BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. EAD-6/AK/AJ/2023-24/28034-28035

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

Noticee No. 1: Arun Panchariya, *(PAN: AEVPP6125N)* 28, Woodlands Ride, Ascot SL5 9HN,Berkshire, United Kingdom.	Noticee No. 2: Mukesh Chauradiya *(PAN: AAVPC0966A)* B 203, Sanmay Apartments, Opp. Prestige Towers, Judges Bunglow Road, Bodakdev, Ahmedabad – 380 054.

(The Noticee No. 1 & 2 were Noticees No. 3 & 4 respectively in the Show cause Notice dated August 22, 2017. aforesaid entities are hereinafter individually referred to by their respective names/ Noticee nos. and collectively as "Noticees", unless the context specifies otherwise)

In the matter of issue of GDRs by Hiran Orgochem Ltd.,

BACKGROUND

1. Securities and Exchange Board of India (**SEBI**) conducted an investigation, inter alia, to ascertain whether shares underlying Global Depository Receipts (**GDRs**) of Hiran Orgochem Ltd., (hereinafter referred to as ***"Hiran"/ "Company"***) were issued with proper consideration. The period under investigation was during issuance of GDRs i.e. April 01, 2010 to May 31, 2010 (hereinafter referred to as ***"investigation period/ IP"****).*

2. Hiran was a Company listed on the Bombay Stock Exchange Ltd., *(*hereinafter referred to as ***"BSE")***, issued 15,38,462 GDRs (amounting to US$ 10.00 Million) representing 4,61,53,860 underlying Equity Shares of face value of ₹ 10/- each at an offer price of US $ 6.50 per GDR on May 20, 2010. The issue was subscribed by one entity viz., Vintage FZE (now known as Alta Vista International FZE) *(*hereinafter referred to as ***"Vintage")***. It was observed that the subscription amount was paid by Vintage by obtaining loan from European American Investment Bank AG (hereinafter referred to as ***"EURAM Bank"***) by entering into Loan Agreement dated March 15, 2010 with EURAM Bank. It was further observed

that Hiran provided security towards the loan obtained by Vintage, through Pledge Agreement dated March 15, 2010 executed between Hiran and EURAM Bank, wherein Hiran pledged GDR proceeds against the loan availed by Vintage for subscribing to GDRs of Hiran. It was observed that the aforesaid Pledge Agreement was signed by Kantilal Hiran, CMD of Hiran, which was an integral part of Loan Agreement entered into between Vintage and EURAM Bank, and these agreements enabled Vintage to avail the loan from EURAM Bank for subscribing GDRs of Hiran. It was alleged that the GDR issue would not have been subscribed had Hiran not given such security towards the loan taken by Vintage. Therefore, it was alleged that the scheme of issuance of GDRs was fraudulent.

3. The investigation revealed that Hiran transferred US$ 5.09 million to its bank account in India. On account of default on loan repayment by Vintage, EURAM Bank adjusted the outstanding amount of US$ 4,945,613.91 on May 27, 2013 from the GDR proceeds of the Hiran kept in Hiran's EURAM Bank account. The GDR proceeds to the extent of US$ 4.95 million were adjusted by EURAM Bank towards the outstanding loan liability of Vintage which was written off by Hiran in May, 2013. Thus, it was observed that around 50% of the underlying shares of the GDRs were issued without proper consideration.

4. The investigation found that entire process of GDR issue by Hiran i.e. from subscription of GDRs to the sale of converted shares to the Indian investors, was devised and structured by Arun Panchariya (hereinafter also referred to as **"AP"/ "Noticee 1"**) in connivance with Hiran. It was found that to the detriment of the Indian investors, AP arranged loans for the subscription of GDRs of Hiran by Vintage, wherein AP was Managing Director, 100% shareholder and Authorized Signatory, through EURAM Bank (connected to "AP") and, thereafter, using certain Foreign Institutional Investors (FIIs), got the GDRs converted into underlying shares and sold them in the Indian securities market with the help of certain domestic entities connected to him. Hence, it was alleged that the Noticee 1 in connivance with Hiran and other connected entities, devised a fraudulent, deceptive and manipulative scheme and violated the provisions of Section 12A(a), 12A(b), 12A(c) of SEBI Act, 1992 (hereinafter referred to as ***"SEBI Act"***) r/w section 3(a), 3(b), 3(c) 3(d), 4(1) of SEBI (Prohibition of Fraudulent and Unfair

Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as ***"PFUTP Regulations"***).

5. Further, the investigation revealed that Mukesh Chauradiya *(*hereinafter also referred to as ***"Noticee 2")*** was the Managing Director and Authorized Signatory of Vintage when it defaulted on repayment of loan of US$ 4.95 million. It was observed that the Noticee 2 was a close associate of Noticee 1 and collaborated with Hiran & Vintage and performed the role assigned to him and thus acted as a party to the fraudulent scheme. Therefore, it was alleged that the Noticee 2 had violated the provisions of Section 12A(a), 12A(b), 12A(c) of SEBI Act r/w section 3(a), 3(b), 3(c) 3(d), 4(1) of PFUTP Regulations.

6. In this regard, an order dated June 17, 2020 was passed by Adjudicating Officer (AO) appointed by SEBI imposing penalty, inter alia, on Noticee No. 1 and Noticee No. 2. The said order was appealed against by the Noticees before Hon'ble Securities Appellate Tribunal (SAT). Hon'ble SAT, after considering the appeal by the Noticees, noted that the said order insofar as Noticee No. 1 is concerned, is in gross violation of the principles of natural justice as the hearing notice was not served upon the appellant (Noticee No. 1) and the order passed against him cannot be sustained, being violative of Article 14 of the Constitution of India. With regard to Noticee No. 2, Hon'ble SAT noted that merely because the appellant Mukesh Chauradiya was employed by Arun Panchariya and was a Manager or Director or Managing Director in Vintage cannot by itself lead to a conclusion that he was involved in the fraudulent activities. There has to be some more evidence before arriving at the conclusion that he was involved in the fraudulent activities in the subscription of the GDR and hence his case requires reconsideration and accordingly, vide order dated June 06, 2023, the impugned order insofar as it related to the Noticees was set aside and the matter was remitted to the AO to decide the matter afresh. Hon'ble SAT also directed that the appellants shall appear personally or through their authorised representative before the AO on 26th June, 2023 on which date the AO will proceed in accordance with law.

APPOINTMENT OF ADJUDICATION OFFICER

7. Undersigned was appointed by SEBI, vide Order dated June 09, 2023, under Section 19 r/w Sub-section (1) of Section 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 (hereinafter referred to as ***"Adjudication Rules")*** to inquire into and adjudge the alleged violations committed by the Noticees under whether Noticees attracted penalty under section 15HA of the SEBI Act.

PERSONAL HEARING AND REPLY

8. The authorized representative of Noticee No. 1, vide email dated June 14, 2023, requested to provide relied upon documents annexed with the Show Cause Notice (SCN) dated August 22, 2017. The authorized representative of Noticee No. 2 also, vide email dated June 19, 2023, requested for the said documents. The requisite documents were provided to the Noticees on June 19, 2023.

9. As directed by Hon'ble SAT, Noticees appeared before me and made submissions based on their replies dated June 25, 2023 (Noticee No. 1) and June 25, 2023 (Noticee No. 2). Post hearing on June 26, 2023, Noticee No. 2 also gave additional submissions, vide email dated June 28, 2023. The relevant paras of the replies of the Noticees are reproduced hereunder;

9.1 Reply of Noticee 1

9.1.1 Noticee cannot be made liable for any misinformation supplied by the company to stock exchange. As per the SEBI, the issue of GDR is not a fraudulent scheme but the manner of information to the stock exchange is such that it has resulted in fraudulent action on the part of the company, thereby, misleading the investors. Under such circumstances had the company informed the Stock Exchange, there was no occasion for a SEBI to allege anything against the noticee.

9.1.2 Wrongly held the Noticee as the perpetrator of the alleged irregularities and a beneficiary of the alleged fraud.

9.1.3 India Focus Cardinal Fund (IFCF) was regulated by FSC Mauritius as Alternate Investment Fund. IFCF being regulated as a FUND, was required to have professional Board to run and not individual as AP. Arun Panchariya was only a director of IFCF from 22.08.2008 to 28.10.2010. IFCF was sub-account of Euram FII till 20.07.2011 and thereafter, of CCPL. Arun Panchariya never controlled any broker, any Fund or contacted for any purpose of conversion or sale of GDR or underlying shares. IFCF had no relationship with HBSEMF or Golden Cliff or KBC Aldini Capital Mauritius or PAN Asia or Vintage.

9.1.4 Euram Bank was having ownership rights on subscribed investments to IFCF. Euram Bank never discharged its ownership rights. Euram Bank held 63.11 Class A shares in IFCF, which acquired the GDRs and sold in India.

