<u>BEFORE THE ADJUDICATING OFFICER</u>

<u>SECURITIES AND EXCHANGE BOARD OF INDIA</u>

[**ADJUDICATION ORDER NO: Order/GR/BM/2022-23/18221-18226]**

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 AND SECTION 23–I OF SECURITIES CONTRACT (REGULATION) ACT, 1956 (HEREINAFTER REFERRED TO "SCRA") AND RULE 5 OF SECURITIES CONTRACT (REGULATIONS) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of:

Noticee No.	Noticee Name	PAN
1.	Kaashyap Technologies Ltd.	AAACK4451A
2.	Shri. A. Venkatramani	AABPV3960F
3.	Shri. A. Ganesan	AACPG8259M
4.	Shri R. Dakshinamurthy	AAGPD2888M
5.	Shri. A Sivakumaran	AIYPS4944H
6.	Shri. R. Gopalan	DIN: 00018966

In the matter of disclosures by Kaashyap Technologies Ltd. in respect of its GDR issue

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

BACKGROUND IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigation into the alleged irregularities in the **Global Depository Receipts** (herein after referred to as **"GDRs"**) issued by Kaashyap Technologies Ltd., (hereinafter referred to as **"Company" / "KTL"**) during the period from December 01, 2007 to January 31, 2008 (hereinafter referred to as **"Investigation Period"**).

2. KTL is a company whose shares are listed on BSE Ltd. The investigation, *prima facie,* revealed that KTL had issued 4,92,500 GDRs (amounting to US $16.50 million), on December 27, 2007 equivalent to 16,25,25,000 equity shares of Re. 1 each issued at a price of Rs. 4 per share, and the said issue was subscribed by one entity viz. Clifford Capital Partners A.G.S.A (formerly Seazun Ltd.) (hereinafter referred to as **"Clifford").** It was observed that the subscription amount was paid by Clifford by obtaining a loan from Banco Efisa, S.F.E., S. A. (**"Banco"**) by entering into Loan Agreement dated October 19, 2007 with Banco.

3. Further, on examination of Annual Report of KTL for FY 2007-08, it was observed that the Board Meetings were held on nineteen dates and directors namely Mr. A. Venkatramani (Noticee No. 2), Mr. A. Ganesan (Noticee No. 3), Mr. R. Dakshinamurthy (Noticee No. 4) and Mr. A Sivakumaran (Noticee No. 5) had attended all board meetings held during FY 2007-08 and Mr. R. Gopalan (Noticee No. 6) had attended all the board meetings (11) from the date of his appointment (i.e. October 04, 2007). From the above, investigation observed that directors namely Mr. A. Venkatramani (Noticee No. 2), Mr. A. Ganesan (Noticee No. 3), Mr. R. Dakshinamurthy (Noticee No. 4), Mr. A Sivakumaran (Noticee No. 5) and Mr. R. Gopalan (Noticee No. 6) had attended the Board meeting dated October 04, 2007

and authorised Mr. A. Venkatramani (Noticee No. 2) to sign the agreement with Banco for the purpose of receiving subscription money in respect of the aforesaid GDR issue of KTL and also for using the funds deposited in the said bank account as security in connection with loans, if any.

4. It was observed that the subscription amount was paid by Clifford by obtaining a loan from Banco by entering into a Loan Agreement dated October 19, 2007 with Banco. Thereafter, it was observed that Mr. A. Venkatramani (Noticee No. 2) had signed and executed the Account Charge Agreement dated October 23, 2007 with Banco pledging GDR proceeds as collateral against the loan availed by Clifford for subscribing to GDRs of KTL, thus securing Clifford's loan. Therefore, it was alleged that the scheme of issuance of GDRs was fraudulent as the company itself were providing funds for the subscription of GDRs to Clifford and the individuals named above i.e. the Directors of KTL had acted as parties to the fraudulent scheme.

5. It was also observed that on default on loan repayment of USD 10.39 million by Clifford the same amount was adjusted by Banco from the GDR proceeds of KTL as it had pledged GDR proceeds against the said loan.

6. During investigation it was also observed that the aforesaid arrangement (viz. Loan Agreement and Account Charge Agreement) was not disclosed to the public. Thus, it was alleged that KTL did not inform stock exchanges as required under clause 36(7) Listing Agreement with regard to 1) Pledge Agreement entered into with Banco for subscription of GDRs; 2) Delisting of GDRs on Luxemburg Stock Exchange; 3) Termination of GDR facility by Global Depository i.e. Bank of New York, USA, which were material events as well as price sensitive information that could have impacted the price of the scrip. Further, it was also observed that KTL

did not follow Accounting Standard 29 (AS 29) since it did not disclose the amount lying in deposit account with Banco as contingent liability in its Financial statements for the FY 2007-08, the knowledge of which might influence the decision of the user of the financial statements.

7. SEBI had, therefore, initiated adjudication proceedings inter alia against Noticee No. 1, Kaashyap Technologies Ltd., (KTL) under Section 15HA of the Securities and Exchange Board of India act, 1992 and Section 23 E of the SCRA, 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 i.e. Mr. A. Venkatramani, Mr. A. Ganesan, Mr. R. Dakshinamurthy, Mr. A Sivakumaran and Mr. R. Gopalan, respectively, 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"**) for acting as party to the fraudulent scheme.

