**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

[**ADJUDICATION ORDER NO: Order/GR/HK/2022-23/23300]**

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

**In respect of:**

**Mr. P.V.R. Murthy (PAN: ABRPM1271B)**

***In the matter of GDR Issue by Zenith Steel Pipes & Industries Limited [erstwhile Zenith Birla (India) Limited]***

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## BACKGROUND IN BRIEF

1. The Hon'ble Securities Appellate Tribunal ("**SAT**") vide its order dated November 22, 2022, set aside the Adjudication order passed against Mr. P.V.R. Murthy in the instant matter dated June 16, 2022 and remanded the matter back stating "The appellant shall appear either personally or through his authorized representative/ Advocate before the authority concerned on 5th December, 2022 on which date the appellant would be served with a show cause notice and thereafter the Authority shall proceed in accordance with law." This aforesaid direction emanated from the Appeal No. 732/733 of 2022 filed by the Mr. P.V.R Murthy, contending that the show cause notice was never served upon him and no opportunity of hearing was provided. Hence, present proceeding was initiated.

## BACKGROUND AND FACTS OF THE CASE

2. The Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigations into the alleged irregularities in the Global Depository Receipts (hereinafter referred to as **"GDR"**) Issue by **Zenith Birla (India) Limited (now Zenith Steel Pipes & Industries Limited),** (hereinafter referred to as **"the Company / ZBIL / Zenith"**) during the period from May 01, 2010 to June 30, 2010 (hereinafter referred to as **"Investigation Period / IP"**).

3. ZBIL is a company whose shares are listed on the BSE Ltd. (BSE) and National Stock Exchange of India Ltd. (NSE). The investigation, prima facie, revealed that ZBIL had issued 1.81 million GDRs (amounting to USD 22.99 million) equivalent to its 5,43,57,060 equity shares of Rs.10 each, and the said issue was subscribed by only 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 May 12, 2010 with EURAM Bank.

4. It was observed that directors of ZBIL, had passed Board Resolution dated October 28, 2009, inter alia authorizing to opening of an account with EURAM Bank for the purpose of receiving subscription money in respect of the GDR issue of ZBIL and authorizing Mr. M.S. Arora (Managing Director of ZBIL) and Mr. P.V.R. Murthy (**Noticee)** (Director of ZBIL) to sign the agreements relating to the GDR issue 'jointly' also for using the funds deposited in the said bank account as security in connection with loans, if any. It was further observed that the directors of ZBIL, had passed another resolution dated March 3, 2010 superseding the earlier resolution of opening of Bank account with EURAM and authorized Mr. M.S. Arora and Noticee 'jointly and severally' to sign, execute, any application, agreement, escrow agreement and other paper(s) from time to

time as may be required by EURAM Bank and to carry and affix Common Seal of the company. In pursuant to this, ZBIL had signed a 'pledge agreement' dated May 12, 2010 with EURAM Bank, pledging GDR proceeds as collateral against the loan availed by Vintage vide 'loan agreement' dated May 12, 2010, which was executed by Noticee (Director and Authorized Signatory of ZBIL). In view of this, it is noted that ZBIL had pledged the GDR proceeds against the loan availed by Vintage for subscribing to GDRs of ZBIL, thus securing Vintage's loan. The loan agreement and the pledge agreement enabled Vintage to avail loan from the EURAM Bank for subscribing to GDR of the company. The said GDR issue would not have been subscribed, had the company not given such security towards the loan taken by Vintage. The bank account in which GDR proceeds were held was in the name of the company but the amount deposited in the account was not at the disposal of the company as the same was pledged as security against the loan availed by Vintage. Therefore, it was alleged that the scheme of issuance of GDRs was fraudulent.

5. As the said Pledge agreement was executed by the Noticee on behalf of ZBIL, it was alleged that the Noticee had acted as party to the fraudulent scheme.

6. SEBI has, therefore, initiated adjudication proceedings *inter alia* against the Noticee, under Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") 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 SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003 (hereinafter referred to as "**PFUTP Regulations**").

## APPOINTMENT OF THE ADJUDICATING OFFICER

7. Subsequent to the Order passed by Hon'ble SAT dated November 22, 2022 and in furtherance to the direction given in the said order, the undersigned was appointed as Adjudicating Officer (**"AO"**) ,vide order dated November 30, 2022, in terms of Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**") read with Section 15-I of the Act to inquire and adjudge the aforesaid violations under Section 15HA of the SEBI Act, 1992.

**SHOW CAUSE NOTICE**

8. Earlier the Show Cause Notice bearing No. EAD-2/SS/VS/9961/2/2019 dated April 18, 2019 ('**SCN**') was issued *inter alia* to the Noticee in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the 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.