9.1.5 Euram bank provided loans to Vintage to subscribe to the GDRs, but held the control of the funds and the GDRs. Euram bank took the GDRs from Vintage and then sold the same through IFCF a SEBI registered FII Sub account or other funds. To hold the underlying shares in India and carry out the conversion of GDR into shares, the Noticee is not a party to this arrangement.

9.1.6 High Blue S ky (HBS) is an investment company incorporated in Mauritius and registered as a sub account of KBC Aldini Capital Limited from 18.06.2010 to 21.10.2012 and Golden Cliff 22.10.2012 to 28.02.2017. AP is not associated with HBS at all. As per the allegations, in order to connect HBS with the noticee, it has been alleged that one Anant Kailash Chandra Sharma was Director in HBS since 11.08.2014 and owner since 09.09.2014. The show Cause Notice has failed to establish or show any evidence with regard to connection of the Anant Kailash Chandra Sharma with HBS during the dates of conversion. Further, entire connection (though strictly denied), which has been shown between the noticee and HBS is again without any evidence and is based upon conjuncture and surmises and on hypothetical basis. Similar is the position with regard to Reema Narayan Shetty.

9.1.7 In so far as Vintage FZE is concerned, it has been alleged that AP was a Managing Director as well as beneficial owner. Apart from signing the loan agreement, there is no evidence to allege that the noticee was the beneficial owner. Noticee was having only one share as on 30 September, 2010 and thereafter in the year 2011 noticee was not even the shareholder. Further, noticee has already resigned from Vintage much prior to the default having been occurred.

9.1.8 In so far as IFCF is concerned, the noticee had already resigned in October, 2010. In fact the ownership rights of the GDRs as well as shareholding pattern of Class A share belongs to Euram Bank, Austria.

9.1.9 The SCN fails to explain the rationale and / or manner in which the alleged loss caused to the shareholders of Hiran or how such alleged loss is attributable to the notice.

9.1.10 The Noticee also referred to the judgements of the Hon'ble Supreme Court in *Civil Appeal No.380 of 2020 titled as SEBI Versus Adi Cooper* and *Appeal No.745 of 2021 titled as M/s.Winsome Yarns Ltd. Vs. SEBI* before Hon'ble SAT to submit that Arun Panchariya nor the Vintage FZE (though not connected to Arun Panchariya) were required to make any representation or disclose anything either to the shareholders or to the investors of the security market through BSE and hence are not a party to the fraud.

9.1.11 As per the loan/Pledge Agreement, company was having all the time control over its GDR issue and it was open for the company not to set off the GDRs against fixed deposits and rather the company would have call back issued GDRs (underline equity shares) and could have cancelled the same at the moment when Vintage defaulted in the loan. This is for the simple reason because the GDR proceeds were lying as a security with the Bank and even the GDRs were also lying in the Bank. Therefore, it was required of the company to cancel the GDRs and call back the same after making payment from the fixed deposit (proceeds) which was lying as a security with the Bank. If the company did not do so then it is clear that the company had in fact received the money in some other account or in some subsidiary account in cash or kind. On the other hand, if the company had not received the amount then it is not discernible as to why the company let go its GDR to be set off.

9.1.12 Post the year 2011, Arun Panchariya was full time Consultant General and was not at all director in any of the companies nor holding any office of profit with any other companies. Therefore, it is not discernible as to how any proceeds, profits or gain could go to Arun Panchariya especially when he was already restrained from dealing in Security Markets in the year 2011 itself.

9.1.13 There is no allegation against Arun Panchariya that he advised any of the companies to execute such Resolutions or Pledge GDRs in order to generate capital or equity or advised the company to set off the Pledged deposits of GDR proceeds with the outstanding loan of Vintage.

9.1.14 It is wrong to allege that AP (through Vintage FZE) controlled certain sub-accounts Viz. IFCF or HBS etc.

9.1.15 There is an inordinate and unexplained delay in issuing Show Cause Notice qua the Noticee to the extent of more than 8 years. Further, there is also inordinate and unwarranted delay in deciding the proceedings by the AO

9.1.16 SEBI investigation officer in the Ex-parte order legitimately portrayed GDR purchase & cancellation by IFCF in a wrong way, just to misguide court and public investors with malafide intention for acceptance of Bribe from alleged parties. SEBI first order in year Sept 2011 with confirming order passed in year 2012 with specific investigation period killed GDR issuance market as SEBI order itself closed all GDR business and GDR scripts trading were suspended by SEBI itself. It created situation of default with the Vintage.

9.1.17 Noticee resigned as director from Vintage in 2010. Noticee was a director in IFCF only till October 2010. Cardinal Capital Partner Ltd. was the sponsor of the fund and held the hundred percent shareholding of the Fund. CCP was FII only for the period of two months prior to the ex parte order published by SEBI against FUND and AP. Before that Euram Bank Austria was managing day to day business of IFCF. IFCF was controlled by EURAM as it was provided in the FII umbrella by EURAM and it was EURAM's staff that controlled the affairs of IFCF.

9.1.18 The noticee categorically prays that the proceedings qua him as initiated in the present Show Cause Notice may kindly be dropped as the noticee has nothing to do with the transactions executed between Southern Ispat, Euram or Vintage FZE nor any illegal gain or ill-gotten gain has been passed on to the noticee and further there is no proof or evidence to support the same.

9.2 Reply of Noticee 2

9.2.1 There is unexplained and inordinate delay in the initiation of the present proceedings and appointment of the Ld. Adjudicating officer to inquire and adjudge the present matter. The alleged violation of the provisions of SEBI Act and Regulations had allegedly been committed in March, 2010 and the appointment of the Ld. Adjudicating Officer was done in May, 2017 and the

Show Cause Notice was issued in August, 2017 *i.e., nearly after 07 years*; therefore, there has been an unreasonable delay in initiating and concluding the proceedings against me which has caused prejudice qua me.

9.2.2 No opportunity of cross–examination provided, the complete materials/documents in support of the aforesaid allegations have not been made available to me, complete evidence and the details connected with the counter parties has not been provided. Thus, it is submitted that it would not be possible for me to present a comprehensive submission without the aforesaid information.

9.2.3 I did not have any relation/ connection with the entities/ persons mentioned in the SCN or with any other counter parties. I was working as General Manager in Vintage and I was only an authorized signatory in Vintage. That the functioning as the authorised signature in Vintage, by me, was done in the normal course of business, under instructions and on behalf of Mr. Arun Panchariya and devoid of any malafide intention and knowledge of such alleged fraudulent scheme as carved in the SCN.

9.2.4 With regard to observation that I had signed a Certificate dated December 30, 2010 under the head of Director of Vintage FZE, I humbly submit and bow down before your good self that various concerns were raised from the EURAM Bank, Austia that Mr. Arun Panchariya was signing the documents on behalf of Vintage FZE as well as authorising and verifying the documents as the President/Director of EURAM Bank Asia Ltd and therefore, the concerned alleged certificate written to the EURAM Bank dated December 30, 2010 was signed under instructions, good faith and proxy of AP after the alleged fraudulent scheme had been perpetrated for the issuance of GDRs of Hiran.

9.2.5 I had signed the Loan Agreement for the subscription of the GDR issues of Rasoya Proteins Limited as the Managing Director of Vintage on February 14, 2011. Without prejudice to my rights and contentions, it is submitted that I have neither signed any loan agreement nor signed any documents with respect to the issuance of GDRs in relation to Hiran and therefore, no prejudice and bias can be pointed towards me by bringing on record documents of other alleged fraudulent scheme.

9.2.6 I submit that even assuming that I had signed the loan Agreement as the Managing Director I humbly submit that I have not gained materially from the alleged fraudulent scheme of GDRs issuance in the relation of Hiran, Rasoya Proteins, Vikas Metal, Nakoda or Power Ltd.

9.2.7 It is submitted herewith that Aurisse International Limited was a fund administrative company and its work was to act as an intermediary between fund managers and Investors. That I humbly submit that no cogent and stringent documentary evidence has been brought on record to show that Aurisse International Limited in which I was the Director and CFO was in anyway related and involved in the alleged fraudulent scheme of issuance of GDRs in relation to Hiran. That it is an admitted position that there was neither a connection shown with the counter party nor any circumstances which could even remotely show that Aurisse International Limited was involved in the fraudulent scheme of issuance of GDRs in relation to Hiran.

9.2.8 That I was the Managing Director of Vintage when it had defaulted in the repayment of loan availed for the subscription of GDRs of Hiran I was instructed and in good faith without knowing about the alleged fraudulent scheme being perpetrated, to sign the documents as the Managing Director availing Loan on behalf of Vintage FZE.

9.2.9 The impugned SCN has failed to produce any material, strong, cogent documentary evidence on record to show that I was involved in the day – to – day affairs of Vintage. Hence, I cannot be held liable, when I was neither the founder, managerial director, beneficial owner or involved in the day to day affairs of Vintage.

