BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/KS/VC/2020-21/7991-94)

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

In respect of:

1. **IKF Technologies Limited**

   PAN: AAACI8167K

2. **Clifford Capital Partners AG SA [Erstwhile Seazun Limited]**

   PAN: Not Available

3. **Shri Sunil Kumar Goel**

   PAN: AJTPG6767G

4. **Shri Mukesh Kumar Goel**

   PAN: AIIPG8861B

In the matter of

GDR Issues of IKF Technologies Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), upon receipt of alerts in its surveillance system, started investigation in regards to certain companies which had come out with their respective issues of Global Depository Receipts (**GDR**). During the course of investigation, it was observed that IKF Technologies Ltd. (hereinafter referred to as '**IKF**'/'**Noticee 1**') had

come up with its GDR issues on two different occasions; first on March 30, 2007 and May 15, 2009. In this regard, it is observed that one Pan Asia Advisors Ltd (hereinafter referred to as '**Pan Asia**') was the Book Running Lead Manager for both of these said GDR issues of IKF. Further, it was also observed that one Mr. Arun Panchariya (hereinafter referred to as '**AP**') was the founder, director as well as 100% shareholder of Pan Asia. It is alleged in the Investigation Report (**IR**) that the complete process of GDR issuances by IKF was devised and structured by AP in connivance with IKF to the detriment of the Indian investors wherein loans were arranged for the subscription of GDRs of IKF on both these occasions, by Clifford Capital Partners AG SA (Erstwhile Seazun Limited and hereinafter referred to as '**CCP**'/'**Noticee 2**') on the first occasion and by Vintage FZE (hereinafter referred to as '**Vintage**') on the second occasion. It is further alleged that AP was Managing Director, 100% shareholder and Authorized Signatory of Vintage. Thereafter, using certain Foreign Institutional Investors (**FIIs**), AP got the GDRs converted into underlying shares and sold them in the Indian securities market with the help of certain domestic entities connected to him.

2. On the basis of the said investigation, it is alleged by SEBI that IKF, its Whole Time Director, Mr. Sunil Kumar Goel (hereinafter referred to as '**Noticee 3**'/ '**Sunil**'), its director Mukesh Kumar Goel (hereinafter referred to as '**Noticee 4**'/'**Mukesh**') and CCP by being part of the abovementioned scheme to defraud Indian investors, have violated the provisions of Section 12A(a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') read with Regulations 3(b), (c), (d), 4(2)(c), (f), (k) & (r) of the

SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'). Further, it is also alleged that IKF had failed to submit certain information demanded by SEBI and also submitted false information and, by doing so, have violated the provisions of Section 11C(3) read with 11C(6) of SEBI Act. For the purpose of the present order, IKF and its directors are hereinafter collectively referred to as '**IKF and its directors**'.[1]

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Suresh Gupta was appointed as the Adjudicating Officer vide Order dated June 15, 2016 under Section 19 read with Section 15-I(1) of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 15A(a) and Section 15HA of the SEBI Act, the violations of the relevant provisions of SEBI Act and PFUTP Regulations, alleged to be committed by the IKF and its directors as well as CCP. Subsequently, the undersigned was appointed as the Adjudicating Officer vide order dated July 05, 2018.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

4. A common Show Cause Notice ref. A&E/EAD-8/KS/VB/8164/2019 dated March 28, 2019 (hereinafter referred to as '**SCN'**) was issued to the IKF and its directors as well as CCP under the provisions of Rule 4(1) of Adjudication Rules to show cause as to why an inquiry should not be held against them and why

[1] It is observed from the Annual Report of IKF for the Financial Year 2009-10 that Mukesh, Executive Director had joined IKF as a director on April 04, 2009 i.e. he was not a director at the time of first GDR issue of IKF. However, for the sake of convenience, IKF, Sunil and Mukesh are referred to as 'IKF and its directors'.

penalty, if any, should not be imposed on them under Sections 15A(a) and 15HA of the SEBI Act for alleged violation of the relevant provisions of law.

5. The relevant part of SCN including details in respect of alleged violations by the IKF and its directors as well as CCP are as given below:

   a. *It is observed from the Investigation Report (hereinafter referred to as "IR") that were two GDR issues by IKF. First GDR Issue was of 1,10,00,000 GDRs (amounting to USD 11 Million) and issue closed on March 30, 2007. Second GDR Issue was of 54,13,048 GDRs (amounting to USD 10.98 Million) and issue closed on May 15, 2009. Further, Pan Asia Advisors Ltd. was the Lead Manager of both GDR issue of IKF. Summary of the GDR issues as provided by IKF is tabulated below:*

Table 1

GDR issue close date	***No. of GDRs issued***	***Capital raised (US mn.)***	***No. of equity shares underlying GDRs***	***Lead Manager***	***Bank where GDR proceeds were deposited***
March 30 2007	*1,10,00,000*	*11*	*13,20,00,000*	*Pan Asia Advisors Ltd*	*Banco Efisa , S.F.E., S. A.,*
May 15 2009	*54,13,048*	*10.98*	*162,391,440*	*Pan Asia Advisors Ltd*	*EURAM Bank, Austria*

   b. *The following were the investors in the GDR issue of IKF as submitted by IKF vide letter dated 10.05.2011.*

Name of Subscriber
Echelon India Investments Ltd (Echelon)
Imagination Network (Imagination)
Knightbridge Management Inc. (Knightbridge)
Tradetec
Trendsetter

Loan & Pledge Agreement signed among IKF, Vintage & Euram

   c. *It is alleged that the Loan and Pledge Agreement for its first GDR issue was signed by IKF with a Portugal based bank, Banco Efisa ("Banco") andthe Loan and Pledge Agreement for second GDR Issue were signed among IKF, Vintage and Euram. The same is discussed in detail below:-*

ISSUE 1 (in 2007)

d. *It is observed that the Loan Agreement (titled as Credit Agreement) was signed between Noticee 2 as Borrower, and Banco Efisa , S.F.E., S.A.,(Banco) as Bank, for a loan term facility of USD 1,40,00,000 on March 27, 2007.The purpose of the Credit Agreement is stated as;*

"The Borrower shall use the proceeds of the Advance to subscribe for global depository receipts to the value of up to $14,000,000 issued by IKF on the terms of the Listing Particulars to be delivered to the Luxembourg Stock Exchange."

e. *Further, a Pledge agreement (titled as Account Charge Agreement) was signed between Banco and Noticee-1. The agreement was signed by Noticee-3 on March 27, 2007 on behalf of IKF. He was director of the company at the time of signing of Account Charge Agreement. The Account Charge in the agreement is stated as below:-*

“Account Charge

•Subject to the terms of this Agreement, IKF deposited in its designated account with the Bank (hereinafter the Account) an amount not exceeding US$ 14,000,000 as security for all the obligations of Seazun under the Loan Agreement (hereinafter the Secured Obligations), and with full title guarantee hereby assigns to and charges by way of first fixed charge in favour of the Bank all the rights, title, interest and benefit in and to the Account as well as all the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof. Such assignment and charge shall be a continuing security for the due and punctual payment and discharge of the Secured Obligations.

- *Upon payment of all or part of the amounts due under the Loan Agreement, IKF may withdraw from the Account the equivalent amount.*

- *IKF covenants with the Bank that it will on demand pay and discharge the Secured Obligations when due to the Bank.*
- *At any time after the Bank shall have demanded payment of all or any of the Secured Obligations the Bank may without further notice apply all or any part of the Deposit against the Secured Obligations in such order as the Bank in its discretion determines.*
- *IKF hereby irrevocably appoints by way of security the Bank as the attorney of IKF with full power in the name and on behalf of IKF to sign, seal and deliver any deed, assurance, instrument or act in order to perfect this charge and at any time after an event of default by IKF to sign, seal and deliver any deed assurance, instrument or act which may be required for the purpose of exercising fully and effectively all or any of the powers hereby conferred to the Bank to take all necessary action whether in the nature of legal proceeding's or otherwise to recover any moneys which may be held in the Account and to give valid receipts for payment of such moneys and also for the purpose of enforcement and realisation of the security hereby created."*

ISSUE 2 (in 2009)

f. *It is observed that a loan agreement (Loan Agreement No. K040509-002) dated April 28, 2009, was signed between Euram and Vintage. The agreement was signed by Arun Panchariya (hereinafter referred to as 'AP') as Managing Director on behalf of Vintage. The Loan agreement states that Euram has agreed to make available a loan of USD 1,09,88,487.44 to Vintage (referred to as "the Borrower"). The nature and purpose of the loan facility is to provide funding enabling Vintage to take down GDR issue of IKF Technologies Ltd. may only be transferred to Euram account no: 540040 for IKF Technologies Ltd. The following is stated in the loan agreement:*

"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. 540 040 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.*
- *Pledge of the account no. 540 040 of the Borrower 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."*

g. *Further, a Pledge Agreement dated April 28, 2009 is also signed between IKF and Euram Bank. The agreement was signed by Noticee-4 on behalf of IKF as Whole Time Director of IKF. He is also one of the promoters of IKF. The following Resolution was passed by the Board of Directors of IKF at its meeting dated 31.01.2007.*

"RESOLVED THAT a bank account be opened with Banco Efisa S. A. ("the Bank") or any branch of Banco Efisa S. A., including the Offshore Branch, outside India for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of the Company.

RESOLVED FURTHER THAT Mr. Mukesh Kumar, Authorised Person be and are hereby 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. Mukesh Kumar, Authorised Person 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 Banco Efisa S.A. or any of branch of Banco Efisa S.A, 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."

h. *According to the Pledge Agreement, IKF has been referred as "Pledgor" and Euram has been referred to as "Bank". The preamble of the Pledge Agreement states*

"By loan agreement K040509-002(hereinafter referred to as "Loan Agreement") dated April 28, 2009, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel AH Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates ("the Borrower") in the amount of $ USD 1,09,88,487.44. The Pledgor has received a copy of the Loan Agreement and acknowledges and agrees to its terms and conditions."

i. *From the above preamble of Pledge Agreement, it is clear that Noticee 4 and IKF were also the party to the Loan Agreement. Further, the pledge created in the Pledge Agreement is stated below:-*

" 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 of $ USD 10,988,487.44 existing from time to time at present or hereafter on the securities account(s) no. 540 040 held with the Bank (hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein.

2.1.2. 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. 540 040 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."

j. *Further, following condition have been put in the Pledge agreement for the realization of the pledge.*

"6. Realization of the Pledge

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

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 transactions, 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. "

k. *It is noted that the bank account no. 540040 is the account which IKF has maintained with Euram Bank to keep the proceeds of GDRs, thus it is alleged that IKF has pledged money received through issuance of GDRs to secure rights of Euram Bank* *against the loan given by Euram Bank to Vintage for subscription of GDR issue (as mentioned in Loan agreement of Vintage).This account (540040) is also mentioned as the borrower in the Loan Agreement. It is alleged that the common ownership of a bank account which belongs to both the borrower/subscriber and the Issuer Company in which the GDR proceeds are received added to a guarantee by Issuer Company for the loan taken by subscriber to its GDRs, are the central and determining features of this scheme to fraudulently raise capital by the Issuer Company It is alleged that these agreements enabled Vintage to avail the loan from Euram Bank for subscribing GDR of IKF and the GDR issue would not have been subscribed had IKF not given such security towards the loan taken by Vintage. It is alleged that the Noticees did not inform Bombay Stock Exchange or shareholders of the company about signing the Pledge Agreement and Loan Agreement.*

Acquisition, Cancellation and Sale of GDRs:-

I. It is noted that pursuant to the issuance of GDRs, the GDRs were purchased by Fils registered in India for conversion and sale in Indian markets. These GDRs were transferred to Fils mostly through over the counter transactions. The following table gives the detail of transfer of GDRs of IKF to the Fils in 1st GDR Issue.

Issue 1 (2007)

Date of Acquisition	***Name of Acquirer***	***Name of Seller***	***Quantity of GDRs acquired***	***Value of GDR Acquired***	***Trading platform***	***Value per GDR ($)***
21-May- 07	*Mavi*	*Investec Bank*	*3,00,000*	*6,33,000*	*OTC*	*2.11*
25-May-07	*Mavi*	*Investec Bank*	*4,00,000*	*9,24,000*	*OTC*	*2.31*
22-Jun-07	*Mavi*	*Investec Bank*	*5,00,000*	*11,80,000*	*OTC*	*2.36*
25-Jun-07	*Mavi*	*Investec Bank*	*5,00,000*	*11,60,000*	*OTC*	*2.32*
18-Jul-07	*Rhodes*	*NA**	*10,00,000*	*24,80,000*	*OTC*	*2.48*
27-Jul-07	*Rhodes*	*NA*	*10,00,000*	*23,70,000*	*OTC*	*2.37*
30-Jul-07	*Rhodes*	*NA*	*4,00,000*	*8,85,768*	*Market*	*2.21*
06-Aug-07	*Rhodes*	*NA*	*1,00,000*	*2,21,442*	*Market*	*2.21*
29-Aug-07	*Mavi*	*Investec Bank*	*5,00,000*	*10,15,000*	*OTC*	*2.03*
14-Sep-07	*Mavi*	*Investec Bank*	*5,00,000*	*11,45,000*	*OTC*	*2.29*
21-Sep-07	*Rhodes*	*NA*	*10,00,000*	*10,04,003*	*Market*	*1.00*
28-Sep-07	*Rhodes*	*NA*	*11,00,000*	*11,02,201*	*Market*	*1.00*
03-0ct-07	*Rhodes*	*Euram Via Kas Bank*	*5,00,000*	*5,01,501*	*Market*	*1.00*
		Total	***78,00,000***	***1,46,21,915***		

"NA- Not available

m. *Apart from the above FIIs, Lotus Global Investments Ltd., Sub-Account, also purchased and cancelled GDRs of 1st GDR issue of IKF. Total 32,00,000 GDRs of IKF were purchased by Lotus Global investments Ltd, Sub-Account, also purchased and cancelled GDRs of 1st GDR issue of IKF. Total 32,00,000 GDRs of IKF were purchased by Lotus Global Investments Ltd between June 12, 2007 to September 19, 2007. The details of purchase by Fils in second GDR issue is as given below.*

Issue 2 (2009)

Date of Acquisition	Name of Acquirer	Name of Seller	Quantity of GDRs acquired	Value of GDR Acquired ($)	Trading platform	Value Per GDR($)
22-Jul-09	KII	Euram Bank	45,000	1,00,699	OTC	2.24
27-Jul-09	IFCF	Euram Bank	4,70,000	11,75,000	OTC	2.50
07-Aug-09	IFCF	Euram Bank	2,00,000	5,00,000	OTC	2.50
24-Aug-09	IFCF	Euram Bank	40,000	96,000	OTC	2.40
07-Sep-09	IFCF	Euram Bank	1,70,000	3,65,500	OTC	2.15
19-Nov-09	IFCF	Euram Bank	44,000	1,10,000	OTC	2.50
17-Dec-09	IFCF	Euram Bank	65,000	1,52,100	OTC	2.34
09-May-10	IFCF	Euram Bank	6,50,000	14,75,500	OTC	2.27
12-May-11	IFCF	Euram Bank	15,00,000	34,50,156	OTC	2.30
		Total	**31,84,000**	**74,24,955**		

n. *It is observed that the cancellation in the GDRs of IKF for first GDR issue started from May 29, 2007 and continued till November 02, 2007. The following are the details of cancellation requests that were completed by Overseas Depository Bank.*

Transaction Date	Entity cancelling GDRs	GDRs Cancelled
29-May-07	INVESTEC BK (SWITZ)/CL, ZURICH, SWITZERLAND (96780)	4,00,000
04-Jun-07	INVESTEC BK (SWITZ)/CL, ZURICH, SWITZERLAND (96780)	3,00,000
12-Jun-07	INVESTEC BK (SWITZ)/CL, ZURICH, SWITZERLAND (96780)	2,00,000
14-Jun-07	INVESTEC BK (SWITZ)/CL, ZURICH, SWITZERLAND (96780)	5,00,000
17-Jul-07	GOLDMAN SACHS AND CO NY, UNITED STATES (90004)	10,00,000
18-Jul-07	INVESTEC BK (SWITZ)/CL, ZURICH, SWITZERLAND (96780)	5,00,000
18-Jul-07	INVESTEC BK (SWITZ)/CL, ZURICH, SWITZERLAND (96780)	5,00,000

10-Aug-07	INVESTEC BK (SWITZ)/CL, ZURICH, SWITZERLAND (96780)	5,00,000
13-Aug-07	INVESTEC BK (SWITZ)/CL, ZURICH, SWITZERLAND (96780)	5,00,000
16-Aug-07	BK JULIUS BAER.ZUR, SWITZERLAND (90258)	5,00,000
20-Aug-07	INVESTEC BK (SWITZ)/CL, ZURICH, SWITZERLAND (96780)	5,00,000
05-Sep-07	INVESTEC BK (SWITZ)/CL, ZURICH, SWITZERLAND (96780)	5,00,000
10-Sep-07	INVESTEC BK (SWITZ)/CL, ZURICH, SWITZERLAND (96780)	5,00,000
17-Sep-07	BK JULIUS BAER.ZUR, SWITZERLAND (90258)	5,00,000
18-Sep-07	BROWN BROTHERS HARRIMAN CO NY, UNITED STATES (94276)	4,00,000
19-Sep-07	BROWN BROTHERS HARRIMAN CO NY, UNITED STATES (94276)	1,00,000
19-Sep-07	INVESTEC BK (SWITZ)/CL, ZURICH, SWITZERLAND (96780)	5,00,000
19-Sep-07	INVESTEC BK (SWITZ)/CL, ZURICH, SWITZERLAND (96780)	5,00,000
27-Sep-07	BROWN BROTHERS HARRIMAN CO.NY, UNITED STATES (94276)	8,00,000
02-Nov-07	BROWN BROTHERS HARRIMAN CO.NY, UNITED STATES (94276)	2,00,000
02-Nov-07	BROWN BROTHERS HARRIMAN CO.NY, UNITED STATES (94276)	2,00,000
02-Nov-07	BROWN BROTHERS HARRIMAN CO.NY, UNITED STATES (94276)	3,00,000
02-Nov-07	BROWN BROTHERS HARRIMAN CO,NY, UNITED STATES (94276)	4,00,000
02-Nov-07	BROWN BROTHERS HARRIMAN CO.NY, UNITED STATES (94276)	7,00,000
	Total	***1,10,00,000***

o. *It is noted that 100% of the GDRs issued by IKF in March 2007 were cancelled by November 2007. The cancellation of GDRs was done on behalf of Sub-Accounts Mavi, Rhodes and Lotus Global investments Ltd. The details of shares received in India by the Sub-Accounts post cancellation are as given below:-*