APPOINTMENT OF THE ADJUDICATING OFFICER

8. 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 10, 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 Noticees. Subsequently, Shri Satya Ranjan Prasad was appointed as the Adjudicating Officer in the matter in 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 17, 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

9. The Show Cause Notice (hereinafter referred to as **"SCN"**) dated June 29, 2018 was issued by the erstwhile AO, Shri Biju S. to the Noticees in terms of Section 15-I of the SEBI Act, 1992 and Section 23 E of the SCRA read with Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**") and Rule 4 of Securities Contracts (Regulation) (Procedure for holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as "**SCR Adjudication Rules**") to show cause as to why an enquiry should not be initiated and penalty be not imposed under Section 15HA of the SEBI Act 1992 and/or under section 23E of the SCRA as applicable for the alleged violations specified in the SCNs.

10. The said SCNs issued, by erstwhile AO, to Noticees and were duly served through speed post except Mr. Mr. A. Venkatramani (Noticee No. 2) and Mr. A. Ganesan (Noticee No. 3) as it returned undelivered. Post transfer of present case to the undersigned, Noticee No. 2 and 3 were served the SCN through e-mail dated June 24 and June 21, 2022 respectively.

11. Further, the Hearing Notice dated June 21, 2022 for the personal hearing scheduled on July 04, 2022 for Noticee No. 1 and 3 to 6 and Hearing Notice dated June 24, 2022 for the personal hearing scheduled on July 12, 2022 for Noticee No. 2. Authorised Representatives for all the Noticees appeared before the AO on July 04, 2022 and sought adjournment as well as inspection of documents relied upon in the present matter. Accordingly, inspection of documents was provided on April 05, 2022, which was undertaken by the Authorised Representative of Noticees. At the time of inspection, copy of Investigation Report along with Annexures was requested which was accordingly provided.

12. Subsequent to inspection the Noticees filed their additional replies dated July 18, 2022 to the SCN. Hearing Notice dated July 18, 2022 was served to the Authorised Representatives of the Noticees whereby opportunity of personal hearing was provided to all the Noticees on July 20, 2022, which was duly attended by the Authorised Representative of the Noticees where they reiterated the submissions made by them in their replies.

The summary of the replies submitted by Noticees are as under:

a. All the Noticees have submitted that they were acting on the advice of their Lead Manager for the said GDR issue i.e. Bremer Bugmann Seiler capital Partners Ltd.

b. There is an inordinate and unexplained delay of 12 years in the issuance of SCN as it was issued in 2018 and the GDR of KTL were issued in 2007.

c. The shareholders of the company were at all times aware of all material particulars regarding the GDR issuance.

13. 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

14. Considering the above facts, in the present proceedings, the examination has been done with respect to the allegations against the Noticees taking into consideration of their replies to the SCN and the documents / material available on record. The issues that arise for consideration in the present case are:

I. Whether the Noticees in light of their role in GDRs issued by KTL, 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 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, 1992 and Section 23E of SCRA, as applicable?

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

OBSERVATIONS AND FINDINGS

15. 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.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

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

(k) "disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities;"

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

SCRA

Section 21

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

Preliminary issue raised by Noticees

16. Before proceeding with the merits of the matter, it would be appropriate to first deal with the preliminary contention raised by Noticee No. 1. At the outset, the said Noticee has contended that the instant proceedings deserve to be dropped on account of delay as the instant proceedings have been initiated after a lapse of more than twelve (12) years from the date of the GDR issuance, hence have caused prejudices against them as they cannot defend themselves effectively. 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................"

17. In view of the above, I am inclined to reject the contention raised by the above mentioned Noticee 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 issuance and disclosures using similar tactics and SEBI has been taking actions against the said companies. Having dealt with the preliminary issue I will now proceed with the key issue.

Issue I: Whether the Noticees in light of their role in GDRs issued by KTL, 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 36(7) and 50 of Listing Agreement, as applicable?

18. Between 2007 and 2009, KTL came out with four GDR issues. In the instant case the issue dated December 27, 2007 is being investigated for various irregularities. From the material available on record, I note that KTL had issued 4,92,500 GDRs (amounting to approx. USD 16.50 million) on December 27, 2007, equivalent to 16,25,25,000 equity shares having par value of Re.1 each. Summary of the aforesaid GDRs issued by KTL, is tabulated below:

GDR issue date	No. of GDRs Issued	Capital raised (US$ mn.)	Local custodian	No. of equity shares underlying each GDR	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited
27-Dec-2007	4,92,500	16.50	ICICI Bank Ltd., Mumbai	330 equity shares of face value of ₹1/- (issued at a price of ₹4/- per share)	The Bank of New Y	Bremer Bugmann Seiler Partners Ltd, Switzerland	Banco Efisa S.A. Lisbon

19. SEBI Investigation observed that subscription to the GDR was obtained through a loan agreement as well as an account charge 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.

20. The Board of KTL passed a resolution in its meeting on October 04, 2007 for opening of Bank account with Banco and authorizing Banco Bank to use the GDR proceeds as security against loan. Further, the board of directors of KTL had authorised Mr. A. Venkatramani (CMD) (Noticee No. 2) to sign, execute, any application/ agreement and other paper(s) from time to time as may be required by Banco. On the basis of authorisation given by the Board, Mr. A. Venkatramani (CMD) (Noticee No. 2) signed the agreement which acted as a security to the loan availed by Clifford for subscription of GDRs.

