BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. : Order/SRP/AE/2018-19/2456]

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 BY ADJUDICATING OFFICER) RULES, 1995

In respect of:

Mr. Subodh Kumar Goel

(PAN ACBPG3533H)

In the matter of GDR Issue by Sybly Industries Ltd.

BACKGROUND IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigations into the alleged irregularities in the GDR (**Global Depository Receipts**) Issue by Sybly Industries Ltd. (hereinafter referred to as **"Company / Sybly"**) during the period from May 01, 2008 to August 31, 2008 (hereinafter referred to as **"Investigation Period"**).

2. Sybly is a company whose shares are listed on the Bombay Stock Exchange Ltd. (**BSE**). The investigations, *prima facie,* revealed that Sybly had issued 1.51 million GDRs amounting to USD 6.99 million on June 19, 2008, equivalent to 3,02,05,000 equity shares of Re. 1 each, and the said issue was subscribed by one entity viz. Vintage FZE (now known as Alta Vista International FZE). It was observed that the subscription amount was paid by Vintage FZE by obtaining loan from European American Investment Bank AG (**EURAM Bank**) by entering into Loan Agreement dated May 30, 2008 with EURAM Bank. It was observed that Mr. Subodh Kumar Goel, Director of Sybly (hereinafter referred to as "**Noticee**") along with other Directors of Sybly in its board meeting held on March 31, 2008 had passed board resolution which authorized EURAM Bank to use Sybly's GDR proceeds deposited

with EURAM Bank as security in connection with loan and authorized Mr. Mahesh Chand Mittal, Managing Director and Mr. Umesh Kumar Mittal, Director to sign any application, agreement etc. as may be required by the EURAM Bank. Subsequently, Mr. Mahesh Chand Mittal and Mr. Umesh Kumar Mittal executed a Pledge Agreement between Sybly and EURAM Bank on May 30, 2008, whereby Sybly pledged the GDR proceeds against the loan availed by Vintage FZE for subscribing to GDRs of Sybly, thus securing Vintage FZE's loan. Investigations observed that the aforesaid Pledge Agreement was an integral part of Loan Agreement entered into between Vintage FZE and EURAM Bank, and these agreements enabled Vintage FZE to avail the loan from EURAM Bank for subscribing GDRs of Sybly. It was alleged that the GDR issue would not have been subscribed had Sybly not given such security towards the loan taken by Vintage. Investigations observed that the Company had reported to BSE that the GDR issue of the Company has been successfully subscribed which made investors believe that the said GDR issue was genuinely subscribed. Investigations also observed that the aforesaid arrangement (viz. Loan Agreement and Pledge Agreement) was not disclosed to the public, and the Company allegedly reported misleading news to the stock exchange which contained information in a distorted manner and may have influenced decision of investors. Therefore, it was alleged that the scheme of issuance of GDRs was fraudulent. It was observed that the Noticee along with the other directors namely, Mr. Mahesh Chand Mittal, Mr. Vimal Prakash Mittal, Mr. Satya Prakash Mittal, Mr. Mahendra Kumar Gupta and Mr. Umesh Kumar Mittal had attended the board meeting dated March 31, 2008 and passed the aforementioned resolution. It was alleged that the Noticee by approving the aforementioned board resolution in the board meeting held on March 31, 2008 had acted as a party to the fraudulent scheme.

3. SEBI has, therefore, initiated adjudication proceedings 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

4. 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 May 29, 2018, to inquire into and adjudge under Section 15HA of the SEBI Act, 1992 the aforesaid violations alleged to have been committed by the Noticee. Consequent upon transfer of Shri Biju S, the undersigned has been appointed as AO in the present matter vide Order dated July 06, 2018.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notice No. EAD-4/ADJ/BS/AE/18698/1/2018 dated July 02, 2018 (*hereinafter referred to as "**SCN**"*) was issued to the Noticee in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "***SEBI Adjudication Rules***") for the alleged violation of the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

6. On behalf of the Noticee and other directors, Sybly vide letter dated July 25, 2018 submitted reply to the SCN. Main submissions are to the following effect:

"….We would like to submit as under:

1. *It was correct that Company came out with the GDR issue as per details given in your Show Cause Notice (SCN)*
2. *It is correct that the Directors of the company namely Mr. Mahesh Chand Mittal and Mr. Umesh Kumar Mittal signed a Pledge Agreement.*
3. *The Company and the Directors have acted during the entire course of action pertaining to the GDR Issue, in the Interest of Company and every step and action within the frame work of the provision of the applicable Laws of the Land.*
4. *There was never any malafide behind any Actions / Information provided. The Company and the Directors had always followed sound business policy in the past and in future too.*
5. *Neither the Company nor the Directors have, during the whole exercise of GDR, never took any kind of benefit/advantages. Thus, if there is anything which is not as per provision of laws, i.e. could be due to oversight and/or due to the ignorance of the provision of the Law.*
6. *It is our sincere feeling that neither of the Company nor the Directors have violated any of the Section read with regulations as alleged against the Company and the Directors in your subject sited SCN.*
7. *Our humble submission in respect of the violation alleged in Para 25(7) of your above referred SCN are as under :*

*A. **Submission in respect of violation of 12A of SEBI Act, 1992 :***
No person shall directly or indirectly;

i. use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations mad e thereunder;

***Reply** : It is humbly submitted that Company and the Directors had engaged only in reputed and authorized Agencies in connection with the GDR issue. Since the GDRs were issued and listed with Luxembourg Stock Exchange, Company and the Directors had followed all the compliances as were required to be made as per rules of Luxembourg Stock Exchange. Further, the Company and the Directors had followed all Law(s), rule(s) and regulation(s) as were applicable in India i.e. Companies Act 2056, FEMA, SEBI Act & Regulation and Listed Agreement. Further, you will appreciate that in your SCN also there were no allegation that either of the Company or the Directors had manipulated or used any deceptive device.*

ii. 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.