9.2.10 The Noticee has also referred to SAT judgements in the matter of *HB Stock Holdings Limited vs. Securities and Exchange Board of India dated 27.08.2013, Bharat Jayantilal Patel vs. SEBI (Appeal No. 126 of 2010 dated September 15, 2010) Sameer C. Arora vs. SEBI (Appeal No. 83 of 2000 dated October 15, 2004), Price Waterhouse & Co vs. SEBI reported in Appeal No. 6 of 2018 dated 09.09.2019, Networth Stock broking Ltd vs. SEBI reported in Appeal No. 5 of 2012 dated 19.06.2012, Sterlite Industries vs. SEBI reported in Appeal No. 20 of 2001 dated 22.10.2001* and also various other judgements viz. *A.K. Roy vs. Union of India reported in AIR 1982 SC 710, Imperial Corporate Finance and Services Private Ltd., Mumbai vs. SEBI reported in Appeal No. 56 of 2003, Hanumant and Ors. Vs. State* *of Madhya Pradesh reported in AIR 1952 SC 343, Rahul H. Shah and Ors. Vs. SEBI decided in Appeal No. 133 of 2003 dated 15.09.2004, Ex – Naik Sardar Singh vs. Union of India reported in 1991 (3) SCC 212, Ranjit Thakur vs. Union of India reported in AIR 1987 SC 2386, S.M.S. Pharmaceuticals Ltd vs. Neeta Bhalla reported in (2005) 8 SCC 89, Katta Sujatha vs. Fertilizers & Chem. Travencore Ltd and Ors. Reported in (2002) 7 SCC 655, K.K. Ahuja vs. V.K. Vora and Ors. Reported in (2009) 10 SCC 48.* Noticee has also drawn attention to Section 27 of SEBI Act.

CONSIDERATION OF ISSUES

10. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Noticee 1 and 2 is that they have violated the provisions of Section 12 A (a) (b) (c) of SEBI Act r/w Regulation 3 (a) (b) (c) (d) and 4 (1) of PFUTP Regulations.

11. After perusal of the material available on record, I note that the following issues arise for consideration, viz.,
    11.1 **ISSUE-I:** Whether the Noticees have violated the relevant provisions of SEBI Act and PFUTP Regulations?
    11.2 **ISSUE-II:** Does the violation, if any, attract monetary penalty under Section 15HA of SEBI Act?
    11.3 **ISSUE-III:** If so, what should be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

12. With respect to the submission of Noticees that there has been delay in the proceedings, I note from the records that SEBI started this GDR investigation in the year 2010 and passed an ex-parte order on 21st September, 2011 on the following grounds:-
    i) Market Manipulation & Price speculation in Shares;
    ii) Money Laundering;
    iii) Creation & Utilization of Fraud devise to execute GDR.

    First ad interim ex-parte order was passed, inter alia, against Noticee 1 in his personal capacity as Managing Director of Pan Asia Advisors on September 21, 2011. SEBI found that there were GDRs of many companies and all were stereotype, being same devise used by involved parties. Subsequently, documents/ records in the instant matter were obtained from the Financial Market Authority, Austria on February 15, 2016, March 1, 2016 and March 3, 2016 and the Financial Services Commission, Mauritius on September 15, 2016 and September 22, 2016. Consequent to the receipt of documents as stated aforesaid, investigation was initiated into the GDR Issue of Hiran and the said investigation was completed in the year 2017. After the completion of investigation in the matter, the SCN dated August 22, 2017, was issued to the Noticees. Once the SCN were served on all the Noticees, opportunity of personal hearing was granted to the Noticees who had sought for the same. In the matter of *Jindal Cotex Ltd. and Ors vs. SEBI* (Date of Decision: February 5, 2020, SAT Appeal No. 376 of 2019), the Hon'ble SAT held that arguments on delay in investigation and consequently affecting natural justice were devoid of any merit. The Hon'ble Tribunal had acknowledged the complexity involved in the entire manipulative GDR Issue and had appreciated the time taken by SEBI to gain information relating to the various entities from multiple jurisdictions. Further, in the matter of *G. V. Films Ltd. vs. SEBI* (Date of Decision: February 15, 2021, SAT Appeal No. 168 of 2020), the Hon'ble SAT opined on the issue of delay in a similar matter pertaining to issue of GDR's, stating: *"Having heard the learned counsel for the parties on this issue, we find that there is no doubt that there has been a delay in the issuance of the show cause notice after 10 years from the date of the GDRs issue. However, on this ground of delay, the proceedings cannot be quashed for the reasons that we find that an investigation was required to be done beyond the borders of India which took time."* In view of the aforementioned, I do not agree that the delay in the matter would vitiate the proceedings. Accordingly, I now proceed to deal with the other issues in the matter.

ISSUE-I: Whether the Noticees have violated the relevant provisions of SEBI Act and PFUTP Regulations?

13. I have carefully perused the documents on record, written submissions made by the Noticees, vide their letter dated 25-28 June 2023 and oral submissions made by them before me on June 26, 2023. The submissions of the Noticees are being dealt with in the subsequent paras, while determining whether the Noticees have violated the relevant provisions of SEBI Act and PFUTP Regulations.

14. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI Act, PFUTP Regulations alleged to have been violated by the Noticees, which reads as under:

SEBI Act

12.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

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

15. Hiran was incorporated on March 22, 1983 in Mumbai and its shares were listed on BSE. The scrip was suspended due to penal reasons w.e.f. March 31, 2015.

16. The Board of Directors of Hiran for the financial years 2009-10 and 2010-11 are furnished hereunder:

Sl. No.	Name of the Director	Designation
1.	Mr. Kantilal Hiran	Chairman & MD, Executive, Promoter
2.	Mr. Vijay K. Hiran	Whole Time Director, Executive, Promoter (resigned w.e.f. May 05, 2011)
3.	Mr. Naresh K. Hiran	Whole Time Director, Executive, Promoter (appointed w.e.f. November 01, 2009, resigned w.e.f. May 05, 2011)
4.	Mr. H. N. Bafna	Non-executive independent director
5.	Mr. Mukesh Naik	Non-executive independent director
6.	Mr. M. Kailash Kumar	Non-executive independent director
7.	Mr. Ashok A. Lunia	Non-executive independent director

17. The category wise shareholding pattern of the Company for the quarter ended March 2010 to September 2010 is given below:

(Source: www.bseindia.com)

Particular	**Quarter ended March 2010**			**Quarter ended June 2010**		
	No. of share holders	**No. of shares**	**%**	**No. of share holders**	**No. of shares**	**%**
Promoter Holding	15	2,37,90,755	45.31	15	2,37,90,555	24.11
Non Promoter Holding	5,572	2,87,12,245	54.69	5,472	3,11,12,445	31.54
Shares held by custodians and against which Depository Receipts have been issued	0	0	0	1	4,37,53,860	44.35
Total no. of shares	5,587	5,25,03,000	100.00	5,488	9,86,56,860	100.00

Particular	**Quarter ended September 2010**		
	No. of share holders	**No. of shares**	**%**
Promoter Holding	15	2,37,90,555	24.11
Non Promoter Holding	6,709	4,32,62,445	43.85
Shares held by custodians and against which Depository Receipts have been issued	1	3,16,03,860	32.03
Total no. of shares	6,725	9,86,56,860	100.00

18. The company had issued bonus shares in the proportion of 4 new equity shares of INR 10 each fully paid up for every 1 equity shares of INR 10 each fully paid to shareholders with a record date of September 12, 2009 i.e. prior to GDR issue.

19. The financial performance of the Company for the quarter ended March 30, 2010 to September 2010 and for the financial years ended 2009-10 and for the period April 2010 to June 2011 is furnished hereunder:

(Source: www.bseindia.com) (in ₹ crores)

Description	Quarter Ended		
	Mar 31, 2010	**June 30, 2010**	**Sept 30, 2010**
Net sales	NA	51.77	28.22
Other Income	NA	0.81	0.56
Total income	NA	52.58	29.78
Profit after tax	NA	1.91	-0.40

Description	Year Ended	
	2009-10	**April 10-June 11**
Net sales	202.96	147.84
Other Income	2.67	4.83
Total income	205.64	152.67
Profit after tax	7.45	-83.38

20. It is observed from the above that net sales of the Company went down significantly during the period from June 2010 to September 2010.

