BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/MC/DS/2020-21/8354]

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

In respect of –

1. **Mukesh Chauradiya (PAN : AAVPC0966A)** having address at - 02, Adinath Nagar, Opp. Rita Park Society, Girdharnagar, Shahibaug, Ahmedabad – 380004 and B203, Sanmay Apartments, Opp. Prestige Towers, Judges Bunglow Road, Bodakdev, Ahmedabad – 380054.

In the matter of GDR issue by Winsome Yarns Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, the "***SEBI***"), initiated adjudication proceedings under Section 15HA of SEBI Act, 1992 (hereinafter be referred to as, the "***SEBI Act***") against Mukesh Chauradiya (hereinafter referred to as **"the Noticee / Mukesh / You**") in the matter of GDR issue by Winsome Yarns Ltd. Adjudication proceedings were initiated against the Noticee for the alleged violations of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI appointed the undersigned as Adjudicating Officer (hereinafter referred to as "**AO**") vide order dated March 14, 2019 to inquire into and adjudge under Section 15HA of the SEBI Act, the aforesaid alleged violations against the Noticee. The appointment of the AO was communicated vide order dated March 28, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/DPS/23572/2019 dated September 11, 2019 (hereinafter be referred to as, the "**SCN**") was served upon the Noticee under Rule 4(1) of the SEBI (Procedure for holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **'Adjudication Rules'**) to show cause as to why an inquiry should not be held and penalty be not imposed against them under Section 15HA of the SEBI Act for the alleged violations of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

4. The allegations levelled against the Noticee in the SCN are summarized as below:

5. An investigation was carried out by SEBI in the matter of GDR issue by Winsome Yarns Ltd (hereinafter referred to as **'Winsome / Company'**) during the period March 01, 2011 to April 30, 2011 (hereinafter referred to as **'investigation period'**).

6. Winsome was incorporated in 1990 as public limited company and commenced its commercial production in April 1994. The company was promoted by Winsome Textile Industries Ltd. & Punjab State Industrial Development Corporation Ltd. The equity shares of the company have been listed on BSE since April 08, 1994 and on NSE since March 26, 2002. The company is claimed to be engaged in the manufacturing of cotton yarn and high quality garments. The company's registered office is located at SCO 191-192, Sector 34-A, Chandigarh- 160022.

7. Winsome Yarns (Cyprus) Limited, a wholly owned subsidiary of Winsome was incorporated on November 08, 2006 in Cyprus.

8. Winsome Yarns FZE ('WINSOME FZE') was incorporated in U.A.E. on July 11, 2011 as a wholly owned subsidiary of Winsome Yarns (Cyprus) Limited, which was a wholly owned subsidiary of Winsome. WINSOME FZE was declared defunct w.e.f. April 01, 2014.

9. The board of directors ('Board/BOD') of Winsome as on the date of its GDR Issue i.e. March 29, 2011 was as follows:

Sl. No.	Name of director	Designation
1.	Satish Bagrodia	Chairman (Non-Executive)
2.	Manish Bagrodia	Managing Director
3.	Chandra Mohan	Independent Non Executive Director
4.	Brij Mohan Khanna	Independent Non Executive Director
5.	S. K. Singla (Nominee Director of PSIDC)	Independent Non Executive Director
6.	G. K. Sawhney (Nominee Director of PNB till March 16, 2011)	Independent Non Executive Director
7.	Yashpal Barar (Nominee director of PNB w.e.f. March 17, 2011)	Non-Executive, Independent Director
8.	Ashish Bagrodia	Non-Executive Director

10. **Shareholding Pattern:** (Source: bseindia.com)

Particulars	QE Dec 2010		QE Mar 2011		QE Jun 2011	
	No. of shares	%	No. of shares	%	No. of shares	%
Promoter Holding	22,33,96,090	57.73	22,33,96,090	38.10	22,33,96,090	38.10
Non Promoter Holding	16,35,88,700	42.27	16,35,88,700	27.90	16,35,88,700	27.90
Shares held by custodian against GDRs	0	0	19,94,12,500	34.01	19,94,12,500	34.01
Total no. of issued shares	**38,69,84,790**	**100**	**58,63,97,290**	**100**	**58,63,97,290**	**100**

11. The total number of shares of Winsome for the quarter ended March 2011 increased by 19,94,12,500 shares as compared to quarter ended December 2010, due to issuance of 1.99 million GDRs on March 29, 2011.