Date of receiving shares	***Sub-Account receiving shares from GDR cancellation***	***No. of shares received***
01-Jun-2007	Mavi	48,00,000
05-Jun-2007	Mavi	36,00,000
13-Jun-2007	Lotus	24,00,000
14-Jun-2007	Lotus	60,00,000
18-Jul-2007	Rhodes	1,20,00,000
19-Jul-2007	Lotus	60,00,000
19-Jul-2007	Mavi	60,00,000
13-Aug-2007	Lotus	60,00,000

14-Aug-2007	*Mavi*	*60,00,000*
21-Aug-2007	*Lotus*	*60,00,000*
21-Aug-2007	*Rhodes*	*48,00,000*
30-Aug-2007	*Rhodes*	*60,00,000*
07-Sep-2007	*Mavi*	*60,00,000*
11-Sep-2007	*Lotus*	*60,00,000*
20-Sep-2007	*Rhodes*	*12,00,000*
24-Sep-2007	*Lotus*	*60,00,000*
24-Sep-2007	*Mavi*	*60,00,000*
24-Sep-2007	*Rhodes*	*60,00,000*
28-Sep-2007	*Rhodes*	*96,00,000*
03-0ct-2007	*Rhodes*	*24,00,000*
04-0ct-2007	*Rhodes*	*84,00,000*
05-0ct-2007	*Rhodes*	*24,00,000*
12-0ct-2007	*Rhodes*	*36,00,000*
05-Nov-2007	*Rhodes*	*48,00,000*
	Total	***13,20,00,000***

p. *Further, the cancellation of the GDRs of IKF for second GDR issue started from May 15, 2009 and continued till December 18, 2009. The following are the details of cancellation requests that were completed by Overseas Depository Bank.*

Transaction Date	***Brokerage cancelling GDRs***	***GDRs Cancelled***	***Shares Released***	***Sub- Account receiving shares***	***Date of receiving shares***
30-Jul-09	*JPM CL CORP BK , UNITED STATES*	*45,000*	*13,50,000*	*KII*	*31-Jul-09*
30-Jul-09	*Euram*	*4,70,000*	*1,41,00,000*	*IFCF*	*31-Jul-09*
10-Aug-09	*Euram*	*2,00,000*	*60,00,000*	*IFCF*	*11 -Aug-09*
25-Aug-09	*Euram*	*40,000*	*12,00,000*	*IFCF*	*26-Aug-09*
08-Sep-09	*Euram*	*1,70,000*	*51,00,000*	*IFCF*	*09-Sep-09*
20-Nov-09	*Euram*	*44,000*	*13,20,000*	*IFCF*	*23-Nov-09*
18-Dec-09	*Euram*	*65,000*	*19,50,000*	*IFCF*	*21-Dec-09*
	Total	***10,34,000***	***3,10,20,000***		

q. *It is observed that 10,34,000 GDRs of IKF out of total 54,13,048 issued (19.10% of the GDRs issued) in May 2009 were cancelled between July 30, 2009 to December 18, 2009. No other cancellation was observed in the GDRs of IKF after December 2009.The following are the details of counterparties to the sale of shares by IFCF to Indian clients during the period January 01, 2009 to September 21, 2011.*

FII	***CP PAN***	***CP NAME***	***Sell Volume***	***Sell Value (Rs.)***	***% to total Sale***
IFCF	*AAACB4324K*	*Basmati*	*71,13,479*	*3,27,09,289*	*36.3*
IFCF	*AAAC03597K*	*Oudh*	*38,80,064*	*1,66,88,888*	*19.8*
IFCF	*AAACM6094R*	*Infin Ltd Angel*	*27,27,931*	*1,18,53,432*	*13.9*

IFCF	AAACJ8850C	JMP	18,61,726	81,07,007	9.5
IFCF	AABCA6702F	Alka	10,94,788	47,07,588	5.6
		Others	29,29,468	1,27,26,629	14.9
	IFCF Total		1,96,07,456	8,67,92,834	100.0

r. From the counterparty analysis of the sell trades of IFCF, it is observed that Indian clients like Alka, JMP, Basmati and Oudh have been the major counterparties. It is noted that these entities are connected with AP as observed from the Bank account statements, the Demat statements and KYC of these entities. The connections among entities and with AP are explained below.

Sr. No.	Name of Entity	Details of connection
1	*Alka India Ltd (Alka)*	• *AP is among the promoters of Alka.* • *As per Annual Return of Basmati filed with MCA on September 30, 2005, Alka and Oudh are among the shareholders of Basmati. Together, they hold 37.68% of the shares of Basmati.* • *Alka and Oudh have common phone number (9702001974) in their KYC documents available with their respective brokers viz, Mansi Share & Stock Advisors Pvt Ltd, Alankit Assignments Ltd and Arch Finance Ltd.* *(Source: MCA and BSE filing of Alka. KYC documents with B. Lodha Securities Ltd. Indiabulls Securities Ltd, Mansi Share & Stock Advisors Pvt Ltd, Alankit Assignments Ltd and Arch Finance Ltd, Ssj Finance & Securities Pvt. Ltd, Madhya Pradesh stock Exchange Indiabulls Securities Ltd, Shriram Insight Share Brokers Ltd and Multiplex Capital Ltd.)*
2	*Basmati Securities Pvt Ltd (Basmati)*	• *Basmati holds 27.8% of the shares of Oudh.* • *As per Annual Return of Basmati filed with MCA on September 30, 2005, Alka and Oudh are among the shareholders of Basmati. Together, they hold 37.68% of the shares of Basmati* • *Basmati and Oudh have common authorised signatory (Rahul C Shah) for operating their demat accounts as per the KYC documents provided by depository participants - Shriram Insight Share Brokers, K & A Securities Pvt Ltd and Motilal Oswal Securities Ltd.* • *Basmati and Oudh have common phone number (9619040060) and address - Room No. 5, Ground Floor, Heera Mahal Building, 250 Kalbadevi Road, Mumbai - 400002 in the KYC documents available with depository*

		participant Shriram Insight Share Brokers Ltd. • Basmati and Oudh have common phone number (32015743) and address - 5/7 Kothari House 2nd Floor Office No 4 Fort Mumbai in the KYC documents available with brokers/ depository participants B.lodha Securities Ltd., Motilal Oswal Securities Ltd, Anand Rathi Share and Stock Brokers Ltd and Networth Stock Broking Ltd. • Basmati and Oudh have common phone number (24526764) and address - Kothari House 1st Floor 5/7 Oak Lane Fort Bombay in the KYC documents available with broker Vertex Securities Ltd. (Source: MCA and BSE filing of Alka. KYC documents available with Religare Securities Ltd. and Cpr Capital Services Ltd, Shriram Insight Share Brokers, K & A Securities Pvt Ltd, Motilal Oswal Securities Ltd., Shriram Insight Share Brokers Ltd., B.lodha Securities Ltd. and Networth Stock Broking Ltd., Anand Rathi Share and Stock Brokers Ltd and Vertex Securities Ltd.
3	Oudh Finance& Investment Pvt Ltd. (Oudh)	• Basmati holds 27.8% of the shares of Oudh. • As per Annual Return of Basmati filed with MCA on September 30, 2005, Alka and Oudh are among the shareholders of Basmati. Together, they hold 37.68% of the shares of Basmati. • Basmati and Oudh have common authorised signatory (Rahul C Shah) for operating their demat accounts as per the KYC documents provided by depository participants - Shriram Insight Share Brokers, K & A Securities Pvt Ltd and Motilal Oswal Securities Ltd. • Basmati and Oudh have common phone number (9619040060) and address - Room No. 5, Ground Floor, Heera Mahal Building, 250 Kalbadevi Road, Mumbai - 400002 in the KYC documents available with depository participant Shriram Insight Share Brokers Ltd. • Basmati and Oudh have common phone number (32015743) and address - 5/7 Kothari House 2nd Floor Office No 4 Fort Mumbai in the KYC documents available with brokers/ depository participants B.lodha Securities Ltd., Motilal Oswal Securities Ltd, Anand Rathi Share and Stock Brokers Ltd and Networth Stock Broking Ltd. • Basmati and Oudh have common phone number (24526764) and address - Kothari House 1st Floor 5/7 Oak Lane Fort Bombay in the KYC documents available with broker Vertex Securities Ltd. (Source: MCA and BSE filing of Alka, KYC Documents

		available with Shriram Insight Share Brokers, K & A Securities Pvt Ltd, Motilal Oswal Securities Ltd., Shriram Insight Share Brokers Ltd., B.lodha Securities Ltd. and Networth Stock Broking Ltd., Anand Rathi Share and Stock Brokers Ltd and Vertex Securities Ltd.)

s. Thus, it is observed that all the above entities have connections with AP and AP has substantial influence over their activities.

t. In view of the foregoing, it is alleged that the Noticees have violated Sections 12A(a), (b) and (c) of the SEBI Act read with regulations 3(b), 3(c), 3(d), 4(2)(c), 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations.

u. The alleged violations of the relevant provisions of the SEBI Act and PFUTP Regulations by the Noticees as brought out above, if proved, makes the Noticees liable for monetary penalty under the provisions of Section 15HA of the SEBI Act.

Non-furnishing of information and misleading submissions by IKF

v. In terms of Section 11 C(3) read with 11 C(6) of the SEBI Act, it is obligatory on any person so summoned to produce the necessary documents/information/appear in person to/before the Investigating Authority. It is alleged that during the course of investigation, summons were issued under Section 11C(3) read with 11C(6) of the SEBI Act to the Noticee 1 for production of documents regarding utilisation of GDR proceeds by the company. It is alleged that the Noticees didn't submit all the documents sought by the SEBI. Following documents/information sought vide summons/emails/letters were not provided by the IKF.

1. *Details of usage of proceeds of the GDR Issues by IKF, along with the documentary proof in support of the utilization of the funds.*
2. *Copies of bank account statements of IKF maintained with Euram Bank.*
3. *Copies of bank account statements of IKF in India highlighting transactions related to repatriation of GDR proceeds.*

4. *Chronology of events leading to the issue of GDRs along with a certified true copy of the resolution passed by Board of Directors.*
5. *Rationale for the appointment of Panasia as LM for GDR issue of IKF.*
6. *Copies of all the agreements between IKF and Panasia*
7. *Copies of agreements with Euram.*
8. *Details of the conditions that were laid upon IKF for the withdrawal of GDR proceeds from bank accounts maintained with Euram.*
9. *Copy of any other agreement that IKF had with Euram apart from those related to GDR issues.*
10. *Details of any agreement of IKF regarding financing for the purpose of subscription by initial investors of GDRs.*
11. *Copies of agreements that IKF had with Vintage and AP.*
12. *Details of address, Contact person and contact number of subsidiary of IKF viz, BIOFEL.*

w. *It is noted that there were two bank accounts of IKF where GDR proceeds were deposited by the company. The proceeds of first GDR issue (in 2007) were deposited in Banco and that of second GDR issue (in 2009) were deposited in Euram. All the summons and queries made to IKF were with regard to both the Bank Accounts. In response to summons dated April 9, 2012, Mr. N. V. Simhadri, independent director of IKF, appeared in person on April 18, 2012 at SEBI Office. However, Mr. Simhadri could not provide information on any of the question asked by the Investigating Authority. On expressing his inability regarding having any information about the company and its subsidiary Biofel, he was asked to seek information from IKF and submit to SEBI by April 12, 2012. Following are the questions which were asked from Mr. Simhadri, which he could not reply and agreed to provide later to SEBI:-*

1. *Name of directors/promoters of IKF during the issuance of GDRs in 2007 and 2009*
2. *Purpose of payments done to a U.A.E. based company Citigate Trade FZE.*
3. *Details of any agreement IKF had with Euram other than already provided to SEBI by the company.*
4. *Details of any agreement IKF had with any entity regarding financing of GDR issues.*
5. *Details of any agreement that IKF had with Vintage.*
6. *Details of payments made to Panasia or companies associated with Panasia.*
7. *Details of end use of GDR proceeds which were transferred to U.A.E. based subsidiary of IKF viz, BIOFEL FZE (Biofel).*
8. *Details of debit and credit in the statement of bank accounts of IKF with Banco.*
9. *Details of Bank account of Biofel with explanation of all the debits and credits.*
10. *Details of nature of business of Biofel.*
11. *Details of purchases and expenses done by Biofel from incorporation till date containing details viz, entity name, entity address, purpose of payment and amount.*
12. *Further details concerning Biofel like Audit reports and bank account statement was also sought.*

x. *Thereafter IKF provided partial information vide letter dated April 24, 2012. However, the most crucial information, i.e. regarding the utilization of GDR proceeds by Biofel which were transferred directly from Euram account of IKF, was not provided. This information has not been provided to SEBI till date by the company.*

y. *Apart from not providing aforementioned critical information to SEBI, wrong information was also provided by IKF. The wrong submissions of IKF were particularly related to Pledge and Loan Agreements to which IKF was one of the* *party. It is alleged that IKF has made following wrong/misleading submissions to SEBI in the matter:*

- *Investigation has revealed that IKF like all other Examined Companies also provided false information and concealed material information to SEBI to mislead the investigation. Following false information was furnished to SEBI by the company:-*
- *IKF made wrong submission that it did not have any agreement with Vintage. The Loan Agreement signed between Vintage and Euram clearly mentions that Pledge Agreement signed between IKF and Euram is part of the Loan Agreement. Similarly, it is mentioned in the Pledge Agreement that the Pledgor has received the Loan Agreement and agrees to its conditions.*
- *IKF made wrong submissions that it did not have any arrangements with AP for subscription of GDRs. As explained the complete GDR issuance was done on the basis of AP GDR Scheme.*
- *IKF denied having any agreement with Euram which puts condition on withdrawal of GDR issue proceeds.*
- *IKF also denied having an agreement with Euram other than Escrow account agreement.*
- *IKF denied having any agreement with any of the entity for the purpose of financing of the GDR issue. It specifically denied having any agreement with Vintage and AP. Further, IKF did not mention about its Account Charge Agreement with Banco. IKF also did not provide any information regarding the Credit Agreement of Seazun which was signed between Seazun and Banco.*
- *IKF authorised transfer of funds (US $ 46,49,000) from its account with Banco where GDR proceeds were deposited to the account of Seazun. On September*

28, 2007, a letter signed by Mr. Mukesh Kumar Goel, director of IKF , was sent to Banco with following instructions:-

> *"We request you to transfer the same amount of USD 4,649,000 from our account towards closure of deposit, to the account of Seazun Limited with Banco Efisa.*
>
> *We hereby also authorize the bank to transfer from our current account the necessary amounts to face payments of interest and fees due in the referred company account resulting from loan granted by the bank."*

It is clearly a transaction done by IKF from its own reserves to settle the outstanding liabilities of Seazun which had taken loan from IKF. However, IKF did not provide SEBI details of this transaction when IKF was asked to provide the details of utilisation of the GDR proceeds. On the contrary, IKF informed SEBI that it has repatriated and utilised 1,00,00,000 out of the GDR proceeds of first issue. This is false as it transferred US $ 46,49,000 from its account to the account of Seazun to settle its loan liability.

z. *In view of the observation(s) mentioned at above paragraph, it is alleged that the Noticees has violated the provisions of Section 11C(3) read with 110(6) of the SEBI Act.*

aa. *The alleged violations of the relevant provisions of the SEBI Act by the Noticees as brought out above, if proved, makes the Noticees liable for monetary penalty under the provisions of Section 15A(a) of the SEBI Act.*

6. I note that the SCN was sent to the respective addresses of the Noticees as per available records, via Registered Post Acknowledgement Due (RPAD). Thereafter, IKF on behalf of itself and its directors, vide its letter dated April 27, 2019, requested for additional time of one month for making representation in the matter. The request of IKF was acceded to vide letter dated May 06, 2019.

Subsequently, IKF and its directors, vide a common letter dated June 14, 2019, made their submissions in the matter. The submissions, in brief, are being reproduced below:

a. *It is correct that SEBI had conducted investigation into the GDR issue of the IKF Technologies Ltd. -Noticee No. 1 (hereinafter called IKF). We have no comments to offer on it. However, it is denied that IKF and Sunil and Mukesh have violated Sec 12A (a),(b) and (c) of SEBI Act read with Regulations 3(b),(c), 4(2) (f) 4(2)(k) and 4(2) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations 2003 (herein after referred to as PFUTP Regulations) as alleged. And that IKF and Noticee No. 5 had violated Sec 11C (3) and 11C(6) of SEBI Act.*
b. *It is correct that IKF had made two GDR issues as detailed in your Show Cause Notice.*
c. *The IKF and its directors got the list of subscribers from the Lead Manager. As there was no means to know the list of subscribers to the GDR issue, IKF and its directors had to rely on the information received from Lead Manager. It is normal in any Public Issue, the Lead Manager or Registrar to the Issue provides the list of initial subscribers to the issue. As such the list of subscribers as received from Lead Manager, which we believed to be true, was submitted to SEBI.*
d. *The allegation that loan agreement was signed by IKF either with Banco Efisa or Euram or Vintge is not correct. No loan agreement was signed by IKF either with Banco or Euram. However, IKF and its directors clarify that the Lead Manager brought a bunch of papers along with Account opening form of respective Bank and obtained our signatures on them stating that they as a part of legal documentation. Later on Lead Manager informed to us that these legal documents including certain agreement was essential for providing collateral security to Banco Efisa SA (i.e. by keeping GDR proceeds under lock-in with Banco Efisa*

SA) to support the issue. It was further informed that such legal agreements for keeping GDR proceeds under lock-in for few months with an overseas bank is normal legal practice in GDR issues.

