BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO: Order/GR/BM/2022-23/20056-20061]

ORDER UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 (HEREINAFTER REFERRED TO AS 'SEBI ACT') READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND SECTION 23–I OF SECURITIES CONTRACT (REGULATION) ACT, 1956 (HEREINAFTER REFERRED TO AS 'SCRA') AND RULE 5 OF SECURITIES CONTRACT (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005.

In respect of:

Noticee No.	Noticee Name	PAN/ Other Identifying No.
1.	Vikash Metal & Power Ltd.	AAACV8850A
2.	Shri. Akkash Patni	AIMPP5138N
3.	Shri. Vimal Kumar Patni	00101744 (DIN)
4.	Shri. Vikash Patni	AKXPP4105E
5.	Shri. Arun Panchariya	AEVPP6125N
6.	Shri. Mukesh Chauradiya	AAVPC0966A

-In the matter of GDR Issue by Vikash Metal & Power Ltd.

<u>(The aforesaid entities are hereinafter individually referred to by their respective Names/ Notice Nos. and collectively as "Noticees", unless the context specifies otherwise)</u>

<u>BACKGROUND IN BRIEF</u>

1. The Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted investigation into the alleged irregularities in the Global Depository Receipts (hereinafter referred to as **'GDR'**) Issue by Vikash Metal & Power Ltd., (hereinafter referred to as **'Company' / 'VMPL'**) during the period from March 25, 2011 to April 25, 2011 (hereinafter referred to as **'Investigation Period'/ 'IP'**). However, wherever deemed necessary, reference has been made outside this period.

2. VMPL is a company whose shares were listed on the NSE and BSE Ltd. during the investigation period. The investigation, *prima facie,* revealed that VMPL had issued 1.20 million GDRs (amounting to USD 11.99 Million, approximately Rs.53.04 Crore) on April 12, 2011, equivalent to 3,60,72,000 equity shares of Rs.10 each, and the said issue was subscribed by one entity viz. Vintage FZE (now known as Alta Vista International FZE) (hereinafter referred to as **'Vintage'**). It was observed that the subscription amount was paid by Vintage by obtaining a loan from European American Investment Bank AG (hereinafter referred to as **'EURAM Bank'**) by entering into Loan Agreement dated March 22, 2011 with EURAM Bank.

3. Further, it was observed that directors of VMPL in its board meeting held on October 27, 2010, had passed board resolution *inter alia* authorizing the opening of an account with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue of VMPL and also for using the funds deposited in the said bank account as security in connection with loans, if any. and also authorized Shri. Akkash Patni, Shri. Vimal Kumar Patni and Shri. Vikash Patni, severally, to sign, execute, any agreement and other paper(s) from time to time as may be required by the EURAM Bank. VMPL had signed a pledge agreement dated March

22, 2011, with EURAM Bank pledging GDR proceeds as collateral against the loan availed by Vintage, executed by Mr. Akkash Patani, Managing Director of VMPL. Vide the said pledge agreement, VMPL had pledged the GDR proceeds against the loan availed by Vintage FZE for subscribing to GDRs of VMPL, thus securing Vintage FZE's loan.

4. Therefore, it was alleged that the scheme of issuance of GDRs was fraudulent. It was observed that the directors of VMPL namely, Shri. Akkash Patni (Noticee No. 2), Shri. Vimal Kumar Patni (Noticee No. 3) and Shri. Vikash Patni (Noticee No. 4) had attended the Board meeting which had approved the board resolution and Mr. Akkash Patani who had executed the Pledge Agreement, were parties to a fraudulent scheme of issuance of GDRs by VMPL by way of loan and pledge agreements. It was therefore alleged that the individuals named above had acted as parties to the fraudulent scheme.

5. Further, Mr. Mukesh Chauradiya (Noticee No. 6) had signed the Loan Agreement dated March 22, 2011 on behalf of Vintage in the capacity of its Managing Director and on perusal of copy of Know Your Customer documents (signed on June 06, 2007) of Vintage available with EURAM Bank, it was observed that Mr. Arun Panchariya (Noticee No. 5) was shown as Beneficiary Owner and Managing Director of Vintage. Some Foreign Institutional Investors (FIIs) connected to the Noticee No. 5 namely EURAM Bank and Cardinal Capital Partners made India Focus Cardinal Fund (controlled by Noticee No. 5) their sub-account. Further, FII connected to the Noticee No. 5, Golden Cliff made HighBlue Sky Emerging Market Fund its sub-account to facilitate them in selling the converted equity shares of the company.

6. FII sub-accounts India Focus Cardinal Fund and HighBlue Sky Emerging Market Fund cancelled GDRs and sold converted shares. Vintage defaulted on loan payment of USD 11.46 million (including interest on loan amount) and same

amount was adjusted by EURAM Bank from the GDR proceeds of Noticee No. 1 as Noticee No. 1 had pledged GDR proceeds against this loan.

7. Considering the fact that Vintage was sole subscriber to GDR issue and it was observed that Arun Panchariya (Noticee No.5) was the beneficial owner of Vintage, which defaulted on loan repayment to EURAM, the converted equity shares were acquired by Vintage free of cost. It is alleged that Noticee No. 5 devised GDR scheme along with Noticee No.1 and they misled the Indian investors by concealing the information of entering into Pledge Agreement which made investors believe that GDRs were genuinely subscribed while loan default alone caused loss to the shareholders of Noticee No.1 to the tune of USD 11.46 million.