12. Winsome issued 19,94,125 GDRs amounting to USD 13.24 million on March 29, 2011. Summary of the GDR issue is tabulated below:

(Source: Information provided by WINSOME)

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
29-Mar-11	1.99 (at USD 6.64 per GDR)	13.24	DBS Bank Ltd.	19,94,12,500	The Bank of New York Mellon	Pan Asia Advisors Ltd	EURAM Bank, Austria	Luxembourg Stock Exchange

13. Investigation revealed that Vintage FZE (now known as Alta Vista International FZE), an entity controlled by Arun Panchariya, was the sole subscriber of GDR issue of Winsome. Vintage availed a loan of USD 13.24 million from EURAM Bank for payment of subscription amount of for GDR issue of Winsome. Vintage signed a Loan Agreement dated March 22, 2011 with EURAM Bank. It was further observed that Winsome pledged the GDR proceeds as collateral against the loan

availed by Vintage FZE. Winsome signed a Pledge Agreement dated March 22, 2011 with EURAM Bank.

14. **<u>Loan Agreement:</u>**

15. Vintage FZE ('Vintage') opened a loan account having number 540012-051-3 with EURAM Bank and Winsome opened a retail account having number 5800400101 with EURAM Bank. Examination of Loan Agreement, Pledge Agreement, loan account statement and Escrow account statement revealed that Vintage obtained loan of USD 13.24 million by entering into a Loan Agreement dated March 22, 2011 with EURAM Bank. The Loan Agreement was signed by Mukesh Chauradiya / Noticee, in capacity of Managing Director of Vintage for subscription of GDRs of Winsome.

16. Loan Agreement inter-alia states as follows:

> ***2."Nature and purpose of facility"*** "*To provide funding enabling Vintage FZE to take down GDR issue of 1,994,125 Luxemburg public offering and may only be transferred to EURAM account nr. 580040, WINSOME Yarns Ltd.*"
>
> ***6. Security:*** *….it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be demanded by the Bank:*
>
> *1) Pledge of certain securities held from time to time in the Borrower's a/c no. 540012 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*
>
> *2) Pledge of the account no. 580040 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."*

17. As per the Know Your Customer documents (signed on June 06, 2007) of Vintage available with EURAM Bank, it was observed that Arun Pancharia was the beneficial owner and Managing director of Vintage as on June 06, 2007. Documents received from EURAM Bank show that Alkarni Holding Limited was the sole shareholder of Vintage FZE and Arun Pancharia was the sole shareholder of Alkarni Holding Ltd.

18. **Pledge Agreement:**

a) A Pledge Agreement dated March 22, 2011 was entered into between Winsome (*as Pledgor*) and EURAM Bank (*as Bank*). The pledge Agreement was signed by Manish Bagrodia, Managing Director on behalf of Noticee Winsome.

b) The preamble of the Pledge Agreement states:
"By Loan Agreement K210311-002 (hereinafter referred to as the "Loan Agreement") dated 22 March 2011, 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 13,240,990- The pledger has received a copy of the Loan Agreement No. K210311-002 and acknowledges and agrees to its terms and conditions."

c) The Pledge Agreement pledged *all of the pledgor's (Winsome) rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount USD 13,240,990 existing from time to time at present or hereafter on the securities account(s) no. 580040 held with the Bank; and 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. 580040 kept by the Bank and all amounts credited at any particular time therein….*

19. Further, conditions were put in the Pledge Agreement for realization of the pledge which permitted the Euram Bank *to apply the funds in the Pledged Account to settle the Obligations. and 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.*

20. Thus, Winsome opened a bank account (*A/c no. 580040*) with EURAM Bank to keep the GDR proceeds and pledged its GDR proceeds before issuance of GDRs

to secure the rights of EURAM Bank against the loan given by EURAM Bank to Vintage for subscription of GDR issue of Winsome. It is observed from the pledge agreement that Winsome was aware of the loan agreement and initial subscriber and the source of funding.