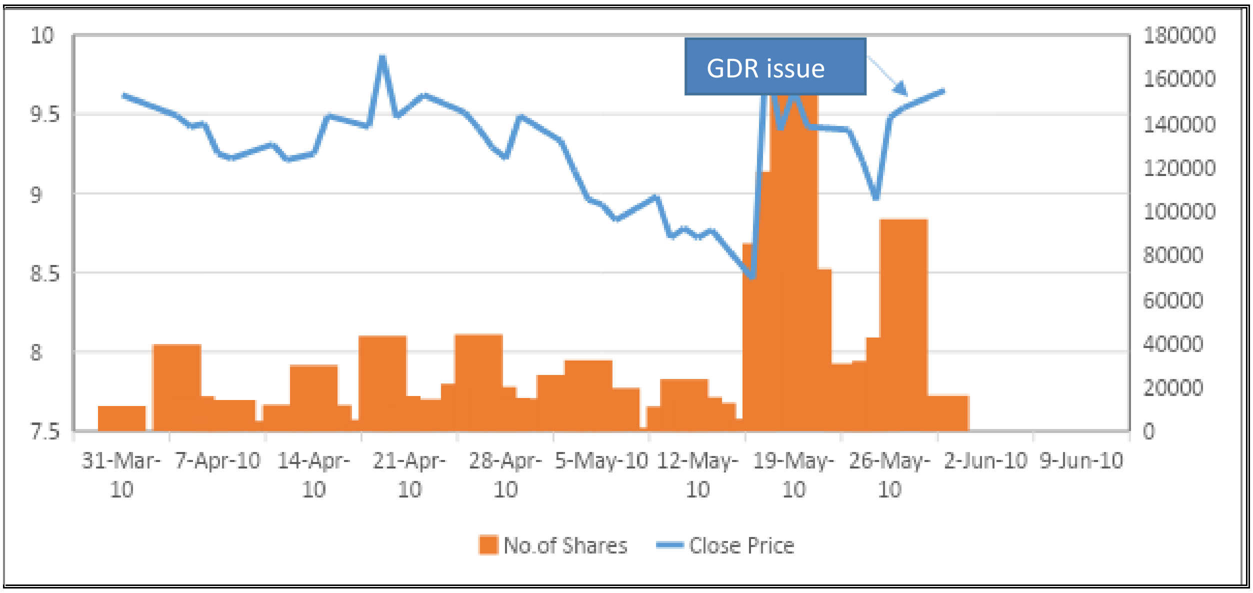
21. The price volume analysis of the scrip (Hiran) before, during and after the period of investigation period is furnished hereunder.

(Source: bseindia.com)

Period	Dates		Opening Price (volume) on first day of the period (₹)	Closing price (volume) on last day of the period (₹)	Low price (volume) during the period (₹)	High Price (volume) during the period (₹)	Avg. no. of (shares) traded daily during the period
Before Investigation period	(04 Jan 10 –31 Mar 10)	**Price**	10.80	9.11	8.00 (18/03/2010)	10.80 (04/05/2010)	25,359.52
		Vol	49,367	18,057	2200 (15/03/2010)	192105 (25/03/2010)	
During Investigation period	(01April 10-31 May 10)	**Price**	9.50	9.65	8.40 (17/05/2010)	10.50 (27/04/2010)	29,837.95
		Vol	11,380	16,307	1623 (10/05/2010)	168563 (20/05/2010)	
After investigation period	(01 Jun 10 –31 Aug10)	**Price**	9.50	10.00	9.25 (29/06/2010)	11.49 (05/07/2010)	1,94,771.18
		Vol	12,306	73,437	3827 (17/05/2010)	1260126 (12/07/2010)	

22. The Price volume chart of the scrip (face value @ ₹ 10) for the for the investigation period is as follows:

(Source: www.bseindia.com)



<u>Findings on the alleged violation of the provisions of SEBI Act & PFUTP Regulations by the Noticees</u>

23. I shall now proceed to deal with the allegations levelled against the Noticees. For this purpose, I consider it appropriate to examine in detail the entire chronology of events starting from decision to raise financial resources by way of GDR till the receipt of GDR proceeds, allotment of GDR, listing of GDRs, conversion of GDRs, sale of converted shares to the Indian investors and delisting of GDRs.

24. The Board of Directors of Hiran, in its meeting held on August 29, 2009 decided to issue GDRs for an aggregate amount not exceeding ₹ 75 crores. Pursuant to a resolution passed by Shareholders through postal ballot on October 16, 2009, the Board of Directors of Hiran, in its meeting held on February 22, 2010 approved opening of GDRs. In this regard, the Board of Directors authorized Kantilal Hiran, Managing Director, Vijay Hiran, Director and Naresh Hiran, Director to do as such acts, deeds and sign any documents, papers, forms in compliance with the above objective.

25. I note from the certified true copy of the resolution passed in the meeting of Board of Directors of Hiran held on October 31, 2009 which inter-alia states as follows:

a) *"Resolved that a bank account be opened with EURAM Bank (the Bank) or any branch of EURAM Bank including the off-shore Branch outside India for the purpose of receiving subscription money in respect of the Global Depository Receipt Issue of the Company".*

b) *"Resolved further that Mr. Kantilal Hiran and Mr. Vijay Hiran, Directors 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."*

c) *"Resolved further that Mr. Kantilal Hiran and Mr. Vijay Hiran, Directors of the Company be and are hereby severally authorized to draw cheques and other documents, and to give instructions from time to time as may be necessary to the said EURAM Bank or any branch of EURAM Bank including the off-shore 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 this company."*

d) *"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 agreements if and when so required."*

26. From the above, I note that the Board of Hiran had considered the proposal to open account with EURAM Bank for the purpose of receiving subscription money in respect of the GDRs, proposed to be issued by Hiran. In this regard, the Board of Hiran had also passed resolution authorising Kantilal Hiran and Vijay Hiran, Directors of the Company 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. Further, the resolution was passed which specifically provided for authorising banks to use the funds so deposited in the bank account proposed to be opened with EURAM Bank as security in connection with loans, if any, as well as to enter into any Escrow agreement or similar agreements if and when so required.

27. I note from the correspondence received from Hiran, vide letter dated June 22, 2015, that it had issued 15,38,462 GDRs (US$ 10.00 million) on May 20, 2010. The GDR proceeds were deposited with EURAM Bank. The summary of the GDR issue by Hiran as per the email received from DBS Bank, Custodian in terms of email dated September 3, 2015 is tabulated below:

GDR issue date	**No. of GDRs issued**	**Capital raised (US$ mn.)**	**Local custodian**	**No. of equity shares underlying GDRs**	**Global Depository Bank**	**Lead Manager**	**Bank where GDR proceeds deposited**	**GDRs listed on**
20-May-2010	15,38,462	10.00	DBS Bank, Mumbai	4,61,53,860	The Bank of New York Mellon	IKON Capital Limited, UK	EURAM, Austria	Luxembourg Stock Exchange

28. Further, the Company, vide letter dated June 22, 2015 had provided the list of subscribers to its GDRs, which is tabulated as under:

Sl. No.	**Name of the subscriber**	**No. of GDRs allotted**	**Country of subscriber**
1	Axinite Inc	1,80,000	United Arab Emirates
2	Cruise Waterford Ltd.	1,46,462	United Kingdom
3	Fort Tropical Ltd.	2,32,000	Indonesia
4	Mediterranean Capital Holdings Corp.	1,60,000	Portugal
5	Scholari Investments Ltd.	2,60,000	South Africa
6	Uranus Global Ltd.	2,50,000	Philippines
7	Victory Pillar Holdings Ltd.	3,10,000	Indonesia
Total		**15,38,462**	

29. I note from the records that on March 15, 2020 Vintage executed a Loan Agreement No. K150310-001 with EURAM Bank by which EURAM Bank agreed to make available a loan facility of US$10 Million expressly for subscribing to the GDRs to be issued by Hiran. The said loan agreement was signed by Arun Panchariya in the capacity of Managing Director, Vintage.

30. As noted above, on perusal of the Loan Agreement, I note that the following has, inter alia, been mentioned therein –

   1. *<u>Currency and the amount of facility</u>:*

      US$10 Million (The amount is exactly the same amount raised by HIran through the said GDR offering.)

   2. *<u>Nature and purpose of facility</u>:*

To provide funding enabling Vintage FZE to take down GDR issue of 1,538,462 Luxemburg public offering and may only be transferred to EURAM account nr. 580012, Hiran Orgochem Ltd., (The specific purpose of the loan/ draw down was for the purpose of subscribing to the GDR issue of Hiran 580012 is the client account number of Hiran.)

6. <u>*Security*</u>:

6.1In order to secure all and any of the Bank's claims and entitlements against the Borrower, arising now or in the future out of or in connection with the Loan or any other obligation or liability of the Borrower to the Bank, including without limitation other loans granted in the future , it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be demanded by the Bank: "

• Pledge of certain securities held from time to time in the Borrower's account no. 540012 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.

• Pledge of the account no. 580012 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.

31. From the aforesaid Loan Agreement, I note that Vintage opened a loan account (no., 540012) and had availed of a loan facility to the extent of US$10 Million from EURAM Bank solely for the purpose of subscribing to the GDRs of Hiran. At the same time Hiran opened its account (A/c No. 580012) with EURAM Bank for the purpose of credit of proceeds of GDR Issue. I also note that, on the day (i.e., March 15, 2010) when Vintage had entered into loan agreement with EURAM Bank, as discussed in pre-paragraphs, Hiran also entered into a pledge agreement as Pledger with EURAM Bank which was signed by Kantilal Hiran as the Managing Director of Hiran. By the said pledge agreement, Hiran pledged the proceeds of its GDR issue with EURAM Bank as security for the loan extended by EURAM Bank to Vintage for subscribing to its GDRs.