e. *IKF and its directors deny that they had signed any loan agreement. IKF and its directors were, however, informed by the Lead Manager that signing of Credit Agreement between Banco Efisa SFE SA and CCP, the selling syndicate agent, is one of the legal formalities to be completed before the GDR issue.*

f. *SEBI's allegation that Sunil had signed the pledge agreement (titled as "Account Charge Agreement) between IKF and Banco Efisa SA and that Sunil was the director of IKF at the time of signing of Account Charge Agreement is incorrect. Neither Sunil had signed the said agreement nor he was the director of the IKF on March 27, 2007, the purported date of signing of said agreement.*

g. *The IKF and the Directors were new to GDR Issue and did not possess expert domain knowledge in respect of GDR issue and thus had to solely rely upon the guidance and advice of Lead Manager and Foreign based Legal advisors. The Lead Manager Pan Asia introduced its team members Seazun and Vintage as selling syndicates agents and requested to provide collateral security to Banco Efisa SA (i.e. by keeping GDR proceeds under lock in for few months with Banco) to enable it to support selling agent for subscription of first issue in May 2007. Examples and precedents of other GDRs issues were shown to the IKF and its directors and it was informed that agreements for keeping GDR proceeds under lock-in with an overseas bank have been a normal legal practice in GDR issues. Thereafter few more GDR issues hit the overseas market and same procedure was adopted. As such in the second GDR issue in May 2009 also, the IKF and its directors adopted the same procedures. The alleged agreements referred to by SEBI, per se, were totally valid agreements, no element of fraud was involved. SEBI or Stock Exchanges or RBI had not pointed out any flaws or fraud when* *there were almost 12-13 identical GDR issues made over a period of 4 years rendering the procedure adopted by the lead managers acquiring a legal sanctity. Since these agreements were entered into in the ordinary course of business and there were no mandated legal requirements for them to be disclosed to the Stock Exchanges, they cannot be considered as fraud or fraudulent transactions. It is only at hindsight, SEBI by conjectures and surmises, has alleged these agreements as fraudulent agreements.*

h. *Since the loan agreement (title as Credit Agreement) was alleged to be signed on 28.4.2009 was between Euram Bank and Vintage, who is a third party, as borrower for loan facility of US$1,40,00,000, there is no privity of contract between the executants of loan agreement and IKF and its directors as borrower had no direct recourse to the IKF and its directors. It is the arrangement between the Lead Manager and the Vintage. Further, while the GDR issue was only US$11 million, the loan amount as per SCN is US$14 million. Hence both appears to be not correlated.*

i. *We are not aware if any Pledge Agreement was signed 28.4.2009 between the CCP and Euram Bank. It is incorrect on the part of SEBI to allege that Agreement was signed by CCP on behalf of IKF as its Whole Time Director. IKF and its directors humbly submit that neither they had ever permitted CCP to sign any agreement on behalf of IKF, nor the CCP was ever a Director of IKF. The IKF and its directors further submit that SCN has wrongly placed a Board Resolution dated 31.01.2007 for opening of Bank Account in Banco Efisa SA, as it has no relation with the alleged Pledge agreement dated 28.4.2008 alleged to be signed by CCP.*

j. *After the 1st GDR issue of IKF made in March 2007, a number of GDR issues were made adopting the same procedure over a period of two years. None of the regulators i.e. RBI, SEBI or Stock Exchange had pointed out any anomaly or flaws in the manner in which these GDR issues were made. Hence the entire procedure* *has assumed legal sanctity. As such, in the second GDR issue in May 2009 also IKF had adopted the similar procedure on the advice of Lead Manager. The IKF and its directors still maintain that the alleged pledge/guarantee agreements were normal business agreements allowed under Companies Act 1956 and hence these agreements per se were totally valid agreements, no element of fraud was involved.*

k. *Providing Security/guarantee by way of pledge or otherwise in connection with loan taken by any third party does not constitute fraud and further that Sec 372A of Companies Act 1956 allowed companies to give corporate third party guarantee.*
l. *The alleged pledge agreements were short term provision for few months in as much as in the first issue of GDR it was redeemed in 3 months period which conforms to the MOF extant GDR guidelines that the proceeds of GDR can be kept in escrow account in bank account abroad for a period of 3 months before repatriation. Further almost entire proceeds of 1st GDR issue has been repatriated to IKF's bank account in India.*
m. *As regards non-disclosure of alleged Pledge Agreements to Stock Exchange, the IKF and its directors strongly maintain that there was no requirement under Listing Agreement to disclose how GDR were subscribed. Only outcome of the issue was to be disclosed which was done. Hence there was no violation of Sec 4(2)(f), (k) and (r) of SEBI (PFUTP) Regulations as there is no specific requirement of such disclosure is mandated under the law. Even if such disclosure was required, non-disclosure of such information cannot by any stretch of imagination leads to a fraud. IKF and its directors request your honour to refer to Judgement of in Hon'ble Supreme Court's the matter of Shrisht Dhawan Vs. Shaw Brothers AIR 1992 wherein it was decided that " non-disclosure of a fact not required by a statute to be disclosed may not amount to a fraud".*

o. *Post GDR issue and listing, there is no prohibition on purchase of GDRs on market or OTC for a consideration by Fll registered in India for ultimate cancellation and acquiring underlying shares of Indian company so long as they are within the ceiling prescribed by RBI. SCN has made statement of acquisition, cancellation and sale of both the issues of GDRs in this para but had not pointed out any irregularity or anomalies in these transactions. Neither IKF nor any of its Promoter or Directors or their relatives were involved in these transactions. They had no other business relationship with parties involved in sale, purchase and cancellation of GDRs. More over the IKF and its directors had no control over who is cancelling or who is buying or who is selling GDRs on OTC or Market. So per se nothing was wrong or fraudulent in these transactions as far as IKF and its directors are concerned. More over IKF and its directors had no control over who is cancelling or who is buying or who is selling GDRs over OTC or Market. So there was nothing wrong or fraudulent about these transactions as far as IKF and its directors are concerned*

p. *SCN has produced the statement of the cancellation of GDRs of 1st issue between 29th May and 2nd Nov 2007 by three major entities without pointing our any irregularities in these transactions on the Part of IKF and its directors. In fact, Investec Bk, Goldman Sachs and Brown Brothers are reputed institutions in their respective countries and hence no fraudulent motive can be attributed to them. More over none of the promoter, directors or their relatives are connected with these institutions and IKF and its directors have no control over them and their activities. So there was nothing wrong or fraudulent about these transactions as far as IKF and its directors are concerned*

q. *SCN has produced statement that 10,34,000 GDRs issued in May 2009 were cancelled by 18th Dec 2009 by issue of 3,10,20,000 shares received into Sub-Accounts. SCN has not pointed out any irregularities in respect of these* *transactions. None of the promoter or Director or their relatives were involved in transactions nor had they had any business relationship with them. Moreover, IKF and its directors had no control over these institutions. So, therefore, no wrongful or fraudulent intentions can be attributed about these transactions as far as IKF and its directors are concerned.*

r. *SCN has mentioned that out of 54,13,048 GDR issued in May 2009, 10,34,000 GDRs were cancelled between July 30,2009 to 18 Dec 2009. SCN has further mentioned names of counter parties to the sale of shares by IFCF to Indian clients during the period Jan. 2009 to Sept 11, 2011. However, SCN has not pointed any specific irregularities in these transactions. None of the promoter or Director or their relatives were involved in transactions nor had they had any business relationship with them. Moreover, IKF and its directors had no control over these institutions. Therefore, no wrongful or fraudulent intentions can be attributed about these transactions as far as IKF and its directors are concerned.*

s. *The SCN provided further details of the Indian counter parties with sell volume and sell value with which IKF and its directors has no connections. Further, SCN has not pointed out any irregularity or illegality in these transactions except that they inter connected with one AP. Post issue, IKF and its directors had no connections whatsoever with Vintage or its associate companies or with their markets operations. All these transactions have taken place independently and IKF and its directors have no role in these transactions.*

t. *IKF and its directors have no connections with AP or his entities except that Vintage appeared to be selling syndicate of 2nd GDR issues as advised by the Lead Manager and alleged to have borrowed money from Euram Bank. IKF and its directors had no connection with Vintage or its associate companies and their market operations.*

u. There was no insider trading or substantial acquisition of security control by the IKF and its directors. In the entire SCN, there are no allegation of insider trading or substantial acquisition of securities control by IKF and its directors or their relatives.

(i) As regards Prohibition of manipulative and deceptive device, we humbly submit as under: - It is fact that Noticee 1 IKF came out with two GDR issues as per detailed given in para 2 above.

(ii) It is also fact that Sunil has signed Pledge Agreement and Account Charge agreement (It is not correct to say that Sunil has signed a pledge agreement.)

(iii) IKF and its directors have acted during the entire process of GDR issue in the interest of IKF and taken every action within the frame work of the provisions of respective Acts.

(iv) There was never any malafied intentions behind any action/information provided as these were done very transparently.

(v) During the entire process of GDR issues and subsequently, none of the IKF and its directors derived any advantage or benefit not to speak of undue advantage.

(vi) We humbly and sincerely maintain that IKF and its directors have not violated any of the above-mentioned provisions of the Act.

v. It is humbly submitted that 13,20,00,000 underlying Equity shares of 1st GDR issue and 16,25,91,440 underlying Equity shares of 2nd GDR issue were got listed on Bombay Stock Exchange (BSE). Once listed, it is evident that IKF has complied with all relevant rules and regulations including obtaining in-principle approval. If there was any non-compliance of any rule or regulation or clause of Listing Agreement, BSE would not listed our shares. Noticee 1 i.e. IKF had not received any complaint or notice of violation of any of its rule and regulation from Stock

Exchange or other regulatory authorities. Thus, it is evident that IKF and its directors have not violated any provisions of the Act or other applicable Laws.

w. *We humbly submit that Fraud/Deceit has been defined under SEBI (PFUTP) Regulations. On perusal of related regulations, we sincerely maintain that none of the transactions or acts as defined in SEBI (PFUTP) Regulations, which tentatively amounted to fraud/deceit, are applicable in our case. As already mentioned in respect of Issue and listing of 13,20,00,000 and 16,23,91,440 underlying shares on BSE, the IKF and its directors had not contravened any of the provisions of SEBI Act or rules or regulations made thereunder.*

x. *Further it humbly submitted that none of the IKF and its directors had made any Dealings in Securities. On perusal of the concept of "Dealings in Securities" as defined under SEBI (PFUTP) Regulations 2003, it can safely be inferred that none of IKF and its directors' act will fall within the ambit of concept of "Dealing in Securities". Therefore, none of the IKF and its directors have violated any provisions of Sec 12A of SEBI Act.*

y. *It is humbly submitted that while making both the issues of GDR, the IKF and its directors had complied with both all the statutory and regulatory provisions applicable at the material time of issue of GDR issue. IKF and its directors tried their best to comply with all statutory provisions both in letter and spirit. Even, SCN has pointed out only few lapses pertaining to non-disclosure/dissemination of information to BSE which we had already proved in earlier para with case law that this act of non-disclosure, is not a fraudulent activity. Considering this, it is amply clear that none of the IKF and its directors had resorted to any manipulative or deceptive device or contrivance or contraventions of the provisions of the Act or rules or regulations made thereunder. Thus, there is no violation of Regulation 3(b).*

z. It is humbly submitted that in the process of making GDRs issues, IKF and its directors had complied with all statutory and regulatory provisions as were applicable at the material time. If any lapses happened, they were unintentional consider only as procedural lapses out of ignorance or on the advice of Lead Manager to Issue or Foregin Legal advisors. On their own IKF and its directors have tried their best to comply with all statutory and regulatory provisions in both in letter and spirit. Even SCN has pointed out that there are only few lapses pertaining to non-disclosure of disseminating information to BSE which we have proved with case law that the said non-disclosure did not amount to fraud. Thus, it is amply clear that IKF and its directors had not resorted to manipulative or deceptive device or contrivance or contravention of the provisions of the Act or the rules or the regulations made thereunder. Therefore, there is no violation of Regulation 3(c).

aa. None of the IKF and its directors had in any way engaged in any act, practice, course of business or in the course of business which operated as fraud or resulted in deceit of any person in connection with any dealings in GDR's underlying shares which were listed on BSE. BSE had not issued any notice or complaint in connection with such shares. Thus, all statutory compliances were thoroughly made and there were no contravention of any provisions of the Act or rules and regulations made thereunder. Thus, there is no violation of Regulation 3(d).

bb. IKF and its directors neither got published nor caused to publish any report/information which was false /not proved nor made any statement or declaration which made any one in the public to believe anything wrong as right.

cc. Further, neither IKF nor its directors had given any advertisement in respect GDR issues which contains any wrong information. The fact is that not a single advertisement was released or published in India in respect of GDR issues.

dd. Similarly, there is not even a single instance which show/indicate that IKF and its directors have planted any false or misleading news. Even in the SCN issued to IKF and its directors based on the investigation made by SEBI, no such instances were pointed out.

ee. In all the activities and transactions mentioned in Para 2 to Para 19, the SCN has not pointed any irregularity/illegality not to speak of fraudulency in the respective transactions. IKF and its directors also maintain that each and every transaction whether execution of any legal documents, issue of GDRs, purchase of GDRs by FIIs, cancellation/ of GDRs and issue of underlying shares per se stand alone basis were legal and within the rules and regulations of this Act and those of respective countries at the material time. Once GDR issue was complete, IKF and its directors had no direct role in any other activities i.e. purchase of GDR by FII, Cancellation of GDRs and issue of underlying shares etc.

ff. As mentioned in Para 21, SCN has not pointed out any irregularity or illegality in respect of individual activities or transactions carried by IKF and its directors in connection with the GDR issues. SCN did not produce a single evidence show that the GDR Issues of the IKF and its directors adversely affected or caused wrongful loss to any investor or whether SEBI received any complaint in respect of IKF and its directors's GDR issue from any of the investors. At least, nothing is furnished in SCN. Therefore, it is clearly evident that the SEBI is unable to prove any transaction or activity connected with GDR issue as illegal and fraudulent. As such Sec 15A is not applicable to Noticess 1, 3 and 4.

gg. Details of the usage of proceeds of GDR issue was provided by way of Annexure A to our letter dated 1.02.2012 and 10.02.2012.

hh. Copy of Account Statement for all bank accounts in Euram Bank by way of Annexure B to the letter dated 1.02.2012.

ii. Details of GDR proceeds repatriated to India provided enclosing relevant bank statements by way of Annexure B & C to our letter dated 1.02.2012 and 10.02.2012.

jj. Chronology of events leading to the issue of GDRs along certified true copy of Board Resolution by way of Annexure D to the letter dated 1.02.2012.

kk. A brief Write-up on how and why Pan Asia was finalised was given in the letter dated 1.02.2012.

ll. Copy of Agreement with Pan Asia provided by way of Annexure E to our letter Dated 1.02.2012.

mm. Copy of Agreement with Euram Bank by way of Annexure F to the letter Dated 1.02.2012.

nn. All conditions were laid in the alleged pledge agreement. There were no separate conditions.

oo. Further, no agreement was signed

- *with Euram Bank apart from those related to GDR Issue.*
- *regarding financing for the purpose of subscription by initial investors of GDRs*
- *with Vintage and AP*

pp. Address of subsidiary of IKF viz, BIOFEL was already given. Other information will be given later.

qq. SEBI is not correct in making such a generic and sweeping allegation that necessary information and all documents were not provided by IKF and its directors which devoid of truth. Our replies given above clearly evident that almost all information which was available with IKF and its directors were given. Summons calling for particular information were issued almost 5 years after 1st issue took place in March 2007. Such inordinate delay made it difficult in getting *many records pertaining to third parties. However, the IKF tried its best to provide as much information and documents as much possible vide its 1st Letter dated 01.02.2012 which was received and acknowledged by SEBI vide inward No.9698 on 4.2.2012, 2nd Letter dated 10.02.2012 duly received and acknowledged by SEBI vide inward entry no. 13336 dated 17.02.2012 and 3rd Letter dated 24.04.2012 duly received by SEBI vide inward entry no. 32530 dated 25.4.2012. The following information and documents as sought by SEBI were provided*

<u>1st Letter dated 01.02.2012</u>

- *Detailed usage of proceeds of GDR by way of Annexure A to the letter.*
- *Copy of Account Statement for all bank accounts in Euram Bank by way of Annexure B to the letter*
- *Details of GDR proceeds repatriated to India enclosing relevant bank statements by way of Annexure B & C*
- *Chronology of events leading to the issue of GDRs along certified true copy of Board Resolution by way of Annexure D to the letter*
- *A brief Write-up on how and why Pan Asia was finalised.*
- *Copy of Agreement with Pan Asia along by way of Annexure E to the letter*
- *Copy of Agreement with Euram Bank by way of Annexure F to the letter*

<u>2nd Letter dated 10.02.2012</u>

IKF furnished further information and documents vide their letter dated 10.02.2012 which was duly received and acknowledged by SEBI vide inward no.13336 dated 17.02.2012 as under:

- *Details of the usage of of proceeds of GDR issue provide by way of Annexure A*
- *Copy of Account statement for all the accounts in Banco Efisa by way of Annexure B*

- *That an amount of USD $10 million (approx.) has been repatriated to India and relevant bank statements were enclosed at Annexure B & C highlighting the transactions related to GDR process.*
- *Chronology of events leading to issue of GDRs along with a certified true copy of Board Resolution by way of Annexure D.*
- *Brief write up on how and why Pan Asia was finalised: IKF and its directors stated that initially the IKF and its directors had appointed Arklos Limited as lead managers. As they could not complete the job, thereafter the IKF and its directors approached EMG Finance, London and IDBI Capital Markets Services Ltd before finalising Pan Asia Ltd as the Lead Manager for GDR issue.*
- *Copy of Engagement/Proposal letter with Pan Asia was enclosed by way of Annexure E to the letter. No further mails or letters exchanged.*

3rd Letter dated 24.4.2012.