21. The relevant extracts of the resolution passed in the aforesaid meeting of the Board of KTL (Noticee No. 1) are as under:

"***RESOLVED THAT*** *the bank account be kept opened with Banco Efisa S.A. ("the Bank") or any branch of Banco Efisa S.A., including the Offshore Branch, for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of USD 16.5 million of the Company.*

RESOLVED FURTHER THAT Mr. A. VENKATRAMANI*, Chairman and Managing Director, of the company be and is hereby authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time as may be required by the Bank, if and when so required.*

RESOLVED FURTHER THAT Mr. A.VENKATRAMANI*, Chairman and Managing Director, be and is hereby authorized to draw cheques and other documents, and* *to give instructions from time to time as may be necessary to the said Banco Efisa S.A. or any of branch of Banco Efisa S.A, including the Offshore Branch, for the purpose of operation of and dealing with the said bank account and carry out other relevant and necessary transactions and generally to take all such steps and to do all such things as may be required from time to time on behalf of the Company.*

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

22. Investigations further observed that an entity viz. Clifford had obtained a loan of USD 16.50 million by entering into a Loan Agreement dated October 19, 2007, with Banco to subscribe to the GDRs of KTL. The agreement was signed by Mr. Samuel Ernest Hurley on behalf of M/s. Corporate & Chancery Group Ltd. (Management Company of Clifford). The relevant extracts of the credit agreement are as under:

*"**Facility**- Subject to the terms of this agreement, the bank agrees to make available to the borrower a Dollar term loan facility in the maximum principal amount of upto $16,500,000.*

***Purpose-** The borrower shall use the proceeds of the advance to subscribe for global depository receipts to the value of up to $16,500,000 issued by KTL on the terms of the Listing particulars to be delivered to the Luxembourg Stock Exchange."*

23. From the aforesaid Loan Agreement, I note that Clifford had availed a loan facility to the extent of USD 16.50 million from Banco to subscribe to the GDRs of KTL.

24. An account charge agreement dated October 23, 2007 was signed between KTL (Noticee No. 1) and Banco. The aforesaid agreement was signed by Mr. A. Venkatramani (Noticee No. 2) and the genuineness of signature has been certified by a notary public. The account charge agreement inter-alia states the following:

1. ***Loan agreement**: Loan agreement means the Loan agreement signed between Clifford Capital (as borrower) and the Bank dated on or around the date of this agreement by which the bank agreed to lend to Clifford Capital the maximum amount of up to US $16,500,000.*

2. ***Account Charge:***
*Subject to the terms of this agreement, Kaashyap deposited in its designated account with bank (hereinafter the Account) an amount not exceeding US $16,500,000 as security for all the obligations of Clifford Capital under the Loan Agreement (hereinafter the **Secured Obligations**) and with full title guarantee hereby assigns to and charges by way of first fixed charge in favour of the Bank all the rights, title, interest and benefit in and to the account as well as the moneys from time to time standing to the credit thereof and all interest from time to time payable in respect thereof. Such assignment and charge shall be a continuing security for the due and punctual payment and discharge of the secured obligations.*

<u>Upon payment of all or part of the amounts due under the Loan Agreement, Kaashyap may withdraw from the account the equivalent amount.</u>

Upon payment and final discharge in full of all the secured obligations, this agreement and the rights and obligations of the parties shall automatically cease and terminate and the Bank shall, at the request of Kaashyap, release the deposit made in the account.

Kaashyap covenants with the Bank that it will on demand pay and discharge the secured obligations when due to the bank.

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

Kaashyap hereby irrevocably appoints by way of security the Bank as the attorney of Kaashyap with full power in the name and on behalf of Kaashyap to sign, seal and deliver any deed, assurance, instrument or act in order to perfect this charge and at any time after an event of default by Kaashyap to sign, seal and deliver any deed assurance, instrument or act which may be required for the purpose of exercising fully and effectively all or any of the powers hereby conferred to the Bank to take all necessary action whether in the nature of legal proceedings or otherwise to recover any moneys which may be held in the Account and to give valid receipts for payment of such moneys and also for the purpose of enforcement and of the security hereby created.

Kaashyap hereby warrants and declares that any and all such deeds, instruments and documents executed on its behalf by or on behalf of the Bank by virtue of this Agreement shall be as good, valid and effective, to all intents and purposes whatsoever, as if the same had been duly and properly executed by Kaashyap itself and KTL hereby undertakes to ratify and confirm all such deeds, instruments and documents lawfully executed by virtue of the authority and power hereby conferred.

It is further mentioned that each notice or other communication to be given under this agreement shall be given in writing in English and unless otherwise provided, shall be made by letter or Fax to:

Kaashyap

New No 33/8, 2nd Floor, CP Ramaswamy Road, Alwarpet, Chennai-18.

Attention: Mr. Annaswamy Venkatramani

25. The aforesaid account charge against designated bank account of KTL (Noticee No. 1) with Banco was registered with Companies House (United Kingdom's registrar of companies) and description of the charge is mentioned as follows:

a. Account charge (the Charge) made between the company and Banco Efisa, S.F.E, S.A(the bank)

b. <u>All obligations of Clifford Capital Partners A.G.S.A (a company incorporated in the British Virgin Islands with number 400452) under a loan agreement dated 19 October 2007 with the Bank (the Secured Obligations)</u> (emphasis supplied)

c. *As continuing security for the due and punctual payment and discharge of the Secured Obligations, the company with full title guarantee hereby assigns to and charges by way of first fixed charge in favour of, the bank all the rights, title and interest in and to its designated account with the bank (the Account), all monies standing to the credit of the Account from time to time and all interest payable thereon (together the Deposit).*

d. *<u>The company covenants not to purport to withdraw the Deposit or any part thereof or sell, assign, mortgage, charge or otherwise encumber, dispose of or deal with or grant or permit third party rights to arise over or against all or any part of the Deposit or attempt or agree so to do.</u>*

26. As observed from above, Clifford had entered into credit agreement dated October 19, 2007 with Banco for subscription of GDRs of KTL (Noticee No. 1) according to which Clifford was to be provided a loan only for subscription of GDRs of KTL (Noticee No. 1).