9. As, the said SCN had returned undelivered from the addresses of the Noticee which were available in our records, a copy of the SCN along with the hearing notice was affixed at the same addresses and was also published in Hindi and English Newspaper on May 04 and 03, 2022 respectively (as per Rule 7 of SEBI Adjudication Rules), wherein Mr. PVR Murthy was advised to download the soft copy of the SCN from SEBI's website and appear for personal hearing. However, no response was received from him.

10. Thereafter, an order dated June 16, 2022 (hereinafter referred to as the **"earlier order"**), was passed against ZBIL, its Directors and the Noticee, *inter alia* holding that the Directors of ZBIL and the Noticee had aided and abetted the fraudulent scheme of self- financing of its GDR issue by the company and had

*inter alia* imposed a penalty of Rs. 20,00,000/- (Rupees Twenty Lakhs) on the Noticee.

11. Subsequently, the Noticee had appealed the aforesaid order before the Hon'ble SAT and vide order dated November 22, 2022, the order was set aside and was remitted to the Authority of SEBI with respect to the Noticee. Accordingly, as directed by the SAT, the nominated advocate of the Noticee visited SEBI office on December 05, 2022 and the SCN along with its annexures was served through hand-delivery and the same was acknowledged.

**REPLY OF THE NOTICEE**

12. The Noticee vide letter dated January 13, 2023, received by SEBI on January 19, 2023, had filed its written submissions in response to the SCN, the contents whereof are summarized as given below:

a. The Noticee has submitted that, he has faced extreme hardship in defending himself against the allegations levied in the SCN on account of considerable quantum of time that has passed between the alleged date of purported violations and the date of notice and the date of receipt of the said notice. Since approx. 12 years have passed from the occurrence of violation, initiation or continuation of present proceedings shall be gross violation of principle of natural justice.

b. In light of Article 14 of the Constitution of India it was stated that the Noticee has been denied meaningful opportunity to present his case due to such delay. The delay has severely handicapped and incapacitated the Noticee to defend himself.

c. In order to substantiate the contention of delay the Noticee has placed reliance on various orders of Hon'ble SAT and Hon'ble Supreme Court. Such as:

a) *Libord Finance v. Whole Time Member, SEBI* [2008] 86 SCL 72 (SAT)
b) *Hindustan Finstock Limited v. SEBI* [2003] 47 SCL 530 (Guj.)]
c) *Bharat J. Patel vs. SEBI* (Date of Order September 09, 2020)
d) *ICICI Bank Limited v. SEBI* (Appeal No. 583 of 2019; Date of Order July 08, 2020)
e) *Ashok Shivlal Rupani and Ors. Vs. Securities and Exchange Board of India* (Appeal No. 417 of 2018)
f) *Ashok Gunvantbhai Shah and Ors. V. SEBI* (Appeal No. 169 of 2019; Date of Order January 31, 2020.
g) *Adjudicating officer, Securities and Exchange Board of India vs. Bhavesh Pabari* (Civil Appeal No. 11311 of 2013; Date of Order February 28, 2019)

d. Quoting the aforesaid orders, the Noticee submitted that the unreasonable delay has put him in a state of bereavement and hampers him in effectively defending himself as most of the documents which are required to prove his case are not available with him.

e. The Noticee has further pleaded that he is an old aged retired person with comorbidities and already facing investigations by EOW and all the accounts are already attached and frozen. He was not at all involved in the day-to-day affairs/ business of the company and the company had Managing Director, CEO, CFO for the same. Noticee has always acted as per the instructions of the Board of Directors through the duly convened Board Meetings and opening of bank account with EURAM bank was similarly done. Noticee was no longer involved in the working and daily affairs of the company. He has resigned from the company on August 14, 2013.

f. Noticee was not aware of the misconduct on part of the company or other directors of the company. There is not even an iota of evidence in the SCN that can prove that there was wrongdoing on the part of Noticee and there was no monetary benefit derived by the Noticee through his actions.

g. The Noticee is already serving 2 years' debarment imposed by the Learned Whole Time Member of SEBI in the same matter. The order was passed without giving him an opportunity to defend and without following principle of natural justice.

h. GDR issue is not an area of expertise of Noticee however he was acting as per the advice of the professional advisors engaged by the company for the said issue. The documents signed by the Noticee in relation to GDR issue were also on the advice of the professionals who were expert in the GDR. Further, Noticee being merely a signatory cannot be a reason to implead in the present proceedings. Noticee was just bonafidely carrying out instructions given to him by the Board of the company.

i. In view of the above, the Noticee has submitted that all the allegations raised in the SCN are baseless, uncorroborated and are merely surmise. Arun Panchariya and Pan Asia Advisors were main perpetrators and the company was misguided by them to sign certain papers/ documents. No adverse inference may be drawn against Noticee for being part of the Board and for merely affixing his signature.