IKF further furnished information and documents vide their letter dated 24.4.2012 which was duly received and acknowledged by SEBI vide inward no.32530 dated 25.04.2012 as under:

- *The names and addresses of Directors/Promoters during GDR Issue i.e. 2007 and 2009. Also, during the period 1.1.2007 to 31.3.2011 by way of Annexure 1.*
- *Nature of Business of Biofuel FZE - The Company mainly engaged in project implementation related to renewable energy.*
- *Purpose of the payment to Citigate Trade FZE Dubai -US$1.6 million through Euram Bank Account.? -Payment of US$1.6 million to Citigate Trade FZE made through Euram Bank Account was for the purpose of supply and installation of Bio Fuel plants.*

- *Have you repatriated the proceeds of GDR 2009 or still in Bank.: The proceeds of UD$ 10 million (approx.) rose from GDR 2009 have been repatriated and or deployed in the project as per detail submitted earlier.*
- *From Euro Bank Account Statement an amount of US$73,74,055.00 transferred to subsidiary Biofuel FZE Dubai. Provide end use of the funds transferred along with documentary evidence before 25.4.2012: - We are in the process of obtaining the same and would submit the same very shortly as some of our directors are out of country.*
- *Explain the debits & credits of Banco Efisa account where proceeds from 2007 GDRs were deposited.: The debits and credits of Banco Efisa accounts are enclosed by way of Annexure 2.*
- *Bank Account statement of subsidiary from inception till the date of all credits and debits: - We would submit the same very shortly.*
- *Details of payment made to Pan Asia or companies associated with Pan Asia advisors Ltd.: - Payment made to Pan Asia have been given by way of Annexure -3.*
- *Details of purchase and expenses by Biofuel FZE from incorporation till date and Entity address, purpose of payment and amount: - We are collecting the desired information, request you goodselves to allow us sometime to compile and submit the same.*
- *Audit Report with financial statement of Biofuel FZE for March 2020 and March 2011: We are in the process of obtaining the same and would submit very shortly.*

rr. You will appreciate that IKF and its directors had very transparently and sincerely submitted to SEBI, almost all the information and documents which were available, at their disposal and possible to obtain from third parties.

ss. *The allegation in para 24 is not correct. Shri V Simhadri, ex-independent director of IKF appeared in person on 18th April 2012 in SEBI office and he was requested to seek required information from IKF and submit the same to SEBI on 12th April 2012. We humbly submit that it is inappropriate for SEBI to expect someone to commit on 18th April 2012 to submit some information on back date 12th April. 2012.*

tt. *Details of end use of GDR proceeds were already provided by IKF and its directors vide their letter dated 1.02.2012 and 10.02.2012. As per the GOI, MOF notification dated 08.07.2002, there is no restriction on the end use of funds except they cannot be invested in Real Estate and Stock Markets. Since IKF has repatriated funds into its subsidiary based in UAE, it is evident that it has neither invested in Indian Real Estate or Indian Stock Market. Under the circumstances SEBI has no jurisdiction to enquire about or asking for details after 5 and 12 years as to how and what way was the utilisation of GDR proceeds so long as they are stated to be used as per the purpose stated in GDR proposal.*

uu. *We submit our replies for sake of good order:*

- *IKF and its directors stand by their submission that it did not have any direct agreement with Vintage. As per SCN, the Loan agreement was executed and signed between Vintage and Euram Bank. Whatever may be the contents of agreement including any reference to IKF, Borrower has no direct recourse to IKF and its directors. Hence it cannot be considered as Agreement between IKF and Vintage. We urge upon SEBI to produce a copy of agreement between IKF and Vintage with signature of both parties on the same instrument.*
- *IKF and its directors still standby its submission that it has no agreement with AP. We urge SEBI to produce any such written evidence.*

- *IKF still standby its denial that they have any separate agreement with Euram which puts conditions on withdrawal of GDR proceeds. There appear to be one alleged Pledge agreement which SEBI enclosed to SCN, IKF and its directors, the contents of which are self-explanatory.*
- *IKF and its directors still standby with its denial that they have any separate agreement with Euram.*
- *IKF and its directors still standby with its denial that they have any agreement with any entity for the purpose of financing of GDR issue. A copy each of the alleged Account Charge Agreement, Pledge agreement and Credit agreement between Seazun and Banco, Loan agreement between Euram and Vintage, have been by SEBI, to SCN, the contents of which are self-explanatory. We put onus on SEBI to produce copy of any such agreement between IKF and Vintage/AP signed by both parties on single instrument.*
- *IKF and its directors deny that Seazun had taken loan from IKF. In fact, loan appear to have been was taken by Seazun from Banco Efisa and not from IKF as alleged in para 26. Sub para 9. The allegations contained in SCN that IKF has not given details of utilisation of GDR proceeds and that given false information about repatriation of GDR proceeds as it has transferred US$46,49,000 from its account to Seazun are also not true. IKF humbly submit that it is SEBI allegation that is false and not the information given by IKF and its directors as an amount of US$ 10.97 million out of US$ 11.00 million 1st Issue has been repatriated to IKF bank accounts in India in Jan 2008. The related statement is attached at Annexure 2. If US$46,49,000 have been transferred towards repayment of loan of Seazun as alleged in SCN, then how an amount of UD$ 10.97 could be repatriated from Banco to IKF's bank accounts in India.*

- *Further there is no restriction on the end use of funds except they cannot be invested in Real Estate and Stock Markets. Since IKF has repatriated funds of 2nd issue partly i.e.US$ 2.3 million into its own accounts with banks in India (The related statement is attached at Annexure 3) and partly i.e.US$ 7.55 million into its subsidiary based in UAE, it is evident that it has neither invested in Indian Real Estate or Indian Stock Market. Under the circumstances, SEBI has no jurisdiction to enquire about or asking for details of how and what way was the utilisation of GDR proceeds so long as they are used as per the purpose stated in GDR proposal.*

vv. We humbly submit that the important element attracting violations of alleged provision in SCN is "Fraud and Misrepresentation". We place reliance on the judgement of the Hon'ble Supreme Court in the matter of Ram Chandra Singh Vs. Savitri Devi & others 2003 8 SCC 319 for the interpretation of "Fraud and Misrepresentation". Wherein it was decided that a statement, if made in the honest belief that it is true, is not fraudulent and does not render the person make it liable to an action of deceit." We submit that IKF and its directors had not induced any person nor they made any representation which was false. This is evident from the fact that as on 30.3.2007, the share price of IKF share was Rs.7.46. We enclose a statement of Share price movement for next 6 months from the date of closure of GDR issue. (Annexure D) It can be observed from the statement that price remain same hovering around Rs.7 throughout period of six months. Hence IKF and its directors had neither induce or cheated or made any false statement or manipulated share price.

ww. Second important element attracting violation of provisions of Regulation 4 (2) (f), (k), and (r) of SEBI (PFUTP) Regulations as alleged in SCN was non-disclosure of Pledge Agreement and the entire backend arrangement for facilitating the subscription of GDR issue to BSE as fraudulent. Here again we *place reliance the judgement of Supreme Court in the matter of Shrisht Dhavan Vs Shaw Brothers AIR 1992 SC 1555 wherein ratio was that "Non disclosure of a fact not required by a statute to be disclosed may not amount to fraud" Since no specific requirement of such disclosure is mandated under the law, no disclosure of Pledge agreement to BSE cannot be consider as fraud as alleged by SEBI. We further submit that even such disclosure was required, even then non- disclosure of information cannot by any stretch of imagination become fraudulent.*

xx. In view the above, IKF and its directors strongly maintain that Sec 15A and 15A (a) of the Act not applicable to them.

yy. While adjudicating the case, we humbly submit to your honour to consider very objectively the following

- *Borrowings funds from market or banks for subscription to Public Issues both in India and abroad is a very normal and common prevalent market practice.*
- *When IKF and its directors took decision for making 1st GDR issue, they did not have expert knowledge pertaining to GDR issue and entirely relied upon the domain knowledge/guidance/advice of Lead Manager, legal advisors, company secretary etc. Accordingly, IKF and its directors initially approached domestic lead managers including IDBI Capital Markets Services Ltd. However, things did not work. Thereafter, IKF and its directors approached foreign Lead Manager Arklos Ltd and also made certain payment as advance to them. However, they also failed to deliver required services. Subsequently, IKF and its directors, as advised by certain market players, approach London based Pan Asia Advisors Ltd. As natural that in all public issuers whether domestic or GDR, Issuers by and large go by the advice of their Lead Manager. So IKF and its directors had*

gone by the advices of Pan Asia who introduced Banco Efisa SA, Seazun etc. as selling syndicate for GDRs. While opening of Bank account for keeping proceeds of GDR, Pan Asia brought a plethora of legal documents along with Bank Account opening form and obtained our signatures on all the documents and requested to provide for collateral security to Banco Efisa SA (i.e. by keeping GDR proceeds under lock-in for few months with Banco Efisa SA) so that Bank could support syndicate selling agents to procure subscriptions. IKF and its directors were informed that certain legal agreements for keeping GDR proceeds under a lock-in with an overseas bank has been a normal legal practice in GDR issues. Accordingly, we followed Lead Manager for all legal documentation. Between the period of 2 years from our 1st GDR issue in March 2007 till we went for 2nd issue in May 2009, a number of GDRs issues were made by Indian companies adopting the same modus operandi with same Lead Manager. However, as none of the regulatory bodies viz. RBI, SEBI or Stock Exchange had raised any objections or pointed out any anomalies, not to speak of indicating them fraudulent transactions for several years, this procedure or modus-operandi had virtually assumed legal sanctity. As such, IKF and its directors went for 2nd GDR issue in the similar manner as many other domestic companies had also made GDRs issues in similar manner just prior to or after IKF and its directors' 2nd GDR issue. Pan Asia had facilitated synchronization transactions of the GDR issue, appoint selling agents, arranging of investors, providing of exit options for investors and conversion of GDRs into equity shares in the Indian market. As all these transactions involving more than a dozen companies went unchecked for nearly 5 years without inviting the attention of regulatory authorities such SEBI, RBI, MCA, Stock Exchange, then it was either the system had been *legitimised or there was a complete "Systemic Failure". But IKF and its directors have been made scapegoats. IKF and its directors reiterate that IKF and its directors neither had any malafied intentions nor any fraudulent inclination but were rather victims of exploitation by foreign institutions in first issue and scapegoat of systemic failures in the second issue.*

zz. There is extra ordinary inordinate delay of 12 long years in serving the Show Cause Notice. While transaction of 1st GDR issue was closed on 31.3,2007, the SCN was issued on 28.3.2019 exactly 12 years after the event. Even though investigation and issue of summon and submission of all the information/documents as required by SEBI was complete by April 2012, SEBI took another 6 years to serve SCN for which SEBI has not indicated any plausible reasons. This delay has severely jeopardized the ability of IKF and its directors to defend themselves in as much as except one, most of the people overseeing this matter has left the company making it difficult to get correct information from third parties and foreign banks. Moreover the preservation period 8 years for records and documents which includes summons, notices, requisitions, orders , account statements, agreements, etc. pertaining to GDR issues whether issued or kept under Annexure B of Regulation 9 of SEBI (Listing Obligation and Disclosure Requirements) or any other law for the time being force has already expired in March 2014 in respect of 1st issue and in May 2016 for 2nd issue respectively. Thus, it is impossible to get any correct authenticated documents or information on events taken place 10 and 12 years ago. While there may not be any provision in SEBI Act prohibiting SEBI from taking action beyond a certain period of time in a given case but as per cannons of natural justice, SEBI cannot have infinite period of time for investigation and further infinite for serving Show Cause Notice for adjudication of a given case. As per legal prudence, it cannot go beyond 8 years period during which

Companies are not required to preserve non-permanent records. Hence the Show cause notice issued based on the documents information which are liable for destruction after expiry of 8 years is amounting to denying the principles of natural justice to IKF and its directors. Based on whatever material, documents, information available, IKF and its directors presented these written submissions, inter alia, contending that the long delay in concluding proceedings against IKF and its directors itself was antithetic to the rule of law, fairness and justice and as such proceedings in the matter, stood vitiated. IKF and its directors have been gravely prejudiced in the matter of their proper defense before the SEBI. IKF and its directors, therefore, humbly pray to SEBI that these proceedings against them be dropped and cancelled on the grounds of such inordinately long and unexplained delay of 5 years in initiating an enquiry, and 12 years in issuing show cause Notice. In this connection, IKF and its directors place reliance on the Order of Hon'ble SAT in the matter of H B Stockholding Ltd Vs SEBI. (Appeal No.114 of2012.)

aaa. Among all nearly a dozen of GDRs Issuers of the material time, IKF and its directors are perhaps the most successful issuer who could repatriate US$10.97 million out of first GDR issue of US$11.00 miilion (99.70%) in the Bank accounts of IKF in India. Further, they could repatriate US$9.85 million (90%) out 2nd issue of US$10.98 million (90%) i.e. (US$2.3 million in IKF bank account in India and US$7.55million into its subsidiary Biofuel FZE Dubai).

7. IKF and its directors made further submissions vide their letter dated July 30, 2019 wherein IKF and its directors explained in detail about the proceedings that had taken place before the Hon’ble Whole Time Members and the directions issued vide SEBI Order No. WTM/SR/ISD/79/04/2015 dated 20.4.2015 (Order 1) and SEBI Order No. WTM/SR/EDP/59/09/2017 dated

5.9.2017 (Order 2) with respect to IKF and its directors as well as other entities listed therein. IKF and its directors made the following additional submissions:

a. *SEBI order dated 24.04.2015 which has also not been appealed against, had attained the finality. Hence any further proceedings after a gap of 4 years (no plausible reasons were given for this inordinate delay) in the same matter and under same cause of action through present SCN dated 28.3.2019 against IKF and Noticees No.3, 4, and 5 are barred by principle of Res-judicata under Sec 11 of Civil Procedure Code 1908. in as much as SEBI could have invoked other relevant provisions/sections of the Act and imposed multiple penalties under enabled sections, if any, of SEBI Act 1992 but it cannot impose multiple proceedings on the other party in the same matter and under same cause of action. Since SEBI had failed to exercised its powers to impose penalties under Sec. 15HA and Section 15A(a) of SEBI Act in the earlier proceedings and in the final order and now urge these new sections in the same matter and same cause of action , the matter cannot be agitated now due to applicability of principle of "Constructive res judicata.*

b. *Similarly, order 2 dated 5.09.2017 has not been appealed against, it had attained finality. While IKF has already undergone the prohibition period of almost 8 years out 10 years, Shri Mukesh Goyal and Shri Sunil Kumar Goyal approx. 2 years each. As regards IKF and Shri Sunil Kumar Goyal and Shri Mukesh Kumar Goel, were implicated in the proceedings in their representative capacity as the Directors of the Company and not in their individual capacity, their fate is tagged with IKF. Thus any further proceedings against IKF and its directors in the same matter (as is evident from SCN dated 28.3.2019) in which SEBI had already completed its investigation, issued show cause notice, summoned for personal hearings and then adjudicated the matter and awarded a very rarest of rare* *punishments, are barred by the principles of "Res Judicata" under Sec 11 of Civil Procedure Code 1908, Further invoking/urging Sections 11C(6), 15A(a), 15HA of the Act for starting adjudication proceedings once again and punishment once again is barred by the principle of Constructive Res-judicata.*

c. *The term 'res judicata' means 'thing already decided by a competent court'. Section 11 of Civil Procedure Code, 1908 embodies the doctrine of res judicata in India. It states that no court shall try any suit or issue in which the issue directly and substantially, in a former suit, between the same parties or their representatives, in a competent court, has been heard and finally decided by such court. This principle rests on two principles i.e. (i) one should not be vexed twice for same cause; and (ii) there should be finality to litigation. Where there has been an executable judgement between the parties, the rule of res judicata will prevent a fresh suit between them for the same relief.*

d. *The basic objects and operation of the provisions of Section 11 were observed by the Supreme Court in the case of Satyadhyan Ghosal vs. Deorajin Debi (AIR I960 SC 941) which states that when a matter between two parties is decided, either on the basis of question of fact or question of law and the decision is final, neither party shall be allowed to pursue the matter again and harass the other party. The basic idea behind this principle is that every litigation must come to an end and therefore, it applies to civil suits, tax matters, criminal proceedings, administrative laws etc.*

e. *Constructive res judicata is a subset of the doctrine of res judicata. Constructive res judicata sets to bar any claims being raised in a later proceeding if the claim should/ought to have been raised and decided in an earlier proceeding. The doctrine seeks to prevent the determination of claims which were failed to be brought at the appropriate time in earlier proceedings.*

f. *If the petitioner wants to urge some new grounds which he has failed to do before in earlier petition, the matter cannot be agitated in a subsequent petition because of "Constructive res judicata. In case, this rule is not applied to such proceeding, the party can go on adjudicating one after another urging one or two new grounds each time, thus causing hardships to the opponent. What operates as res judicata is the decision and not the reasons advanced by the court in supports of its decision, AIR 1968 SC 1370).*

g. *In the absence of rule like res judicata there would have been endless litigation and parties would be going through continuous harassment and incurring huge expenses. The principle of res judicata has been evolved from common law system and now is been included in jurisprudence of every well-regulated country. The basic idea behind this principle is that every litigation must come to an end and therefore, it applies to civil suits, tax matters, criminal proceedings, administrative laws etc.*

h. *There are five conditions which must be satisfied for the application of res judicata'.*

(i) *The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue, either actually or constructively in the former suit.*

(ii) *The former suit must have been a suit between the same parties or between the parties under whom they claim.*

(iii) *In the former suit, the parties must have litigated under the same title.*

(iv) *The court which decided the former suit must have been a court which is competent to try this subsequent suit.*

(v) *The matter which is directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.*

i. *The matter, cause of action, allegations, parties, title, adjudicating authority (SEBI), findings, conclusions etc are same and identical in both the orders i.e. SEBI Order No. WTM/SR/ISD/79/04/2015 dated 20.4.2015 & SEBI Order No. WTM/SR/EDP/59/09/2017 dated 5.9.2017 and current SCN dated 28.3.2019. By its final Order dated 20.4.2015, SEBI awarded punishment to IKF in the form of debarment from Capital Market for a period of 10 years. Further SEBI in its Order dated 5.09.2017 awarded punishment to Shri Mukesh Kumar Goyal and Sunil Kumar Goel by way debarment from Capital Market for a period of ten years. This, in itself, is a harshest, rarest of rare and disproportionately very high punishment. But in good faith taking these orders as final orders, we had not appealed before the Hon'ble SAT. In the current SCN, allegations are made against the same entities under the same sections viz Sec.l2A(a)-(d) of SEBI Act read with Regulation 3(b)-(d), Regulations 4(1) and 4(2) (c),(f),(k) and (r) of the PFUTP Regulations 2003 as well as 11C(3). Since all the 5 criteria in respect of applicability of re- judicata have been fulfilled, any attempt to re-adjudicate or adjudicate afresh the same matter, same cause of action and same parties once again is thus barred by the principle of re-judicata. Nothing prevented Hon'ble AO/WTM to invoke Secs 11C(6), 15A(a) and 15HA while passing final orders on 20.04.2015 and 5.09.2017. However, SEBI had failed to invoke the said sections of SEBI Act at that stage. Therefore urging these sections i.e. 11C(6), 15A(a)and 15HA of SEBI Act against IKF and its directors now in the same which ought to have been raised and decided in the previous two orders cannot be raised now as the same is barred by constructive res-judicata. We place reliance on:*

   (i) *The Hon'ble Supreme Court Judgement in the matter of PK Vijayan vs. V Kamalaskshiamma. [(1994)4 SCC 53] wherein the Appex Court explained the rule "might and ought" regarding raising of pleas to operate as Constructive Res-judicata. It was held by the Lordships that "omission by a party to raise* *all available and relevant pleas which might have or ought to have raised in the proceedings would constitute constructive res-judicata. The pleas not raised in earlier proceedings would deemed to have been waived in subsequent proceedings.*

(ii) The Hon'ble SAT Order dated 1.02.2019 in the matter of MLB Capital Pvt Ltd Vs SEBI. Appeal No.278/2019 wherein Hon'ble SAT agreed SEBI contention that interest not claimed on previous suits cannot be claimed in subsequent suits due to operation of res-judicata.