27. Subsequently, I note that, an account charge agreement was executed between KTL (Noticee No. 1) and Banco on October 23, 2007, signed by Mr. A. Venkatramani (Noticee No. 2) on behalf of KTL, according to which KTL (Noticee No. 1) shall deposit in its designated account with Banco an amount not exceeding loan availed by Clifford for subscription of GDRs of KTL (Noticee No. 1) as security for all the obligations of Clifford under the Credit Agreement (signed between Banco and Clifford). It was also observed that only upon payment of all or part of the amounts due under the Credit Agreement, KTL (Noticee No. 1) could withdraw an equivalent amount from the bank account with Banco.

28. In view of the above, it is observed that KTL (Noticee No. 1) pledged GDR proceeds to secure the rights of Banco against the loan given to Clifford for

subscription to GDR issue (as mentioned in Credit Agreement). The Account Charge agreement specifically mentions the loan amount provided to Clifford.

29. From the above, investigation observed that the account charge agreement (entered into between KTL and Banco) was an integral part of Credit agreement signed between Clifford and Banco. These agreements enabled Clifford to avail a loan of US $16.50 million from Banco to subscribe GDRs of KTL (Noticee No. 1). The GDR issue would not have been subscribed had the company not given any such security towards the loan taken by the Clifford (purpose of loan was to subscribe GDRs of KTL). From the above I note that the GDR issue of KTL for December 27, 2007, Clifford was the sole subscriber for the entire $16.50mn worth of issue. However, during investigation it was observed that vide letter dated June 10, 2015, KTL provided list of subscribers of its GDR issued on December 27, 2007:

Sl. No.	**Name of the GDR subscriber**	**Number of GDRs subscribed**
1	Geolog S.A	1,05,000
2	Aguanave Limited	1,40,000
3	Animar Limited Miuel Bombarda	1,50,000
4	Zorbex Limited	97,500
	TOTAL	**4,92,500**

30. Further, the company reported to the stock exchange on December 28, 2007 that:

"*a meeting of the Committee of Board of Directors of the Company was held on December 27, 2007, to consider and allot Global Depository Receipts (GDRs) aggregating to US$ 1,64,98,750 (app. 16.5 Million US$). The Committee approved the allotment of 4,92,500 GDRs of US$ 33.50 each amounting to US$ 1,64,98,750* *representing 16,25,25,000 equity shares of Rs. 1 each issued at a price of Rs. 4 per share (including Rs. 3 premium per share)."*

31. The aforesaid arrangement about account charge agreement / collateral security was not disclosed to the stock exchange which contained information in a distorted manner and was primarily meant to mislead the investors that the GDR was fully subscribed whereas the GDR issue was supported by the company itself. The terms of the registration of the account charge agreement with Companies House, as referred to in para 25 above, also refers to provide security to all obligations of Clifford under the loan agreement dated October 19, 2007 with the Bank (i.e. Banco). Therefore, the entire scheme of issuance of GDRs was found to be fraudulent. In view of the above, Noticee no. 1 is alleged to have violated Section 12A(a), (b), and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4(1), 4(2)(f), (k), and (r) of SEBI (PFUTP) Regulations, 2003.

<u>Realisation of GDR Proceeds:</u>

32. Investigation has observed that KTL (Noticee No. 1) raised funds to GDR Issue in four tranches i.e. dated May 25, 2007, July 02, 2007, December 27, 2007 and October 09, 2007. It was observed that GDR proceeds of the first three issues (amounting to US $25 million) were credited to KTL's bank account (account no. 6312955.15.001) with Banco and fourth GDR Issue was for acquisition of 49% stake in Logistics Solutions Inc, USA (other than cash consideration). Details of receipt of GDR proceeds in the KTL's bank a/c with Banco is as given below:

GDR Issue r	GDR Issue size (US $)	Date of credit of GDR proceeds	Amount credited to KTL Bank a/c (US$)
I	6,000,000	25-May-07	5,999,988

II	2,500,000	29-Jun-07	2,499,956
III	16,500,000	27-Dec-07	16,500,000
Total			**24,999,944**