***Reply** : It is humbly submitted that 3,02,05,000 No. of equity Shares was issued in connection of GDR were got listed with BSE. The Company complied with all relevant provisions, rules in this regards. From obtaining the In-Principle Approval and to get the Shares Listed at BSE, the all necessary Compliances were made and if it had been there any Non-Compliance, then BSE would not have granted its Approval. Even Post-Allotment and Listing, Company i.e. Sybly Industries Limited never got any complain / Notice of violation from Stock Exchange. Thus, the Company and the Directors have not violated of any provision or law.*

iii. 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

***Reply** : It is humbly submitted that Fraud /Deceit has been defined under the SEBI (PFUTP) Regulation. On the perusal of the same it is humbly submitted that none of the Act, as defined in SEBI (PFUTP) Regulation which tentative amount to fraud are applicable in our case; As already submitted in respect of a Issue and Listing of 3,02,05,000 No. of equity shares on BSE the Company had not contravened any of the provision of SEBI Act, or the rules, or the regulations made thereunder;*

Further, it is humbly submitted that none of the Noticee had made any Dealing in Security. On perusal of the concept of "Dealing in Securities" as defined under SEBI (PFUTP) Regulations, 2003, it is inferred that none of the Noticee have done any act which prima fade falls within ambit of the Concept of Dealing in Securities. Therefore, none of the Noticee has violated any provision of the Act.

B. Submission in respect of violation of 3(a) to (d) of SEBI (PFUTP) Regulations.
Prohibition of certain dealings in Securities:

No person shall directly or indirectly-

i. buy, sell or otherwise deal in securities in a fraudulent manner;

***Reply** : It is humbly submitted that none of the Directors had not done any buying, selling or otherwise dealt in the securities of the Company. Therefore, there is no question of any involvement of fraud. Further, the Company has also not indulged itself in anyway in buying, selling or otherwise dealt in the securities of the Company. The Company had issued GDR's against underlying Equity Share. On the perusal of the definition of "Dealing in Securities" which read as under, includes an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any person as principal, agent or intermediary referred to in Section 12 of the Act.*

Your good self will find that none of the Company or the Directors indulged in buying, selling & dealing in security. Thus, there is no default of Regulation 3(a).

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

***Reply** : It is submitted that the Company has while going through process of issuing GDR had complied with all the statutory & regulatory provision as were applicable at the time of issuing GDR's. If any lapse had been happened it's just due to over sight and ignorance. On its own the Company and the Directors have tried their best to comply with all the statutory provisions in Letters & Spirit. Your good self while investigating the matter has also pointed out that there is only few lapses pertaining to Non-disclosure/ disseminating information with BSE. It is amply clear that none of the Company or the Directors had resorted to any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under. Thus, there is no default of Regulation 3(b).*

iii. 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;

***Reply** : While, It is submitted that the Company has while going through process of issuing GDR had comply with all the statutory & regulatory provision as were applicable at the time of issuer GDR's. If any lapse have happened its just due to over sight and ignorance. On its own the Company and the Directors have tried their best to comply with all statutory provision in letters & spirit. Your good self while investigating the matter has also pointed out that there is only few lapses pertaining to Non-disclosure/ disseminating information with BSE. It is amply clear that none of the Company or the Directors had resorted to any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under. Thus, there is no default of Regulation 3(c).*

iv. engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under;

***Reply** : Neither the Company nor the Directors had, in any ways, engaged in any act, practice, course of business or in the course of business which operated as fraud or deceit any person in connection with any dealing in issue of GDR's underlying Equity Shares which were listed to on Bombay Stock Exchange. All statutory compliance was thoroughly made and there were no contravention of any provisions of the Act or the rules and the regulations made there under. Thus, there is no default of Regulation 3(d).*

C. <u>Submission in respect of violation of 4(1), 4(2) (f), (k), (r) of SEBI (PFUTP) Regulations, 2003.</u>

4. Prohibition of manipulative, fraudulent and unfair trade practices:

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

***Reply** : It is humbly submitted that none of the Noticee has indulged in fraudulent or unfair trade practice in respect of issue of GDR / in respect of any process followed by the Company while issuing GDR's/ underlying Equity.*

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

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

***Reply** : Company neither got publish not caused to publish any report / information which was false / not proved nor made any statement / declaration which made anyone in the public to believe anything wrong as right.*

Further, none of the Noticee given any Advertisement in respect of GDR issue which contains any information. However, the fact is that not a Single Advertisement was released in India in respect of the GDR issues.

Similarly, there is not even a single instance which is shows/indicate that Notices have planted any false or misleading news. Even in show cause notice issued to the Notices based, on the investigation made by the SEBI, no such instance had pointed out.