(iii) The Hon'ble Supreme Court judgement in the matter of Civil Appeal No 1500 OF 2019 (@SLP(C) No. 1216 OF 2016) ASGAR & ORS. Appellant(s) Vs MOHAN VARMA & ORS. Respondents (s). In this recent case their Lordships held that "having failed to assert the claim at that stage (means at earlier state of proceedings), the deeming fiction contained in Explanation IV to Section 11 is clearly attracted. Their Lordship further held that "An issue which the appellants might and ought to have asserted in the earlier round of proceedings is deemed to have been directly and substantially in issue. The High Court was, in this view of the matter, entirely justified in coming to the conclusion that the failure of the appellants to raise a claim would result in the application of the principle of constructive res - judicata. The appeal shall stand dismissed.

8. Thereafter, IKF and its directors were granted an opportunity of hearing in the matter on October 11, 2019, vide hearing notice dated September 27, 2019. Thereafter, the Authorized Representative ('**AR**') of IKF and its directors, vide email dated October 09, 2019, *inter alia* requested for inspection of certain documents in the matter. The said request was acceded to and the said request for inspection was forwarded to the concerned department of SEBI. I note from

the available records that the inspection of documents was provided to the AR of IKF and its directors by the concerned department of SEBI. Thereafter, the AR of IKF and its directors was granted a final opportunity to submit additional replies in the matter by December 18, 2019, vide hearing notice dated December 05, 2019. In the said hearing notice dated December 05, 2019, the AR of IKF and its directors was also granted an opportunity of hearing on December 20, 2019. The AR of IKF and its directors, vide email dated December 06, 2019, requested to postpone the hearing scheduled on December 20, 2019. In view of the said request, the hearing in the matter was rescheduled to January 06, 2020. 8. I further note that IKF and its directors, vide letter dated December 17, 2019 again reiterated the submissions made by them vide their letters dated June 14, 2019 and July 30, 2019. Thereafter, IKF and its directors also submitted additional contention during the course of personal hearing dated January 06, 2020. IKF and its directors contended that:

a. *Based on the merits of detailed explanations repudiating each and every allegations paragraph-wise submitted as preliminary replies by IKF and its directors vide Letter dated 14th June 2019, IKF and its directors ought to have been exonerated in as much as much as SEBI investigation was found to be flawed and defective and because SCN itself proved completely wrong and admitted that two basic agreements namely Pledge Agreement dated 27.03.2007 signed between Banco Efisa S.A. and IKF and Pledge Agreement dated 28.4.2019 signed between Euram Bank and CCP were never signed by IKF and its directors. But the edifice on which entire SEBI investigation and charges of alleged fraudulent transactions and consequent punishment (albeit a miscarriage of Justice) meted out to IKF and its directors was built on these two flawed* *agreement. As per SEBI's own assertion in SCN (para 6), the first pledge agreement dated 27.3.2007 between Banco Efisa and Noticee No. 1-IKF was signed by Sunil as the Director of IKF. In fact, Sunil had not even joined IKF as on the alleged date of execution of agreement and hence there is no question of his signing the alleged Agreement. Further, as para 8 of SCN, second pledge agreement dated 28.4.2009 was signed by Noticee -4 on behalf of Noticee No.1-IKF as Whole Time Director of IKF. He is also one of the promoter of IKF. A Resolution was passed to this effect the Board of Directors of IKF at its Meeting dated 31.01.2007. It is unthinkable that SEBI investigating officer does not have basic knowledge of Companies Act in as much as a Corporate (that too a foreign entity) cannot be a Whole time director of Indian Company. Further, the related Board resolution sited by SCN does not pertain to 2009 GDR issue but to 2007 GDR issue. There are other goof-offs by way attributing the allegations pertain some other corporate entity to IKF and its directors. With such blunders and goof-offs, the investigations is completely flawed and the SCN itself is defective in many aspects and as such entire adjudicating proceedings stand vitiated ab- initio and thus no justice can be expected from this adjudication.*

b. Sir, now I wish to point out that SEBI miserably failed to provide any primary and authenticated evidence against allegations made in SCN. In the first paragraph itself of our first letter dated and subsequently vide e-mail dated 7th October 2019, IKF and its directors demanded to inspect the originals documents of Xerox copies provided by SEBI to IKF and its directors along with SCN. However, during the inspection, which was allowed on 2.12.2019, the same unauthenticated and uncertified plain Xerox copies which were already enclosed to SCN were provided. Though it was pointed out on the spot by way of note on the certificate of inspection as well as by e-mail dated 7.12.2019 that despite my request for seeing the original documents, I was shown only plain Xerox copies which were *already sent along with SCN. However, there is no response from SEBI. It may be noted that no purpose is served by giving inspection of same plain Xerox copies which were already sent along with SCN. It is well settled law that Xerox copies are not admissible as Primary evidence under Sec 62 and 63 read with Sec 79 of Indian Evidence Act 1872. Since SEBI did not produce any originals or the copies of Agreements duly attested by a Local Notary and countersigned by an authorised officials of Indian Embassy in that particular Country certifying authenticity of documents and authority of the Local Notary, ft is proved that SEBI has no primary or secondary evidence to produce against the allegations levelled in the SCN and thus, SCN liable to be quashed and set aside.*

9. Further, during the course of personal hearing, I note that Mr. Bharathiraju Vegiraju had raised the contention of error of facts in the SCN. However, during the course of personal hearing, it was clarified to him that the same are not error of facts but merely clerical errors. He was further clarified that

    - On page 3 in line 3 of para 6, Noticee 3 should be read as Noticee 4.
    - On page 5 at para 8, Noticee 2 should be read as Noticee 3.
    - Further, it was also clarified that the resolution dated January 31, 2007 was passed in respect to GDR Issue 1 of IKF and the same has to be read with GDR Issue 1. The AR was informed that, w.r.to GDR Issue 2 of IKF, the board resolution dated January 30, 2008 was passed and the same has to be read with GDR Issue 2 of IKF. A copy of resolution dated January 30, 2008 was also provided to AR during the course of hearing.
    - In para 12 at page 8 and in para 26 on page 18, Asahi should be read as IKF, wherever mentioned.

Pursuant to the said clarifications, the AR requested time to make additional submissions. Accordingly, IKF and its directors were given time till January 13, 2020 to make post-hearing submissions.

10. Thereafter, vide letter dated January 09, 2020, IKF and its directors submitted that they had no objections to SEBI rectifying the mistakes in the SCN and they have nothing to add in reply to the same.

11. I note that CCP, vide its letter dated April 18, 2019, submitted its reply to the SCN wherein CCP made the following contentions:

   a. *As a matter of fact, Clifford Capital Partners AG SA only applied for a term loan facility of up to USD 14,000,000 with Banco Efisa, S.F.E, S.A. per credit agreement dated 16th March 2007 and IKF Technologies Limited entered into an account charge agreement with Banco Efisa, SFE, S.A. on 27th March 2007, whereby the former deposited USD 14,000,000 in its account with Banco Efisa, as security for all the obligations of Clifford Capital Partners AG SA (Seazun Limited) under the credit agreement (dated 16th March 2007).*

   b. *I hereby strongly affirm that Clifford Capital Partners AG SA liaised only with independent financial advisors and Banco Efisa (during the whole loan application and GDRs processes) and was never in contact with IKF Technologies Limited at any time prior or since.*

   c. *In consequence, Clifford Capital Partners AG SA was never knowingly a party to the alleged fraudulent scheme of IKF Technologies Limited and effectively falls out of the scope of Sections 11C(3), 11C(6) and 15HA of the SEBI Act 1992, as well as that of Section 23E of the SCRA 1956.*

   d. *I also wish to inform you that Clifford Capital Partners AG SA has been struck off the BVI Companies Register on 1 st May 2018.*

12. Thereafter, vide letter dated September 27, 2019, CCP was provided with an opportunity of personal hearing on October 11, 2019. Vide letter dated October 11, 2019, CCP requested for recusal from personal hearing dated October 11, 2019.

CONSIDERATION OF ISSUES AND FINDINGS:

13. I have taken into consideration the facts and circumstances of the case, the material available on record. I note that the allegations levelled against IKF, its directors and CCP are as below:

    a. IKF and its directors, in connivance with entities connected/related to AP as well as CCP, had executed the scheme of fraudulent issuance of GDR wherein they had issued GDRs on two different occasions and pledged the GDR proceeds once with Banco Efisa and on another occasion with Euram Bank so that CCP and Vintage could take loan for the subscription of GDRs. Thereafter, certain FIIs had converted the GDRs into underlying shares and had sold them in the Indian securities market with the help of the entities connected with AP. Therefore, it is alleged that IKF, its directors and CCP have violated the provisions of Section 12A(a), (b) (c) of SEBI Act read with 3(b), (c), (d), 4(2)(c), (f), (k) & (r) of PFUTP Regulations.

    b. IKF and Mukesh, by their failure to submit the required information as well as by making false submissions before SEBI, have violated the provisions of Section 11C(3) read with 11C(6) of SEBI Act.

14. In view of the above, the issues for consideration before me are:-

    a. Whether IKF, its directors and CCP, in light of their role in GDR issues of IKF, have been responsible for fraudulent issues of GDRs and, as a consequence, whether have violated the provisions of Section 12A(a), (b) (c) of SEBI Act read with 3(b), (c), (d), 4(2)(c), (f), (k) & (r) of PFUTP Regulations?

b. Whether IKF and Mukesh have violated the provisions of Section 11C(3) read with Section 11C(6) of SEBI Act?

c. If yes, whether IKF, its directors and CCP are liable for penalty?

d. If yes, what should be the quantum of penalty that should be imposed on them?

15. Before moving forward, the relevant extracts of the provision of law, allegedly violated by IKF and its directors, are mentioned as under-

SEBI Act

Investigation.

11C.

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

(6) If any person fails without reasonable cause or refuses—

…….

(b) to furnish any information which is his duty under sub-section (3) to furnish; or

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.

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—

(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

(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:—

(c) advancing or agreeing to advance any money to any person thereby inducing any other person to offer to buy any security in any issue only with the intention of securing the minimum subscription to such issue;

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

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

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

16. Before moving forward, I would deal with certain preliminary issues raised by IKF and its directors in their common replies dated June 14, 2019, July 30, 2019 and January 06, 2020.

17. In the beginning, IKF and its directors have contended that SEBI lacks jurisdiction in regard to utilization of the GDR issues as the same was done in terms of direction issued by Ministry of Finance (**MoF**) as well as Reserve Bank of India. IKF and its directors contended that, as per the MoF notification dated 08.07.2002, there is no restriction on the end use of funds except they cannot be invested in Real Estate and Stock Markets. Since IKF has repatriated funds into its subsidiary based in UAE, it is evident that it has neither invested in Indian Real Estate or Indian Stock Market. Under the circumstances SEBI has no jurisdiction to enquire about or asking for details after 5 and 12 years as to how and what way was the utilisation of GDR proceeds so long as they are stated to be used as per the purpose stated in GDR proposal. I note that in the matter of SEBI vs. Pan Asia Advisors Ltd., the issue under consideration before the Hon'ble Supreme Court of India was whether SEBI has jurisdiction in respect to GDR issues of 6 companies, including IKF. In the said matter, SEBI had filed

an appeal against SAT order dated September 30, 2013 wherein it was held that SEBI does not have jurisdiction in the matter of GDR issues. The said appeal of SEBI was allowed by Supreme Court of India and it was held that SEBI has jurisdiction in the matter of GDR issues of the companies. While discussing the definition of 'securities' as per SCRA, Supreme Court of India observed that:

"*63. Going by the definition under Section 2(h)(i) 'security' would include other marketable securities of a like nature of any incorporated company. Therefore reading Section 2(h)(i) and 2(h)(iii) together and apply the same to GDRs, having regard to the fact that the issuance of GDRs are always based on the underlying Indian shares deposited with the Domestic Custodian Bank and thereby the GDRs possess in it right, as well as, interest in the shares, scripts etc., it will have to be straight away held that all GDRs would fall within the definition of 'securities' as defined under Section 2(h) of the 1956 Act.*"

I note that Hon'ble Supreme Court of India also made the following observations:

"*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.*"

Therefore, in terms of above observations of Hon'ble Supreme Court of India, I hold that it is a settled position that SEBI has jurisdiction in respect of GDR issue as the same fall within the definition of 'securities' under SCRA. As a consequence, SEBI also has jurisdiction to enquire about end use of funds to check if the same were used as per the objective of the respective GDR issues.

18. Further, IKF and its directors have contended that, during the course of inspection of documents, they were only provided with photo copies of certain documents in place of original documents. IKF and its directors have submitted that the photo copies are not admissible as primary evidence under Sections 62 and 63 read with Section 79 of the Indian Evidence Act 1872. In this regard, I note that, as per Rule 4(5) of Adjudication Rules, the AO is not bound by the provisions of Indian Evidence Act, 1872 while taking evidence under Adjudication Proceedings. However, at the same time, I note that the photocopies of the documents were obtained by SEBI from foreign entities which are having possession of original documents. Therefore, SEBI itself is not in possession of the said original documents. I also note from available records that the documents / information relied in the present matter has been provided to IKF and its directors. Hon'ble SAT in the matter of Shruti Vora vs. SEBI (Appeal (L) No. 28 of 2020, date of decision: 12.02.2020) has observed that: - *"….A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon…"* In view of the above, the said contention raised by IKF and its directors is not acceptable.

19. I note that IKF and its directors have also contended that the present adjudication proceedings suffer from gross delay on the part of SEBI and the

same is in violation of principles of natural justice. In this regard, I note that the GDRs under consideration in the present proceedings were issued in March 2007 and May 2009. However, I note that the present matter is complex involving investigation of various entities registered under foreign jurisdiction. The same, *inter alia*, required collaboration with foreign regulators by SEBI and collection of information. In this regard, I note that Hon'ble SAT in its order dated February 05, 2020 in the matter of Jindal Cotex Ltd. vs. SEBI had made the following observations:

"*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.*"

In this regard, I also note that proceedings in respect of the GDR issue of IKF were initiated by SEBI as early as 2011, wherein SEBI passed an interim order dated September 21, 2011. Thereafter, pursuant to complete investigation in the matter, vide final order dated September 05, 2017, directions were passed against IKF and its directors. Before issuing final direction by SEBI vide its order referred *supra*, SEBI had sought replies of IKF and its directors on merits. Therefore, the contention of IKF and its directors that it was an onerous task to reconstruct the records and trace the transactions of an old matter is of no merit as IKF and its directors had already replied on merits before the Whole Time Member of SEBI.

20. IKF and its directors have further contended that neither IKF nor its directors had made any Dealings in Securities. Therefore, there is no violation of Section 12A of SEBI Act or PFUTP Regulations. However, I rely on the observations of Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Kanaiyalal Baldevbhai Patel wherein Hon'ble Supreme Court made the following observations:

"*The definition of 'dealing in securities' is broad and inclusive in nature. Under the old regime the usage of term 'to mean' has been changed to 'includes', which prima facie indicates that the definition is broad. Moreover, the inclusion of term 'otherwise transacting' itself provides an internal evidence for being broadly worded so as to include situations such as the present one.*"

In light of the above observations, I am of the view that the present situation wherein IKF had issued GDRs falls under dealing in securities. Therefore, the contention of IKF and its directors is not acceptable.

21. IKF and its directors have further contended that two separate orders dated April 20, 2015 and September 05, 2015 were passed by Hon'ble Whole Time Member of SEBI on the same facts as of the present adjudication proceedings. The said orders have attained finality as none of those orders were appealed against before the higher forum. Therefore, the present adjudication proceedings is violation of the principle of *res-judicata* as it amounts to duplication of proceedings on the same facts. However, I am unable to accept this contention of IKF and its directors. In this regard, I note that the Hon'ble SAT, in its order dated April 21, 2017 in the matter of Sunita Gupta vs. SEBI, has made the following observations:

"*6. Where a person violates the provisions contained in the SEBI Act and the regulations made thereunder, then, SEBI is empowered to initiate penalty proceedings against that person under Chapter VIA of SEBI Act and also issue directions in the interests of investors or securities market as it deems fit under Chapter IV of SEBI Act. Thus, the powers conferred on the Board under Chapter IV are independent from the powers to impose penalty under Chapter VIA of SEBI Act. Accordingly, in the present case, since the appellant had indulged in synchronized/ circular trades in gross violation of SEBI Act/ PFUTP Regulations and the same was detrimental to the interests of the investors and securities market, the Board deemed it fit to issue direction under Chapter IV in addition to the penalty imposed under Chapter VIA of SEBI Act. Therefore, in the facts of present case, initiation of proceedings under Chapter IV even after initiating proceedings under Chapter VIA cannot be faulted.*

7. Counsel for appellant had placed reliance on decisions of the Apex Court in the case of Kunjan Nair Sivaraman Nair (Supra) & in the case of Dr. Subramanian Swamy (Supra) which have no relevance to the facts of present case, because, SEBI Act itself contemplates that where a person violates SEBI Act and the regulations made thereunder, then apart from imposing penalty under Chapter VIA, it would be open to the Board to issue such directions at it deems fit under Chapter IV of SEBI Act."

In view of the above observations of Hon'ble SAT, the argument of IKF and its directors does not hold ground and, therefore, the same is rejected.

a. **Whether IKF, its directors and CCP, in light of their role in GDR issue of IKF, have been responsible for fraudulent issuances of GDRs and, therefore, have violated the provisions of Section 12A(a), (b) (c) of SEBI Act read with Regulations 3(b), (c), (d), 4(2)(c), (f), (k) & (r) of PFUTP Regulations?**

22. I note from the IR that, IKF had come up with its GDR issue on 2 separate occasions. First GDR Issue was of 1,10,00,000 GDRs (amounting to USD 11 Million) and issue closed on March 30, 2007 (hereinafter referred as '**first issue**'). Second GDR Issue was of 54,13,048 GDRs (amounting to USD 10.98 Million) and issue closed on May 15, 2009 (hereinafter referred to as '**second issue**'). Further, Pan Asia was the Lead Manager of both GDR issues of IKF.

23. I further note from the IR that, before the first issue, IKF had an issued share capital of Rs. 10,66,90,000 represented by 10,66,90,000 fully paid up equity shares of Re. 1/- each. Thereafter, by appointing Pan Asia as Lead Manager, IKF decided to raise funds from investors outside India through the issuance of GDRs. Consequently, on March 30, 2007, IKF issued 13,20,00,000 equity shares which resulted in allotment of 1,10,00,000 GDRs having total value of USD 11 Million. The said GDRs, issued by IKF, were fully subscribed and the issue closed on March 30, 2007 itself.