21. Noticee had long association with Arun Pancharia. Noticee worked as director in Ramsai Investment Holdings P. Ltd wherein Arun Pancharia was director and holding 99.98% shares through Vintage. Further, Noticee signed Loan Agreement dated March 22, 2011 for subscription of Winsome's GDR issue as Managing Director of Vintage and signed redemption requests of loan account as authorised signatory. Noticee also signed the Loan Agreements dated February 14, 2011, April 28, 2011 and February 03, 2011 in capacity of the Managing Director of Vintage for subscription of the GDR issue of Rasoya Proteins Ltd, Southern Ispat and Energy Ltd and Aqua Logistics Ltd. Vintage's default on repayment of balance loan amount affected Winsome to the tune of USD 6.05 million. From the above, it is clear that Noticee acted as aid to Arun Pancharia and acted as party to fraudulent scheme.

22. Noticee held key position in Vintage (as Managing Director and authorized signatory of Vintage) and was in knowledge of Arun Pancharia's scheme of subscribing to GDR issues through Loan Agreement and subsequently defaulting on repayment of loan in several GDR issues (as Noticee signed the Loan Agreements and Vintage's redemption of loan amount requests for repayment of Vintage's loan). Noticee acted as aid to Arun Pancharia and facilitated Arun Pancharia's scheme by executing the Loan Agreement of Winsome in capacity of the Managing Director of Vintage.

23. In view of the above, Noticee acted as party to the fraudulent scheme in alleged violation of section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.

24. It was stated in the SCN that the aforesaid alleged violations, if established, would make the Noticee liable for monetary penalty under Section 15HA of the SEBI Act.

25. SCN was served to the Noticee through Speed Post Acknowledgement Due (SPAD). Noticee submitted its reply vide letter dated September 27, 2019.

26. An opportunity of hearing was provided to the Noticee on March 3, 2020 vide notice dated February 18, 2020.

    a) Vide email dated February 24, 2020, Noticee requested for adjournment of hearing, and hearing was rescheduled on March 6, 2020. Hearing on March 6, 2020 was attended by Noticee himself and AR of the Noticee, Mr. Devendra Dhanesha. During hearing, the AR and Noticee reiterated the submissions as made in the reply dated September 27, 2019 and submitted that they will be filing additional submissions by March 16, 2020. Vide email dated March 14, 2020, Noticee filed additional submissions.

27. The key submissions of the Noticee in its reply dated September 27, 2019 and March 14, 2020, are reproduced as below:-

    a) Noticee had never been the Director or Managing Director of Vintage FZE as alleged in the SCN.
    b) Noticee submitted copy of certificate from Jebel Ali Free Zone Authority (JAFZA) dated December 28, 2010, addressed to EURAM Bank stating in relation to Vintage FZE:
       FZE Shareholder : Alkarni Holdings Limited.
       FZE Directors : Ashok Ramswarup Panchariya.
       FZE Manager : Mukesh Babulal Chauradiya.
       FZE Secretary: Ashok Ramswarup Panchariya.
    c) The letter of JAFZA certifying formation of Vintage FZE has an inward stamp of March 18, 2011 by EURAM Bank and clearly clarifies his position as a Manager and not as a Director or Managing Director of Vintage FZE.
    d) Noticee is no more associated with Vintage FZE and Arun Panchariya, and he do not have access to any material to properly defend his case.

Now he is staying in Ahmedabad where no documents related to the GDR issue is available to properly reply to the SCN.

e) Noticee was never asked or called by the investigation officers nor his statement was recorded during the course of investigation.

f) Noticee was only an employee of Vintage FZE, the subscriber to the GDR of WINSOME. Vintage FZE was fully owned and controlled by Mr. Arun Panchariya. He was only drawing monthly salary for the work done by him in Vintage FZE. He did not have any other advantage, monetary or otherwise for any of the acts done by him as an employee of Vintage FZE working under Arun Panchariya.

g) Noticee joined Vintage FZE as Manager in the year 2005. After joining Vintage FZE, he had relocated itself from Ahmedabad to Dubai and had been staying in Dubai till 2016.