………..

…………..

(b) As mention in Para 44 (v) :

"It was humbly submitted that giving a security in connection with Loan taken by any 3rd Party (not associated with a Company) does not consequence fraud. Even if we see the provision of Section 372A of Companies Act, 1956 it allows a Company to give Corporate Guarantees. It neither proves that either Company or the Directors have committed any fraud. These documents were executed as

per the requirement of concerned bank. Therefore, it cannot be taken as fraudulent documents or Fraudulent Scheme."

Further, on the perusal of the definition "Fraud" under SEBI (PFUTP) Regulations, includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include-

i. a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
ii. a suggestion as to a fact which is not true by one who does not believe it to be true;
iii. an active concealment of a fact by a person having knowledge or belief of the fact;
iv. a promise made without any intention of performing it;
v. a representation made in a reckless and careless manner whether it be true or false;
vi. any such act or omission as any other law specifically declares to be fraudulent.
vii. deceptive behaviour by a person depriving another of informed consent or full participation,
viii. a false statement made without reasonable ground for believing it to be true,
ix. the act of an issuer of security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.
On perusal of the above, your good self will find that the execution of Guarantee does not fall in any way under the Definition of Fraud. With the execution of Guarantee instrument neither the Company nor the Directors have decieted in any way, in any Third party, Investors, stakeholders.

…..

…..

Demise of a Noticee:
It is humbly submitted that Mr. Vimal Prakash Mittal, have expired in May 2011. A copy of Rest Certificate is inclusive.

Opportunity of hearing before the Whole Time Member:
It is humbly submitted that the Company and the Directors be given an Opportunity to appear before the honourable Members either through themselves or through their Authorised Representative/ Power of Attorney Holders(s), before deciding the matters.

Prayers:
It is humbly submitted that the Noticee have always comply with the relevant Section(s), Rule(s), Regulation(s), of SEBI well in time and to the best of their knowledge and expertise. There was never an element of malafide any intension. Neither the Company or the Directors have taken any gain or made any undue advantage while executing the process of Issuing GDRs

However, if there is any Non disclosures or any action as alleged they were totally unintentional and occurred due to the over sight or ignorance of the any provision of the rule/regulation.
i. Neither the Company nor any of directors,

ii. There was no loss to any stakeholder at large,
iii. There was no loss of any statutory Authority,
iv. Neither the Company nor the Directors had/ have acted against of the Public Interest,
v. Neither the Company nor the Directors deliberately done any unfair trade practice nor indulge in any kind of fraud nor taken any deceptive practices,

In view of the submission made above, the Company & Promoters is pardoned of and no action be initiated against any of them.

The Company and the Directors hereby assure that in future they will abide by all the relevant rules & regulation of the SEBI while issuing, dealing and/or listing of security on the recognised Stock Exchange.

….”

7. An opportunity of personal hearing before the undersigned was granted to the Noticee on October 25, 2018. In the said hearing, Shri R. S. Bhatia, practicing Company Secretary, authorized representative (**AR**) appeared on behalf of the Noticee and reiterated the submissions made by the Noticee vide letter dated July 25, 2018. It was further submitted that there was no *mala fide* intention on the part of the Noticee, and if there was anything which was not as per the provisions of law, the same could be due to oversight / ignorance. It was also submitted that the Noticee has not made any dealing in securities, nor made any gain in this matter and neither resorted to any unfair trade practice. It was further submitted that the company has been listed for around 25 years, and there is no default with any compliances, and no investor complaint is there against the company. AR requested that a lenient view be taken in the matter.

8. On behalf of the Noticee and other directors, Sybly submitted letter dated November 12, 2018, enclosing a copy of their letter dated November 03, 2018, sent earlier to SEBI, and *inter alia* requested the same to be considered as additional submissions in the present proceedings. Main submissions in the said letter are to the following effect –

“…

1. *This is submitted that during the Course of Hearing in the above subject cited matter **before the Hon'ble Member**, which was attended by Mr. RS. Bhatia, Practicing Company Secretary on Company’s behalf and on behalf of the Directors, **the Hon'ble Member** has directed to submit information respect of the Receipt and utilisation of GDR Issue, and disclosures made in this regard.*

2. In this regard please find enclosed C.A. Certificate dtd. 23.06.2008 given by M/s. V.S. Gupta & Co., Chartered Accountants, the then Statutory Auditors of the Company, confirming receipt of GDR Issue proceeds by the Company as Annexure-1.

   The Company made Listing application with BSE on 25.06.2008 and the said Certificate alongwith other relevant information, was submitted with BSE. Copy of the covering letter is annexed as Annexure-l(a).