24. Further, before the second issue, IKF had an issued share capital of Rs. 26,81,90,000 represented by 26,81,90,000 fully paid up equity shares of Re. 1/- each. Thereafter, by appointing Pan Asia as Lead Manager, IKF decided to raise funds from investors outside India through the issuance of GDRs. Consequently, on May 15, 2009, IKF issued 16,23,91,440 equity shares which resulted in allotment of 54,13,048 GDRs having total value of USD 10.98

Million. The said GDRs, issued by IKF, were fully subscribed and the issue closed on May 15, 2009 itself.

25. I note the following details regarding GDR issue of IKF from the IR

Sr. No	Issuer	Date of GDR Issue	Pre GDR equity ('000)	Shares issued under GDR ('000)	% GDR to Pre GDR equity	Market Cap prior to GDR issue (Rs Crore)	Capital raised by GDR Issue (Rs. Crore)	% Capital raised to pre GDR Market Cap
1	IKF	30-03-2007	1,06,690	1,32,000	123.72	79.60	47.96	60.25
2.	IKF	15-05-2009	2,68,190	1,62,391	60.55	79.66	54.45	68.35

Thus, I note from the above data that the capital raised under the first issue was 60.25% of market capital of the company prior to first issue. Further, the capital raised under the second issue was 68.35% of market capital of the company prior to second issue.

26. I note from the IR that SEBI, on the basis of investigation in the scrip of IKF, alleged that the complete process of GDR issuance by IKF, on both the occasions, was devised and structured by AP in connivance with IKF to the detriment of the Indian investors, wherein AP arranged for loans for the subscription of GDRs by CCP/Vintage, out of which, Vintage, a Dubai based company, was allegedly 100% owned and controlled by AP. IKF, in turn, helped AP in arrangement of those funds by signing two separate pledge agreements, with Banco Efisa SFE SA (hereinafter referred to as '**Banco Efisa**'), a bank based in Lisbon, Portugal, at the time of first issue and, at the time of second issue, with European American Investment Bank AG (hereinafter referred to as '**Euram Bank**'), a bank based in Vienna, Austria, thereby, providing security for such loans taken by CCP/Vintage. Thereafter, these GDRs were converted into underlying shares and sold to Indian investors with the help of certain FIIs registered with SEBI or their Sub-Accounts as well as certain Indian entities

connected to AP. At the same time, IKF misled the Indian investors by not disclosing information regarding pledge agreements signed by Mukesh and Sunil, at the time of first issue and second issue respectively, whereby the funds received by IKF under the respective GDR issues were given as collateral for the loans taken by CCP/Vintage. In light of this, it is alleged that the activities of IKF and its Directors, viz. Sunil and Mukesh, in connivance with AP and his connected entities, involved in the whole scheme, created a wrong impression before the Indian investors that foreign investors were interested in investing in IKF due to its reputation and future prospects and therefore, defrauded them. Further, it is also alleged that CCP, by being part of the first issue, played a very important role in defrauding the Indian investors by subscribing the first issue of IKF using the loan secured by IKF itself.

27. In the background of the allegations as mentioned above, I proceed to note in the ensuing paragraphs the scheme of events that took place in respect of the above GDR issuances by IKF.

1st GDR Issue

28. Firstly, I note that the Board of Directors of IKF, in its meeting dated January 31, 2007, had passed the following resolution:

"RESOLVED THAT a bank account be opened with Banco Efisa S. A. ("the Bank") or any branch of Banco Efisa S. A., including the Offshore Branch, outside India for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of the Company.
RESOLVED FURTHER THAT Mr. Mukesh Kumar, Authorised Person be and are hereby 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. Mukesh Kumar, Authorised Person 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 Banco Efisa S.A. or any of branch of Banco Efisa S.A, 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."

I note from the above resolution that Board of Directors of IKF had resolved to open a bank account with Banco Efisa for its GDR issue and authorized Mukesh to sign any document in this regard. I further note that Banco Efisa was also authorized to use any funds deposited with it as a security to any loans.

29. I further note from the subscriber's side, as part of the GDR scheme that, seven days prior to the issuance of the aforesaid GDRs, Seazun Ltd. entered into a credit agreement dated March 23, 2007 with Banco Efisa by which Banco Efisa advanced loan to Seazun Ltd. expressly for subscribing to the GDRs to be issued by IKF which observation I note from the covenants of the loan agreement brought out in subsequent paragraph(s). The said loan agreement was signed by one Mr. Samuel Hurley on behalf of Seazun Ltd. I further note from the said credit agreement that Seazun Ltd. is mentioned as a company incorporated in the British Virgin Islands with registered number 400452 (the

Borrower). I further note from the IR that Seazun later changed its name to CCP.

30. As noted above, on perusal of the Loan Agreement, the purpose of the Credit Agreement is stated as;

"*The Borrower shall use the proceeds of the Advance to subscribe for global depository receipts to the value of up to $14,000,000 issued by IKF on the terms of the Listing Particulars to be delivered to the Luxembourg Stock Exchange.*"

From the aforesaid Loan Agreement, I note that CCP had availed of a loan facility to the extent of USD 14 Million from Banco Efisa solely for the purpose of subscribing to the GDRs of IKF.

31. At the same time, IKF opened its account with Banco Efisa for the purpose of credit of proceeds of GDR Issue. I also note that, four days after CCP entering into loan agreement with Banco Efisa, as discussed in pre-paragraphs, IKF also entered into an account charge agreement dated March 27, 2007 with Banco Efisa which was signed by Mukesh as the Authorized Representative of IKF. By the said account charge agreement, IKF pledged the proceeds of its GDR issue with Banco Efisa as security for the loan given by Banco Efisa to CCP for subscribing to its GDRs. The salient Clauses of the Account Charge Agreement *inter alia* are as under:

"*Definitions*

Loan Agreement means the Loan Agreement signed between Seazun (as borrower) and the Bank dated on or around the date of this Agreement by which the Bank agreed to lend to Seazun the maximum amount of up to USS 14,000,000.

Account Charge

- *Subject to the terms of this Agreement, IKF deposited in its designated account with the Bank (hereinafter the Account) an amount not exceeding US$ 14,000,000 as security for all the obligations of Seazun under the Loan Agreement (hereinafter the Secured Obligations), and with full title guarantee hereby assigns to and charges by way of first fixed charge in favour of the Bank all the rights, title, interest and benefit in and to the Account as well as all the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof. Such assignment and charge shall be a continuing security for the due and punctual payment and discharge of the Secured Obligations.*
- *Upon payment of all or part of the amounts due under the Loan Agreement, IKF may withdraw from the Account the equivalent amount.*
- *IKF covenants with the Bank that it will on demand pay and discharge the Secured Obligations when due to the Bank.*
- *At any time after the Bank shall have demanded payment of all or any of the Secured Obligations the Bank may without further notice apply all or any part of the Deposit against the Secured Obligations in such order as the Bank in its discretion determines.*
- *IKF hereby irrevocably appoints by way of security the Bank as the attorney of IKF with full power in the name and on behalf of IKF to sign, seal and deliver any deed, assurance, instrument or act in order to perfect this charge and at any time after an event of default by IKF to sign, seal and deliver any deed assurance, instrument or act which may be required for*

the purpose of exercising fully and effectively all or any of the powers hereby conferred to the Bank to take all necessary action whether in the nature of legal proceedings or otherwise to recover any moneys which may be held in the Account and to give valid receipts for payment of such moneys and also for the purpose of enforcement and realisation of the security hereby created."

32. I note that IKF and its directors have contended that no loan agreement was signed by IKF with Banco Efisa. In this regard I note that the IR carries a mention about signing of "loan and pledge agreements" by IKF. I note the contention of IKF and its directors in this regard. Further, I observe that though IKF may not have entered into any loan account, *per se,* however, I note that the Account Charge Agreement refers to the Loan Agreement signed between the borrower i.e. CCP and Banco Efisa, whereby CCP was granted a loan of USD 14,000,000. Therefore, I observe that, while signing the Account Charge Agreement, IKF was clearly aware that CCP had acquired a loan of USD 14,000,000 and the same is being secured by way of money deposited by IKF in its bank account with Banco Efisa. Further, as the pledge agreement was signed by Mukesh on behalf of IKF, in his capacity as the Authorized Representative of IKF, I note that he was well aware of the said loan agreement between CCP and Banco Efisa. On perusal of the contents of the Account Charge Agreement, it is noted that IKF had agreed to pledge all its rights, title and interest in and to the funds deposited in its designated bank account as well as the interest accrued therein so as to secure the present and future obligations of CCP. The Account Charge Agreement also expressly states that:

"*At any time after the Bank shall have demanded payment of all or any of the Secured Obligations the Bank may without further notice apply all or any part of the Deposit against the Secured Obligations in such order as the Bank in its discretion determines*".

I note from the perusal of the Account Charge Agreement and the Loan Agreement that both of them were signed on March 27 and 23, 2007 respectively. Further, I note that the Definition Clause of the Account Charge Agreement clearly defines loan agreement in the terms quoted above. Therefore, in view of this, I hold that both the loan agreement and account charge agreement are intertwined with each other and support each other. Therefore, one cannot be read in isolation of the another.

33. I further note that the GDR proceeds of IKF was not freely held unencumbered fund and further IKF was not allowed to withdraw the same without prior written approval of Banco Efisa. In this regard I note it relevant to rely upon the observations of the Hon'ble SAT, incorporated in its Order dated October 25, 2016 in the matter of Pan Asia Advisors Limited vs. SEBI as follows:

"*28.... there can be no dispute that the GDR subscription amounts running into several million US $ were not available to the issuer companies till the loan taken by Vintage for subscribing to GDRs were repaid to Euram Bank. Admittedly, the loans were repaid by Vintage after a long period of time. Therefore, in the facts of present case, findings recorded by SEBI that in reality there was no fund movement after the GDRs were subscribed, cannot be faulted.*"

The only reason the funds remained unemployed was because the same were pledged with Banco Efisa and the IKF was not allowed to withdraw the same without prior written approval of Banco Efisa.

34. Further, I note from the corporate announcements available on BSE website that IKF had informed BSE on April 02, 2007 that the board in its meeting held on March 30, 2007 had approved and authorized to execute documents for the GDR issue of 11 million USD.

35. I also note from the IR and the disclosures available on Bombay Stock Exchange (**BSE**) website dated April 02, 2007 that the loan agreement and account charge agreement which were instrumental in the whole scheme of GDR issue were not disclosed to the BSE.

<u>2nd GDR Issue</u>

36. On similar lines to 1st GDR issue, I note that the Board of Directors of IKF, in its meeting dated January 30, 2008, had passed the following resolution:

"*RESOLVED THAT a bank account be opened with EURAM Bank ("the Bank") or any branch of EURAM Bank including Offshore Branch outside India for the purpose of receiving subscription money in respect of Global Depository Receipt issue of the Company.*

RESOLVED FURTHER THAT Mr. Sunil Kumar Goel, Whole Time Director of the Company, be and is hereby severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and any 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. Sunil Kumar Goel, Whole Time Director of the Company, be and are hereby severally authorised 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 other branch of EURAM Bank, including the Offshore Branch, for the purpose of operation of and dealing with the said account and carry out other relevant and necessary transactions and generally to take all such steps and to do such things as may be required from time to time on behalf of the Company.*

RESOLVED FURTHER THAT the Bank be and is hereby authorised 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."

37. I note from the IR that, subsequent to successful implementation of the above scheme, IKF once again decided to raise funds from investors outside India through the issuance of GDRs. Consequently, on May 15, 2009, IKF issued 16,23,91,440 equity shares which resulted in allotment of 16,23,91,440 GDRs having total value of USD 10.98 Million. The said GDRs, issued by IKF, were fully subscribed and the issue closed on May 15, 2009 itself.

38. I note from the IR that, from the subscriber's side, as part of the GDR scheme that, seventeen days prior to the issuance of the aforesaid GDRs, Vintage entered into a loan agreement ref. K040509-002 dated April 28, 2009 with Euram Bank by which Euram Bank advanced loan to Vintage expressly for subscribing to the GDRs to be issued by IKF which observation I note from the covenants of the loan agreement brought out in subsequent paragraph(s). The said loan agreement was signed by AP on behalf of Vintage as its Managing Director. I further note from the IR that AP was the founder and director of Vintage and Alkarni, a company registered in British Virgin Island with its entire

share capital held by AP and his family, is the 100% shareholder of Vintage. In view of these facts, I hold that Vintage was controlled by the AP during the relevant period of time.

39. As noted above, on perusal of the Loan Agreement, I note that the following has, *inter alia,* been mentioned therein –

1. *Currency and the amount of facility:*

   USD $10,988,487.44

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

2. *Nature and purpose of facility:*

   To provide funding enabling Vintage FZE to take down GDR issue of IKF Technologies Ltd. Luxemburg public offering and may only be transferred to Euram account nr 540 040, IKF Technologies Limited

   (The specific purpose of the loan/ draw down was for the purpose of subscribing to the GDR issue of IKF. 540 040 is the client account number of IKF.)(Explanation supplied).

6. *Security*

   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 540 040 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.*
   - *Pledge of the account no. 540 040 of the Borrower 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.

From the aforesaid Loan Agreement, I note that Vintage had availed of a loan facility to the extent of USD 10.989 Million from Euram Bank solely for the purpose of subscribing to the GDRs of IKF.

40. At the same time, IKF opened its account (A/c No. 540 040) with Euram Bank for the purpose of credit of proceeds of GDR Issue. I also note that, on the day when Vintage had entered into loan agreement with Euram Bank, as discussed in pre-paragraphs, IKF also entered into a pledge agreement with Euram Bank which was signed by Sunil as the Whole Time Director of IKF. By the said pledge agreement, IKF pledged the proceeds of its GDR issue with Euram Bank as security for the loan given by Euram Bank to Vintage for subscribing to its GDRs. The salient Clauses of the Pledge Agreement *inter alia* are as under:

1. Preamble

By loan agreement K040509-002 (hereinafter referred to as the "Loan Agreement") dated April 28, 2009, 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 Ali, Dubai, United Arab Emirates ("the Borrower") in the amount of $ USD 10,988,487.44 million. The Pledgor has received a copy of the Loan Agreement 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 of $ USD 10,988,487.44 existing from time to time at present or hereafter on the securities account(s) no. 540 040 held with the Bank (hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein.

2.1.2. 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. 540 040 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.

6. Realisation of the Pledge:

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

41. I note that IKF and its directors have contended that no loan agreement was signed by IKF with Euram Bank. I note that though IKF may not have signed a loan agreement, *per se,* however, I note that the Pledge Agreement refers to the Loan Agreement dated April 28, 2009 between the borrower i.e. Vintage and Euram Bank, whereby Vintage was granted a loan of USD 10,988,487.44 and it is stated that the Pledger i.e. IKF had received a copy of the said Loan Agreement and had also acknowledged and agreed to the terms and conditions of the said loan agreement. Therefore, I observe that, while signing the Pledge Agreement, IKF was very much aware that Vintage had acquired loan only to subscribe to the GDR issue of IKF. Further, as the pledge agreement was signed by Sunil on behalf of IKF, in his capacity as the Whole Time Director of IKF, I note that he had, as clearly mentioned in the pledge agreement,

acknowledged receiving the said loan agreement and agreed to its terms and conditions after perusing the said agreement. On perusal of the contents of the Pledge Agreement, it is noted that IKF 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*".

I note from the perusal of the Pledge Agreement and the Loan Agreement that both of them are dated April 28, 2009. Further, I note that

- Clause 6.1 of the Loan Agreement specifies that the Pledge Agreement was an integral part of the Loan Agreement.
- The preamble of the pledge agreement clearly mentions that the pledge is being created for the purpose of the loan agreement.

Therefore, in view of the above points, I hold that both the loan agreement and pledge agreement are intertwined with each other and support each other. Therefore, one cannot be read in isolation of the another.

42. I am of the view that the GDR proceeds of IKF were not freely held unencumbered fund and further IKF was not allowed to withdraw the same without prior written approval of Euram Bank. In this regard I note it relevant to rely upon the observations of the Hon'ble SAT, incorporated in its Order dated October 25, 2016 in the matter of Pan Asia Advisors Limited vs. SEBI as follows:

"*28.... there can be no dispute that the GDR subscription amounts running into several million US $ were not available to the issuer companies till the loan taken by Vintage for subscribing to GDRs were repaid to Euram Bank. Admittedly, the loans were repaid by Vintage after a long period of time. Therefore, in the facts of present case, findings recorded by SEBI that in reality there was no fund movement after the GDRs were subscribed, cannot be faulted.*"

43. Further, I am of the view that the only reason the funds remained unemployed was because the same were pledged with Euram Bank and IKF was not allowed to withdraw the same without prior written approval of Euram Bank.

44. Further, I note from the corporate announcements available on BSE website that IKF had informed BSE on May 15, 2009 that

"*1. The Board of Directors of IKF Considered and Approved various Agreements like Placing Agreement, Deposit Agreement and the Escrow Account Agreement in respect of the GDR issue.*

2. The Board has considered and approved the offering circular filed at Luxembourg Stock Exchange.

3. The board has approved the allotment of 162,391,440 equity shares of Rs 1/- each underlying 5,413,048 GDR's issued in the name of Depositary (The Bank of New York Mellon)."

Further, IKF, vide its letter dated May 23, 2009, informed BSE that the following were the investors in the GDR issue of IKF (similar information was given to SEBI by IKF vide its letter dated May 10, 2011):

Sl. No.	Name of Subscriber	Amount paid (US$)	GDRs Subscribed
1.	Echelon India Investments Ltd.	26,39,000	13,00,000
2.	Imagination Network Inc.	22,59,487.44	11,13,048
3.	Knightbridge Management Inc.	20,30,000	10,00,000
4.	Tradetec Corporation	28,42,000	14,00,000

5.	Trend Setter Enterprises Corp.	12,18,000	6,00,000
		59,82,000	**54,13,048**

45. I incidentally note from the IR that the above entities were also subscribers in other GDR issues also. In order to contact these initial investors, SEBI had sent emails to their available (Email) addresses and also had issued summons to their contact addresses as per records. However, all the Emails and summons returned undelivered. Thereafter, SEBI contacted the respective Financial Markets Regulators of Hong Kong and Singapore. In this regard, I note that following:

i. The Securities and Futures Commission of Hong Kong, vide its Email dated July 31, 2012, informed SEBI that Imagination Network Inc. is not present at the address given above.

ii. The Monetary Authority of Singapore, vide its Email dated July 27, 2012, informed SEBI that the building Prudential Tower, where Tradetec Corporation is supposed to have an office at Level 47, does not have a Level (floor) 47. The highest floor is Level 30. Further, for the address of Knightbridge Management Inc. at Ngee Ann City Tower A, it was discovered that #12-01 does not exist and the first unit on 12th Floor is #12-02. At the same time, unit #13-08 is occupied by another entity not connected with Knightbrigge Management Inc. Knightbridge is also not listed in the office directory.