33. Details of repatriation/ utilisation of GDR proceeds of US$ 25 million (including interest) are as follows:

Date of debit in KTL's account with Banco	USD debited in KTL's account with Banco	Date of credit to KTL's Indian bank account	Rupees credited to KTL's Indian Bank account	Remarks
15/06/2007	8,00,000	18/06/2007	3,24,90,558	Received in KTL's Indian bank account with HDFC
21/06/2007	3,45,000	22/06/2007	1,40,12,458	
29/06/2007	5,00,000	5&6/07/2007	2,02,01,066	
20/07/2007	5,00,000	24/07/2007	2,00,74,825	
16/08/2007	75,000	17/08/2007	31,09,527	
28/08/2007	1,50,000	29/08/2007	61,75,538	
31/08/2007	1,25,000	05/09/2007	51,11,048	
05/09/2007	2,00,000	07/09/2007	81,50,553	
10/09/2007	1,05,000	11/09/2007	42,52,112	
11/09/2007	1,40,000	13/09/2007	56,46,168	
14/09/2007	3,00,000	17/09/2007	1,20,88,569	
18/09/2007	5,50,000	20 & 21/09/2007	2,18,76,090	
25/09/2007	1,85,000	26/09/2007	73,22,745	
28/09/2007	2,50,000	05/10/2007	98,53,601	
28/09/2007	2,00,000	01/10/2007	79,18,594	
09/10/2007	3,00,000	10/10/2007	1,17,73,607	
16/10/2007	1,75,000	17/10/2007	69,37,342	
29/10/2007	75,000	30/10/2007	29,52,102	
19/11/2007	50,000	20/11/2007	19,63,723	
23/11/2007	1,05,000	26/11/2007	41,50,296	
27/11/2007	63,000	28/11/2007	24,97,802	
28/11/2007	45,000	29/11/2007	17,82,512	
29/11/2007	40,000	30/11/2007	15,83,912	
03/12/2007	80,000	04/12/2007	31,45,803	
04/12/2007	1,50,000	05/12/2007	59,02,603	
05/12/2007	96,000	06/12/2007	37,76,203	
06/12/2007	1,65,000	07/12/2007	64,93,003	
07/12/2007	1,65,000	10/12/2007	64,87,229	
10/12/2007	90,000	11/12/2007	35,36,505	
11/12/2007	1,00,000	12/12/2007	39,30,104	
12/12/2007	1,00,000	13/12/2007	39,27,105	
13/12/2007	1,10,000	14/12/2007	43,23,804	
14/12/2007	95,000	17/12/2007	37,30,680	
18/12/2007	3,00,000	19/12/2007	1,18,24,601	
19/12/2007	1,30,000	20/12/2007	51,23,850	
20/12/2007	75,000	24/12/2007	29,55,850	
28/12/2007	3,50,000	31/12/2007	1,37,60,427	
28/12/2007	2,00,000	31/12/2007	78,62,604	
31/12/2007	2,25,000	02/01/2008	88,41,105	
31/12/2007	2,00,000	31/12/2007	78,62,604	
03/01/2008	2,25,000	02/01/2008	88,41,105	
03/01/2008	1,75,000	04/01/2008	68,62,108	
03/01/2008	1,75,000	04/01/2008	68,62,108	
04/01/2008	1,75,000	07/01/2008	68,63,857	
07/01/2008	2,50,000	08/01/2008	97,86,423	
08/01/2008	11,60,000	09/01/2008	4,55,05,407	
18/01/2008	1,35,000	22/01/2008	53,52,075	
23/01/2008	4,50,000	24/01/2008	1,77,36,750	
04/02/2008	3,00,000	05/02/2008	1,18,23,000	
07/02/2008	2,00,000	08/02/2008	78,88,000	
11/02/2008	3,00,000	06/02/2008	1,18,29,000	
13/02/2008	4,00,000	13/02/2008	1,58,28,000	
14/02/2008	6,00,000	15/02/2008	2,37,48,000	
20/02/2008	10,00,000	21/02/2008	4,00,30,000	
28/02/2008	13,00,000	03/03/2008	5,21,30,000	

Date of debit in KTL's account with Banco	USD debited in KTL's account with Banco	Date of credit to KTL's Indian bank account	Rupees credited to KTL's Indian Bank account	Remarks
08/04/2008	4,00,000	09/04/2008	1,59,86,000	
28/04/2008	1,60,000	02/05/2008	64,83,685	
07/07/2008	1,00,000	08/07/2008	43,30,500	
23/07/2008	75,000	28/07/2008	31,59,750	
24/07/2008	70,000	25/07/2008	29,51,900	
29/07/2008	1,00,000	30/07/2008	42,41,000	
31/07/2008	1,00,000	01/08/2008	42,35,000	
06/08/2008	2,50,000	07/08/2008	1,04,70,000	
12/08/2008	2,70,000	13/08/2008	1,14,80,400	
19/08/2008	1,00,000	20/08/2008	43,65,000	
30/10/2008	75,000	31/10/2008	36,72,750	
15/12/2008	18,000	16/12/2008	8,59,410	
22/04/2009	30,000	27/04/2009	15,01,500	
05/05/2009	35,000	08/05/2009	17,20,950	
07/05/2009	11,000	12/05/2009	5,44,830	
13/05/2009	18,000	18/05/2009	8,66,031	
15/05/2009	50,000	19/05/2009	23,89,000	
21/05/2009	50,000	26/05/2009	23,68,000	
28/05/2009	50,000	29/05/2009	23,67,500	
SUB TOTAL (A)	**1,67,16,000**		**67,04,87,868**	
06/02/2009	1,03,45,000	Repayment of loan of Clifford		
06/02/2009	32,309			
06/02/2009	10,345			
SUB TOTAL (B)	**1,03,87,654**			

34. Out of GDR proceeds raised through three issues (including interest accruals), investigation observed that an amount of US $16.72 million (Rs.67.04 crore) was received into KTL's Indian Bank account with HDFC having account no: 01412050000266 during the period June 15, 2007 and May 28, 2009.

35. Further, investigation also observed from KTL's deposit account (a/c no: 631295525005) with Banco that an amount of US $10.345 million was transferred to its current account with Banco (i.e. a/c no: 6312955.15.001) on February 06, 2009 and there was no balance lying in the deposit account as on February 06, 2009. It was observed that an amount of US $ 10.39 million (principal of US$ 10,345,000 + Interest of US$ 32.309.27 + prepayment fee of US$ 10,345) was transferred to Clifford from KTL's current account with Banco on February 06, 2009.