32. The salient Clauses of the Pledge Agreement inter alia are as under:

3. <u>The preamble</u>

"By Loan Agreement K150310-001 (hereinafter referred to as the ***"Loan Agreement")*** *dated 15 March 2010, the Bank granted a loan* (hereinafter referred to as the ***"Loan")*** *to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates (the "Borrower") in the amount of US$10,000,003.00. The Pledgor has received a copy of the Loan Agreement No. K150310-001 and acknowledges and agrees to its terms and conditions."*

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

2.1.1 all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the ***"Pledged Securities")*** *and the balance of funds up to the amount US$ 10,000,003.00 existing from time to time at present or hereafter on the securities account(s) no. 580012 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. 580012 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 Pledger agrees to deposit with the Bank all dividends, interest and other payments, distributions of cash or other property resulting from the Pledged Securities and funds.

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

33. Further, the following condition was put in the Pledge Agreement for realization of the pledge.

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

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

6.2 Notwithstanding the foregoing, in the case that the Borrower fails to make payment on any due amount, or defaults in providing or increasing security, the Pledger 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 Pledger 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 transaction, 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."

34. I note that the Pledge Agreement refers to the Loan Agreement dated March 15, 2010 between the borrower i.e. Vintage and EURAM Bank (Lendor), whereby Vintage was granted a loan of US$10 Million and it is stated that the Pledger i.e. Hiran had received a copy of the said Loan Agreement and had also acknowledged and agreed to the terms and conditions of the said loan agreement. Therefore, I observe that, while signing the Pledge Agreement, Hiran was clearly aware that Vintage had acquired a loan only to subscribe to the GDR issue of Hiran. Further, as the pledge agreement was signed by Kantilal Hiran on behalf of Hiran, in his capacity as Chairman and Managing Director of Hiran, I note that he had, as clearly mentioned in the Pledge agreement, acknowledged receiving the

said loan agreement and agreed to its terms and conditions after perusing the said agreement. On perusal of the contents of the Pledge Agreement, I note that Hiran 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. This arrangement shows that Kantilal Hiran had complete knowledge about the subscriber to GDR issue well in advance (March 2010) before the actual GDR issue (May 2010). However, such material information was withheld from the shareholders / investors regarding the sole subscriber and also pre-arrangement scheme of pledging GDR proceeds and securities to EURAM Bank. Taking into consideration the above findings, I conclude that gullible investors were induced to falsely believe that GDR was subscribed by genuine investors as against manipulators.

35. I note from the perusal of the Loan agreement entered into by Vintage with EURAM and Pledge agreement entered into by Hiran with EURAM, that both are dated March 15, 2010. I note that the Loan agreement specifies that the Pledge agreement was an integral part of the Loan agreement and as per the preamble of the Pledge agreement as it explicitly mentions that the pledge is being created for the purpose of the loan agreement. These agreements enabled Vintage to avail the loan from EURAM for subscribing GDRs of Hiran, and these arrangements resulted in subscription of GDRs issued by the Company. The GDR issue would not have subscribed had the company not given any such security towards the loan taken by Vintage.

36. I note from the records that GDR proceeds of an amount of US $10,000,003 were credited to the bank account number 05800120014 of Hiran with EURAM Bank, Austria on May 20, 2010. It is to be distinctly noted that the same were not available at the disposal of Hiran, since Hiran pledged the GDR proceeds amount to US$ 10 Million with EURAM Bank, as a security for the loan (US$ 10 Million) raised by Vintage for subscribing to the GDRs issued by Hiran.

37. The details of realization of funds by Hiran out of GDR proceeds of US$ 10.00 million is tabulated below:

(Source: EURAM bank a/c statement)

Date of receipt of funds	Amount of funds received by Hiran in India (US$)
October 08, 2010	1,000,000.00
October 12, 2010	1,000,000.00
October 14, 2010	1,000,000.00
October 18, 2010	1,000,000.00
October 19, 2010	1,000,000.00
June 17, 2013	95,769.77
Total	**5,095,769.77**

38. I note that Hiran signed a Pledge Agreement with EURAM Bank and pledged GDR proceeds of US$10.00 million as collateral against the Loan availed by Vintage. I note that Vintage repaid the loan amount to the extent of US$ 5.07 million in several installments from June 08, 2010 to October 19, 2010 to EURAM Bank. The details of repayment of loan by Vintage, as provided by EURAM Bank are furnished hereunder:

Date	Repayment of loan amount by Vintage (in US$)	Date	Amount of funds transferred from Hiran's EURAM Bank account (in US$)
08/06/2010	13,000.00	-	-
08/07/2010	62,500.00	-	-
08/10/2010	1,000,500.00	08/10/2010	1,000,000.00
12/10/2010	1,000,000.00	12/10/2010	1,000,000.00
14/10/2010	1,000,000.00	14/10/2010	1,000,000.00
18/10/2010	1,000,000.00	18/10/2010	1,000,000.00
19/10/2010	1,000,000.00	19/10/2010	1,000,000.00
-	-	17/06/2013	95,769.77
Total	**5,076,000.00**		**5,095,769.77**

39. On perusal of the Hiran's Bank account and Vintage's loan account statement, I note that Vintage repaid loan amount of US$ 5,076,000 till October 19, 2010 and thereafter defaulted on the loan payment. It is noted from the above table that only after Vintage repaid loan instalments, equal/ less amount of money was transferred from Hiran's EURAM Bank account to Hiran's bank account in India (ICICI Bank account no. 001105011836) on the same day (except on one instance

when US$ 0.09 million were transferred without repayment of loan by Vintage on that day). It is evident from the above findings that the amount transferred from Hiran's EURAM Bank account to its bank account in India was dependent on the repayment of the loan by Vintage.

40. Hiran after allotting the GDRs to Vintage for US$10 Million, received 50% of the proceeds i.e., US$ 5 Million during October 8, 2010 to October 19, 2020 and thus repatriated the same (50% of the GDR proceeds) to its account in India. The remaining proceeds were never received by Hiran from Vintage, which means 50% of the GDRs were issued by Hiran without any consideration.

41. Pursuant to default of repayment of loan by Vintage, EURAM Bank, vide letters dated August 21, 2012 and April 11, 2013, informed Hiran that despite multiple demands for repayment of US$ 4,924,003 plus interest of US$ 21,610.9, Vintage has not repaid the outstanding loan amount. Further, vide notice dated April 11, 2013, EURAM Bank informed Hiran that in accordance with the Pledge agreement executed by Hiran, in order to secure the above mentioned loan of US$4,945,613.91 *(inclusive of interest)*, defaulted by Vintage, it would exercise its right and invoke the charge of Hiran's deposit towards repayment of loan defaulted by Hiran.

42. Further, I note from the copy of a letter, dated October 31, 2012, sent by Hiran to EURAM Bank which states that:

"... we hereby confirm that the pledge agreement entered into by and between Hiran Orgochem Ltd. and Europran American Investment Bank AG is valid and was duly signed by Hiran Orgochem Ltd.

Further, we confirm the right of European American Investment Bank AG to set off the pledged cash deposit with outstanding loan amount 4924003.00 US$."

43. I note from the above communication of Hiran to EURAM Bank that it had consented for invocation of charge on Hiran's deposit with EURAM Bank towards repayment of loan amount of US$4,924,003 defaulted by Vintage. I note that on account of default on repayment of loan obtained by Vintage, GDR proceeds amounting to US$ 4.95 million were set off by EURAM Bank on May 27, 2013,

which is evidenced from the bank statement of Hiran and thereby Hiran did not receive the consideration for 50% of the GDR issue.

44. Thus, I note that out of the GDR proceeds of US$10 million, Hiran received US$5.09 million only and the balance proceeds of US$ 4.95, which was defaulted by Vintage, was paid by Hiran to EURAM Bank from the proceeds of the Company. Thus, I note that 50% of the underlying shares of the GDRs were issued without proper consideration, by Hiran.

45. The company reported to BSE on May 21, 2010 that, *"... the Board of Directors of the Company at its meeting held on May 21, 2010, inter alia, has considered and approved allotment of 15,38,462 GDRs representing 46153860 underlying Equity Shares of face value of ₹ 10/ each at an offer price of US $ 6.50 per GDR.."*, which made investors believe that the said GDR issue was genuinely subscribed. This announcement neither mentioned nor indicated that the GDRs were allotted to, or subscribed by, a single entity on the basis of pledge of GDR proceeds and rather it tends to give a message to the market that there was considerable demand for its GDR in the overseas market and the same were successfully subscribed. From the aforesaid findings, it is an established fact that Company did not receive total GDR consideration, whereas it was shown as fully subscribed from public point of view and later on written off.