3. Post Receipt of GDR proceeds, i.e. after allotment of underlying equity shares, Company complied with all the disclosure requirements i.e. Compliance of Clause 43 of the Listing Agreement was regularly made till the time of final utilization of Issue proceeds as per requirements of said Clause 43. Copies of the Letters, showing details of utilization as sent to BSE from time to time as detailed hereunder are enclosed as Annexure-2(1) to 2(6):

Sl. No.	Qtr. Ended	Letter Date	Annexure
1.	June 2008	30.07.2008	2(1)
2.	Dec. 2008	30.01.2009	2(2)
3.	March 2009	30.04.2009	2(3)
4.	June 2009	28.07.2009	2(4)
5.	Dec. 2009	11.01.2010	2(5)
6.	March 2010	14.05.2010	2(6)

4. The disclosure regarding utilization of GDR Issue proceeds were also given under the Quarterly Reporting of UFR/AFR and the same were filed with BSE. The details of same are given as under and also enclosed as Annexure-3 (1) to 3{8):

Sl. No.	Qtr. Ended	Letter Date	Annexure
1.	June 2008	30.07.2008	3(1)
2.	Sep. 2008	31.10.2008	3(2)
3.	Dec. 2008	30.01.2009	3(3)
4.	March 2009	30.04.2009	3(4)
5.	June 2009	28.07.2009	3(5)
6.	Sep. 2009	30.10.2009	3(6)
7.	Dec. 2009	12.01.2010	3(7)
8.	March 2010	14.05.2010	3(8)

5. The utilization of issue proceedings were brought to the notice of all stake holders till the time it was fully utilized along with UFR/ AFR (by way of Note) at the time of publication of the said U FR.AFRs in the Newspapers.

   The details of the same are given as under and also enclosed as Annexure-4 (1) to 4(8):

Sl. No.	Qtr. Ended	Letter Date	Annexure
1.	June 2008	02.09.2008	4(1)
2.	Sep. 2008	18.11.2008	4(2)
3.	Dec. 2008	01.02.2009	4(3)
4.	March 2009	20.05.2009	4(4)
5.	June 2009	18.08.2009	4(5)
6.	Sep. 2009	30.11.2009	4(6)

7.	*Dec. 2009*	*19.01.2010*	*4(7)*
8.	*March 2010*	*21.05.2010*	*4(8)*

It is, therefore, submitted that Company has properly given disclosures regarding utilization of issue proceeds.

6. ***Foreign Subsidiary:***

It is humbly submitted that while taking approval for issue of GDR's it was clearly mentioned in the explanatory statement of Notice of GDR Issue that issue proceeds can/may be utilized for floating and running of subsidiary(s). A copy of the Notice dtd. 28.01.2008 is enclosed as Annexure-5.

Further, when the Board was to take decision for incorporating a subsidiary abroad, adequate Notice well in advance was given to the BSE. A copy of the letter dtd: 30.11.2009 sent to BSE is enclosed as Annexure-6.

It is therefore, submitted that the Company has made adequate disclosure compliance in this regard.

7. ***Closure of GDR Issure:***

The Company has vide its Letter dtd. 20.06.2008 informed to the BSE about the closure of GDR Issue. A copy of the said letter is enclosed as Annexure-7.

8. ***Bank Statements:***

Total GDR Issue proceeds of USO 69,92,457.50 were received by the company in Escrow Account maintained with Euram Bank, Austria on 19.06.2008. Certificate of Eu ram Bank is enclosed as Annexure-8. These funds inclusive of interest thereon were fully utilized by transferring to Sybly International Ltd. FZE, Hamiryah Free Zone Sharjhah, UA E, the Wholly Owned Subsidiary of Sybly Industries Ltd. as Investment & Loans & Advances, details of which given hereunder :

Date	*Amount (USD)*
30.12.2009	*30,00,000.00*
07.01.2010	*30,00,000.00*
12.02.2010	*14.85.472.39*
Total	*74.85.472.39*

Relevant Statements of Euram Bank for the above said period are enclosed as Annexure-9

PRAYER

In view of the submissions made at the time of hearing and as made herein above, it is prayed that the Company and the Directors have acted honestly, in compliance with the Legal requirements and still any omission happened it could be because of ignorance. There is no mala fide intention behind any action. Therefore, the Company and the Directors be pardoned. "

9. In its aforesaid letter dated November 12, 2018, the Noticee enclosed the following documents –

a) copy of CA certificate regarding receipt of GDR proceeds,

b) copy of disclosures under Clause 43 of the Listing Agreement,

c) copy of its quarterly results, newspaper clippings of its quarterly results,

d) copy of letter dated 30.11.2009 sent to BSE regarding incorporation of its subsidiary,

e) copy of letter dated 20.06.2008 informing BSE about the closure of GDR Issue, and

f) copy of Sybly's bank statement of its account with EURAM Bank.

CONSIDERATION OF ISSUES AND FINDINGS

10. I have carefully examined the allegations against the Noticee and his 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 Noticee 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

11. 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 below:

SEBI Act, 1992:

"Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly –

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

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the Rules or the Regulations made thereunder;"

PFUTP Regulations, 2003:

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange.