36. From the above, it was observed that an amount of US $10.39 million from the GDR proceeds was utilised for repayment of the loan of Clifford. Considering the fact that Clifford was the sole subscriber to the GDR issue, GDR proceeds to

the extent of US $10.39 million was used for repayment of loan of Clifford. Thereby, I note that GDRs to the extent of US $10.39 million were issued without consideration to Clifford at the cost of other investors.

37. 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."

38. In the present matter, I note that the GDR subscription amount of USD 16.50 million was not available to KTL for utilization until the loan taken by Clifford for subscribing to the GDRs was repaid to the Banco Bank. I also note that after the subscription of GDR on December 27, 2007, the amount raised from the issue was not completely transferred to India but was observed to be transferred in patches. It was only in 2009 when all the amount was transferred to KTL's bank account in India and can be utilized by the company. Hence, it appears that only when Clifford repaid a sum of money, KTL was able to transfer a similar sum to its bank accounts in India and was able to use the same for any other purpose, as the charge on the KTL's Banco account was removed to that extent, as per the account

charge agreement. Therefore, it is apparent that the amount transferred from KTL's Banco Bank Account was dependent on the repayment of the loan by Clifford.

39. From the documents available on record, it is observed that the GDRs were subscribed by one entity only, viz. Clifford. I also note that the Account Charge Agreement dated October 23, 2007, which was specifically signed by the authorized representative of KTL makes reference to the loan agreement signed between Clifford and Banco. The same also clearly shows that KTL was aware that the subscriber to the GDR issue was just Clifford. Such actions also indicate *mala fide* intention on the part of KTL.

40. 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....".*

41. It is therefore, the aforementioned act of KTL 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*** cited above 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 KTL, in allotting GDR issue to only one entity i.e. Clifford which subscribed the GDR issue by obtaining loan from Banco and the same was again secured by the KTL 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. Hence, KTL (Noticee no. 1) has violated the provisions of sections 12A (a),(b) and (c) of SEBI Act, 1992 read with regulations 3(a), (b), (c), (d), 4(1), 4(2) (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003.

43. On perusal of the corporate announcement made by KTL to BSE during the period January 2007 to December 2009, it was observed that KTL did not inform BSE with regard to, **a)** outcome of board meeting dated October 04, 2007, **b)** account charge agreement dated October 23, 2007 entered into with Banco for subscription of GDRs and **c)** transfer of an amount of US$10.387 million (including interest and prepayment fees) on February 06, 2009, towards repayment of the loan taken by Clifford for subscription of GDRs of KTL. The aforementioned three events were price sensitive information and could have impacted the price of the scrip 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 KTL had itself facilitated subscription of its GDR issue wherein the subscriber (Clifford) obtained loan from Banco for subscribing the GDR issue of KTL and KTL secured that loan by pledging the GDR proceeds with the Banco. Hence, KTL did not comply with clause 36(7) of the Listing Agreement.

Clause 50 of the Listing Agreement reads as follows:

"The company will mandatorily comply with all the Accounting Standards issued by Institute of Chartered Accountants of India (ICAI) from time to time."

AS 29 – 'Provisions, Contingent liabilities and Contingent Assets' inter-alia reads as follows:

"*10.4 A contingent liability is:*

a) *a possible obligation that arises from past events and the existence of which will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the enterprise; or*

b) *a present obligation that arises from past events but is not recognised because:*

i. it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation;

ii. a reliable estimate of the amount of the obligation cannot be made.

"27. A contingent liability is disclosed, as required by paragraph 68, unless the possibility of an outflow of resources embodying economic benefits is remote."

"68. Unless the possibility of any outflow in settlement is remote, an enterprise should disclose for each class of contingent liability at the balance sheet date a brief description of the nature of the contingent liability and, where practicable:

a) an estimate of its financial effect, measured under paragraphs 35-45

b) an indication of the uncertainties relating to any outflow; and

c) the possibility of any reimbursement."

"71. Where any of the information required by paragraph 68 is not disclosed because it is not practicable to do so, that fact should be stated."

AS- 1– Disclosure of Accounting Policies–*deals with the disclosure of significant accounting policies followed in preparing and presenting financial statements.AS -1 inter-alia states the following:*

"Considerations in the Selection of Accounting Policies

16. The primary consideration in the selection of accounting policies by an enterprise is that the financial statements prepared and presented on the basis of such accounting policies should represent a true and fair view of the state of affairs of the enterprise as at the balance sheet date and of the profit or loss for the period ended on that date.

17. *For* this purpose, the major considerations governing the selection and application of accounting policies are:—

a) Prudence

In view of the uncertainty attached to future events, profits are not anticipated but recognized only when realised though not necessarily in cash. Provision is made for all known liabilities and losses even though the amount cannot be determined with certainty and represents only a best estimate in the light of available information.

b) Substance over Form

The accounting treatment and presentation in financial statements of transactions and events should be governed by their substance and not merely by the legal form.

c) Materiality

Financial statements should disclose all "material" items, i.e. items the knowledge of which might influence the decisions of the user of the financial Statements."

44. From the above, it is clear that AS-1 provides that an enterprise (i.e. KTL) shall consider prudence, substance over form and materiality as major parameters while preparing its annual financial statements. It is observed that SIEL (in its financial statement for the Annual Report 2007-08) did not follow prudence since it did not disclose the contingent liability/ make provision for potential liability, did not follow substance over form as presented its bank balance with Banco as free cash available with the company and also did not follow materiality as it did not disclose the fact of signing of Account Charge Agreement and pledging of GDR proceeds, as the same are items, the knowledge of which might influence the decision of the user of the financial statements.