I note that copies of the above referred email letters have been shared with IKF and its directors vide annexure 10 to the SCN. In this regard, I note that the matter of GDR issues of IKF came up for consideration by the Hon’ble SAT vide appeal No. 126 of 2013 (Pan Asia Advisors Ltd. vs. SEBI) along with GDR issues of 5 other companies. The said matter was decided by Hon'ble SAT by way of an order dated October 25, 2016. The Hon'ble SAT in the aforesaid matter while noting that same *modus operandi* was adopted in all the six issuer companies, for convenience discussed the GDR issue of Asahi Infrastructure & Projects Ltd., and noted, *inter alia,* as follows: -

"*It is equally interesting to note from the investigation carried out by SEBI that the alleged initial subscribers to the GDRs were nonexistent entities because, e-mails and summons issued to those entities were return back undelivered. Moreover, the respective securities market regulators of the Countries in which the alleged initial subscribers were supposed to be situated have informed SEBI that the addresses of the initial subscribers are either non-existent or do not belong to those entities. In case of Tradetec the address shown was 'level 47, Prudential Tower, 30 Cecil Street, Singapore, 049712'. Investigation carried out by SEBI through the Monetary Authority of Singapore revealed that there was no level 47 and the highest floor of Prudential Tower was level 30 and that Tradetec is not even listed in the office directory of Singapore. One of the alleged initial subscriber known as Rexflex Ltd. was found to be controlled by AP and admittedly the name of Rexflex Ltd. has now been changed PAN Asia Management Ltd. Even in case of other issuer companies, the WTM of SEBI has recorded a finding in para 15 of the impugned order that those entities do not exist at the given address and the names of those entities do not exist in the official directory of the Countries in which the said entities were supposed to be situated. In these circumstances, findings recorded in the impugned order that the names of initial subscribers exist only in fiction and that the appellants have artificially sought to create an impression that the GDRs were initially subscribed by foreign investors other than Vintage cannot be faulted.*"

46. The abovementioned information, forwarded by the respective Securities Market Regulators of Hong Kong and Singapore clearly show that the initial subscribers, submitted by IKF to SEBI and BSE, do not exist and that IKF had

submitted wrong information. In this regard, IKF has contended that it had only forwarded the information which it had received from Pan Asia. However, I do not accept the above contention of IKF as Sunil, on behalf of IKF, had signed the pledge agreement corresponding to the loan agreement between Vintage and Euram Bank wherein it was clearly mentioned that the loan was being given to Vintage only to subscribe to the GDR issue of IKF and the proceedings of the loan agreement may only be transferred to Euram Bank Account no. 540 040 (bank account of IKF). Therefore, in view of the scheme of the GDR issue as described in the initial paragraphs of this order, I note that, from the beginning, IKF and Sunil were aware of the fact that Vintage was the only initial subscriber of the GDR issue. In light of the whole scheme of things as explained it only stands to reason that despite clear knowledge of the subscriber to the GDR issue IKF and its directors have disclosed non-factual information which buttresses their *malafide* intention behind withholding the correct actual information.

47. Therefore, in light of the above observations and the fact that IKF itself had secured the loan taken by Vintage for the subscription of its GDR and the documents related to that were signed by Sunil himself, I am of the view that, from the initial stage, IKF and its directors were well aware that the GDRs were subscribed only by Vintage.

48. Therefore, as noted above in pre-paragraphs, IKF didn't disclose the details of loan agreement of CCP and its own Account Charge Agreement with Banco Efisa at the time of 1st GDR issue and loan agreement of Vintage and its own pledge agreement with Euram Bank at the time of 2nd GDR issue. IKF and its

directors have contended that the said loan agreements and account charge agreement/pledge agreement were not required to be disclosed as per law. Therefore, there was no violation of law by IKF and its directors in view of the said non-disclosures on two separate occasions. In this regard, I note that the Hon'ble SAT, in its order dated February 05, 2020, in the matter of Jindal Cotex Ltd. vs. SEBI, has clearly delineated the importance of disclosure of loan agreement and pledge agreement and the requirement of their disclosures in the following terms:

"*The contention that Pledge Agreement was not required to be disclosed under the Listing Agreement is not correct as the Listing Agreement, which forms the very basis of a disclosure based regulatory regime, requires every material information to be disclosed to the Stock Exchange at the earliest, sometime in a matter of minutes and others in a matter of days. When the company has lent the entire proceeds of the GDR issue to the tune of US$ 38.75 million as security for a third party abroad to avail a loan on the basis of that security and thereby potentially jeopardizing the entire proceeds is not a non-event but an important material information affecting all the stakeholders. We would hold that such events have to be disclosed in bold letters so that the investors of the company as well as those who are subscribing to its GDR issue etc. should be fully aware of those highly material facts.*

…… The basic question to be answered is whether the issue was subscribed by a loan taken by Vintage on the basis of pledging the proceeds of the GDR issue as security for the said loan taken by a third party and that too a party located abroad and whether sufficient disclosures of material events associated with the issue was properly done. We are of the considered view that the method adopted by the appellants was vitiated through fraud………"

Therefore, in light of the above observations of Hon'ble SAT, I am of the view that non-disclosure of loan agreements and account charge agreement / pledge agreement on both the occasions were done so as to create a fraudulent impression in the minds of the public investors that the said GDR issues were genuine in nature and the company had received the funds and the same were available for the free use of IKF.

49. I further note from the reply of IKF and its directors that they have generally argued that they did not have the expertise in GDR issue and had complied with the advice of professional advisors. I also note that IKF being a listed company and Mukesh, being its Authorized Representative, and Sunil, being its whole time director, are expected to ensure adherence and compliance with the provisions of securities laws. Hence, I do not find merit in such contention of IKF and its directors and the same appears to be an attempt to evade the consequences of this proceeding by exhibiting ignorance without any basis. I am of the view that listed companies and their directors assume a huge responsibility towards their investors and the market. Therefore, such arguments cannot be entertained. Further, I am of the view that IKF and its directors had purposefully entered into Account Charge agreement at the time of first GDR issue and pledge agreement at the time of second GDR issue in order to secure loan in favour of CCP at the time of first GDR issue and to secure loan in favour of Vintage at the time of second GDR issue so that the respective GDR issues could be fully subscribed.

50. In the same context, I also note that Hon'ble Supreme Court of India, in its judgment dated July 06, 2015, in the matter of SEBI vs. Pan Asia Advisors Ltd. & Ors, had explained the object of creating and trading in GDRs outside India in the following terms:

"*60. On a consideration of the 2000 Regulations, the 1993 Scheme and the Master Circular issued by RBI periodically one can discern that for creation of GDRs which can be traded only at the global level, the issuing company should have developed a reputation at a level where the marketability of its investment creation potential will have a demand at the hands of the foreign investors. Simultaneously, having regard to the development of the issuing company in the market and the confidence built up with the investors both internally as well as at global level, the issuing company's desire to raise foreign funds by creating GDRs should have the appreciation of investors for them to develop a keen interest to invest in such GDRs. Mere desire to raise foreign investments without any scope for the issuing company to develop a market demand for its GDRs by increasing the share capital for that purpose is not the underlying basis for creation of GDRs. In fact for creating of GDRs apart from the desire of the issuing company to raise foreign funds, the marketability of such shares in the form of GDRs should have an applicable potential at the global level. To put it differently, by artificial creation of global level investment operation, either the issuing company on its own or with the aid of its Lead Manager cannot attempt to make it appear as though there is scope for trading GDRs at the global level while in reality there is none. The above fact has to be kept in mind when dealing with an issue relating to creation of GDRs, in as much as, when the GDRs gets fully subscribed at the global level providing scope for huge foreign investment, the same will have a serious impact at the internal investment market in the form of high appreciation of share value whereby the issuing company and the investor will be greatly benefited mutually. Such a real growth structurally and financially is the underlying principle in the creation and trading of GDRs at the global level.*"

Therefore, I observe that the company has issued GDRs on two separate occasions without disclosing the actual subscribers would clearly give an impression that the company has 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. The same not only provides scope for huge foreign investment but may also lead to high appreciation of share value.

51. In this regard, I am of the view that the above general disclosure that the GDRs were allotted to the subscribers clearly establishes the malafide intention on the part of IKF as well as its directors. Further, the purpose behind such disclosure has been elaborately explained by the Hon'ble SAT, in its order dated October 25, 2016 in the matter of Pan Asia Advisors Ltd. vs. SEBI, in following words:

"*It is apparent that the appellants knew that if the investors in India come to know that the GDRs of the issuer companies have not been subscribed by foreign investors but by the entities controlled by the Managing Director (AP) of PAN Asia, then it would not generate interest in minds of the investors in India to subscribe to the shares of issuer companies. Therefore, in order to create an artificial impression that global investors have shown keen interest in investing in the issuer companies by subscribing to the GDRs, appellants by a dubious method introduced fictitious and non-existent initial subscribers to the GDRs of the issuer companies so as to mislead the investors in India in believing that the global investors have shown keen interest in investing in the GDRs of issuer companies. In these circumstances, decision of SEBI that the appellants attempted to committed fraud on the investors in India by introducing fictitious initial subscribers cannot be faulted.*"

In view of this, I hold that the deliberate act on the part of IKF and its directors to submit wrong information on two separate occasions was an important part of the whole schemes of GDR issues and the same was done only for the purpose of defrauding Indian investors by creating an impression that the GDRs of IKF have been subscribed by genuine foreign entities on both the occasions on the basis of its fundamentals and future prospects.

52. I further note from IR that these GDRs were sold by way of Over the counter (**OTC**) transactions to FIIs and their sub-accounts such as Mavi Investment Fund Limited, Lotus Global Investments Ltd. etc. at the time of 1st GDR issue. Similarly, these GDRs were sold to FIIs and their sub-accounts such as India Focus Cardinal Fund ('**IFCF**') and KII at the time of second issue. In this regard, I note from the IR that IFCF was an entity connected with AP. I further note that, vide an agreement dated July 13, 2009, Vintage had given a loan of US $ 20,00,000 to Credo Investment Holding Ltd., holding company of KII for onward lending to KII, *inter alia*, to purchase GDRs of IKF. Thereafter, I note that the said GDRs were converted into underlying shares by IFCF and KII. Pursuant to the said conversion, IFCF and KII sold these shares in Indian Securities Market to the entities connected with AP. Incidentally, I note from the investigation report that no wrongdoing, whatsoever, has been identified on part of IKF and its directors or CCP in respect of the above leg of the scheme.

53. To put the entire discussion in a nutshell, I find that IKF, by appointing Pan Asia as the lead manager, issued GDRs on two separate occasions. In the first occasion viz in the year 2007, a loan agreement entered into between CCP and Banco Efisa to the extent of the whole GDR proceeds of IKF, secured by a corresponding account charge agreement between IKF and Banco Efisa, was instrumental in the subscription of the complete GDR issue by CCP. I note that the two agreements were drawing strength from each other. At the same time, IKF did not disclose the aforesaid loan agreement and account charge agreement. Thereby, IKF created an impression that the GDRs were genuinely subscribed by foreign entities. Thereafter, the said GDRs were sold in OTC

trades to certain FIIs by CCP which converted the same and sold them in Indian Securities Market.

54. Similarly, on the second occasion viz in the year 2009, a loan agreement entered into between Vintage and Euram Bank to the extent of the whole GDR proceeds of IKF, secured by a corresponding pledge agreement between IKF and Euram Bank, was instrumental in the subscription of the complete GDR issue by Vintage. I note that the two agreements were drawing strength from each other. At the same time, IKF did not disclose the aforesaid loan agreement and pledge agreement. Thereby, IKF created an impression that the GDRs were genuinely subscribed by foreign entities. Thereafter, the said GDRs were sold in OTC trades to certain FIIs by Vintage which converted the same and sold them in Indian Securities Market.

55. Thus, I note that the issuance of GDRs by adopting the explained *modus operandi* and the consequential misleading and false disclosure on both the occasions render the whole schemes of things a fraudulent act orchestrated by IKF and its directors with the help of AP and associates. At the same time, CCP has played a very important role in the first GDR issue by subscribing the whole GDR issue using funds secured by IKF.

56. In view of the above, I further hold that, using the 1st GDR issue, the fraudulent impression, created before the investors in Indian securities market, showed IKF as a company to be of international reputation and better investment opportunity. The said fraudulent impression was again strengthened by way of 2nd GDR issue in 2009. I am of the view that the said impression was made possible only through an elaborate fraudulent planning detailed above.

57. I further note that IKF and its directors have contended that providing Security/guarantee by way of pledge or otherwise in connection with loan taken by any third party does not constitute fraud and further that Sec 372A of Companies Act 1956 allowed companies to give corporate third-party guarantee. However, I am unable to accept the contention of IKF and its directors as there is express prohibition under Section 77 of the Companies Act 1956 for a public company from giving a loan, guarantee, the provision of security or otherwise, any kind of financial assistance, whether directly or indirectly, for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company. The text of the said provision of law is being reproduced below:

77. Restrictions on Purchase by Company, or Loans by Company for Purchase, of its own or its Holding Company's Shares

(2) No public company, and no private company which is a subsidiary of a public company, shall give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company or in its holding company : Provided that nothing in this sub-section shall be taken to prohibit –

(a) the lending of money by a banking company in the ordinary course of its business; or

(b) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase of, or subscription for,

fully paid shares in the company or its holding company, being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the company, including any director holding a salaried office or employment in the company; or

(c) the making by a company of loans, within the limit laid down in sub-section (3), to persons (other than directors or managers) bona fide in the employment of the company with a view to enabling those persons to purchase or subscribe for fully paid shares in the company or its holding company to be held by themselves by way of beneficial ownership.

58. Further, IKF and its directors have contended that if there was any kind of fraud, listing of underlying shares of the GDRs would not have happened on BSE. However, as noted above, this was a fraudulent scheme and at the time of listing, the said fraudulent scheme was not detected. Therefore, I am unable to accept the contention of IKF and its directors

59. In view of the foregoing, I find that the fraudulent GDR schemes crafted; false and misleading corporate announcements made and material and price sensitive information viz., (i) execution of account charge agreement dated March 27, 2007 by IKF in favour of Banco Efisa pledging the GDR proceeds of 1st GDR issue for providing security to the loan taken by CCP, (ii) execution of loan agreement dated March 26, 2007 by CCP for obtaining loan from the Banco Efisa for subscribing the 1st GDR issue of IKF, (iii) CCP was the only subscriber of GDR issued in March 2007 by IKF, (iv) execution of pledge agreement dated April 28, 2009 by IKF in favour of Euram Bank pledging the

GDR proceeds of entire 2nd GDR issue for providing security to the loan taken by Vintage, (v) execution of loan agreement dated April 28, 2009 by Vintage for obtaining loan from the Euram Bank for subscribing the 2nd GDR issue of IKF and (vi) Vintage was the only subscriber of GDR issued in May 2009 by IKF, suppressed by IKF are price sensitive information and have the strength to impact the scrip price of IKF.

60. I further note that IKF has also contended that no investors were harmed due to this scheme. However, I note that the Hon'ble SAT, in its order dated October 25, 2016 in the matter of Pan Asia Advisors Ltd. vs. SEBI, has made the following observations:

"*From the aforesaid definition (of fraud) it is absolutely clear that if a person by his act either directly or indirectly causes the investors in the securities market in India to believe in something which is not true and thereby induces the investors in India to deal in securities, then that person is said to have committed fraud on the investors in India. In such a case, action can be taken under the PFUTP Regulations against the person committing the fraud, irrespective of the fact any investor has actually become a victim of such fraud or not. In other words, under the PFUTP Regulations, SEBI is empowered to take action against any person if his act constitutes fraud on the securities market, even though no investor has actually become a victim of such fraud. In fact, object of framing PFUTP Regulations is to prevent fraud being committed on the investors dealing in the securities market and not to take action only after the investors have become victims of such fraud. Therefore, in the facts of present case, if fraud is committed by the appellants on the investors in India, then without making the investors as party to the proceedings, SEBI could take action against the appellants.*"

Therefore, in light of the above observation of SAT, the contention has no merit.

61. I further note that the IKF has denied that it has violated Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3 (b), (c), (d) and 4(2)(c), (f), (k), (r) of PFUTP Regulations for certain reasons. In this regard, I note that the facts of the present matter and the *modus operandi* employed in the present GDR issues are similar to facts and *modus operandi* in the GDR issue of Cals Refineries Ltd. wherein the Hon'ble SAT vide its order dated October 12, 2017 has made the following observations:

"*In these circumstances, the conclusion drawn by SEBI that opening a bank account with Banco and executing the Account Charge Agreement were the acts done by Cals through its directors to finance Honor for subscribing the GDRs issued by Cals in gross violation of Section 77(2) of the Companies Act, 1956 and the provisions contained in the SEBI Act and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for convenience), cannot be faulted.*"

62. In this regards, the following observations made by the Hon'ble SAT in matter of V. Natarajan vs. SEBI(Order dated June 29, 2011 in Appeal No.104 of 2011) are worth mentioning:

"*... we are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 were violated. These regulations, among others, prohibit any person from employing 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 an exchange. They also prohibit persons from engaging 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 that are listed on stock exchanges. These regulations also prohibit persons from indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true* *or which he does not believe to be true. Any advertisement that is misleading or contains information in a distorted manner which may influence the decision of the investors is also an unfair trade practice in securities which is prohibited. The regulations also make it clear that planting false or misleading news which may induce the public for selling or purchasing securities would also come within the ambit of unfair trade practice in securities.*"

63. I further note that IKF and its directors have contended that they had not planted any news which could induce purchase or sale of shares. However, I have already discussed as to how the corporate announcements made by IKF had the capacity to create an impression of a genuine subscription of its GDR issue and its impact on Indian investors. Therefore, in view of this, I am unable to accept the contention.

64. I incidentally note from the IR that SEBI had attempted to examine the utilization of the funds of both the GDR issues. In this regard, it is noted that during the 1st GDR issue, IKF had written a letter dated September 28, 2007 wherein it had instructed Banco Efisa to close its deposit account with Banco Efisa and transfer the balance of $46,49,000 to the account of CCP against the settlement of loan granted by Banco Efisa to CCP and the interest thereof. I note that IKF and its directors have submitted that $10 million out of the GDR proceeds of 1st GDR issue were repatriated back to India. However, no bank statement supporting the said assertion is put on record. The only document submitted by IKF in support of its contention is two page data with dates and money with bank name where IKF and its directors assert that the money was transferred back in India. However, the same data is not backed by any documentary evidence viz. the account statements of the said bank accounts. In light of this, due to the lack of evidences including the rationale behind the said transfer of

funds from 1st GDR proceeds, the allegation of misutilization of funds could not be examined by SEBI.

