Act, 1956 and Articles of Association to contend that his role in the Company was limited to Secretarial functions and meeting clerical documentation requirements and did not extend to the management functions in the Company. I find the submissions made by Noticee no. 4 have some merit. I note that the charge against the Noticee no. 4 is mainly that he has certified the copy of the Board Resolution pertaining to Meeting dated March 16, 2010 which has been used by the Company to execute the Pledge Agreement. Based on this action performed by him, he has been accused of acting as a party to the fraudulent scheme. However, he has argued that he had no say in the passing of the alleged Board Resolution and that he had merely certified the Board resolution in a mechanical/clerical manner. At this juncture, from the submissions of Noticee No. 2, I note that Noticee No. 1 approached him on April 20, 2010 and requested him to sign the said resolution just as "Certified True Copy" since a

certified copy of the resolution was required to be submitted by the company to EURAM Bank and that when the said true copy of resolution was brought to him for his signature, it was already signed by Noticee No. 3, Director and Noticee No. 4, Company Secretary and so, he signed the said resolution - as a third signatory - believing in the requirement of the company. Further, Noticee No. 3 in his submissions mentioned that he was informed by the Company that it is in the process of opening a bank account outside India with EURAM Bank and that the copy of Board Resolution approving GDR issue and opening a bank account is to be certified by two Independent Directors as per the requirement of EURAM Bank. Corroborating the submissions of Noticee No. 2 and Noticee No. 3 with that of Noticee No. 4, it can be inferred that Noticee No. 2 and Noticee No. 3, along with Noticee No. 4, had signed the certified copy of Board Resolution based only on the request made by Noticee No. 1 / KIEL. It is apparent that pursuant to signing the certified copy of the Board resolution by Noticee No. 2 to 4, in all probabilities, the same was sent to Noticee no. 1, for onward execution of the Pledge Agreement by him with EURAM Bank. Under such circumstances and after considering the role and functions of the Noticee no. 4 and his plea of ignorance about the fraudulent arrangement by the Company as well as there being no further material to show his involvement including his presence in the Board Meeting dated March 16, 2010, I do not find that there is sufficient material to hold him guilty of the violations as alleged in the SCN. Resultantly, the SCN dated September 17, 2018, is disposed of *qua* Noticee No. 4.

33. It is also relevant to mention that SEBI had initiated parallel proceedings under Section 11B of the SEBI Act against the Noticees on the same set of charges and allegations as levelled in the SCN dated September 17, 2018. While the instant proceedings were in progress, on January 27, 2021, SEBI has passed final order (No. WTM/SM/IVD/ID8/10160/2020-21) under section 11, 11(4) and 11B (1) of the SEBI Act in respect of the Noticees on the same set of charges and allegations as levelled in the SCN dated September 17, 2018. In this regard, I note that the SEBI's final order dated January 27, 2021, also upholds the same position as regards the violation of aforesaid provisions of securities laws by the Noticee No. 1 to 4.

34. In view of the aforesaid findings *qua* Noticees, I find that Noticee No. 1, 2 and 3 have violated the provisions of Sections 12A (a) to (c) of the SEBI Act read with regulations 3 (a) to (d) and 4 (1) of the PFUTP Regulations. The said violation, according to me, deserve imposition of monetary penalty under section 15HA of the SEBI Act.

35. For the purpose of adjudication of quantum of penalty, it is relevant to mention that under section 15I of the SEBI Act, imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty*" are of considerable

significance, especially in view of the guidelines provided by the legislature in section 15J of the SEBI Act. Further, while adjudging the quantum of penalty the adjudicating officer has discretion and such discretion should be exercised having due regard to the identical factors specified in section 15J which are as under:

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.

36. Having regard to the factors listed in section 15J and the guidelines issued by Hon'ble Supreme Court of India in *SEBI Vs Bhavesh Pabari Civil Appeal No(S).11311 of 2013* vide judgement dated February 28, 2019, it is noted that the material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by Noticee No. 1 to 3 and the loss, if any, and suffered by the investors as a result of the failure of Noticee No. 1 to 3. The violations as observed in this case are serious in nature although there are no investor complaints on record. In this case, the Noticees have not only committed breach of the applicable provisions of securities laws but also acted as party to the fraudulent scheme which, in all probabilities, has the potential to misleading Indian retail investors and inducing investors to deal in shares of KIEL in Indian capital market and will have an adverse impact on the securities market as a whole. I have also taken note that there is a debarment order under section 11B of the SEBI Act from dealing in securities for two years with respect to Noticee No. 1 and six months with respect to Noticee No. 2 and 3. Thus, such acts of Noticee No. 1 to 3 should be suitably penalized to demonstrate enforcement as an effective deterrence.

37. Taking into consideration all the facts and circumstances of the case including the aforesaid 15J factors and exercising the powers conferred upon me under section 15I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, I hereby impose a monetary penalty upon Noticee No. 1 to 3 as mentioned in the table below:

Sl. No.	Name of the Noticee	Penalty provisions for violation of securities laws	Penalty Amount (In ₹)	Payable
1	Noticee No. 1	Section 15HA of SEBI Act	**20,00,000**	Individually
2	Noticee No. 2		**10,00,000**	Individually
3	Noticee No. 3		**10,00,000**	Individually

38. In my view, the penalty amount as mentioned in the table above is commensurate with the violation committed by these Noticees in this case.

39. The Noticees shall remit / pay the said total amount of penalty within 45 days of receipt of this order in either of the way of demand draft in favour of "*SEBI - Penalties Remittable to Government of India*", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticees may contact the support at portalhelp@sebi.gov.in

40. The Demand Draft or details and 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- 4A, "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 the 'Payer/Noticee'	
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 along with order details)	

41. 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, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

42. In terms of Rule 6 of the SEBI Adjudication Rules, copies of this order are sent to the last known address of the Noticees and also to SEBI.

Date: April 28, 2021 | **Amit Pradhan**
Place: Mumbai | **Adjudicating Officer**