45. In the instant matter, KTL could withdraw its GDR proceeds only to the extent of amount of loan repaid by Clifford and there was a possible obligation on KTL for an amount of US $11.815 million (balance lying in the account no: 631295525002) on the date of balance sheet i.e. March 31, 2008 in the event of default of repayment of loan taken by Clifford which is of contingent liability in nature. It was observed from the annual report for the FY 2007-08 that KTL has not disclosed an amount of US $11.815 million (as on March 31, 2008) lying in deposit account with Banco as contingent liability in its Financial statements for the FY 2007-08. Therefore, KTL has not complied with AS-29 and thereby violated Section 21 of SCRA, 1956 read with clause 50 of the Listing Agreement.

Directors of KTL – Noticee No. 2 to 6

46. A company being legal entity cannot act on its own. It acts through its agents i.e., Directors who controls the management of the company and act on behalf of the company. In the instant case, I note, from the perusal of Annual Report for FY 2007-08, following were the Directors OF KTL during relevant time period:

S.No.	Name	Designation
1.	Mr. A. Venkatramani	Chairman, Managing Director
2.	Mr. A. Ganesan	Non-executive Director
3.	Mr. R. Dakshinamurthy	Independent Director
4.	Mr. A Sivakumaran	Independent Director
5.	Mr. R. Gopalan	Independent Director
6.	Mr. Raghu Tandra	Non-executive Director

47. With regard to the same, I note that, Mr. A. Venkatramani (Noticee No.2) was the Chairman and Managing Director and Noticee No. 3 was the Non-Executive Director and Noticee No. 4 to 6 were the Independent Directors of KTL during FY 2007-08. Further, it is observed that A. Venkatramani (Noticee No.2) was authorized to sign, execute any application, agreement, escrow agreement, document, undertaking etc. as may be required by Banco Bank. It is also observed that Noticee No. 2 was also authorized to draw cheques and generally to take all such steps and do all such things as may be required from time to time on behalf of this Company, by way of the said Board Resolution dated October 04, 2007. It is further noted that the Account Charge Agreement entered into by KTL with Banco, whereby a deposit account of KTL maintained with Banco having USD 16.50 million was given as security for all the obligations of Clifford under the Loan Agreement and had been signed by Mr. A. Venkatramani.

48. I further note from the contents of the Account Charge Agreement dated October 23, 2007 that KTL had agreed to pledge all its rights, title and interest in and to the funds deposited in its designated bank account as well as the interest accrued therein so as to secure the present and future obligations of Clifford. The Loan Agreement clause of the Account Charge Agreement also expressly states that:

*"1. **Loan agreement**: Loan agreement means the Loan agreement signed between Clifford Capital (as borrower) and the Bank dated on or around the date of this agreement by which the bank agreed to lend to Clifford Capital the maximum amount of up to US $16,500,000."* (emphasis supplied)

49. From the above clause of Account Charge Agreement, it is clear that KTL was aware of the loan agreement and acknowledged and agreed to its terms and conditions. Further, I also note that the aforesaid Account Charge Agreement entered into by and between KTL and Banco was signed by Mr. A. Venkatramani (Noticee No 2) for KTL.

50. Further, investigation observed from the Annual Report of KTL for the FY 2007-08, that board meetings were held on nineteen dates and Noticee No. 2, 3, 4 and 5 attended all the board meetings held during FY 2007-08 and Noticee No. 6 had attended all the board meetings (11) from the date of his appointment (i.e. October 04, 2007). From the above I note that, Noticee No. 2 to 6 had attended the board meeting dated October 04, 2007, where the said resolution related to GDR was passed. In this regard, Noticee No. 5 has submitted in his reply dated July 23, 2022, that he was not present in India between December 19, 2007 and January

13, 2008 and hence was not present in the meeting dated December 27, 2007, which approved the GDR issue. However, I note that the meeting dated December 27, 2007 was of the committee of Board of Directors of the company and purpose of that meeting was to approve the allotment of the GDRs that were issued on December 27, 2007. As observed earlier, the issue of GDR of December 27, 2007 was approved on October 04, 2007 and all the relevant authorisations were approved in the said board meeting which was attended by Noticee No. 5. I note that Order under Section 11B of SEBI Act was already passed by the Hon'ble Whole Time Member (WTM) of SEBI dated April 12, 2019, debarring Noticee No. 2 to 6 from securities markets for 5 years. I also note that Noticee No. 5 had also not filed the above submission to SCN during the parallel proceedings intiated under Section 11B of SEBI Act, 1992 before the learned WTM in the present matter. It is also observed that the said order is not being challenged by any of the Noticees before the Appellate authority.

51. I also note that Noticee No.2 was authorized to use the funds in the Banco account of KTL and with such authorization he had entered into the Account charge agreement with Banco, providing securities for the loan obtained by Clifford to subscribe to the GDR issue of KTL. All directors including Noticee No. 2, were part of the board meeting, where the resolution was passed to authorize the Noticee No.2 with broad powers with respect to the GDR issue. Thus, the aforesaid Noticees (2 to 6) were the human agency through which the aforesaid fraudulent scheme of KTL to finance its own GDR issue was effected. Further, KTL had failed to report all these material events of entering into account charge agreement, its GDR proceeds not being fully available to it until the repayment of the loan by Clifford, in its annual financial statements. Therefore, Noticee Nos. 2 to 6, being the Directors of KTL and

having participated in the Board Meeting dated October 04, 2007 where resolution to open bank account of KTL with Banco and authorizing Noticee No.2 to carry out all the related activities w.r.t. GDR and making him authorized signatory on behalf of KTL, are also liable for this fraud committed by the company under their watch. Thus, the Noticees' contention of not being aware of the account charge agreement and the creation of charge of the proceeds of the GDR in addition to denying signing the Pledge Agreement cannot be accepted.