65. I further note from the IR that major portion of funds from 68.70% of funds raised from the GDR issue were transferred to Biofel FZE, a wholly owned subsidiary of IKF in UAE. Further, IKF made a payment of $16,75,000 to Citigate Trade FZE on August 12, 2009. It was also observed that, on the same day i.e. August 12, 2009, $16,75,000 was transferred to the loan account of Vintage as part repayment of the loan taken by Vintage. Further, $1,75,000 was transferred by IKF to Premier Management Consultancy Ltd, as payment against invoice of placement fees. In this regard, IKF did not provide information like bank account statements and utilisation of funds regarding Biofel FZE to SEBI. Therefore, the allegation of misutilization of funds could not be examined by SEBI due to lack of evidences.

66. In view of the above, I note that the scheme of arrangement of IKF, in allotting GDR issue to only one entity on each of the two occasions, i.e. CCP during 1st GDR issue and to Vintage on 2nd GDR issue which subscribed to the GDR issue by obtaining loans from Banco Efisa/Euram Bank and which were secured by IKF by pledging its GDR proceeds, seen along with the false and misleading corporate announcements made by IKF on both the occasions stating that the GDR was issued and allotted without disclosing the crucial details pertaining to the aforesaid Loan and Pledge Agreements which were price sensitive information, lead to a conclusion that the same were done in a fraudulent manner. Therefore, I find that IKF has violated the provisions of Section 12A(a),

(b), (c) of SEBI Act read with Regulations 3(b), (c), (d) and 4(2)(c), (f), (k), (r) of PFUTP Regulations.

67. I also note that CCP had played a very important role in the 1st GDR issue of IKF wherein it subscribed to the whole GDR issue using the funds loaned by Banco Efisa and secured by way of Account Charge Agreement by IKF. I note that CCP has admitted the knowledge of Account Charge Agreement in its reply dated April 18, 2019. However, CCP has submitted that it was only in contact with its financial advisor and Banco Efisa and it never came in contact with IKF. However, I am unable to accept the contention of CCP. I am of the view that CCP cannot be said to be unaware of the whole scheme as no entity or bank will grant a loan of $14 million without adequate security and no entity would provide a security for such loan for an unknown entity. I further note that, vide letter dated September 28, 2007, IKF advised Banco to close its bank account and transfer $ 46,49,000 from its bank account to the account of CCP against the loan granted by Banco Efisa to CCP. Therefore, I am of the view that CCP was aware from the starting about the whole scheme and has played an active role in the whole scheme and helped IKF and AP in defrauding Indian investors. Therefore, I find that CCP has also violated the provisions of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(b), (c), (d) and 4(2)(c), (f), (k), (r) of PFUTP Regulations.

68. I further note that Mukesh was the Authorized Representative of IKF for all the purposes of 1st GDR issue of IKF. At the same time, the account charge agreement was signed by Mukesh in his capacity as the Authorized

Representative of IKF. He was also the authorized person on behalf of IKF to execute other documents in relation to the 1st GDR issue.

69. Similarly, I further note that Sunil was the Promoter and Whole Time Director of IKF and was authorized to execute all the documents for all the purposes of 2nd GDR issue of IKF. At the same time, the pledge agreement was signed by Sunil in his capacity as the Authorized Representative of IKF. He was also the authorized person on behalf of IKF to execute other documents in relation to the 2nd GDR issue.

70. In this regard, as the Authorized Representative of IKF, Mukesh was central to the whole scheme on part of IKF at the time of 1st GDR issue. In the same way, Sunil was central to the whole scheme on part of IKF at the time of 2nd GDR issue. I note that Sunil, being the whole-time director of IKF, had been vested with substantial powers for the purpose of respective GDR issues of IKF, an artificial juridicial person and he assumes the character as “officer in default” for any violation. In this regard it is pertinent to rely upon the provisions of Section 5 of the Companies Act, 1956 (section 2(60) of the Companies Act, 2013) read with Section 27 of the SEBI Act. Additionally, I would also like to quote the observations of the Hon'ble Supreme Court of India in the matter of Shri N. Narayanan vs. SEBI decided on 26.04.2013, wherein it was observed that - *"... Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence.”.* Further, Hon’ble High Court of Madras in Madhavan Nambiar vs Registrar of Companies (2002 108 CompCas 1 Mad) has held that – “*… Section 5 of the Companies Act defines the expression "officer who is in default". The expression means either (a) the managing director or managing directors ; (b) the*

whole-time director or whole-time directors ; (c) the manager ; (d) the secretary ; (e) any person in accordance with whose directions or instructions the board of directors of the company is accustomed to act; (f) any person charged by the board with the responsibility of complying with that provision ; (g) any director or directors who may be specified by the board in this behalf or where no director is so specified, all the directors.

… Section 29 of the Companies Act provides the general power of the board….Therefore it follows there cannot be a blanket direction or a blanket indemnity in favour of the petitioner or other directors who have been nominated by the Government either ex officio or otherwise. Hence the second point deserves to be answered against the petitioner…. There may be a delegation, but ultimately it comes before the board and it is the board and the general body of the company which are responsible..."

71. Further, I note that Section 27 of SEBI Act also deals with offences by Companies. In the said provision, Section 27(1) says that, in case of a default by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

72. In light of the above discussions regarding the scheme of GDR issues of IKF, I am of the view that Mukesh and Sunil had played the major role from the side of IKF as, by virtue of the respective Board Resolutions mentioned above, they were given sole authority to open the bank account with Banco Efisa/Euram Bank and sign any other document necessary for the respective GDR issues. Further, I note that it is Mukesh who had signed everywhere on behalf of IKF

be it KYC document or the account charge agreement at the time of 1st GDR issue. Further, Mukesh was given the sole authority to operate the said bank account with Banco Efisa. Similarly, I also note that it is Sunil who had signed everywhere on behalf of IKF be it KYC document or the pledge agreement at the time of 2nd GDR issue. Further, Sunil was given the sole authority to operate the said bank account with Euram Bank.

73. Therefore, in view of the above I hold Mukesh and Sunil to be equally liable for the abovementioned frauds carried out by IKF, in collusion with AP and CCP, on the Indian investors and has violated the provisions of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(b), (c), (d) and 4(2)(c), (f), (k), (r) of PFUTP Regulations.

b. Whether IKF and its directors have violated the provisions of Section 11C(3) read with Section 11C(6) of SEBI Act?

74. It is alleged that IKF and Mukesh, by their failure to submit the complete and correct information regarding the GDR issues of IKF have violated the provisions of Section 11C(3) read with 11C(6) of SEBI Act. In this regard, it is observed that there are two allegations against IKF & Mukesh viz.:

- Wrong submission of information
- Non-submission of information

75. I note that Section 11C(3) of SEBI Act requires any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before the Investigating Authority or any person authorised by it in this behalf which the investigating authority considers relevant or necessary for the purposes of its investigation.

76. In this regard, I note that SEBI had issued two different summons to the Managing Director, IKF on January 12, 2012 and April 20, 2012, wherein it was advised to submit certain documents listed therein.

77. In this regard, it is alleged that IKF, in its replies to the Summons, submitted certain wrong information. Therefore, adjudication proceedings under Section 15A(a) has been initiated against IKF and its directors. The details of the said alleged wrong information is given as below:

   a. IKF was advised to mention conditions regarding the withdrawal of funds from accounts with Euram Bank. IKF, in its letter dated February 01, 2012, submitted that no such conditions were prescribed. However, I note that the proceeds of 2nd GDR issue were held as collateral against the Loan taken by Vintage and therefore funds could only be withdrawn when the loan is repaid by Vintage. Similarly, IKF was advised to submit copy of any other agreement with Euram bank apart from those related to GDR issues as well as any other agreement it had with AP or Vintage. IKF, vide its letter dated February 01, 2012, denied having any agreement with Vintage or AP and any agreement with Euram Bank other than Escrow Account agreement. However, the said submissions of IKF are false as Pledge agreement was signed by Sunil as the Whole Time Director of IKF with Euram Bank which was part of the Loan Agreement between Vintage and Euram Bank. Therefore, IKF was well aware of the said agreements and have deliberately submitted the wrong information to SEBI. IKF was advised to submit details of any agreement with any entity regarding financing for the purpose of subscription by initial investors of GDRs. IKF denied having any such agreement with any entity. However, the whole arrangement of loan agreement and pledge agreement among Vintage, IKF and Euram Bank was only for the purpose of arranging funds for Vintage to subscribe the 2nd GDR issue of IKF. Therefore, the said information submitted by IKF was false.

b. IKF was advised to submit details of fund utilization of GDR proceeds. Vide its letter dated February 10, 2012, IKF informed SEBI that it has repatriated and utilised $1,00,00,000 out of the GDR proceeds of 1st GDR issue. However, it is observed that this information is false as IKF had authorised transfer of funds ($46,49,000) from its account with Banco Efisa where GDR proceeds were deposited to the loan account of CCP. On September 28, 2007, a letter signed by Mr. Mukesh Kumar Goel, director of IKF, was sent to Banco Efisa with following instructions:-

"*We request you to transfer the same amount of USD 4,649,000 from our account towards closure of deposit, to the account of Seazun Limited with Banco Efisa.*

We hereby also authorize the bank to transfer from our current account the necessary amounts to face payments of interest and fees due in the referred company account resulting from loan granted by the bank."

Subsequently, the said amount of $46,49,000 was transferred from its account to the account of CCP to settle its loan liability.

In this regard, I note that the said letters dated February 01 and 10, 2012 by which all the above mentioned wrong information was submitted by IKF to SEBI, were signed by Mukesh for and on behalf of IKF.

78. At this juncture, it is relevant to mention that the Hon'ble Supreme Court of India, in Civil Appeal No. 5859 of 2006 in the matter of Bonanza Biotech Ltd Vs SEBI and other connected appeals examined the issue as to whether the Adjudicating Officer (AO) under section 15A of the SEBI Act is authorized to impose penalty when the documents/information called for and furnished are false or whether the power of the said AO to impose penalty on the person/entity is limited and exercisable only in the event of failure to furnish information/details/documents. I note that the above appeal was filed in the context of an Order dated June 16, 2008 in the matter of Bonanza Biotech Ltd vs SEBI wherein Hon'ble SAT had upheld the levy of penalty imposed by the AO on Bonanza Biotech Ltd (the appellant) under section 15A for submission of false information /details to the investigating authority of SEBI. In its order dated March 7, 2017, in Civil Appeal No 5859 of 2006, the Hon'ble Supreme Court, *inter alia*, referred to the observation of the expert group constituted by SEBI under the chairmanship of Late Mr. Justice M. H. Kania, former Chief Justice of India, which was relied upon by the appellant, which mentioned that-

"*as per the provisions of Chapter VIA of SEBI Act, SEBI can impose monetary penalty for failure to furnish information or delay in furnishing the information. However, there is no provision for monetary penalty for giving false information*"

The Hon'ble Supreme Court of India, in its judgment dated March 07, 2017 had observed the following: -

"*It appears that the only question in this matter is whether the Adjudicating Officer Under Section 15A of the Securities and Exchange Board of India Act, 1992, is authorized to impose penalty on the ground that the documents which have been asked for and have been furnished are false or whether power of the*

Adjudicating Officer to impose penalty is limited and can be exercised only in the event of failure to furnish documents.

We have perused the order passed by the Adjudicating Officer. It appears from the order which was passed that the Adjudicating Officer had specifically stated in para 31 'that the Appellant has already furnished the materials which are available on record'. Since the materials have already been furnished, in our opinion, the said section is not attracted on the given facts."

79. Having regard to the above mentioned observations, the Hon'ble Supreme Court, set aside the Order dated June 16, 2008 of Hon'ble SAT as not sustainable. Therefore, in view of the above observations and in the context of the present proceedings against IKF & Mukesh, the allegation levelled in the SCN that IKF and Mukesh have violated the provisions of sections 11C(2) & 11C(3) of SEBI Act by furnishing false information/details to the Investigating Authority w.r.t details sought through the summons (two summons) issued to IKF and Mukesh by the IA is not sustainable. Accordingly, no penalty can be levied IKF and Mukesh u/s 15A(a) of the SEBI Act, as existing at the time of occurrence of cause of action, for furnishing false information/details sought through the summons issued by the Investigating Authority. Therefore, I dispose of the SCN against IKF and Mukesh limited to the allegation of furnishing of wrong information.

80. In this regard, it is also alleged that IKF and Mukesh have failed to submit the following information to SEBI despite repeated issuance of summons:

- Important details with respect to Biofel FZE regarding utilization of GDR proceeds by it viz. bank account details of Biofel FZE was not provided by IKF and Mukesh to SEBI.
- Details of nature of business and Audit reports of Biofel FZE.

- Details like name of entities involved, amount used, and purpose behind the purchases, expenses and payments done by Biofel FZE.
- Contact details of Biofel FZE.

81. I note that, vide letter dated April 24, 2012, IKF had submitted to the investigating authority that it was in the process to acquire the bank account statements and the audit reports of Biofel FZE. Thereafter, no document in this regard was submitted by IKF. I also note from the replies of IKF and its directors that IKF has also failed to produce the said documents before me during the present proceedings. On the other hand, IKF has argued that SEBI has no jurisdiction to question the end fund usage. I note that this argument has been adequately settled by me in pre-paragraphs of this order. Further, I note that Biofel FZE is a company registered in UAE and it was a wholly owned subsidiary of IKF and, by virtue of this, it was under complete control of IKF. Therefore, I find the replies of IKF to be evasive in nature.

82. Further, I note from the IR, that a part of the GDR proceeds had admittedly gone to Biofel FZE. In this regard, I note that the details regarding information mentioned above regarding Biofel FZE (wholly owned subsidiary of IKF) and certain fund transactions done by it were very important for the purpose of present investigation as the same were required to examine the use of funds raised by IKF by way of GDR issue. The IR carries remarks that due to the failure of IKF and its directors to submit the said information, SEBI could not examine the end use of the funds and establish complete cycle of flow of funds with regards to the funds raised by way of 2nd GDR issue. Further, I note from the IR that SEBI had suspicion that Biofel FZE was used by IKF and AP to route

funds back to Vintage and other AP connected entities. However, due to the deliberate non-submission of the above information by IKF, SEBI could not investigate the said angle and the same has hampered a very crucial aspect of investigation in GDR issue of IKF.

Therefore, I hold that IKF has failed to furnish the above sought information and thereby hampered the investigation of SEBI; thereby, has violated the provision of Section 11C(3) of SEBI Act.

83. However, at the same time, I observe from the Annual Report of IKF for the Financial Year 2011-12 that Mukesh had resigned from the Board of Directors of IKF on April 04, 2012, i.e., he was not a director when the letter dated April 24, 2012 was submitted by IKF to SEBI. Therefore, I find it not justified to hold Mukesh guilty for the non-submission of information by IKF especially when Mukesh had already resigned as per annual report. Therefore, I dispose of the SCN against Mukesh limited to the allegation of non-submission of information to SEBI.

84. However, I note that the power to try an entity and punish accordingly, if required, under Section 11C(6) lies with some other forum and the same is outside the purview of an Adjudication Proceedings. Therefore, I hold that the provisions of Section 11C(6) of SEBI Act will not be applicable in the present adjudication proceedings.

c. If yes, whether IKF and its directors and CCP are liable for penalty?

85. As established in the pre-paragraphs, IKF and its directors as well as CCP have violated the provisions of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(b), (c), (d) and Regulations 4(2)(c), (f), (k) and (r) of PFUTP

Regulations. Therefore, IKF and its directors and CCP are liable for a penalty under Section 15HA of SEBI Act. The text of the said provision of law is being reproduced below:

<u>SEBI Act</u>

Penalty for fraudulent and unfair trade practices.

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

86. It has further been established that IKF has violated the provisions of Section 11C(3) of SEBI Act. Therefore, IKF is liable for penalty under Section 15A(a) of SEBI Act. The text of the said provision of law is being reproduced below:

<u>SEBI Act</u>

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made there under,—*

(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

87. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely; -

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

88. With regard to the above factors, it may be noted that the investigation report has not quantified the profit made or the loss caused to general investors on account of the violations committed by IKF and its directors. Further, I note that the violation of IKF and its directors under Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(b), (c), (d) and Regulations 4(2)(c), (f), (k) and (r) of PFUTP Regulations was a repeated violation as the same modus operandi was employed by IKF in the both GDR issues leading to defrauding Indian investors on two different occasions.

89. Further, in light of recent order dated August 02, 2019 of Hon'ble SAT in the matter of P G Electroplast vs SEBI, I also note that, vide Order dated April 20, 2015, Hon'ble Whole Time Member of SEBI has debarred IKF from issuing equity shares or any other instrument convertible into equity shares or any other security for a period of ten years. Further, vide order dated September 05, 2017, Hon'ble Whole Time Member of SEBI also prohibited CCP, Sunil and Mukesh from accessing the capital market directly or indirectly, and dealing in securities or instruments with Indian securities as underlying, in any manner whatsoever, for a period of ten years.

ORDER

90. After taking into consideration the facts and circumstances of the case, material/facts on record and also the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of Adjudication Rules, hereby impose the following penalty on IKF and its directors and CCP under Section 15A(a) &

15HA of the SEBI Act for their violation of the provisions of SEBI Act and PFUTP Regulations, as discussed in this order:

Name of the Noticee	Provision	Penalty
IKF Technologies Ltd.	Section 15HA of SEBI Act	Rs. 12,00,00,000 (Rupees Twelve Crore)
	Section 15A(a) of SEBI Act	Rs. 10,00,000 (Rupees Ten Lakh only)
Clifford Capital Partners AG SA	Section 15HA of SEBI Act	Rs. 1,00,00,000 (Rupees One Crore)
Sunil Kumar Goel	Section 15HA of SEBI Act	Rs. 1,00,00,000 (Rupees One Crore)
Mukesh Kumar Goel	Section 15HA of SEBI Act	Rs. 1,00,00,000 (Rupees One Crore)

I am of the view that the said penalty is commensurate with the lapse/omission on the part of IKF and its directors as well as CCP.

91. IKF and its directors and CCP 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.

92. 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.

93. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to IKF and its directors viz. IKF Technologies Ltd., Sunil

Kumar Goel & Mukesh Kumar Goyal and Clifford Capital Partners AG SA and also to the Securities and Exchange Board of India.

Place: Mumbai	**K SARAVANAN**
Date: June 24, 2020	**CHIEF GENERAL MANAGER**
	AND ADJUDICATING OFFICER