8. Investigation also observed that the aforesaid arrangement (viz. Loan Agreement and Pledge Agreement) was not disclosed to the public. Investigation further alleged that VMPL did not inform stock exchange as required under clause 36(7) Listing Agreement with regard to - 1) Pledge Agreement entered into with EURAM Bank for subscription of GDRs.2) delisting of GDRs on Luxemburg Stock Exchange 3) termination of GDR facility by Global i.e. Bank of New York Mellon, which were material events as well as price sensitive information that could have impacted the price of the scrip. Further, it was observed that VMPL did not follow Accounting Standard 1,3 and 29 since it did not disclose/provide for potential liability for pledged GDR proceeds, presented the cash balance pledged with EURAM Bank as free cash and did not disclose the fact of signing of Pledge Agreement and pledging of GDR proceeds as the same are the items, the knowledge of which might influence the decision of the user of the financial statements.

9. SEBI had, therefore, initiated adjudication proceedings inter alia against Noticee No. 1, VMPL under Section 15HA of the Securities and Exchange Board of India act, 1992 and Section 23 E of the SCRA, for the alleged violation of Section 12A(a), (b), (c) of SEBI Act read with Regulation 3(a), (b), (c), (d), 4(1), 4(2) (f), (k) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as PFUTP Regulations), Section 21 of SCRA read with

Clause 36(7) of Listing Agreement and Section 21 of SCRA read with Clauses 32 and 50 of the Listing Agreement. Adjudication proceedings were also initiated against Noticee No. 2 to 6 namely, Shri. Akkash Patni, Shri. Vimal Kumar Patni, Shri. Vikash Patni, Shri. Arun Panchariya and Shri. Mukesh Chauradiya, respectively under Section 15HA of the Securities and Exchange Board of India Act, 1992 (SEBI Act) for the alleged violation of the provisions of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003 (hereinafter referred to as "PFUTP Regulations") for acting as party to the fraudulent scheme.

APPOINTMENT OF THE ADJUDICATING OFFICER

10. Earlier, Shri Biju S, Chief General Manager, was appointed as Adjudicating Officer (AO) in the matter, which was communicated to the AO vide communiqué dated January 09, 2018, to inquire into and adjudge under Section 15HA of the SEBI Act, 1992 and Section 23E of the SCRA the aforesaid violations alleged to have been committed by the Noticee. Subsequently, vide Order dated July 06, 2018, Shri Satya Ranjan Prasad was appointed as the Adjudicating Officer in the matter in the place of Shri Biju. S. Thereafter, the undersigned was appointed as the Adjudicating Officer in the instant case, which was communicated vide communique dated May 22, 2019.These proceedings are therefore been carried forward where they had been left off by the previous AO, and an opportunity of personal hearing was granted as detailed hereinafter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

11. Show Cause Notices No. EAD4/ADJ/BS/DS/OW/P/17337/1/2018 dated June 15, 2018 (hereinafter referred to as “SCN”) was issued to the Noticees in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the SEBI (Procedure for

Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “SEBI Adjudication Rules”) for the alleged violation of the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations. The SCNs were sent through Speed Post (SPAD).

12. The said SCNs were duly served to Arun Panchariya (Noticee No. 5) and Mukesh Chauradiya (Noticee No.6). With respect to the other Noticees the SPAD had returned undelivered from the addresses of the Noticees. Thereafter, subsequent to the handing over of the proceedings to the undersigned, the email address of the Noticee (Akkash Patani) were obtained and the scanned copy of the SCNs addressed to them were mailed to the said address on June 08, 2022. The said mail was addressed to Mr. Vikal Kumar Patani and Mr. Vikash Patani alongwith Mr. Akkash Patani as they all are family members and share common address.

13. Pursuant to the delivery of SCNs to Noticee No. 2, 3 and 4, a request for inspection of original documents was made by Mr. Vimal Kumar Patani vide email dated June 13, 2022. Since the Noticees were already provided the inspection of documents in the parallel 11B proceedings, and no additional documents are perused in the instant proceedings, the inspection of documents was consequently not provided for second time.

14. Noticee No. 2, 3 and 4 submitted their common replies. A preliminary reply dated August 25, 2022 and a final reply dated September 08, 2022 was submitted. The official liquidator appointed by the High Court, Calcutta, informed vide letter dated April, 2022 that the company, Vikash Metal & Power Ltd. (Noticee No. 1) has been wound up and is undergoing liquidation. No written submission was received from Noticee No. 5 and 6.

15. Mr. Mukesh Chauradiya (Noticee No. 6) personally appeared for hearing on May 25, 2022. Noticee No. 2, 3 and 4 were provided opportunity of personal hearing on August 26, 2022. The hearing was attended by the said Noticees through their authorized representatives. In the said hearing the Noticees reiterated their submission made in the written reply.

16. **The summary of the replies submitted by Noticee No. 2, 3 and 4 are as under:**

In their joint replies the Noticees have inter-alia submitted the followings:

a. The company, VMPL has been liquidated vide order dated September 08, 2015 passed by High Court of Calcutta and hence all the documents are with official Liquidator.
b. On ground of abnormal delay, the present proceedings should be dropped.
c. Minutes of Board Meeting was not provided and only on the basis of Board Resolution and Annual Report it was assumed that Noticee No. 2, 3 and 4 voted in favour of the resolution in which opening of account with EURAM bank was agreed.
d. VMPL's Board had authorized EURAM Bank to use GDR proceeds in connection of the loan is based on hypothetical assumption, surmises and conjectures.
e. The company had honest intentions to raise money and be listed in international markets. Arun Panchariya presented false and fabricated information and experience in raising issue in his Brochure.

The summary of the reply submitted by Noticee No. 6 during hearing is as under:

a. The Noticee was merely an employee working for Arun Panchariya and moved to Dubai for the employment purpose.

b. He was only following instructions of his employer and hence signed the Loan Agreement.

c. The title “Managing Director” was pre-printed or part of the proforma of the Bank and it was by oversight continued to be so and he did not gain any advantage, monetary or otherwise for any of the acts done by him as an employee of Vintage FZE.