**<u>PERSONAL HEARING</u>**

13. Further, in terms of Rule 4(3) of SEBI Adjudication Rules, vide email dated January 03, 2023, an opportunity of personal hearing was granted to the Noticee on January 10, 2023. The authorized representative ("**AR**") of the Noticee vide email dated January 05, 2023 sought additional time to submit reply to the SCN till January 19, 2023 and adjournment for the hearing scheduled on January 10, 2023. Subsequently, vide email dated January 06, 2023, it was informed to the AR that the extension sought has been accepted and new date of personal hearing was provided i.e. January 20, 2023. On the said date the Noticee, through its AR, appeared through web based video conference and reiterated the submissions already made by the Noticee vide letter dated January 13, 2023.

14. Taking into account the aforesaid facts, I am of the view that principles of natural justice have been followed in the matter by granting the Noticee opportunity of being heard and submit his reply in the matter. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record and the reply of the Noticee.

## CONSIDERATION OF ISSUES

15. I have carefully examined the allegations against the Noticee and his reply to the SCN and the documents / material available on record. The issues that arise for consideration in the present case are:

I. Whether the Noticee has 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 PFUTP Regulations?

II. Does the violation, if established, attract monetary penalty under Section 15HA of the SEBI Act, 1992?

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

## OBSERVATIONS AND FINDINGS

16. 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 Noticee. The same are reproduced herein 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.*

## PRELIMINARY ISSUE RAISED BY NOTICEE

17. Before proceeding with the merits of the matter, it would be appropriate to first deal with the preliminary contention raised by Noticee. The Noticee has contended that the instant proceedings deserve to be dropped on account of delay as the proceedings have been initiated after a lapse of more than twelve (12) years from the date of the GDR issuance and has caused prejudices against him as he cannot defend himself effectively. In this regard, the Noticee has placed reliance on various decisions viz; *Libord Finance v. Whole Time Member*, (supra) *Hindustan Finstock Limited v. SEBI* (supra) *Bharat J Patel vs. SEBI* (supra), *Ashok Shivlal Rupani & Anr. vs. SEBI* (supra), *ICICI Bank Ltd. vs. SEBI* (supra), *Ashlesh Gunvantbhai Shah & Ors. vs. SEBI* (supra), etc., However, it is noted that the present proceeding and the issues involved herein are different to that involved in the orders cited by the Noticee.

18. Further, 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....”*

19. It is therefore, the orders quoted by the Noticee to support his contention of inordinate delay may not be helpful, firstly, because as seen in *Jindal Cortex Ltd.* (supra) the Hon’ble SAT has accepted the complexities involved in the matters pertaining to GDR issues and held that the time period taken by SEBI in such cases is justified. Secondly, the orders referred by Noticee may not be squarely applicable in the instant case. For instance, both in *Libord Finance* (supra) and *Hindustan Finstock Limited* (supra) the orders challenged before Hon’ble SAT were Section 11B directions passed by SEBI which has different implications than what is pursued in the instant adjudication proceeding.

20. For instance, in *Libord Finance* (supra) it was held *“We do not think that the Board was right in initiating proceedings against the appellant under Section 11B of the Act. It should have proceeded under the Regulations. …<u>It could still proceed under the Enquiry Regulations</u> but in its wisdom, it chose to proceed under Section 11B.”* (Emphasis supplied)

21. In another case relied upon by the Noticee i.e. *Bharat J. Patel vs. SEBI* (supra) the matter pertained to certain fraudulent trades done by the appellant who is a broker and was unable to defend his case due to want of records and trade data, which he had no obligation to preserve after certain period of time. However, in the instant case, the Noticee has failed to demonstrate as to how precisely the delay has caused prejudice to him and his right to properly defend himself. A mere sweeping statement was made by the Noticee stating that the documents required to prove his case are not available without specifically defining the documents may not be acceptable. Further, it is also noted that all

the relevant documents were duly provided in the form of annexures to the SCN, the veracity of which is not disputed / challenged by the Noticee.

22. In the instant case, while considering the aspect of delay, the direction given by Hon'ble Supreme Court in *University of Delhi vs Union of India & Ors.* (Civil Appeal No. 9488 of 2019) was kept in mind and also understood that there is no standard yardstick for condoning the delay, and the same needs to be considered on a case-to-case basis depending on the varying circumstances and facts. It was held therein that,

*"20. …. the position is clear that, by and large, a liberal approach is to be taken in the matter of condonation of delay. …In that background while considering condonation of delay, the routine explanation would not be enough but it should be in the nature of indicating "sufficient cause" to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the Courts based on the fact situation."*

23. In view of the above, I am inclined to reject the contention raised by the Noticee as the Hon'ble SAT has accepted the complexity involved in the GDR issues and held that such matters are bound to take longer than usual time as various entities from other jurisdictions are also involved. Also, there are more than 50 Indian Companies who were found by SEBI to be involved in fraudulent GDR issuance and disclosures using similar modus operandi and SEBI has been taking actions against such companies and other associated persons.