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder

……

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

12. From the material available on record, I note that Sybly had issued 1.51 million GDRs (amounting to USD 6.99 million) on June 19, 2008, equivalent to 3,02,05,000 equity shares of Re. 1 each. The details regarding the GDR issue was provided by Sybly to SEBI vide letter dated June 22, 2015. The same is summarized 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
19-June-2008	1.510 (at USD 4.63 each GDR)	6.99	ICICI Bank	3,02,05,000 of Rs. 1 each	Deutsche Bank Trust Company Americas	Pan Asia Advisors Ltd.	EURAM Bank, Austria	Luxembourg Stock Exchange (LSE)

13. Sybly provided the list of the GDR allottees to SEBI vide letter dated June 22, 2015 which is tabulated as under: -

Sl. No.	Name of the subscriber	Address	No. of GDRs
1	Rexflec Ltd.	Level 41, Emirates Tower, Sh. Zayed Road, Dubai – UAE	5,00,000
2	Tradetec Corporation	Level 47, Prudential Tower, 30, Cecil Street, Singapore.	5,00,000
3	Greenwich Management Inc	18th Floor, One International Finance Centre, 1 Harbour View Street, Central Hong Kong	5,10,250
	Total		**1,510,250**

14. SEBI Investigations observed that subscription to the GDR was obtained through a loan agreement as well as a pledge agreement, details of which are discussed in the following paragraphs, and therefore, it was alleged that the GDR issuance was done through a fraudulent arrangement.

15. Investigations further observed that an entity viz. Vintage FZE (now known as Alta Vista International FZE) (hereinafter referred to as "**Vintage**") had obtained a loan

of USD 6.99 million by entering into a Loan Agreement dated May 30, 2008 with EURAM Bank to subscribe to the GDRs of Sybly. The aforesaid Loan Agreement was signed by Mr. Arun 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 the amount of facility:*

   USD 6,992,457.50

2. *Nature and purpose of facility:*

   To provide funding enabling Vintage FZE to take down GDR issue of Sybly Industries Limited's Luxembourg public offering and may only be transferred to EURAM account nr. 540 081, Sybly Industries Limited"

…..

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. 540081 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*

   - *Pledge of the account no. 540081 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.*

   ….. "

16. From the aforesaid Loan Agreement, I note that Vintage had availed a loan facility to the extent of USD 6.99 million from EURAM Bank to subscribe to the GDRs of Sybly.

17. From the certified true copy of Sybly's Board Resolution dated March 31, 2008 provided by EURAM Bank, and copy of minutes of the board meeting dated March 31, 2008 provided by Sybly vide email dated January 02, 2018 to SEBI, it is observed that the following resolution was *inter alia* passed in the said meeting held on March 31, 2008 -

> *"RESOLVED THAT a bank account be opened with EURAM Bank ("the Bank") or any branch of Euram Bank, including the Offshore Branch, outside India for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of the Company.*
>
> *RESOLVED FURTHER THAT Shri Mahesh Chand Mittal, Managing Director and Shri Umesh Kumar Mittal, Director of the Company, be and are hereby severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required.*
>
> *…*
>
> *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."*

18. From the aforesaid minutes of the board meeting it is observed that the Noticee along with other Directors who constituted the Board of Directors of Sybly, had authorized, Mr. Mahesh Chand Mittal, Managing Director of Sybly, and Mr. Umesh Kumar Mittal**,** Director of Sybly, **-** severally to sign, execute, any application, agreement and other paper(s) from time to time as may be required by EURAM Bank. 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 for receiving the subscription money in respect of the GDR issue of the company as security in connection with loans, if any.

19. From the copy of the minutes of the meeting, it is observed that the Noticee along with the following other directors viz. Mr. Umesh Kumar Mittal**,** Mr. Vimal Prakash

Mittal, Mr. Mahesh Chand Mittal, Mr. Mahendra Kumar Gupta, and Mr. Satya Prakash Mittal attended the Board meeting dated March 31, 2008 and approved the aforementioned resolutions. The minutes of the meeting also mentions the following - *"1. Leave of Absence – It was noted that all directors were present at the meeting"*. The attendance of the Noticee and the aforesaid Directors in the Board meeting dated March 31, 2008, is also evident from the Sybly's annual report (page 7) for the year 2007-08.

20. I note that subsequently Sybly has admittedly entered into a Pledge Agreement with EURAM Bank on May 30, 2008. The said Pledge Agreement was signed by Mr. Mahesh Chand Mittal, and Mr. Umesh Kumar Mittal on behalf of Sybly, in the capacity of Managing Director and Director of Sybly, respectively. The salient Clauses of the Pledge Agreement are *inter alia* as under:

" ….

1. <u>Preamble</u>

*By loan agreement (hereinafter referred to as the "**Loan Agreement**") dated May 30, 2008, 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 6,992,457.50. The Pledgor has received a copy of the Loan Agreement No. 300508-001 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 Borrower towards the bank under the Loan Agreement and any and all respective amendments thereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the Loan Agreement – including those limited as to condition or time or not yet due – irrespective of whether such claims have originated from the account relationship, from bills of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations") the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:

2.1.1. all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount of $ USD 6,992,457.50 existing from time to time at present or hereafter on the securities account(s) no. 540081 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. 540081 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account ") and all amounts credited at any particular time therein.

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

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

…….

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

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

21. I note that the Pledge Agreement refers to the Loan Agreement dated May 30, 2008 between the borrower i.e. Vintage, and EURAM Bank, whereby Vintage was granted a loan of USD 6,992,457.50, and it is stated that the Pledgor i.e. Sybly has received a copy of the said Loan Agreement and acknowledges and agrees to its terms and conditions. By signing the Pledge Agreement, Sybly was 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".* Regarding the dates, it is noted that the Pledge Agreement and the Loan Agreement were both dated May 30, 2008. 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.