17. Noticee No. 5 did not file any written submission or appear for personal hearing. I am, therefore, bound to proceed on the basis of available material with respect to the Noticee No. 5.

18. In view of the above, I note that principles of natural justice have been duly complied with, as SCNs and Hearing Notices were duly served upon the Noticees and sufficient opportunity was also granted to the Noticees to reply to the SCN and appear for hearing.

CONSIDERATION OF ISSUES

19. I have carefully examined the allegations against the Noticees, and the replies of the Noticees to the SCN and the documents / material available on record. The issues that arise for consideration in the present case are:

I. Whether the VMPL and other Noticees in light of their role in GDRs issued by VMPL, 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, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(f), (k), (r) of SEBI (PFUTP) Regulations 2003, Section 21 of SCRA, 1956, r/w clause 32, 36(7) and 50 of Listing Agreement, as applicable?

II. Does the violation, if established, attract monetary penalty under Section 15HA of the SEBI Act and Section 23E of SCRA, as applicable?

III. If yes, then what should be the quantum of penalty?

OBSERVATIONS AND FINDINGS

Company / VMPL (Noticee No. 1)

20. I note that vide letter dated April 29, 2022, the official liquidator appointed for Noticee No.1, has informed that the said Noticee had been wound up and the Official Liquidator attached to the Hon'ble High Court, Calcutta was appointed as Liquidator vide order dated September 8, 2015, as made in C.P. No. 985 of 2014.

21. In order to examine the maintainability of the present Adjudication proceedings against Noticee, it will be appropriate to refer to Section 446 of the Companies Act, 1956, (corresponding to Section 279 of Companies Act, 2013) which reads as under: -

Section 446 of Companies Act, 1956

When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Tribunal and subject to such terms as the Tribunal may impose.

22. According to Black's Law Dictionary, Sixth Edition, the term '*Legal Proceedings*' includes "all proceedings authorized or sanctioned by law, and brought or instituted in a court or legal tribunal, for the acquiring of a right or the enforcement of remedy." Further, the term 'Proceedings' means, "any action, hearing, investigation, inquest or inquiry (whether conducted by a court, administrative agency, hearing officer,

arbitrator, legislative body, or any other person authorized by law) in which, pursuant to law, testimony can be compelled to be given."

23. In the "*Guide to the Companies Act*" by A Ramaiya, (17th Edition Reprint 2010, page 4929 & 4930), it is stated that the object of winding up of a company by the court is to facilitate the protection and realization of its assets with a view to ensure an equitable distribution thereof among those entitled and to prevent the administration from being embarrassed by a general scramble among creditors and others. Consequently, once the court has taken the assets of a company under its control or has passed an order for its being wound up, it will not be proper to allow proceedings to be started or continued against the company.

24. While examining the issue of maintainability of the legal proceedings initiated after the date of order of winding up/ appointment of official liquidator, the Hon'ble High Court of Bombay, in the case of ***Deutsche Bank v. S.P. Kala {(1990) 67 Com. Cases***} held as under: -

"Section 446 of the Companies Act provides that, when a winding up order is made or the official liquidator is appointed as provisional liquidator, no suit or legal proceedings should be commenced or if pending on the date of the winding-up order, shall be proceeded with, against the company, except with the leave of the court and subject to such terms as may be imposed. Sub-section (2) further lays down that the court which is winding-up the company shall, notwithstanding anything contained in any other law in force, have jurisdiction to entertain or dispose of, inter alia, any suit or proceeding by or against the company, whether such suit or proceeding has been instituted or is instituted. A careful examination of these provisions of law makes it clear that once a winding-up order is made or the official liquidator is appointed as provisional liquidator, no proceedings can continue or be instituted against the company without the permission of the court. It is further clear that jurisdiction to entertain or dispose of any suit or proceeding by or against the company is vested in the company court without any kind of restriction................

The expression 'any suit or proceeding by or against the company' is wide enough to bring within its sweep any kind of suits."

25. I note that instant Adjudication proceedings against the Noticee No.1 commenced with the issuance of SCN dated June 15, 2018, whereas the Noticee No.1 had already been wound up by Hon'ble High Court of Calcutta vide Order dated September 8, 2015.

26. In view of the above, I note that there is no material on record to suggest that the leave of the Hon'ble High Court of Calcutta has been taken in the matter. Therefore, I am of the view that the present Adjudication proceedings against VMPL (Noticee No. 1) which is under liquidation cannot be continued without the leave of the Hon'ble High Court, Calcutta. Hence, the present proceedings against Noticee No. 1 is not maintainable.

27. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of the SEBI Act, 1992 and PFUTP Regulations, alleged to have been violated by the Noticees. The same are reproduced below:

SEBI Act, 1992:

"***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, 2003:

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

(c) employ any device, scheme or artifice to defraud in 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 thereunder.

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

<u>Preliminary Issues raised by certain Noticees</u>

28. Before proceeding with the merits of the matter, it would be appropriate to first deal with the certain preliminary contentions raised by Noticee No. 2, 3 and 4. At the outset, the said Noticees have contended that the instant proceedings deserve to be dropped on account of delay hence have caused prejudices against them as they cannot defend themselves effectively. I also note the said Noticees have placed reliance on various decisions viz; ***Mr. Rakesh Kathotia & Ors. vs. SEBI*** *(Appeal No. 07 of 2016),* ***Ashok Shivlal Rupani & Anr. vs. SEBI*** *(Appeal No. 417 and 440 of 2018),* ***Yatin Pandey HUF v/s SEBI*** *(Appeal No. 719 of 2021)* etc., In this respect, it is noted that the present proceeding and the issues involved herein are different to that involved in the orders cited by the said Noticees. Hence, in defense to the said contention I would draw reference to the Hon'ble SAT order in ***Jindal Cotex Ltd. and others vs. SEBI*** (Appeal No. 376 of 2019 decided on 05.02.2020) whereby while dealing with an appeal emanating from the similar GDR issue wherein a plea of delay was also taken by the appellant therein, Hon'ble SAT observed as under:

> *".............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 (Date of Decision: October 25, 2016 in Appeal No. 126 of 2013) and Cals Refineries Limited (Appeal No 04 of 2014; Date of Decision 12.10.2017) etc...............”