h) Noticee submitted that under the Implementing Regulations No. 1/92 of FZE, under which the Vintage FZE was registered as a Free Zone Enterprise (FZE) in JAFZA, it shall have a single owner. Noticee submitted that in this case it was Mr. Arun Panchariya who has been the beneficial and legal owner of Vintage FZE (directly and indirectly) and the real face behind Vintage FZE. It was a single member enterprise and he was the owner.

i) Mr. Arun Panchariya was initially the sole director and subsequently somewhere in 2010 – 2011, Mr. Ashok Panchariya, his brother, replaced him as the Director of the Vintage FZE. Noticee submitted that he was merely a manager and never the Director or Managing Director of Vintage FZE.

j) Noticee submitted the copies of his resident permits for the period September 14, 2005 to September 9, 2017, where his designation/position has always been mentioned as the General Manager and not as a Director/Managing Director. Noticee submitted that he could not have functioned as the Director/Managing Director in Vintage FZE (which operated in JAFZA) or in any other entity within JAFZA without an appropriate work permit as a Director/Managing Director from JAFZA.

k) Noticee submitted letter dated October 01, 2009 written by Vintage FZE to Abu Dhabi Commercial Bank, wherein he has been referred to as the General Manager since September 2005. The said letter was signed by Mr. Arun Panchariya himself.

l) Noticee submitted Copy of the JAFZA Visa of Mr. Arun Panchariya for the period January 12, 2010 to January 11, 2013 showing that his designation was mentioned as the Managing Director.

m) Noticee submitted a copy of his Employment Card issued to him by JAFZA and submitted that he had always been an employee of Vintage FZE and not a Director or Managing Director of it.
n) Noticee also submitted that as seen from the Shareholder's list as on September 30, 2009 / 2010 /2011 /2012 / 2013 in relation to Ramsai Investment Holding Private Limited (Vintage FZE Investment Holding Private Limited), it can be clearly seen that Mr. Arun Panchariya holds 9,998/18,59,013 Equity Shares in Vintage FZE Investment Holding Private Limited in his capacity as a Director of Vintage FZE. This clearly demonstrates that Mr. Arun Panchariya has all along been the Director/Beneficial Owner of Vintage FZE. Noticee submitted that this clearly proves that he cannot have any role to play in Vintage FZE except as an employee and acting on instructions and under supervision of Arun Panchariya.
o) This shareholding in Vintage FZE Investment Holding Private Limited by Arun Panchariya was more than 99.99% of its shareholding. He was just holding qualification shares of mere 1 or 2 shares.
p) Administrative fine statement passed by DFSA imposing fine of US$12,000 on Mr. Arun Panchariya also clearly indicates that Arun Panchariya was the Licensed Director in relation the Vintage FZE.
q) As per regulation 30 of FZE Regulations, the business of a Free Zone Establishment shall be managed by the Directors who shall exercise all the powers under the Free Zone Establishment – which were exercised solely by Mr. Arun Panchariya or through Mr. Ashok Panchariya. Key decision-making powers such as availing loans from Banks, subscribing to GDRs or other investments, repayment of loan etc. were taken by the Owner and Director of Vintage FZE which was Mr. Arun Panchariya/ Mr. Ashok Panchariya. As an employee and Manager, Noticee was required to execute such decisions taken. Noticee had no authority to take any such decision.
r) In 2010, Arun Panchariya setup Euram Bank Asia Ltd. (Euram Bank Asia) in JV with Euram Bank and got it UAE DIFC License. As there were concerns in relation to conflict of interest raised by Euram Bank as Arun Panchariya was also signing/ verifying transaction documents as the Director/ President of Euram Bank Asia, Arun Panchariya, while continuing as the sole beneficial owner of Vintage FZE, stepped down as Director of Vintage FZE and was replaced by his brother, Ashok Panchariya. Also, on account of the above conflict, Noticee was instructed by Arun Panchariya to sign the loan agreement which were hitherto being signed by Arun Panchariya. As an employee and authorized signatory of Vintage FZE, based on the instruction from the

Director/ Sole Owner of Vintage FZE, Noticee had signed certain documents on behalf of Vintage FZE. As a salaried employee of Vintage FZE following instruction form its sole beneficial owner, Arun Panchariya, Noticee cannot be deemed to be the key employee/ managing, the affairs of Vintage FZE or treated as a key person in structuring GDR issue.