22. 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 6.99 million to subscribe to the GDRs of Sybly. 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 6.99 million on June 19, 2008 and the same was then transferred to the escrow account (No. AT41193400-540081-0021) on June 19, 2008. 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 Sybly

comprising 1.51 million GDRs and amounting to USD 6.99 million, was subscribed by only one entity, i.e. Vintage, and not by the three entities (viz. Rexflec Ltd, Tradetec Corporation and Greenwich Management Inc) as claimed in Sybly's letter dated June 22, 2015. I further note that the amount was transferred to Sybly's account (no. AT15193400-540081-0101) held with EURAM Bank on the same day i.e. June 19, 2008, and that Sybly's account was pledged with EURAM Bank under the Pledge Agreement. Thus, I note that in the above manner, the obligation of Vintage under the Loan Agreement was secured by Sybly 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 Sybly'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.

23. I note that the arrangement of loan and pledge agreement, which resulted in the subscription of GDR issue of Sybly was not disclosed to the stock exchange in a true and complete manner but was reported as misleading news to the stock exchange. On June 20, 2008, the stock exchange (BSE) reported that "*Sybly Industries Ltd has informed BSE that GDR Issue of the Company for US $ 7.00 Millions has been fully subscribed and closed on June 19, 2008 and allotment has been made of 15,10,250 Global Depository Receipts underlying 3,02,05,000 Equity Shares of Rs 10/- each at par by the Board in its meeting held on June 20, 2008...*". This disclosure by Sybly would have led investors to believe that the said GDR issue was genuinely subscribed by foreign investors, and Sybly has acquired a good reputation in terms of investment potential. However, I note that the information available to the general investors and thus their perception was totally different from the actual position about the GDR issue and the subscription proceeds. Investors were not aware that in fact the GDR issue was subscribed by only one entity i.e. Vintage and the same had only been possible through an arrangement of Loan Agreement and Pledge Agreement involving the subscriber and the company. Sybly had portrayed that GDR subscription proceeds were available with it for utilization whereas it had already pledged the said proceeds with Euram Bank to secure the loan of Vintage for subscription of GDRs. I note that Sybly had actively concealed material information with regard to the GDR

subscription and the pledge of entire GDR subscription amount, and the fact that the GDR proceeds were not available at the Sybly's disposal. In view of the above, I find that the entire scheme of GDR issuance was fraudulent. The Hon'ble Securities Appellate Tribunal (**SAT**) vide order dated October 25, 2016 in Appeal no 126/2013 in the matter of **Pan Asia Advisors Limited vs. SEBI**, wherein GDRs were issued through similar *modus operandi* to Vintage by certain other listed issuer companies, had held that

> *"25. It is apparent that the appellants knew that if the investors in India come to know that the GDRs of the issuer companies have not been subscribed by foreign investors but by the entities controlled by the Managing Director (AP) of PAN Asia, then it would not generate interest in minds of the investors in India to subscribe to the shares of issuer companies. Therefore, in order to create an artificial impression that global investors have shown keen interest in investing in the issuer companies by subscribing to the GDRs, appellants by a dubious method introduced fictitious and non-existent initial subscribers to the GDRs of the issuer companies so as to mislead the investors in India in believing that the global investors have shown keen interest in investing in the GDRs of issuer companies. In these circumstances, decision of SEBI that the appellants attempted to committed fraud on the investors in India by introducing fictitious initial subscribers cannot be faulted."*

24. The Noticee has vide its reply dated July 25, 2018 *inter alia* contended that they have not published any report nor they have given any advertisement or any false and misleading news. In this context, the following observations made by the Hon'ble SAT in matter of ***V. Natarajan vs. SEBI*** (Order dated June 29, 2011 in Appeal No.104 of 2011) are worth mentioning:

> *"… we are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 were violated. These regulations, among others, prohibit any person from employing any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on an exchange. They also prohibit*

persons from engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities that are listed on stock exchanges. These regulations also prohibit persons from indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true. Any advertisement that is misleading or contains information in a distorted manner which may influence the decision of the investors is also an unfair trade practice in securities which is prohibited. The regulations also make it clear that planting false or misleading news which may induce the public for selling or purchasing securities would also come within the ambit of unfair trade practice in securities. …….”

25. In this regard, I note that the deliberate false/misleading statements, misrepresentations of the material facts, and active suppression and concealment of material facts as found in this case amount to *'suppressio veri and suggestio falsi'* which is a facet of 'fraud' as defined in regulation 2(1)(c) of the PFUTP Regulations. In the facts and circumstances of the case as observed in the previous paragraphs, I note that the information and perception of the genuine investors in shares of Sybly was totally different from the actual position about GDR issue and subscription proceeds.

26. I also note that in its Order dated October 25, 2016 in Appeal No. 126 of 2013, in the matter of **Pan Asia Advisors Limited vs. SEBI**, the Hon’ble SAT while interpreting the expression ‘fraud’ under the PFUTP Regulations, 2003, observed:

“13. 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."

27. In the present proceedings, the Noticee has *inter alia* contended that they have disclosed the utilisation of the GDR proceeds to the public. In this regard, the Noticee vide its letter dated November 12, 2018, had submitted a copy of a Chartered Accountant certificate dated June 23, 2018, which stated that the GDR proceeds were received by the Company. The Noticee has also submitted copies of Sybly's disclosures made under Clause 43 of the Listing Agreement, and copies of its various quarterly financial results, along with clippings of newspapers in which the financial results were published. It was also stated that Sybly had transferred a total of USD 7,485,472.39 (which included the GDR proceeds and interest earned thereon) to its wholly owned subsidiary, Sybly International Ltd. FZE. Noticee has enclosed the statement of Sybly's EURAM Bank account.