29. In view of the above, I am inclined to set aside aforesaid contention raised by the Noticees as the Hon’ble SAT has accepted the complexity involved in the GDR issues and hence it is bound to take time which is longer than usual. Also there are around 50 Indian Companies who were found by SEBI to be involved in fraudulent GDR issues and disclosures using similar tactics and SEBI has been taking actions against the said companies.

30. Further, Noticee No. 2, 3 and 4 have raised another contention with regard to the incomplete inspection of documents provided by SEBI in the instant matter which has led to breach of the principle of natural justice. The said Noticees have mentioned that certain documents demanded by them were not provided by SEBI despite their continuous requests. Also, since the company, VMPL, is under liquidation, they were unable to get the same documents from official liquidator. In absence of such documents, the said Noticees were unable to file appropriate reply.

31. In this regard, I note that the documents that are in possession of SEBI and are relevant in the instant matter have been provided by SEBI. The said Noticees have acknowledged the earlier inspection provided in the parallel 11B proceedings.

32. Further, considering Noticee No. 2, 3 and 4 were the Promoters/Directors of VMPL, they were expected to be diligent with the documentations that they were privy to. SEBI carried out investigation and arrived at the logical conclusion on the basis of the materials available on record. Whatever documents in the present matter SEBI had, have been already provided to the Noticees. In view of this, the above contention raised by Noticee No. 2, 3 and 4 that there is breach of principle of natural justice is rejected.

33. In light of the observation made in preceding paragraphs with respect to Noticee No. 1, the first issue stands amended as provided herein:

***<u>Issue I</u>*: Whether the Noticee No. 2 to 6, in light of their role in GDRs issued by VMPL, 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, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations 2003?**

34. From the material available on record, I note that VMPL had issued 1.20 million GDRs (amounting to USD 11.99 million) on April 12, 2011, equivalent to 3,60,72,000 equity shares having par value of Rs.10 each. Summary of the aforesaid GDRs issued by VMPL, is tabulated below:

GDR date	No. of GDRs Issued (mn.)	Capital raised (US$ mn.)	Local Custo-dian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where proceeds deposited	GDRs listed on
12-Apr-2011	1.20	11.99	DBS Bank	3,60,72,000	The Bank of New York Mellon, USA	Pan Asia Advisors Ltd.	EURAM Bank, Austria	Luxembourg Exchange

35. SEBI Investigations observed that subscription to the GDR was obtained through a loan agreement as well as a pledge agreement, details of which are discussed in the following paragraphs, and therefore, it was alleged that the GDR issuance was done through a fraudulent arrangement amounting to a self-financing of the subscription to the GDRs by VMPL.

36. Investigations further observed that an entity viz. Vintage had obtained a loan of USD 11.99 million by entering into a Loan Agreement dated March 22, 2011, with EURAM Bank to subscribe to the GDRs of VMPL. The aforesaid Loan Agreement was signed by the Noticee No. 6 in the capacity of Managing Director of Vintage.

On perusal of the Loan Agreement, I note that the following has been *inter alia* mentioned therein –

__1. Currency and the amount of facility:__

USD 11,999,952.-

(The amount is exactly the same amount raised by VMPL 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 1,202,400 Luxembourg public offering and may only be transferred to EURAM account nr. 580037, Vikash Metal and Power Ltd.

The specific purpose of the loan/ draw down was for the purpose of subscribing to the GDR issue of VMPL. 580037 is the client account number of VMPL. (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. 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.* (emphasis supplied)
- *Pledge of the account no. 580037 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**.* (emphasis supplied)

37. From the aforesaid Loan Agreement, I note that Vintage had availed a loan facility to the extent of USD 11.99 million from EURAM Bank to subscribe to the GDRs of VMPL.

38. From the certified true copy of VMPL's Board Resolution dated October 27, 2010 provided by EURAM Bank, it is observed that the following resolution was *inter alia* passed in the said meeting–

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

> *Resolution also states that:*

*"**RESOLVED FURTHER THAT** Shri Vimal Kumar Patni, Shri Vikash Patni, Shri Akkash Patni, Authorized Signatory of the Company, be and are hereby severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required."*

Resolution further states that:

*"**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."*

39. From the aforesaid resolution of the board meeting it is observed that the Board of Directors of VMPL had authorized, Shri Vimal Kumar Patni (Noticee No. 3), Shri Vikash Patni (Noticee No. 4) and Shri. Akkash Patni (Noticee No. 2), Directors of VMPL, to severally, sign, execute any application, agreement and other paper from time to time as may be required by EURAM Bank. For this purpose, Shri Vimal Kumar Patni, Shri Vikash Patni and Shri. Akkash Patni were *inter alia* authorized to carry and use the seal of VMPL. In the said resolution, the Board of Directors had further authorized EURAM Bank to use the funds deposited in the bank account opened with EURAM Bank in the manner of subscription money in respect of the GDR issue of the company, as security in connection with loans, if any.