s) Noticee submitted that Mr. Arun Panchariya's name has been mentioned as sole Beneficial Owner and Director of Vintage FZE on the declaration of beneficial ownership. This declaration was also signed by Mr. Arun Panchariya.

t) Regarding Loan Agreement No. K210311-002 dated March 22, 2011, which was in relation to GDR of WINSOME, Noticee submitted that it was mentioned as Managing Director of Vintage FZE under his signature. Noticee submitted that he was never a Managing Director/ Director of Vintage FZE as stated above. Noticee submitted that he was instructed by Mr. Arun Panchariya to sign this Document in view of the conflict of Mr. Arun Panchariya as Director and President of Euram Bank, Asia. He had a stake in the Euram Bank Asia and hence it was advised that somebody other than him should sign the document. Since the title "Managing Director" was pre-printed or part of the pro-forma of the Bank, it was by oversight continued to be so. Noticee submitted that he signed in the capacity of an authorized signatory.

u) With regard to para 52 of SCN, alleging that Noticee signed the Loan Agreements dated February 14, 2011, April 28, 2011 and February 03, 2011 in capacity of the Managing Director of Vintage for subscription of the GDR issue of Rasoya Proteins Ltd, Southern Ispat and Energy Ltd and Aqua Logistics Ltd, Noticee submitted that the documents relied upon in relation to the above allegations have not been provided to him.

v) Noticee submitted that Mr. Arun Panchariya as a Director of Euram Bank Asia had verified the signature of the representatives of the Company on the pledge agreement, in case of GDR issuance by Rasoya Protein Limited, Hiran Orgochem Limited and Nakoda Limited.

w) As seen in Annexure 11 of the SCN, even in the case of the Pledge Agreement in relation to WINSOME dated March 22, 2011, Mr. Arun Panchariya had verified the signatures of the Director of WINSOME as Director of Euram Bank Asia.

x) There is no fraud committed by him in signing the loan agreement with Euram Bank as an authorized signatory (wrongly referred to as Managing Director) on the instruction of its employer Mr. Arun Panchariya. His role is limited to signing the loan agreement as an authorized signatory of Vintage FZE in view of the conflicting positions of Mr. Arun Panchariya had with Vintage FZE and Euram Bank.

y) Since 1999 to 2005, Noticee was involved in trading of surgical items, while he was at Ahmedabad.

z) Somewhere in the year 2005, Mr. Arun Panchariya offered him an employment in his trading company Vintage FZE which was a single person company owned and controlled by Mr. Arun Panchariya set up in Jebel Ali Free Zone Area (Jafza), Dubai. Mr. Arun Pancharia organized his Visa/ Work permits etc. pursuant to which he shifted to Dubai and joined Vintage FZE as a Manager / General Manager.

aa) Somewhere in 2007, he was added as an Authorised Signatory in relation to the Bank Account held by Vintage FZE with Euram Bank, Austria. All along during his stay in Dubai and association with Vintage FZE, he was a Manager/ General Manager of Vintage FZE working under the direction of Mr. Arun Panchariya, the ultimate owner and beneficiary of Vintage FZE.

bb) Somewhere in 2010, under instruction and direction from Mr. Arun Panchariya, he was made to sign certain loan agreement (standardized formats), sign loan redemption request etc. which were hither to being signed / carried out by Mr. Arun Panchariya. Mr. Arun Panchariya use to authenticate / verify signatures on behalf of Euram Bank Asia, where he was a 50% owner, Director and President. He was also signing the loan agreement with Euram Bank, Austria as the Managing Director of Vintage FZE.

cc) On account of such conflict of interest, Mr. Arun Panchariya replaced his name in certain loan agreements signed on behalf of Vintage FZE. He signed such loan agreement as an authorized signatory of Vintage FZE as per the instruction and direction of Mr. Arun Panchariya, the ultimate owner and beneficiary of Vintage FZE. Inadvertently, the designation of "Managing Director" continued to appear in such standardized loan agreement while Mr. Arun Panchariya's name was replaced by his name.

dd) Noticee had no financial or any other interest in the loan availed by Vintage FZE, subscription to the GDRs or in the repayment of loans availed by Vintage FZE.