52. It is pertinent to mention Section 27 *of the SEBI Act, 1992* which talks about 'Contravention by Companies', as per the said provision:

"(1) Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

(2) Notwithstanding anything contained in sub-section (1), 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."

53. Notice No. 5 and 6 has submitted that since they were appointed as Independent Directors on the Board of KTL they were not involved in the day to day affairs of the company. While dealing with this issue Hon'ble SAT in the case of ***Adi Cooper vs. SEBI*** *(Appeal no. 124/2019, Order dated November 5, 2019*) held "*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."* I note that Noticee No. 5 and 6, although were Independent Directors of KTL, present in the Board Meeting of October 04, 2007, where the resolutions related to the said GDR issue was passed, which shows their involvement. Hence they cannot take such defence and accordingly it is rejected.

54. KTL and its directors have submitted that the Company and its Board trusted the Lead Manager Bermer Bugmann and carried out the instructions as provided by Bermer Bugmann. The submission of the Noticees that it trusted the Lead Manager do not lend credence to such a submission. The Noticee has not produced any correspondence, email or any other tangible effort made by it to contact the Lead Manager nor has it produced any communication with the Banco so as to verify the antecedent of the Account Charge Agreement or the Lead Manager. The Company had the choice and discretion to open a bank account in any other bank and to have consultants of its own choice for assisting it in executing the GDR issue since, in case of any default on the part of any of its consultants/intermediaries, statutorily it is the Company that will be held liable and it can't escape from its responsibility on the ground that it has acted in good faith or trust reposed by it on the advice given by the intermediaries and consultants. If the

contention of the Noticee that it has signed the said Board Resolution and Account Charge Agreement on good faith trusting the Lead Manager is to be believed, then it was duty bound to take stringent legal action against the Lead Managers for such criminal breach of trust. However, as per the records available, no action has been initiated by the Company or other Noticees against any of the intermediaries/consultants so far. Under the circumstances, again as observed in the previous paragraph and the reasoning provided therein I reject the present contention.

55. 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*** (MANU/SC/1293/1996). 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]**

56. Therefore, from the above it is established that Noticee Nos. 2 and 6 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.

<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?

57. 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.*"

58. 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."

59. 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 Clifford using the account charge agreement signed on behalf of KTL to obtain a loan from Banco and then to dispose the shares acquired through such GDRs, routing of the monies received from KTL, thereby creating an elaborate façade of demand for the securities of KTL.

60. Thus, the violation of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4 (1), 4(2) (f), (k), (r) of SEBI (PFUTP) Regulations, 2003, and Section 21 of SCRA, 1956 read with Clauses 36(7) and 50 of Listing Agreement, as applicable, by the Noticees make them liable for imposition of penalty under Section 15HA of the SEBI Act, 1992 and Section 23E of SCRA, which read 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."*

61. 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.

Section 23E of SCRA prior to amendment, stated:

"23E Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds*.*

If a company or any person managing collective investment scheme or mutual fund fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees."

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

62. 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.

63. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that KTL had misled the Indian investors by concealing the information of entering into Account Charge 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 16.50 million, Clifford repaid some loan amount and thereafter defaulted on the remaining loan amount of USD $10.39 million. On account of the loan default by Clifford and as per the Account Charge Agreement between Banco and KTL, Banco adjusted outstanding loan amount (includes interest on loan amounts) of USD 10.39 million from KTL's GDR proceeds. Hence, GDRs to the tune of USD 10.39 million were issued by KTL to Clifford at free of cost and at the cost of other investors of KTL. The said subscription of the GDRs by Vintage was funded by KTL itself, through the Noticees. Therefore, the magnitude of the fraud committed by the Noticees is enormous as is evident from the issue size of USD 16.50 million.

ORDER

64. After taking into consideration KTL 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	Penal Provisions	Penalty
Kaashyap Technologies Ltd., Notice No. 1 (PAN: AAACK4451A)	Penalty imposed under Section 15HA of the Securities and Exchange Board of India act, 1992 and Section 23 of the SCRA, the violation of Section 12A(a), (b), (c) of SEBI Act read with Regulations 3(a), (b), (c), (d), 4(1), 4(2) (f), (k) and (r) of PFUTP Regulations. Section 21 of SCRA read with Clauses 36(7) of Listing Agreement and Section 21 of SCRA read with Clause 50 of the Listing Agreement.	**Rs. 25,00,000/- (Rupees Twenty Five Lakhs only)**
Mr. A. Venkatramani, Noticee No. 2 (PAN: AABPV3960F)	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 only)**
Mr. A. Ganesan, Noticee No. 3 (PAN: AACPG8259M)	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)**
Mr. R. Dakshinamurthy Noticee No. 4 (PAN: AAGPD2888M)	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)**
Mr. A Sivakumaran Noticee No. 5 (PAN: AIYPS4944H)	Penalty imposed under Section 15HA of the SEBI Act, 1992 for violation of the provisions of Section 12A (a),	**Rs. 10,00,000/-**

	(b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations	**(Rupees Ten Lakhs only)**
Mr. R. Gopalan, Noticee No. 6 **(DIN : 00018966)**	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)**

65. The above 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

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:

66. 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.

67. 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: July 29, 2022 **Adjudicating Officer**