40. Further, I note from the observation of the investigation that in the Annual Report of FY 2010-11 of VMPL it was mentioned that the Noticee No. 2 to 4 had attended

all the Board Meetings (19) in that financial year including the one dated October 27, 2010. Further, Mr. Vimal Kumar Patni was named as Chairman and Mr. Vikash Patni was named as Managing Director of VMPL and also the said Noticees were the promoters of VMPL. In view of this, I note that the very nature of the positions held by Noticee No. 2 to 4 require them to have knowledge of the day to day activities and active involvement in the functioning of the company. In this regard the said Noticees have submitted that the presumption of Noticees No. 2 to 4 having attended the aforesaid Board Meeting cannot be equated with them voting in favour of the resolution passed in the said meeting. Further, they contended that in the absence of vital documents such as Notice of Board Meeting, Attendance Sheet, Minutes of Board Meeting and other relevant records and documents, it cannot be ascertained that the three Directors, Noticee No. 2 to 4, had attended the Board Meeting held on 27/10/2010 and whether the Noticees who are present in the Board Meeting had recorded their accent or dissent or had refrained themselves from voting.

41. I note that the above contention lacks morality as seen from the documents provided by the EURAM. Though it is understood that the list of documents mentioned in the above contention will conclusively settle the issue, however their absence cannot be made a ground to give any undue advantage to the said Noticees. The resolution passed in the Board Meeting dated 27/10/2010 authorised Noticee No. 2 to 4 to sign, execute any agreement, escrow agreement, document etc. as may be required by EURAM. The documents available on record are Pledge agreement and Escrow agreement. It is observed that the Pledge agreement, dated 22/03/2011, with EURAM was signed by Mr. Akkash Patani (Noticee No.2) on behalf of VMPL and the Escrow Agreement with EURAM, dated 23/03/2011, was signed by Noticee No. 2, 3 and 4. Hence, their words are not in consonance with their actions. Even though they are claiming to not approve the resolution but were implementing the same. In view of this, It is difficult to accept the fact that the said Noticees were made authorized signatory of VMPL without their assent and

thereafter they went ahead and signed the documents with EURAM on behalf of VMPL.

42. This contention further lacks credibility as the said Noticees were Promoters/ Directors of the company. In view of this, the above contention raised by Noticee No. 2, 3 and 4 cannot be accepted

43. The aforesaid fact of opening of bank account with EURAM Bank for such purposes as stated in the Board resolution and reproduced above have not been refuted by any of the Noticee No. 2, 3 and 4. Also the fact of signing the Pledge Agreement with EURAM Bank was not denied.

44. I note from the records made available by EURAM Bank that subsequently VMPL had entered into a Pledge Agreement with EURAM Bank on March 22, 2011. The said Pledge Agreement was signed by Shri. Akkash Patni, Authorized signatory on behalf of VMPL, in the capacity of Director of VMPL. The salient Clauses of the Pledge Agreement are *inter alia* as under:

1. Preamble

*By loan agreement K210311-003 (hereinafter referred to as the **"Loan Agreement"**) dated March 22, 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 K210311-003 and acknowledges and agrees to its terms and conditions. (Emphasis Supplied)*

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 bill of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations") the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:*

2.1.1 all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount USD 11,999,952 existing from time to time at present or hereafter on the securities account(s) no. 580037 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. 580037 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and all amounts credited at any particular time therein….

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

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

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

6. <u>Realisation of the Pledge:</u>

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.

45. I note that the Pledge Agreement refers to the Loan Agreement dated March 22, 2011 between the borrower i.e. Vintage, and EURAM Bank, whereby Vintage was granted a loan of USD 11.99 million, and it is stated that the Pledgor i.e. VMPL has received a copy of the said Loan Agreement and acknowledges and agrees to its terms and conditions. By signing the Pledge Agreement, VMPL is deemed to be clearly aware that Vintage was the subscriber to the GDR issue. On perusal of the contents of the Pledge Agreement, it is noted that the Pledgor 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. As already reproduced above, 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. In such case the bank shall

transfer the funds on the pledged accounts, even repeatedly to an account specified by the Bank."

46. Regarding the dates, it is noted that the Pledge Agreement and the Loan Agreement were both dated March 22, 2011. Further, I also note that the Loan Agreement expressly states that the Pledge Agreement was an integral part of the Loan Agreement.

47. From the Loan Agreement and the bank account statement of Vintage, I note that Vintage had availed a loan from the EURAM Bank to the extent of USD 11.99 million to subscribe to the GDRs of VMPL. From the statement of Vintage's bank account and the escrow account for the GDR issue, it is observed that Vintage had instructed EURAM to transfer an amount of USD 11.99 million from its account and to credit it into the escrow account of VMPL. The said amount was credited to the account of VMPL on April 11, 2011. The bank account statement of VMPL clearly shows that the said amount as received from one entity only, i.e. Vintage. Further, Financial Market Authority (FMA) Austria vide email dated March 01, 2016 had informed that EURAM Bank has submitted that Vintage was the sole subscriber to GDR issue of VMPL. From the above, it is evident that GDR subscription money was received from only one entity i.e. Vintage. Accordingly, I note that the GDR issue of VMPL comprising 1.20 million GDRs amounting to USD 11.99 million, was subscribed by only one entity, i.e. Vintage. I further note that the loan agreement between Vintage and EURAM was signed on March 22, 2011 and on the same date Vintage had instructed EURAM to transfer the said amount of USD 11.99 million from it account to that of VMPL and that VMPL's account was pledged with EURAM Bank under the Pledge Agreement.

48. Thus, I note that in the above manner, the obligation of Vintage under the Loan Agreement was secured by VMPL through the Pledge Agreement, and accordingly, the subscription of the GDR issue was facilitated in the above manner. I note that due to such pledging of the GDR proceeds, the funds were not available at VMPL's

disposal. In view of the above, I note that the GDRs were not issued in a genuine manner, but rather through a fraudulent arrangement between VMPL and Vintage.