28. I now proceed to decide the case on the basis of SCN issued, replies made by the Noticees and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

29. The issues that arise for consideration in the instant matter are:

Issue No. I Whether the Noticee is in violation of section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations?

Issue No. II If yes, whether the violation on the part of the Noticee would attract monetary penalty under Section 15HA of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

Issue No. I **Whether the Noticee is in violation of section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations?**

30. The charge against the Noticee rests on his long association with Arun Pancharia and the fact that he signed Loan Agreement with Euram bank for subscribing to the GDRs of Winsome in the capacity of Managing Director of Vintage FZE, thereby acting as aid to Arun Pancharia and as party to a fraudulent scheme for GDR subscription.

31. In this regard, it first needs to be established that the scheme for GDR subscription by Vintage FZE was a fraudulent scheme. The material on record shows that Vintage FZE was on the only subscriber to the Winsome GDR issue on March 29, 2011 for an amount of USD 13.24 million. Material on record also established that the source of funding for this GDR issue came from a loan taken by Vintage FZE from Euram Bank through a Loan Agreement dated March 22, 2011. It is also established that this loan was secured by way of a Pledge Agreement signed between Winsome and Euram Bank dated March 22, 2011 which placed the entire GDR proceeds as security with Euram Bank. Thus, material on record has established that the entire subscription to the GDR issue by Vintage FZE was through a fraudulent scheme, where the funds raised by the company through the issue were pledged by the company in favour of the subscriber, who had taken

them as loan from Euram Bank, and the funds remained with Euram Bank itself. Vintage FZE subsequently defaulted on the loan to the tune of USD 6.05 million, and hence the company never received the GDR proceeds to this extent.

32. Noticee was the signatory on the loan agreement signed by Vintage FZE with Euram Bank and signed in the capacity of Managing Director. Noticees main submission is that he was not the Managing Director but was merely an employee of Vintage FZE in the capacity of General Manager and hence he cannot be held responsible for the aforesaid fraudulent scheme.

33. The long association of the Noticee with Arun Panchariya has not been denied by the Noticee. I take note of the submissions by the Noticee that he joined Vintage FZE in 2005 and worked there as Manager/ General Manager. I also take note of the various records and permits produced by the Noticee showing that he was employed as General Manager with Vintage FZE. I also note that over the course of his employement, he was appointed as Director in Ramsai Investment Holdings P. Ltd from February 4, 2008 and again from August 17, 2010 till March 17, 2016 wherein Arun Pancharia was also Director and holding 99.98% shares through Vintage.

34. Noticee signed documents on behalf of Vintage FZE as authorised signatory, and as stated by him, in 2007, he was added as an Authorised Signatory in relation to the Bank Account held by Vintage FZE with Euram Bank, Austria. Subsequently, he has signed Loan Agreements dated March 22, 2011as Managing Director of Vintage, for loan for subscription of Winsome's GDR issue and also signed redemption requests of loan account as authorised signatory on March 28, 2011, and September 21, 2011. Noticee allegedly also signed certain other Loan Agreements dated February 14, 2011, April 28, 2011 and February 03, 2011 in capacity of the Managing Director of Vintage for loan for subscription of the GDR issue of Rasoya Proteins Ltd., Southern Ispat and Energy Ltd. and Aqua Logistics Ltd.

35. I note from evidence on record that Noticee has signed loan agreements and documents as both authorized signatory and Managing Director. I also note that Vintage FZE was controlled fully by Arun Panchariya through a 99.99% shareholding control. Without going into whether the Noticee was appointed as Managing Director, as evident from his signing on certain documents as Managing Directors, or whether he was only a General Manager as evidenced by the work permits produced by the Noticee, it is clear that the Noticee worked for and assisted Arun Panchariya in the scheme for obtaining loans from Euram Bank for GDR subscription. The Noticee cannot plead ignorance of the scheme when he has signed loan documents not just in the case of Winsome GDR but also several other GDR issues.