28. On perusal of the aforesaid documents submitted by the Noticee, I note that the quarterly disclosures under Clause 43 of the Listing Agreement submitted by Sybly to BSE and the quarterly financial results of Sybly, mainly show the bifurcation of the GDR proceeds into - amounts utilized *vis-a-vis* amounts unutilized at the end of that particular quarter, and the same is summarized below –

Quarter Ended	***Utilisation of GDR proceeds***
June 2008	*Utilized – NIL* *Unutilized – USD 6.99 million*
December 2008	*Utilized – NIL* *Unutilized – USD 6.99 million*
March 2009	*Utilized – NIL* *Unutilized – USD 6.99 million*
December 2009	*Utilized – USD 3.00 million* *Unutilized – USD 3.99 million*
March 2010	*Utilized – USD 6.99 million* *Unutilized – Nil*

29. I note that in their reply they have not submitted the bank statement of Sybly's UAE based subsidiary i.e. Sybly International Ltd. FZE which could have thrown light on further utilization and trail of the funds raised by Sybly through the GDR issue.

From the materials available on record viz. statement of Vinatge's bank account with EURAM, it is noted that Vintage repaid the loan in several installments from December 30, 2009 to February 12, 2010. Details of repayment of loan by Vintage and transfer of funds by Sybly as provided by EURAM Bank are tabulated below:

***A**: Repayment of loan by Vintage to EURAM Bank (Repayments by Vintage)*

***B**: transfer of amounts from Sybly to its UAE subsidiary*

Date	**Repayment By Vintage (in USD) (A)**	**Transfer/Payment by Sybly (in USD) (B)**	**Remarks**
30-Dec-09	3,000,000	3,000,000	
07-Jan-10	3,000,000	3,000,000	
12-Feb-10	992,458	1,485,472	Difference of USD 493,014 is net interest earned
			Total

30. I note that as and when, loan repayments were made by Vintage, Sybly used to transfer funds from its EURAM Bank account to the account of its subsidiary in UAE viz. Sybly International Ltd FZE. In view of the above, I note that every transfer from Sybly to its UAE subsidiary is in sync with the date and amount of loan repaid by Vintage to EURAM Bank. Therefore, I note that the amount transferred from Sybly's EURAM account to its UAE subsidiary was dependent on the repayment of the loan by Vintage. 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.

31. 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 SAT in its Order dated October 25, 2016 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."*

32. In the present matter, I also note that the GDR subscription amount of USD 6.99 million was not available to the Company for utilization until the loan taken by Vintage for subscribing to the GDRs was repaid to the EURAM Bank. I also note that after the subscription of GDR on June 19, 2008, a partial amount of USD 3 million could be made available to the company only on December 30, 2009 i.e. after a period of more than a year and half. The last instalment towards amount of USD 6.99 million along with accrued interest was available to Sybly only in February 2010 when the loan was fully repaid by Vintage to EURAM Bank.

33. Moreover, it is noted that Sybly had provided incorrect information to SEBI vide its letter dated June 22, 2015, wherein it had stated that the GDR issue was subscribed by three investors, namely, Rexflec Ltd, Tradetec Coirporation, and Greenwhich Management Inc. In the present proceedings, the Noticee in its reply dated November 12, 2019 had enclosed copy of Sybly's letter dated June 25, 2008 to BSE, wherein it was informed that the GDRs were allotted to the aforesaid three investors. However, from the documents available on record, it is observed that the GDRs were subscribed by one entity only, viz. Vintage. Such actions also indicate *mala fide* intention on the Noticee's part as a Director of Sybly.

34. I note that the Noticeee in its reply dated July 25, 2018, has *inter alia* submitted that "*It is correct that the Directors of the company namely Mr. Mahesh Chand Mittal and Mr. Umesh Kumar Mittal signed a Pledge Agreement",* however, it was contended that there was never any *mala fide* behind their actions. From the above, I note that the Noticee clearly admits the execution of the Pledge Agreement by Sybly.

35. The Noticee has contended that none of its activity falls within ambit of the concept of dealing in securities, and that it has not indulged in buying, selling and dealing in security. In this regard, I note that the Hon'ble Supreme Court of India in the matter of **Kanaiyalal Baldevbhai Patel v. SEBI (2017) 15 SCC** has observed that "*the definition of 'dealing in securities' is broad and inclusive in nature. Under the old regime the usage of term 'to mean' has been changed to 'includes', which prima facie indicates that the definition is broad*". Therefore, I note that 'dealing in securities' is not limited to mere act of buying and selling in securities. As noted above, the scheme of facilitating the subscription of the company's GDRs also

comes within the ambit of dealing in securities and therefore, will attract PFUTP Regulations if the same has been done in a fraudulent manner as stated above.