24. In addition to the aforesaid observation, I also note that the SCN was previously served upon the Noticee on the addresses available on the records by way of Newspaper publication, which is a substitute method of serving the notices, as the SCN could not be served through post and returned undelivered. Subsequently, the SCN was also sent to another address of Noticee which was

provided by the Noticee while filing the appeal before Hon'ble SAT i.e. *C/402, Fortune Tower, Madhpur, Hyderabad – 82*. However, the SCN returned undelivered from this address as well.

**<u>Issue I:</u> Whether the Noticee has 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 PFUTP Regulations?**

25. From the material available on record, I note that ZBIL had issued 1.81 million GDRs (amounting to USD 22.99 million) on May 28, 2010, equivalent to 5,43,57,060 equity shares. Summary of the aforesaid GDRs issued by ZBIL is tabulated below.

| 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 |
|---|---|---|---|---|---|---|---|---|
| 28-May-2010 | 1.81 (at USD 2.58 each GDR) | 22.99 | HSBC Bank, Mumbai | 5,43,57,060 | The Bank of New York Mellon | Pan Asia Advisors Ltd. | EURAM Bank, Austria | Luxembourg Stock Exchange |

26. SEBI's Investigation 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.

27. Investigation further observed that an entity viz. Vintage FZE (now known as Alta Vista International FZE) had obtained a loan of USD 22.99 million by entering into a Loan Agreement dated May 12, 2010 with EURAM Bank to subscribe to the GDRs of ZBIL. The aforesaid Loan Agreement was signed by Mr. Arun R Panchariya 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 amount of facility:*

   *USD 22,993,036.38*

   (The amount is exactly the same amount raised by ZBIL 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 1,811,902 Luxembourg public offering and may only be transferred to EURAM account nr. 580013, Zenith Birla (India) Limited.*

   (The specific purpose of the loan/ draw down was for the purpose of subscribing to the GDR issue of ZBIL. *580013* is the client account number of ZBIL. Exactly, the amount of USD *22,993,036.38* was credited to the escrow account of ZBIL with EURAM Bank on the same date of loan being debited to the account of Vintage i.e., May 12, 2010 (**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. 580013 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.*

28. From the aforesaid Loan Agreement, I note that Vintage had availed a loan facility to the extent of USD 22.99 million from EURAM Bank to subscribe to the GDRs of ZBIL.

29. In this connection, from the certified true copy of ZBIL's Board Resolution dated March 03, 2010 provided by EURAM Bank, and copy of minutes of the board

meeting of ZBIL held on the same date provided by ZBIL to SEBI, it is observed that the following resolution was inter alia passed in the said meeting–

*16. CHANGE IN THE OPERATION OF BANK ACCOUNT WITH EURAM BANK*

"*RESOLVED THAT in supersession of all the earlier resolution passed in the connection with the opening of bank account 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, Shri. M.S. Arora, Managing Director and Shri. P.V.R. Murthy, Director be and are hereby jointly and severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking confirmation, declaration and other paper(s) from time to time as may be required by the Bank and to carry and affix, Common Seal of the company thereon, if and when so required.*

*"RESOLVED FURTHER THAT Shri M.S. Arora, Managing Director and Shri P.V.R. Murthy, Director, be and are hereby jointly and severally authorized to draw cheques and other documents, and to give instructions from time to time as may be necessary to the said Euram Bank or any of branch of Euram Bank, including the Offshore Branch, for the purpose of operation of and dealing with the said bank account and carry out other relevant and necessary transactions and generally to take all such steps and to do all such things as may be required from time to time on behalf of the company.*

*"RESOLVED FURTHER THAT the Bank be and is hereby authorized to use the funds so deposited in the aforesaid bank account as security in connection with loans if any as well as to enter into any Escrow Agreement or similar arrangements if and when so required*". (*Emphasis supplied*)

30. From the aforesaid minutes of the board meeting it is observed that the Board of Directors of ZBIL authorized, Shri P.V.R. Murthy (Noticee) and Shri M.S Arora to sign, execute, jointly and severally, any application, agreement and other paper(s) from time to time as may be required by EURAM Bank. For this purpose, Shri P.V.R. Murthy / Shri M.S Arora were inter alia authorized to carry and use the seal of ZBIL. 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.

31. From the said copy of the minutes of the meeting, it is observed that the Noticee along with other directors had attended the Board meeting dated March 3, 2010 and approved the aforementioned resolutions.