46. I note that had Hiran not given security for the loan taken by Vintage, Vintage would not have got finance to subscribe to GDR's, consequently the GDR issue would not have been successful as Vintage was the only allottee to the issue. Further, the circular movement of funds starting from the source of funds to repayment of loan through invoking the Pledge agreement clearly establishes that 50% of GDRs were allocated to Vintage free of cost.

47. In this regard, I note that the facts of the present matter and the modus operandi employed in the present GDR issue are similar to facts and modus operandi in the GDR issue of Cals Refineries Ltd. wherein the Hon'ble SAT, vide its order dated October 12, 2017, made the following observations:

"In these circumstances, the conclusion drawn by SEBI that opening a bank account with Banco and executing the Account Charge Agreement were the acts done by Cals through its directors to finance Honor for subscribing the GDRs issued by Cals in gross violation of Section 77(2) of the Companies Act, 1956 and the provisions contained in the SEBI Act and the PFUTP Regulations, cannot be faulted."

48. In this regard it is also pertinent to mention that with regard 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, Hon'ble 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."

49. In view of the observations made in the preceding paragraphs, I find that the entire scheme created by the Company starting with passing of the impugned Board Resolution, followed by entering into Pledge agreement so as to permit use of its GDR proceeds as a security against a loan taken by Vintage from the same Bank (i.e., EURAM), making an announcement on May 21, 2010 that the GDRs have been successfully allotted and then not disclosing to the Public about the said impugned Board Resolutions, and the details of Pledge agreement, which reveal the Company's blatant commitment to secure the loan obligation of its GDR subscriber etc., have cumulatively succeeded in misleading as well as inducing the susceptible investors at large. Such a scheme and arrangement has in it, all the ingredients that comprise a fraudulent activity in the Securities Market.

50. It was alleged in the SCN that the Noticee 1 i.e., Arun Panchariya *(hereinafter referred to as "AP" / "Noticee 1"),* in connivance with Hiran and other connected entities, devised fraudulent GDR scheme and committed fraud right from the stage of subscription of GDRs and to the sale of converted shares to the Indian

investors. I note that according to an Administrative Fine Statement available on Dubai Financial Services Authority (DFSA) website, AP held positions with Pan Asia Advisors Ltd. (now known as Global Finance and Capital Ltd.), Vintage (now known as Alta Vista International FZE) and IFCF. A brief summary of connection/ association of AP with various entities as brought out in the investigation are tabulated below.

(Source: MCA database, custodian DBS Bank and foreign regulators)

Sl. No.	Name of the entity	Connection/association of AP with entity
1	Vintage FZE (now known as Alta Vista International FZE)	AP was Managing Director as on May 05, 2010 as well as beneficial owner
2	IFCF	AP was director from August 22, 2008 to October 28, 2010, Investment Officer (100% shareholder) and beneficial owner
3	Cardinal Capital Partners Limited	AP was beneficial owner and 100% shareholder
4	EURAM Bank, Austria	AP connected Pan Asia Advisors Ltd. had joint venture with EURAM Bank namely EURAM Bank Asia Limited.
5	EURAM Bank Asia Limited	AP was director and president (resigned on September 22, 2011)
6	Mr. Mukesh Chauradiya	AP was beneficial owner of Vintage FZE in which Mr. Mukesh Chauradiya served as Managing Director and director. In Ramsai Investment Holdings Private Limited, where AP was holding 99.98% shares (for the period 2009-2013) and was director for the period from February 04, 2008 to August 18, 2010 wherein Mr. Mukesh Chauradiya was director in the same company (first appointment from February 04, 2008 and second appointment from August 17, 2010 till March 17, 2016).
7	Mr. Anant Kailash Chandra Sharma	AP and Mr. Anant Kailash Chandra Sharma were directors in Sai Sant Advisory (India) Private Limited: AP-August 31, 2007 to October 20, 2010 Anant Kailash Chandra Sharma-December 01, 2009 till March 18, 2016. AP's brother Mr. Satish Ramswaroop Panchariya is promoter of Alka India Limited. Anant Kailash Chandra Sharma is also additional director

		in Alka India Limited since December 01, 2009 till date. AP's brother Mr. Satish Ramswaroop Panchariya and Mr. Ashosk Ramswaroop Panchariya are directors in Alka India Limited since October 05, 2011 and April 29, 2005 respectively, till date.
8	HBSEMF	Mr. Anant Kailash Chandra Sharma is director and beneficial owner of HBSEMF (since September 09, 2014 till date). Mr. Anant Kailash Chandra Sharma is connected to AP.
9	Golden Cliff (previously known as Vaibhav Investments Limited)	Mr. Anant Kailash Chandra Sharma is director and 100% beneficial owner (since September 09, 2014 till date)) of Golden Cliff. Anant Kailash Chandra Sharma is connected to AP. Reema Narayan Shetty was director and 100% beneficial owner (from September 12, 2013 till September 09, 2014)) of Golden Cliff. She was authorized signatory for the bank account of AP connected entity IFCF which was maintained with EURAM Bank Austria.
10	KBC Aldini Capital Ltd	Mr. Daniel Baumslag was director of KBC Aldini Capital (till September 27, 2011) and HBSEMF (from March 05, 2010 to June 14, 2011). Mr. Daniel Baumslag was 100% shareholder of HBSEMF (from March 05, 2010 to June 14, 2011). Mr. Anant Kailash Chandra Sharma is connected to AP and Anant is beneficial owner and director of HBSEMF since April 21, 2014 till date of the investigation.

51. Now, I would like to deal with the basis of connection of AP with other entities, which were involved in the process of issue of GDRs by Hiran. I note from the letter, dated February 20, 2012, addressed to SEBI by Pan Asia Advisors Ltd., that Arun Panchariya was the Promoter / Director of Pan Asia Advisors Ltd., holding 100% shareholding and his period of directorship was from April 24, 2006 to September 29, 2011. I note from the information sourced from EURAM Bank through Financial Market Authority, Austria, vide emails dated March 03, 2016, March 01, 2016, February 15, 2016 and information available on Dubai International Financial Centre (DIFC) website, Pan Asia Advisors Ltd., had a joint venture with the EURAM Bank namely EURAM Bank Asia Ltd., which was incorporated on August 23, 2009 and dissolved on December 30, 2013. It is pertinent to note that AP was Director and President in EURAM Bank Asia Ltd., and resigned from the posts on September 22, 2011. Further, I note from the account opening form of Vintage with EURAM Bank (Account No. 540012) dated

June 6, 2007, AP was the Director and ultimate Beneficial Owner of Vintage. It is also noted that on behalf of Vintage, the Loan agreement for an amount of US$ 10 Million for subscribing to the GDRs of Hiran was executed by AP in the capacity of Managing Director. I also note from the Pledge agreement entered into between Hiran and EURAM Bank, in the capacity of Director, EURAM Bank Asia Ltd., AP signed the document with the remarks *"signature verified".*

52. From the above connections, it is evident that Pan Asia Advisors Ltd., was owned by AP, which had a joint venture with EURAM Bank Asia Ltd., in which he was a Director and President and in such capacity had signed on the Pledge agreement executed by Hiran with EURAM Bank, certifying the credentials. It is also evident that AP owned Vintage.

53. From the aforesaid facts, it is evident that through his Company i.e., Vintage, AP subscribed to the GDRs of Hiran by obtaining loan from EURAM Bank, where his Company (Pan Asia Advisors Ltd.,) had joint venture with EURAM Bank Asia Ltd., by ensuring that the Issuer Company i.e., Hiran enters into Pledge Agreement with EURAM Bank for pledging the proceeds of GDRs for securing the loan. In a nutshell, to put it in simple words, well before the start of GDR issue process, the Borrower, Lender and Subscriber for securing the proceeds of GDRs issued by Hiran were pre-decided as all entities involved were connected or controlled by AP. Thus, based on the chronology, timing, pattern of transactions, I am of the view that AP had meticulously conceived and executed fraudulent and deceptive schemes by involving a wide network of entities under his control, registered and located at various locations across the globe. Such network of entities along with control over the bank, borrower and FII / Sub account indicates that he had well established and tested machinery to execute such schemes to various Indian Companies which were looking to raise capital in foreign jurisdiction for better standing or credibility in the eyes of investors. The flare of mastery over such schemes can also be inferred from the terms of loan agreement and restrictive conditions included regarding pledge of GDR proceeds and simultaneous pledge agreement to forfeit the GDR process in case of loan default by Vintage. In fact, on a plain reading of loan agreement entered prior to issue of GDRs, when seen in conjunction with the actual events, it can be reasonably concluded that entire

scheme was designed only to deceive the Indian investors by taking away money from Indian Markets, through sale of GDRs converted shares and routing such proceeds through AP connected entities then to Hiran, only to give a colour of subscription by genuine foreign investors.