36. The Noticee has denied that it has violated 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.The Noticee in its reply dated July 25, 2018, has *inter alia* contended that they had followed all statutory compliance and had followed the rules of Luxembourg Stock Exchange as well as the laws as applicable in India i.e. Companies Act 1956, FEMA, SEBI Act & Regulations and the Listing Agreement. The Noticee has submitted that none of the acts as defined in PFUTP Regulations, 2003 and which amount to fraud are applicable in their case. The Noticee has also submitted that there was no allegation that they have manipulated or used any deceptive device under Regulation 3 (a) to (d) of PFUTP Regulations. In this regard, I note that the Hon'ble Supreme Court in its judgment in the matter of **Kanaiyalal Baldevbhai Patel v. SEBI** has also observed that 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".* 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, all these provisions get attracted in a situation....".*

37. The Noticee has submitted that had there been any non-compliance on their part, then BSE would not have granted its approval for the issue and getting the shares listed. In this regard, I note that Sybly had concealed material information regarding the GDR issue, and the knowledge regarding the fraudulent arrangement involved

in the GDR issue has only been revealed during the investigation by SEBI. Accordingly, I do not find any merit in the aforesaid contentions of the Noticee.

38. The Noticee has stated that the providing security in connection of loan taken by any third party does not constitute fraud, and further that Section 372A of Companies Act, 1956 allows the Company to give corporate guarantees. In this regard, I note that Section 372A of the Companies Act, 1956 deals mainly with inter-corporate loans or guarantees, and the limits and various approval requirements for the same. In this regard, it is noted that the compliance or non-compliance of section 372A of the Companies Act, 1956 by Sybly is not central to the subject matter in the present case, and the same is not alleged in the SCN. In the present case, the purpose of pledging the funds received from the GDR issue by Sybly, was to make the funds act as a guarantee against the loan taken for the purposes of subscribing to the same GDR issue by Vintage (the subscriber), while concealing such arrangement / facilitation from the public. Accordingly, it is noted that the GDR was issued in a fraudulent manner.

39. I note that it was in the Board Meeting held on March 31, 2008, the Board of Directors approved the resolution which authorized EURAM Bank to use Sybly's GDR proceeds deposited with EURAM Bank as security in connection with loan and authorized Mr. Mahesh Chand Mittal and Mr. Umesh Kumar Mittal to sign any application, agreement etc. as may be required by the EURAM Bank. I note that on the basis of the aforesaid board resolution, Pledge Agreement dated May 30, 2008 was executed by Sybly. In view of the above, I find that the Noticee by approving the aforesaid board resolution in the Board meeting held on March 31, 2008, and which subsequently led to execution of the Pledge Agreement dated May 30, 2008, has acted as a party to the fraudulent scheme. Thus, I find that the Noticee has violated Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

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

40. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund** 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."

41. I note that the Noticee was the Director of Sybly at the time of GDR issuance. In this regard, it is pertinent to refer to the order dated October 5, 2012 passed in the matter of **Mr. N. Narayanan vs. The Adjudicating Officer, SEB**I (Appeal No. 29 of 2012) wherein, while commenting on the role of directors, Hon'ble SAT had observed that "*The director of a company cannot confine himself to lending his name to the company but taking light responsibility for its day to day management. While functions may be delegated to professionals, the duty of care, diligence, verification of critical points by directors cannot be abdicated. The directors are expected to have a hands on approach in the running of the company and take up responsibility not only for the achievements of the company but also the failings thereto*".

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

SEBI Act, 1992

Penalty for fraudulent and unfair trade practices.

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

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

43. 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.

44. 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. From the documents made available, it is noted that no prior default by the Noticee is on record. In the present case, I note that Sybly had issued 1.51 million GDRs worth USD 6.99 million to Vintage on June 19, 2008. However, it had pledged the entire GDR proceeds as collateral against the loan availed by Vintage from EURAM Bank. The same was carried out through a Loan Agreement entered between Vintage and EURAM Bank, and Pledge Agreement entered between Sybly and EURAM Bank. It is noted that both the Agreements were executed concurrently i.e. on May 30, 2008, and that the Pledge Agreement was an integral part of Loan Agreement. It is observed that the GDR issue would not have been subscribed had Sybly not given such security towards the loan taken by Vintage. 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. I note that the Noticee along with other directors was part of the Board meeting held on March 31, 2008 wherein the Board of Directors approved a resolution which authorized EURAM Bank to use Sybly's GDR proceeds deposited with EURAM Bank as security in connection with loan and further authorized Mr. Mahesh Chand Mittal and Mr. Umesh Kumar Mittal to sign any application, agreement etc. as may be required by the EURAM Bank. I also note that Mr. Mahesh Chand Mittal and Mr. Umesh Kumar Mittal have subsequently proceeded ahead and executed the aforementioned Pledge Agreement on behalf of Sybly. Thus, the Noticee was observed to have acted as a party to the fraudulent scheme, and has violated Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

ORDER

45. 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 of Rs. 10,00,000/- (Rupees Ten Lakh Only) on the Noticee viz. Mr. Subodh Kumar Goel, in terms of 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.

46. The amount of penalty shall be paid either by way of demand draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department - DRA-I), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

1. Case Name :	
2. Name of Payee :	
3. Date of Payment:	
4. Amount Paid :	
5. Transaction No. :	
6. Bank Details in which payments is made :	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

47. 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 **Satya Ranjan Prasad**
Date: March 27, 2019 **Adjudicating Officer**