36. I note that in the matter of issuance of GDRs by Rasoya Proteins Ltd., SEBI vide ad interim ex-parte order dated September 24, 2014 restrained Mukesh Chauradiya (Noticee) from accessing the securities market and further prohibited from buying, selling or dealing in securities or any instrument exchangeable or convertible into securities, directly or indirectly, in any manner whatsoever, till further directions. I note that the aforesaid directions were confirmed vide order dated March 23, 2015.

37. It is also noted in the matter of issuance of GDRs by Visu International Ltd., SEBI vide Order dated February 14, 2020 restrained Mukesh Chauradiya (Noticee) from accessing the securities market and further prohibited from buying, selling or dealing in securities or any instrument exchangeable or convertible into securities, directly or indirectly for one year.

38. Further I note that in the matter of issuance of GDRs by Hiran Orgochem Ltd.(Hiran), SEBI vide Order dated June 17, 2020, levied penalty of Rs.15 Lakh upon Mukesh Chauradiya (Noticee) for acting as conduit to Arun Panchariya in furtherance of common intention to defraud the investors.

39. From the above, it is clear that the Noticee assisted Arun Panchariya and acted as party to fraud in collaboration with Arun Panchariya, in several instances including by being Authorised Signatory to an Indian Listed Company (Visu International) to execute Pledge agreement, Managing Director of Vintage to execute Loan agreements with Vikash Metal & Rasoya Proteins (Indian Listed Companies) for securing the GDRs issued by these two companies and was Director in Alka India Ltd., (Promoted by Arun Panchariya) for the period January 31, 2006 to June 01, 2010, was Director in Ramsai Investment Holdings Private Ltd. from February 4, 2008 and from August 17, 2010 till March 17, 2016, (99.98% shareholding by Arun Panchariya) and Authorised Signatory in the GDR issue of Hiran and Winsome.

40. In view of the long association of the Noticee with Vintage and Arun Panchariya and the role played by him in collaboration with Arun Panchariya, the Noticee cannot escape responsibility for the fraudulent scheme and arrangement for subscription of GDRs by pleading that he was merely an employee. It is thus established that by signing the Loan Agreement and loan redemption requests in respect of loan for subscribing to Winsome GDR, the Noticee was part of the fraudulent and deceptive scheme for GDR subscriptions devised by Arun Panchariya, and thus violated provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a),(b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.

Issue No. II	**If yes, whether the violation, on the part of the Noticees would attract monetary penalty under Section 15HA of the SEBI Act?**

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Issue No. III	**If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?**

41. Since it is established that Noticee assisted and aided Arun Pancharia in a fraudulent scheme in violation of section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003. I am of the view that it warrants imposition of monetary penalty under Section 15HA of the SEBI Act on the Noticee, text of which is reproduced as under:

SEBI Act:

Penalty for fraudulent and unfair trade practices.

***15HA**. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty 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.*

42. While determining the quantum of penalty under Section 15HA of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

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.

43. From the material available on record, it is not possible to ascertain disproportionate gains or unfair advantage made by the Noticee nor the loss caused to the investors. I note that Noticee was part of several cases of fraudulent GDR subscription schemes devised by Arun Panchariya in whch separate enforcement proceedings are going on. I note that while the main perpetrator of the scheme was Arun Panchariya, the Noticee played a role in assisting him by signing the Loan Agreement and loan redemption requests for the loan taken to subscribe to the Winsome GDR issue.

44. Therefore, taking into account the facts and circumstances of this matter, I am of the view that a penalty of ₹10,00,000/- (Rupees Ten Lakh only) will be commensurate with the violations committed by the Noticee.

ORDER

45. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I(2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the following penalty of ₹10,00,000/- (Rupees Ten Lakh only) upon the Noticee i.e. Mukesh Chauradiya, under section 15HA of SEBI Act for the violation of section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.

46. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

ENFORCEMENT → Orders → Orders of AO → PAY NOW

47. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

   a) Name and PAN of the entity (Noticee)
   b) Name of the case / matter
   c) Purpose of Payment – Payment of penalty under AO proceedings
   d) Bank Name and Account Number
   e) Transaction Number

48. Copies of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: JULY 28, 2020 | **MANINDER CHEEMA**
PLACE: MUMBAI | **ADJUDICATING OFFICER**