49. On perusal of the Pledge Agreement and Loan Agreement, I note that issuance and subscription of GDRs was done through loan availed by Vintage from EURAM Bank. Further, I note that bank account in which GDR proceeds were deposited, was in name of the company but the amount deposited in the account was not at the free disposal of the company as same was kept as collateral prior to issuance of GDRs for the loan availed by Vintage. I also note that the Pledge Agreement dated March 22, 2011, which was specifically signed by the authorized representative of VMPL makes reference to Vintage. The same also clearly shows that VMPL was aware that the subscriber to the GDR issue was just Vintage. Such actions also indicate *mala fide* intention on the part of VMPL's directors and Vintage and its directors.

50. Further, I note that Noticee No. 1 had pledged its GDR proceeds of USD 11.99 million with EURAM Bank against the loan availed by the Vintage and as on June 30, 2012, Vintage repaid the loan amounting to only USD 0.55 million and therefore loan amount of USD 11.45 million (approximately Rs. 64.47 crore, at RBI exchange rate of Rs. 56.31 per USD on 29/06/2012) was outstanding. Further, on examination of company's retail account statement with EURAM Bank it was observed that on January 02, 2013 on account of loan default by Vintage, EURAM Bank adjusted USD 11.46 million (includes the interest on loan) from company's retail bank account.

51. Noticee No. 2, 3 and 4 have submitted that they were victim of fraud by Arun Panchariya, PAN Asia Limited. In this regard, I note that the agreements signed by the directors of VMPL namely Noticee No. 2 to 4, explicitly had the mention of Vintage being the sole subscriber as seen above. Further, nothing has been brought on record to show that Noticee No. 2 to 4 have taken any action against

Arun Panchariya or Vintage for the alleged fraud. Hence, the contention is without any merit and consequently denied.

52. Investigation also observed that the aforesaid arrangement (viz. Loan Agreement and Pledge Agreement) was not informed to the exchange. Investigations further alleged that VMPL did not inform stock exchanges as required under clause 36(7) of Listing Agreement with regard to – i) Pledge Agreement entered into with EURAM Bank for subscription of GDRs, ii) delisting of GDRs on Luxembourg Stock Exchange, and iii) termination of GDR facility by the Global Depository i.e. The Bank of New York Mellon, which was price sensitive information that could have impacted the price of the scrip. I find that these three events were price sensitive information and could have impacted the scrip price of VMPL and also could have mislead the investors and created a false impression in the minds of the investors that the GDR issue was fully subscribed whereas VMPL had itself facilitated subscription of its GDR issue wherein the subscriber (Vintage) obtained loan from the EURAM Bank for subscribing the GDR issue of VMPL and VMPL secured that loan by pledging the GDR proceeds with the EURAM Bank.

53. In this regard, I note that the Hon'ble Supreme Court in its judgment in the matter of ***Kanaiyalal Baldevbhai Patel v. SEBI*** *(civil appeal no. 2595 of 2013)* has also observed that:

> "*if Regulation 2(c) of the 2003 Regulations was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or not, by any person while dealing in securities to induce another person to deal in securities would amount to a fraudulent act. The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been*

committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities".

Further, I note that the Hon'ble Supreme Court in the same judgment, has also observed that "*that the provisions of Regulations 3 (a), (b), (c), (d) and 4(1) are couched in general terms to cover diverse situations and possibilities. Once a conclusion, that fraud has been committed while dealing in securities, is arrived at, these provisions get attracted in a situation....".*

54. It is therefore, the aforementioned act of VMPL resulted in '*fraud*' as defined under the PFUTP Regulations, 2003. In this respect, it would be appropriate to refer to the Order of the Hon'ble SAT in ***Pan Asia Advisors Limited vs. SEBI*** (Date of decision October 25, 2016 in Appeal No. 126 of 2013) wherein, while interpreting the expression of '*fraud*' under the PFUTP Regulations, 2003, it was observed that:

"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."

55. In view of the above, I note that the scheme of arrangement of VMPL, in allotting GDR issue to only one entity i.e. Vintage which subscribed the GDR issue by obtaining loan from EURAM Bank and the same was again secured by the VMPL by pledging its GDR proceeds, seen along with the relevant disclosure w.r.t. subscription of GDR, without disclosing the crucial details pertaining to the aforesaid loan and pledge agreements which were price sensitive information, lead to conclusion that the same were done in a fraudulent manner with a view to influence the decision of the investors and to induce the sale or purchase of its scrip. During this entire process the Noticee Nos. 2 to 4 were the Directors / Promoters of VMPL, and were in charge of its affairs.

56. In view of the above, I conclude that the scheme of arrangement of VMPL, in allotting GDR issue to only one entity i.e. Vintage which subscribed the GDR issue by obtaining loan from EURAM Bank and the same was again secured by the VMPL by pledging its GDR proceeds, seen along with the false and misleading corporate announcements made by VMPL to stock exchanges, 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 conclusion that the same were done in a fraudulent manner with a view to influence the decision of the investors and to induce the sale or purchase of its scrip. In this entire fraudulent scheme, Vintage had played a crucial role in coordination with the Noticee No. 2 to 4, as already detailed in the preceding paragraphs.

57. Therefore, from the aforesaid, it is noted that Vintage was the sole subscriber to the GDR issue, it has defaulted in repayment of Loan and also received entire GDRs which were subsequently converted and sold in Indian markets through the sub-accounts of Foreign Institutional Investors (FIIs) connected to Arun Panchariya. Hence, virtually the GDRs were issued to Vintage at free of cost. The

aforesaid establishes that the issuance of GDRs at free of cost to the extent of USD 11.45 million to the subscriber- Vintage at the cost of other investors.