54. Thus, instead of ensuring that the foreign investors subscribed to the GDRs of Hiran, AP as Managing Director of Vintage planned to get the entire GDR subscribed by one entity i.e. Vintage, controlled and owned by AP. In fact AP as Managing Director of Vintage took a loan of US$10 Million from EURAM Bank for subscribing to the GDRs of Hiran. It is surprising to note that such transactions are clearly with conflict of interest and also tantamount to loan given to self. Such an arrangement was structured dauntingly by AP as he was certain that Hiran would agree to pledge to the EURAM Bank the entire GDR subscription amount of US$10 Million as security for the loan taken by Vintage. I am of the view that AP managing to get such terms, as mentioned above, signed by Hiran indicates that AP was in command as genuine rational dealings demands that terms would be as per the Company raising capital and not in the nature where entire GDR proceeds are pledged as security for the subscriber. The absence of rationality in transactions clearly suggests that such structured and crafted arrangements were not genuine and meant for other purposes. Thus, such arrangements on one hand restricted Hiran from getting the GDR proceeds immediately upon conclusion of GDRs while on other hand freely allowed allotment of GDRs to Vintage as GDRs was fully subscribed on paper. The modus operandi of GDR conversions, sale of shares and repayment of loan have been detailed in following paras. Consequent upon full subscription of GDR as mentioned above, investors in India were made to believe that in the global market Hiran has acquired a high reputation in terms of investment potential and hence the foreign investors have fully subscribed to the GDRs, whereas GDRs were subscribed by AP through Vintage which was wholly owned by AP. In other words, AP by virtue of his control over Vintage and having connection with EURAM Bank was party to mislead the investors in India that the GDRs have been subscribed by genuine foreign investors. I note that any attempt to mislead the investors in India constitutes fraud on the investors under the PFUTP Regulations. Thus, AP was the root cause in creating an artificial impression that the GDRs have been subscribed by foreign investors when in fact

GDRs were purchased by AP through Vintage. Such an act is clearly prohibited under the PFUTP Regulations.

55. It was also alleged in the SCN that pursuant to subscription of GDRs in a fraudulent manner, Vintage transferred GDRs to FIIs/Sub-accounts (IFCF and HBSEMF), which were also controlled by AP and who in turn converted GDRs into underlying equity shares of the Hiran from the domestic custodian bank in India and sold the said shares on the Stock Exchanges in India.

56. I would like to deal with the basis of connection of AP entities who were involved, post subscription of GDRs. I note from the table of connection mentioned in Para 50 above that EURAM Bank was also registered as Foreign Institutional Investor (FII) in India with SEBI (during the period November 21, 2008 to November 20, 2011) and IFCF was registered as a sub–account (during the period December 12, 2008 to July 19, 2011) of EURAM Bank. I note from the records that except IFCF, no other sub account was registered with EURAM Bank. Further, I also note that IFCF was registered as a sub-account of Cardinal Capital Partners Ltd., *(*hereinafter referred to as ***"CCPL")*** during July 20, 2011 and June 19, 2017 an FII registered with SEBI (during the period June 22, 2011 and June 19, 2017). I note from the letter dated September 15, 2016 received from Financial Service Commission, Maruitius, that CCPL was the management shareholder of IFCF since August 26, 2008, wherein AP was the beneficial owner (100% shareholding) and one of the Directors of IFCF (100% shareholding) from August 22, 2008 till October 28, 2010. I also note from the above communique that AP was the Chief Operating Officer of CCPL. Further, I note from the Administrative Fine Statement issued by Dubai Financial Services Authority (DFSA) in respect of Arun Panchariya (Licensed Director), DFSA Number 1002975 that AP became a Director of CCPL on August 22, 2008 and remained a Director. From the above, it is evident that AP had control over EURAM Bank and CCPL, both FIIs registered with SEBI besides having control over its sub-accounts viz., IFCF and thus it is concluded that these entities are connected to AP. It is pertinent to note that both IFCF and CCPL were incorporated on August 22, 2008 in Mauritius.

57. As regards HBSEMF [previously known as KBC Aldini Capital (Mauritius) Ltd.], I note that it was registered as sub-account under FII-KBC Aldini Capital Ltd., during the period June 18, 2010 to October 21, 2012 and thereafter the sub account was transferred to FII-Golden Cliff [previously known as Vaibhav Investments Ltd.] (henceforth referred to as ***"GC")*** for the period October 22, 2012 to February 28, 2017. I also note that HBSEMF and GC were incorporated on March 5, 2010 and June 25, 2007 respectively in Mauritius.

58. On perusal of the KYC documents of HBSEMF obtained from ICICI Bank Ltd., vide email dated November 27, 2015, it is noted that HBSEMF was having registered address at – *C/o Auriss International Ltd, 2nd Floor, Wing A, Cybertower 1, Ebene, Cybercity Ebene, Mauritius*. The email address therein mentioned was fundadmin@aurisse.com and contact number as +2304640077. However, as per SEBI's records, HBSEMF has mentioned it's email id as saleem@aurisse.com Further, the investigation found from the search made on Google that Aurisse International Limited is based out of Mauritius and it was earlier known as Al Jabha (Mauritius) Ltd., and Mukesh Chauradiya was Director and CFO of the Aurisse International Limited in 2011. Further, from the website Aurisse International Ltd., I note that it shares common address and contact number with that of HBSEMF.

59. I note from the email dated March 2, 2016 received from HBSEMF that Golden Cliff *(which was earlier known as Vaibhav Investments Ltd.,)* is 100% shareholder of HBSEMF since April 21, 2014. The summary of connection of Mr. Anant Kailash Chandra Sharma with Golden Cliff and HBSEMF as per the information provided by HBSEMF vide emails dated March 2, 2016 and April 29, 2016 is tabulated below:

Connection with HBSEMF		**Connection with Golden Cliff GC)**	
1.	Director since August 11, 2014 till date	1.	Director since July 16, 2014
2.	Beneficial owner (100% shareholder) since September 09,2014 (by virtue of being beneficial owner of Golden Cliff since September 09, 2014 which in turn is beneficial owner of HBSEMF since April 21, 2014) till date	2.	Beneficial owner (100% shareholder) since September 09, 2014 till date

60. I note from the above table that Mr. Anant Kailash Chandra Sharma was Director of HBSEMF since August 11, 2014 and also beneficial owner (100% shareholding)

of HBSEMF since September 9, 2014 (*by virtue of being beneficial owner of GC since September 9, 2014)* which in turn was beneficial owner of HBSEMF since April 21, 2014. Further, I also note that Mr. Anant Kailash Chandra Sharma was Director of GC since July 16, 2014 and also beneficial owner (100% shareholding) since September 9, 2014. Further, I note from the information available on the Ministry of Corporate Affairs (MCA) website that Mr. Anant Kailash Chandra and AP are connected to each other as both were Directors in Sai Sant Advisory (India) Private Limited during a common period. Mr. Anant Kailash Chandra Sharma was Director from December 01, 2009 to March 18, 2016 and AP was Director from August 31, 2007 to October 20, 2010.

61. Upon examination of the Account Opening Form of IFCF available with EURAM Bank, it is observed that Reema Narayan Shetty was Authorized Signatory of IFCF for the bank account held with EURAM Bank Austria as on June 02, 2011. The summary of connection of Reema Narayan Shetty with HBSEMF and Golden Cliff as per the information provided by HBSEMF vide emails dated March 2, 2016 and April 29, 2016 is tabulated below.

Connection with Golden Cliff (GC)		**Connection with HBSEMF**	
1.	Director from May 16, 2013 to August 01, 2014	1.	Beneficial owner (100% shareholder) from April 21, 2014 to September 09, 2014 (by virtue of being beneficial owner of Golden Cliff which in turn is beneficial owner of HBSEMF)
2.	Beneficial owner (100% shareholder) from September 12, 2013 to September 09, 2014		

62. I note from the above table that Reema Narayan Shetty was Director in GC from May 16, 2013 to August 1, 2015 and 100% beneficial owner of GC from September 12, 2013 till September 09, 2014. I also note from the above table that Reema Narayan Shetty was beneficial owner of HBSEMF (100% shareholding) from April 21, 2014 to September 9, 2014, by virtue of being beneficial owner of GC which in turn was beneficial owner of HBSEMF.

63. Thus, from the above connections it is evident that Mr. Anant Kailash Chandra Sharma who worked with AP, and Reema Narayan Shetty who worked with AP connected entity (IFCF), are associated with HBSEMF as beneficial owners.