32. Further I note that, subsequently ZBIL has entered into a Pledge Agreement with EURAM Bank on May 12, 2010. The said Pledge Agreement was signed by Mr. P.V.R. Murthy on behalf of ZBIL, in the capacity of Director and Authorized Representative of ZBIL. The salient Clauses of the Pledge Agreement are inter alia as under:

    *1.* *Preamble*

    *By loan agreement K120510-005 (hereinafter referred to as the "Loan Agreement") dated 12 May 2010, the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahmadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates ("the Borrower") in the amount of USD 22,993,036.38. The Pledgor has received* *a copy of the Loan Agreement No. K120510-005 and acknowledges and agrees to its terms and conditions."*

*2. <u>Pledge</u>*

*2.1 In order to secure any and all obligations, Present and future, whether conditional or unconditional of the **<u>Borrower</u>** 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 **<u>Loan Agreement</u>** – including those limited as to condition or time or not yet due – irrespective of whether such claims have originated from the account relationship, from bills of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations") **<u>the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:</u>***

*2.1.1. all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount of $ USD 22,993,036.38 existing from time to time at present or hereafter on the **<u>securities account(s) no. 580013</u>** 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. 580013 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and all amounts credited at any particular time therein. The interest rate on* *the deposit in the amount of facility amount of the Loan Agreement will be fixed at 1.00% p.a.*

*(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. Realisation of the Pledge:*

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

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

*6.3 The Bank may realize the Pledge rather than accepting payments from the Borrower after maturity of the claim if the Bank has reason to believe that the Borrower's payments may be contestable."*

33. I note that the Pledge Agreement refers to the Loan Agreement dated May 12, 2010 between the borrower i.e. Vintage and EURAM Bank, whereby Vintage was granted a loan of USD 22,993,036.38, and it is stated that the Pledgor i.e. ZBIL has received a copy of the said Loan Agreement and acknowledges and agrees to its terms and conditions. By signing the Pledge Agreement, ZBIL 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. 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".*

34. Regarding the dates, it is noted that the Pledge Agreement and the Loan Agreement were both dated May 12, 2010. Further, I also note that Clause 6.1

of the Loan Agreement specifies that the Pledge Agreement was an integral part of the Loan Agreement.

35. 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 22,993,036.38 to subscribe to the GDRs of ZBIL. From the statement of Vintage's bank account and the escrow account for the GDR issue, it is observed that Vintage received the loan amount of USD 22,993,036.38 on May 12, 2010 and the same was then transferred to the escrow account of ZBIL. 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 ZBIL comprising 1.81 million GDRs amounting to USD 22.99 million, was subscribed by only one entity, i.e. Vintage. I further note that the amount was transferred to ZBIL's bank account held with EURAM Bank on May 27, 2010 and the same ZBIL's account was pledged with EURAM Bank under the Pledge Agreement. In view of this, it can further be noted that the GDR proceeds were pledged prior to realizing the same.

36. Vintage had repaid the loan to EURAM Bank in several installments from August 2010 to May 2012. It was further observed that only after Vintage repaid the loan installments, on same day or later date, equal/ less/more amount of money was transferred (barring six instances i.e. August 05, 2010, September 20-22, 2010, January 05, 2011 and December 14, 2012, when more money was transferred on account of availability of surplus money in ZBIL's account) from ZBIL's account to: i) ZBIL's bank account in India; and ii) Other entities abroad. Thus, the amount transferred from ZBILs account was dependent on the repayment of loan by Vintage. Details of transfer of GDR proceeds (along with

the interest earned on it) are tabulated below as Table A and details of repayment of loan by Vintage to EURAM Bank are tabulated below as Table B:

**TABLE – A**

| Date of transfer of funds | Amount of funds transferred from ZBIL's EURAM Bank a/c to ZBIL's bank account in India (USD) | Amount of funds transferred from ZBIL's EURAM Bank a/c to other entities (USD) |
|---|---|---|
| 05.08.2010 | 100,000.00 | |
| 06.08.2010 | 1,000,000.00 | |
| 10.08.2010 | 1,000,000.00 | |
| 13.08.2010 | 1,000,000.00 | |
| 18.08.2010 | 1,000,000.00 | |
| 23.08.2010 | 1,000,000.00 | |
| 25.08.2010 | 1,000,000.00 | |
| 27.08.2010 | 1,000,000.00 | |
| 30.08.2010 | 1,000,000.00 | |
| 20.09.2010 | 400,000.00 | |
| 21.09.2010 | | 10,496.00<br>EURAM Bank Asia Ltd. |
| 22.09.2010 | | 2,373.68<br>Singhania and Co. (payment of legal opinion) |

| Date of transfer of funds | Amount of funds transferred from ZBIL's EURAM Bank a/c to ZBIL's bank account in India (USD) | Amount of funds transferred from ZBIL's EURAM Bank a/c to other entities (USD) |
|---|---|---|
| 05.01.2011 | | 13,396.73<br>Al Jabha Legal Consultants Cultan Business Centre (Legal Services) |
| 14.12.2012 | 216,889.65 | |
| **Total** | **8,716,889.65** | **26,266.41** |