58. I find that the Noticee no. 2 to 4 were in charge of the day to day affairs of the VMPL. Also, as seen from the Board Resolution dated October 27, 2010, attended by Noticee No. 2, 3 and 4, the said Noticees were authorized to enter in agreement with EURAM Bank for the purpose of the GDR issue. Noticee No. 2 being the authorized signatory of VMPL signed the said Pledge agreement whereby all the proceeds of GDR were kept as security against the loan taken by Vintage for subscribing the GDR of VMPL. It is also established that Vintage was the sole subscriber of the said GDR and the fact was known to VMPL and its directors (Noticee No. 2 to 4). Thus, the Noticees No. 2, 3 and 4 being the key managerial personnel, Director, Chairman and Managing Director respectively, are squarely responsible for the fraud perpetrated and establishes that they have violated 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.

Directors of Vintage – Noticee No. 5 and 6

59. In the present matter, Vintage was sole subscriber of GDR issue of VMPL and subscription was arranged through a loan availed from EURAM Bank to the extent of USD 11.99 million for which security was provided by VMPL by pledging its GDR proceeds. On perusal of the KYC details of Vintage provided by EURAM Bank and also confirmed by Mr. Mukesh Chauradiya (Noticee No. 6) during personal hearing that Noticee No.5 was the sole beneficiary/ owner of Vintage. The loan agreement dated March 22, 2011 was signed by Noticee No. 6 in the capacity of Managing Director. Hence it is clear that Noticee No. 5 and 6 were connected entities and were jointly responsible for the perpetrated fraud. Further, Vintage defaulted in repayment of loan to the extent of USD 11.46 million (including interest), thereby GDR proceeds to that extent were adjusted by EURAM. Hence, it is evident that

Vintage acquired GDRs of VMPL free of cost, which they subsequently converted and sold in the Indian Market through sub-accounts of FIIs.

60. Further, I note that the Noticee No. 5 who was connected with various other entities including Foreign Institutional Investors (FIIs) and Sub- accounts involved in the issuance of GDRs that facilitated FIIs in selling the converted equity shares of the company.

61. I find that Noticee no. 5 had aided and abetted the fraudulent scheme of self-financing of the GDR issue of VMPL by acting on behalf of Vintage as he was the beneficial owner of Vintage in which the Noticee No.6 had served as Managing Director. The role played by Vintage in the fraudulent scheme has already been brought out in details in the preceding paragraphs. From the above, it is observed that the Noticee No. 6 held key position in Vintage (was Managing Director and authorized signatory of Vintage) and was in the knowledge of Noticee No.5's scheme of subscribing to GDR issues through Loan Agreement and defaulting on repayment of loan in several GDR issues (as the Noticee No. 6 had signed the Loan Agreement and the letters for Redemption of Loan Amount in the capacity of Managing Director and Authorized Signatory respectively).

62. Noticee No. 6 during his personal hearing has refuted the allegations made in the SCN and stated that he has always been an employee of Vintage FZE, and not a Director or Managing Director, he signed the documents, on instruction from Arun Panchariya, the title "Managing Director" was pre-printed or part of the proforma of the Bank and it was by oversight continued to be so and he did not gain any advantage, monetary or otherwise for any of the acts done by him as an employee of Vintage FZE.

63. With respect to the defence of the Noticee No.6 being merely an employee of Vintage and not Managing Director, reference is made to the Loan Agreement entered into by Vintage with EURAM Bank, where Mr. Mukesh Chauradiya (Noticee No.6) signed as Managing Director of Vintage. Further, two letters for the Redemption of Loan amount dated November 09, 2011 and July 12, 2011 written

on behalf of Vintage for the repayment of loan amount taken from EURAM Bank, were signed by Mr. Mukesh Chauradiya (Noticee No.6) as Authorized Representative of Vintage.

64. In view of the above observations I note that, having represented himself as being the Managing Director/ Authorised Representative of Vintage, the said Noticee cannot seek relief from the consequences of such representation by asserting that he was merely an employee. The circumstances indicate that Mukesh Chauradiya (Noticee No. 6) was playing an important role in the affairs of Vintage during the relevant period. In this regard I note that a similar contention had been raised by Mukesh Chauradiya (Noticee No. 6) before the Hon'ble SAT in ***Mukesh Chauradiya vs. SEBI*** (Date of Decision: January 7, 2021 Appeal No. 260 of 2020) wherein it was argued that he was never a managing director of Vintage FZE; he was initially only a Manager and later on a General Manager. It was contended that he was never a beneficial owner of the company Vintage FZE and he has never benefited anything in the alleged violation as he was only a salaried employee of Vintage FZE. In the matter, the Hon'ble SAT held as follows:

"It is an undisputed fact that the appellant has signed as Managing Director as we also note at page 94 of the Memo of appeal. It is not that he signed "for managing director" or "on behalf of managing director" etc. Therefore, irrespective of the dispute relating to the designation as contended by the appellant, the appellant was undoubtedly having the power to sign as managing director. In the certificate given by the JAFZA only 3 names [and 4 designations, with the sole Director, being named as the Secretary also] are indicated who are responsible people in Vintage FZE and appellant was one of them. Therefore, the dispute as to what was the exact designation of the appellant is irrelevant in the context that admittedly the appellant signed as Managing Director of Vintage FZE. It is also important to clarify here that

using a designation in other jurisdictions, such as UAE in the instant case, or elsewhere, for comparison to similar designations in India is also not relevant because designations vary widely even with respect to similarly placed officials across multiple jurisdictions. What is relevant is only whether the appellant was holding a position in which he could put his signature, that too in a loan agreement for USD 13.24 million with a bank under the designation of Managing Director. In any case designation of a person and whether a person is "an officer in default" in an organization etc. are irrelevant when the charge is that of aiding and abetting fraud under the PFUTP Regulations, which is the case herein.