**(**ZBIL's EURAM bank a/c statement**)**

**<u>TABLE - B</u>**

| Date of transfer of funds | Amount repaid by Vintage (USD) | Amount of funds transferred from ZBIL's EURAM Bank a/c to:<br>1) ZBIL's bank account in India, and<br>2) other entities |
|---|---|---|
| 05.08.2010 | 103,000.00 | 100,000.00 |
| 06.08.2010 | 1,000,000.00 | 1,000,000.00 |
| 10.08.2010 | 1,000,000.00 | 1,000,000.00 |
| 13.08.2010 | 1,000,000.00 | 1,000,000.00 |
| 18.08.2010 | 1,000,000.00 | 1,000,000.00 |
| 23.08.2010 | 1,000,000.00 | 1,000,000.00 |
| 25.08.2010 | 1,000,000.00 | 1,000,000.00 |
| 27.08.2010 | 1,000,000.00 | 1,000,000.00 |

| Date of transfer of funds | Amount repaid by Vintage (USD) | Amount of funds transferred from ZBIL's EURAM Bank a/c to: 1) ZBIL's bank account in India, and 2) other entities |
|---|---|---|
| 30.08.2010 | 1,000,000.00 | 1,000,000.00 |
| 20.09.2010 | 413,000.00 | 400,000.00 |
| 21.09.2010 | | 10,496.00 |
| 22.09.2010 | | 2,373.68 |
| 05.01.2011 | 15,000.00 | 13,396.73 |
| 14.12.2012 | | 216,889.65 |
| **Total** | **8,531,000.00** | **8,743,156.06** |

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

37. From the above Table-A and Table-B above, it is observed that out of the GDR proceeds of USD 22.99 million (along with the interest earned on it), ZBIL transferred USD 8.72 million to its bank account in India and USD 0.03 million to certain entities situated abroad for payments and the amount transferred from ZBIL's EURAM Bank account was dependent on the repayment of the loan by Vintage. Vintage repaid the loan to the extent of USD 8.53 million and thereafter defaulted on the repayment of outstanding loan. On account of the loan default by Vintage, EURAM Bank adjusted outstanding loan amount to the extent of USD 14.50 million (includes interest on loan amount) from ZBIL's GDR proceeds.

38. From the details of fund transfer stated above, I observe that only after Vintage repaid loan instalments to EURAM Bank that ZBIL could make payments from

its account maintained with the same bank and such payments were exactly for the same amount or less amount except for adjustments on account of bank charges / interest earned by ZBIL. Therefore, it is evident that the amount transferred from ZBIL's EURAM Bank account was dependent on the repayment of the loan by Vintage to EURAM Bank. It also establishes that the purpose of the Pledge Agreement was to facilitate the subscription of GDR issue and securing the loan obtained by Vintage.

39. In the present matter, I note that the GDR subscription amount of USD 22.99 million was not available to ZBIL for utilization until the loan taken by Vintage for subscribing the GDRs was repaid to the EURAM Bank. I also note that after the subscription of GDR on May 28, 2010, Vintage repaid the loan amount to the extent of USD 8.53 million as on March 31, 2011 and as on March 31, 2012. Hence, only USD 8.53 million was at the disposal of ZBIL out of the total issue of GDR despite the GDRs of ZBIL being fully subscribed. Subsequently, the said GDR proceeds along with the interests accrued thereupon less bank charges was transferred by ZBIL. The outstanding loan amount of USD 14.46 million was defaulted by Vintage and had to be subsequently set off by the GDR proceeds of ZBIL pledged against the loan taken by Vintage.

40. The entire trail of funds as can be observed from the bank account statements of Vintage and ZBIL with EURAM Bank and the pattern of subsequent disbursements as already narrated above, when seen as a whole, strongly establishes collusion between Vintage and the company along with aforesaid Noticee with respect to the subscription of the said GDR issue of ZBIL. In this regard, I refer to the Hon'ble SAT Order dated July 14, 2006, in the case of *Ketan Parekh vs. SEBI* (Appeal no. 2/2004), wherein, Hon'ble SAT has observed that:

*"… in order to find out whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism, will depend upon the intention of the parties <u>which could be inferred from the attending circumstances of the cases, because direct evidence in such cases may not be available."</u>* [Emphasis supplied]

41. Thus, I note that in the above manner, the obligation of Vintage under the Loan Agreement was secured by ZBIL 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 ZBIL'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 and act of ZBIL 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* (Civil Appeal No. 10560/2013, AIR 2015 SC 2782) 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."*

42. In view of the above, I note that the scheme of arrangement of ZBIL, 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 ZBIL by pledging its GDR proceeds, seen along with the false and misleading corporate announcements made by ZBIL 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. (Issue of corporate announcements dealt in earlier order)

43. I also note that with regards to the subscription of GDR issues of certain other listed Indian companies through the aforesaid *modus operandi* viz. involving arrangement of Loan Agreement and Pledge Agreement, the Hon'ble Securities Appellate Tribunal ("SAT") in its Order dated October 25, 2016 in Appeal No. 126 of 2013 in the matter of *Pan Asia Advisors Limited vs. SEBI* had observed:

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

44. In view of the above observations, I note that the Noticee being the Director and Authorised Signatory of ZBIL while exercising his power executed pledge agreement with the EURAM Bank whereby it was stated that the amount shall be pledged against loan amount taken by Vintage for subscribing the GDR issue of ZBIL suggests that the Noticee has clearly allowed himself to be a part of the fraudulent scheme. Further, EURAM Bank, through the said pledge agreement, was also authorized to use the proceeds of GDR issue against any default made by Vintage of repayment of the said loan amount.

45. In this regard, the Noticee contended that, he was not at all involved in the day-to-day affairs/ business of the company and the company had Managing Director, CEO, CFO for the same. Noticee has always acted as per the instructions of the Board of Directors through the duly convened Board Meetings and opening of bank account with EURAM bank was similarly done. This contention may not be accepted as it is a dangerous proposition to contend that the director was acting on the direction of other directors of the company. It is settled principle that a director of company has fiduciary duty towards the company and hence while discharging his role as a director the interest of company should be the paramount consideration and should not be compromised at any cost. This responsibility cannot be transferred and becomes even more critical in case of Public Companies where number of shareholders / investors are huge and are more dependent on directors for efficient management of the company, as direct oversight is not feasible. The fiduciary capacity with which the Directors have to act enjoins upon them a duty to act on behalf of a company with utmost good faith, utmost care and skill and due diligence and in the interest of the company they represent.

46. The Board of Directors take decisions by way of passing resolutions in the board meetings on approval of majority of directors present in the said meeting. For the said purpose each director has been provided with the power to cast their vote. In the present case also the issue of GDR by ZBIL was approved by way of passing similar board resolution dated March 03, 2010 which was attended by Noticee. Here, it is also important to note that the Noticee in the instant case is also a Chartered Accountant, law graduate and MBA and possesses 45 years of experience as submitted through his reply. Hence, it is not prudent for such an experienced professional to act solely on the advice of other people specially where the Noticee is holding important and responsible position as director of a public listed company. Further, it is observed that the Noticee was also found to be involved in few other similar fraudulent GDR issues and was discharging responsibility of similar nature in those cases as well.

47. Here I would refer to the order of Hon'ble SAT in the matter of *Adi Cooper vs. SEBI* (Appeal no. 124 of 2019, DoD: November 05, 2019), where it was held that *"The contention of this appellant that he was not involved in the day-to-day running of the company cannot be accepted as he was found to be part of the resolution process of the company and his involvement in the issuance of the GDR proceeds."* Further for the purpose of determining the liability of the directors where a company is found to be in contravention of any of the provisions of SEBI Act or any rule, regulations framed therein, it is important to mention Section 27 of the SEBI Act, which states:

***27. Contravention by companies.***

*(1) …*

*(2) Notwithstanding anything contained in sub-section (1), <u>where an contravention under this Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.</u>* (emphasis supplied)

48. In this regard, I note that vide the earlier order, ZBIL has already been found to be in violation of various provisions of SEBI (PFUTP) Regulations and Securities Contract (Regulations) Act, 1956 with the same GDR issue that is examined in the present proceeding. Further, I will also refer to the order of Hon'ble Supreme Court, in the appeal of *N Narayanan v. Adjudicating Officer, SEBI* (Civil Appeals No. 4112-4113 of 2013) wherein it was observed that:

*"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."*

49. In view of the aforesaid, the contention of the Noticee that he was not at all involved in the day-to-day affairs/ business of the company and the company had Managing Director, CEO, CFO for the same and the Noticee had always acted as per the instructions of the Board of Directors may not be accepted as a ground to discharge him of his responsibility.