65. As held by the Hon'ble SAT, the exact designation of the Noticee No. 6 is not relevant. I note that Noticee No. 6 executed several loan agreements/ signed other documents in various matters involving fraud related to GDR issues where Vintage was involved. In view of this, it can be concluded that Noticee No. 6 held key position in Vintage and cannot plead ignorance of the scheme of manipulation.

66. Therefore, Noticee No. 6 acted as an aide to the Noticee No.5 and facilitated the fraudulent scheme by executing the Loan Agreement dated March 22, 2011 with EURAM Bank in capacity of the Managing Director of Vintage.

67. Thus, the Noticees No. 5 and 6 being the sole beneficial owner of Vintage and key managerial personnel respectively, facilitated Vintage in acquiring the GDR of VMPL free of cost and subsequently selling the converted equity shares of the company and are squarely responsible for the fraud perpetrated. This establishes that they have violated 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.

<u>Issue II</u>: Does the violation, if established, attract monetary penalty under Section 15HA of the SEBI Act, 1992 and Section 23E of the SCRA, as applicable?

68. The Hon'ble Supreme Court of India in the matter of ***SEBI vs. Shri Ram Mutual Fund*** *[(2006) 68 SCL 216 (SC)]* held that:

"*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.*"

69. I note that the Hon'ble Supreme Court, in the matter of ***N Narayanan v. Adjudicating Officer, SEBI*** *(Civil Appeals No. 4112-4113 of 2013)* has observed as under:

"33. 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. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."

70. The Noticees had jointly and in close connivance with each other, had acted as the one part of the entire fraudulent scheme by arranging for the subscription of the GDRs through Vintage using the pledge agreement signed on behalf of VMPL to obtain a loan from the EURAM Bank and then to dispose the shares acquired through such GDRs, thereby creating an elaborate façade of demand for the securities of VMPL.

71. Thus, the violation of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations by the Noticees make them liable for imposition of penalty under Section 15HA of the SEBI Act, 1992, which reads as below –

SEBI Act, 1992

"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]."*

The provisions of section 15 HA as it stood prior to its amendment before September 8, 2014, at the time of occurrence of the aforesaid violations is reproduced herein below:

"15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher."*

As per the dates of violations, Section 15HA of SEBI Act, as it stood prior to the amendment, is applicable. Nevertheless, guided by the principle of rule of beneficial construction of even *ex post facto* law to mitigate the rigour of law, as was laid by the Hon'ble Supreme Court in ***T. Barai vs. Henry Ah Hoe and Ors*. (07.12.1982 - SC): MANU/SC/0123/1982 [(1983)1SCC177], the amended version of section 15HA of SEBI Act is being applied.

***<u>Issue III</u>*: If yes, then what should be the quantum of penalty?**

72. In this regard, the provisions of Section 15J of the SEBI Act, 1992, Rule 5 of the SEBI 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.

73. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that VMPL had misled the Indian investors by concealing the information of entering into Pledge Agreement and informing GDR related news in a distorted manner to stock exchange which made investors believe that GDRs were genuinely subscribed. Out of the GDR proceeds of USD 11.99 million, an amount of USD 11.46 million (including interest) were adjusted by EURAM against the loan of Vintage. Therefore, GDRs to the extent of USD 11.45 million {approximately Rs. 64.47 crore, at RBI exchange rate of Rs. 56.31 per USD on 29/06/2012} were issued at free of cost to Vintage, and this had caused a loss to the shareholders to the tune of USD 11.46 million (including interest on the loan).

The said subscription of the GDRs by Vintage was funded by VMPL itself, through the Noticees No. 2 to 4. The magnitude of the fraud committed by the Noticees is enormous as is evident from the issue size of USD 11.99 million.

ORDER

74. After taking into consideration all the facts and circumstances of the case, gravity of violations and the material on record, and also the factors stipulated in Section 15J of the SEBI Act, 1992, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, hereby impose the following penalty on the Noticees:

Entity	Violation	Penal Provisions	Penalty
Shri Akkash Patni, Noticee No. 2 (PAN: AIMPP5138N)	Penalty imposed under Section 15HA of the SEBI Act, 1992 for violation of the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations		**Rs. 20,00,000/- (Rupees Twenty Lakhs)**
Shri Vimal Kumar Patni, Noticee No. 3 (DIN: 00101744)	Penalty imposed under Section 15HA of the SEBI Act, 1992 for violation of the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations		**Rs. 10,00,000/- (Rupees Ten Lakhs)**

Shri Vikash Patni, Noticee No. 4 (PAN: AKXPP4105E)	Penalty imposed under Section 15HA of the SEBI Act, 1992 for violation of the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations	**Rs. 10,00,000/- (Rupees Ten Lakhs)**
Mr. Arun Panchariya, Noticee No. 5 [PAN: AEVPP6125N]	Penalty imposed under Section 15HA of the SEBI Act, 1992 for violation of the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations	**Rs. 10,00,000/- (Rupees Ten Lakhs)**
Mr. Mukesh Chauradiya, Noticee No. 6 [PAN: AAVPC0966A]	Penalty imposed under Section 15HA of the SEBI Act, 1992 for violation of the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations	**Rs. 20,00,000/- (Rupees Twenty Lakhs)**

75. The Noticees 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

76. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – 1 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:

77. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

78. In terms of the Rule 6 of the SEBI Adjudication Rules and Rule 6 of SCR Adjudication Rules, copy of this order is sent to the Noticees and also to Securities and Exchange Board of India.

Place: Mumbai **G. Ramar**

Date: September 30, 2022 **Adjudicating Officer**