50. The Noticee has further contended that it has signed the said Board Resolution and Pledge Agreement on good faith trusting the professionals who had expertise in GDR issue. In this regard, I note that directors are bound by the maxim *delegates non-protest delegare* i.e. authority once delegated cannot be delegated again. Shareholders have appointed him because of their faith in his skill, competence and integrity and they may not have the same faith in another person. This issue came up before Hon'ble Supreme Court in the case of J*.K. Industries v. Chief Inspector of Factories* [1996] 6 SCC 665; Decided on September 25, 1996). Whereby it was held that the rule is, however, not that rigid. The Act or Articles of Association of the Company may make a delegation of functions to the extent to which it is authorized. Also, there are certain duties, which may, having regard to the exigencies of business, properly be left to some other officials. *A proper degree of delegation and division of responsibility is permissible but not a total abrogation of responsibility. A director might be in breach of duty if he left to others the matters to which the Board as a whole had to take responsibility. Directors are responsible for the management of the company and cannot divest themselves of their responsibility by delegating the whole management to agent and abstaining from all enquiries. He is the agent of the company except for matters to be dealt with by the company in general meeting and not of the other members of the Board.* [Emphasis Supplied]

51. The Noticee has also contended that Arun Panchariya and Pan Asia Advisors were main perpetrators and the company was misguided by them to sign certain papers/ documents. In this regard, I note that the pledge agreement signed by the Noticee explicitly had the mention of Vintage FZE (where Arun Panchariya was the Managing Director and sole beneficial owner) being the beneficiary of the said agreement and also in the pledge agreement the Noticee acknowledged receiving copy of Loan Agreement signed between EURAM Bank and Vintage for the sole purpose of subscribing the said GDR issue of ZBIL. Considering that everything was on paper and transparent hence the Noticee had prior information of the entire scheme. Further, nothing has been brought on record to show that any action has been taken against Arun Panchariya or Vintage for the alleged fraud by the company till date. Hence, the contentions are without any merit and consequently denied.

52. In the end, 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 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".*

53. I note that the Hon'ble Supreme Court in the same judgment, has also observed 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, all these provisions get attracted in a situation....".*

54. In view of the above, I hold that the GDR issue would not have been subscribed had ZBIL not given any such security towards the loan taken by Vintage and the entire scheme involving entering into pledge agreement, making corporate announcement that the GDRs were subscribed without disclosing the arrangement to the investors resulted in publication of misleading news to the stock exchanges which contained information in a distorted manner so as to influence the decision of the investors by creating a make belief picture that GDR issue was genuinely subscribed (violations regarding misleading disclosures against the Company has already been dealt in the earlier order). Hence, the Noticee, being director and authorized signatory of ZBIL, has acted fraudulently alongwith the Company, and is in breach of the provisions of 12A(a), (b), (c) of SEBI Act, 1992 read with regulation 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations, 2003.

**Issue II*: Does the violation, if established, attract monetary penalty under Section 15HA of the SEBI Act, 1992?***

55. 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."*

56. In view of the above, since the charge of 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 Noticee stands established, it makes him liable for imposition of penalty under Section 15HA of the SEBI Act, 1992.

57. 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:

**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 of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher."*

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

58. 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.*

59. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that no quantifiable figures or data is available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default of the Noticee. However, from the documents made available, it is noted that in few other GDR issues also the Noticee was found to be involved in the similar role and actions have been taken against the same. In the present case, I note that ZBIL had issued 1.81 million GDRs worth USD 22.99 million to Vintage on May 08, 2010. However, it had pledged the entire GDR proceeds as collateral against the loan availed by Vintage from EURAM Bank. It is observed that the GDR issue would not have been subscribed had ZBIL not given such security towards the loan taken by Vintage through the pledge agreement executed by the Noticee. Such facilitation of the GDR issue and its subscription was not known to the public and investors. Therefore, the entire scheme of issuance of GDRs was fraudulent which aided and abetted *inter alia* by the Noticee. Also, the outstanding loan amount of USD 14.46 million was defaulted by Vintage and had to be subsequently set off by the GDR proceeds of ZBIL pledged against the loan taken by Vintage and was never received by ZBIL. Further, the Noticee's submission on the quantum of penalty referring the orders of Hon'ble SAT and SEBI whereby the amount of penalty was reduced may not applicable in the present case as here the Noticee was the Director as well as signatory to the pledge agreement unlike the signatory of the Board resolution

only as mentioned in the referred order. Had the pledge agreement was not signed and the terms and conditions mentioned therein were not accepted by the Noticee, the said GDR issue would not have been subscribed and hence the Noticee played vital role in the entire fraudulent scheme.

**ORDER**

60. 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 Noticee:

| **Noticee** | **Violations and Penal Provision** | **Penalty (Rs.)** |
|---|---|---|
| Mr. P. V. R. Murthy (PAN: ABRPM1271B) | 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 Only)** |

61. 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**

62. The Notice 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

63. 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.

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

**Place: Mumbai** **G. Ramar**
**Date: January 31, 2023** **Adjudicating Officer**