64. Further, I note that Mr. Anant Kailash Chandra Sharma and Mr. Mukesh Chauradiya are also connected to each other. Mr. Anant Kailash Chandra Sharma

served as Additional Director of Alka India Limited (from December 01, 2009 till date) and Mr. Mukesh Chauradiya served as director of Alka India Limited from January 31, 2006 till June 01, 2010. It is pertinent to note from the Administrative Fine Statement of DFSA in respect of AP, that AP was Director of Alka India Ltd., *(listed company in India)* from January 9, 1994 to January 11, 2001. I note from the shareholding pattern filed by Alka India Ltd. with BSE that AP is one of the Promoters of Alka India Ltd. Further, from the MCA records, I note that in Ramsai Investment Holdings Private Limited, Mukesh Chauradiya and Mr. Anant Kailash Chandra Sharma served as Director from August 17, 2010 to March 17, 2016 and from September 01, 2015 to March 18, 2016 respectively. I further note that AP was 99.98% shareholder in Ramsai Investment Holdings Private Limited (for the period 2009-2013) and Director from February 04, 2008 to August 18, 2010. From the above basis of connections, it is evident that HBSEM is connected to the AP since its beneficial owners are connected to AP/ his connected entities.

65. I note from the details of GDR transactions provided by EURAM Bank, out of the 15,38,462 GDRs of Hiran, acquired by Vintage on May 20, 2010, Vintage had transferred 11,55,000 GDRs to IFCF, the details of which are furnished hereunder:

Date of transaction	No., of GDRs received by IFCF from Vintage
02/06/2010	1,75,000
22/09/2010	1,25,000
23/09/2010	2,80,000
24/09/2010	80,000
14/10/2010	50,000
10/11/2010	25,000
11/11/2010	90,000
02/12/2010	60,000
06/12/2010	1,20,000
14/12/2010	1,50,000
Total	**11,55,000**

66. I note from the above table that pursuant to acquiring GDRs on May 20, 2010, Vintage had started transferring the GDRs to IFCF from two weeks thereon. I note that there is no evidence on record to suggest that the GDRs were being actually sold to IFCF. Even if it is assumed there was any consideration, the same cannot be considered as genuine since Vintage and IFCF are connected entities of AP.

Therefore, movement of funds, if any, would merely be book entries to disturb the audit trail. Given the common connection between them, the preponderance of probability indicates that the transfer of GDRs to IFCF by Vintage was made as part of the fraudulent scheme of AP to offload shares to gullible investors in India Securities Markets after conversion of GDR into equity shares. Further, I am of the view that AP had craftily orchestrated the scheme of manipulation through a web of various connected entities which operated outside Indian Jurisdiction in order to make the audit trail of money and transfer of GDR complex and onerous.

67. Further, I note from the email dated April 29, 2016 received from HBSEMF that it had converted 4,83,589 GDRs of Hiran and provided the details of purchase of GDRs, which are furnished hereunder:

Date	No. of GDRs	Name of the counterparty	Type of transaction
10-Jul-13	141,243	Mauritius Commercial Bank	Purchase of GDRs
06-Nov-13	242,346	Habib Bank AG Zurich	Purchase of GDRs
23-Jul-14	396,757	Mauritius Commercial Bank	Purchase of GDRs
03-Jun-15	-296,757	Ambrus Value Fund Ltd	GDRs Redemption (in Kind)
05-Jun-15	141,116	Aries Capital Fund	GDR Subscription (in kind)
Total	**6,24,705**		

68. I note that the issuance of GDRs is from the authorised share capital of a company listed in Indian stock exchanges and that the underlying security of the GDRs are Indian securities and the two–way fungibility scheme for GDRs allows for conversion of GDRs in Indian market and vice versa. Conversion of GDRs into equity share is termed as cancellation of GDRs.

69. It is established that all GDRs issued by Hiran were subscribed by Vintage alone and pursuant to which the GDRs were transferred to the FIIs/Sub-accounts of entities connected to AP, who converted it into equity shares and these shares were sold in the Indian Capital Market. The details of GDRs converted into equity shares by IFCF and HBSEMF, as per the email dated August 22, 2015 and January 5, 2017 furnished by DBS Bank, Custodian, are furnished hereunder:

Date of conversion of GDRs	No. of GDRs converted	No. of equity shares issued	No. of outstanding GDRs	No., of outstanding shares	Entity becoming holder of equity shares post conversion of GDRs

		on conversion of GDRs			
28-Jun-10	80,000	24,00,000	14,58,462	4,37,53,860	IFCF DPID: IN301348 (ICICI Bank) Client ID: 20016866
16-Jul-10	30,000	9,00,000	14,28,462	4,28,53,860	
23-Sep-10	65,000	19,50,000	13,63,462	4,09,03,860	
24-Sep-10	1,53,000	45,90,000	12,10,462	3,63,13,860	
27-Sep-10	72,000	21,60,000	11,38,462	3,41,53,860	
29-Sep-10	85,000	25,50,000	10,53,462	3,16,03,860	
4-Oct-10	50,000	15,00,000	10,03,462	3,01,03,860	
4-Nov-10	32,000	9,60,000	9,71,462	2,91,43,860	
16-Nov-10	50,000	15,00,000	9,21,462	2,76,43,860	
17-Jul-13	1,00,000	30,00,000	8,21,462	2,46,43,860	HBSEMF DPID: IN301348 (ICICI Bank) Client ID: 20018819
7-Nov-13	41,243	12,37,290	7,80,219	2,34,06,570	
13-Nov-13	1,00,000	30,00,000	6,80,219	2,04,06,570	
10-Dec-13	75,000	22,50,000	6,05,219	1,81,56,570	
8-Jan-14	67,346	20,20,380	5,37,873	1,61,36,190	
30-Jul-14	1,00,000	30,00,000	**4,37,873**	**1,31,36,190**	
Total	**11,00,589**	**3,30,17,670**			

70. From the above table, I note that out of the 15,38,462 GDRs issued by Hiran, 11,00,589 GDRs i.e., 71.54% of the total GDRs were converted into the underlying equity shares of 3,30,17,670 by IFCF and HBSEMF. I also note that conversion GDRs started within one and half months from the date of issuance of GDRs. I also note that IFCF had converted 6,17,000 GDRs for 1,85,10,000 underlying shares and HBSEMF converted 4,83,589 GDRs into 1,45,07,670 underlying shares, of Hiran. Further, It can be inferred from above table that balance of 4,37,874 GDRs representing 1,31,36,190 underlying shares of Hiran, were not converted.

71. I note from the email received from DBS Bank Custodian, dated September 3, 2015, that post conversion of GDRs, the underlying equity shares were transferred to the respective beneficiary's accounts of IFCF and HBSEMF as mentioned in the above table at para number 69 above, on the same day when the GDRs were converted into equity shares by the aforementioned 2 entities.

72. The investigation found that IFCF and HBSEMF further sold the 3,00,17,670 converted equity shares (which they received post cancellation of GDRs) in Indian securities market on BSE. I note from the BSE email, dated February 25, 2016,

the details of sale transactions carried out by IFCF and HBSEMF in the scrip of Hiran, post conversion of GDRs, are furnished hereunder:

Trades of IFCF on BSE

Trade date	No., of share sold	Value of shares in ₹
05-07-2010	3,00,000	30,00,924.33
06-07-2010	1,00,000	10,00,000.00
07-07-2010	2,00,000	20,00,000.00
12-07-2010	2,00,000	20,40,000.00
13-07-2010	2,00,000	19,80,012.00
19-07-2010	2,00,000	19,22,398.36
06-08-2010	1,00,000	10,03,045.95
20-09-2010	1,00,000	10,00,573.95
22-09-2010	18,20,000	1,90,42,085.26
23-09-2010	18,20,000	2,19,14,008.62
24-09-2010	34,30,000	4,54,55,203.68
27-09-2010	20,83,520	2,55,06,155.84
29-09-2010	9,49,801	1,09,28,402.32
29-09-2010	6,23,661	71,75,389.66
05-10-2010	26,878	4,20,668.69
03-11-2010	9,36,488	1,03,90,458.06
11-11-2010	5,00,000	55,01,012.63
12-11-2010	6,50,000	67,52,963.56
13-05-2011	4,92,716	25,37,537.17
02-06-2011	4,00,000	17,60,010.01
09-10-2012	45,643	76,223.81
10-10-2012	636	1,049.40
11-10-2012	27,682	41,821.80
12-10-2012	43,989	63,128.57
17-10-2012	2,00,000	2,68,557.01
19-10-2012	2,00,000	2,50,304.52
23-10-2012	3,02,501	3,48,760.77
25-10-2012	2,40,000	2,61,600.00
30-10-2012	79,000	85,448.01
05-11-2012	61,001	70,151.15
07-11-2012	2,00,000	2,26,184.00
08-11-2012	50,000	56,000.00
20-11-2012	2,92,150	3,03,837.49
11-12-2012	85,000	88,461.70
12-12-2012	2,00,000	2,00,000.00
14-12-2012	2,42,203	2,34,291.43
18-12-2012	1,35,000	1,21,500.00
26-12-2012	2,00,000	1,82,093.29
27-12-2012	67,383	67,383.00
28-12-2012	21,362	21,362.00
31-12-2012	2,018	2,018.00
02-01-2013	1,63,005	1,58,114.85
03-01-2013	5,738	5,680.62
04-01-2013	61,063	60,452.37

07-01-2013	4,51,022	3,95,230.73
22-01-2013	540	469.80
Total	**1,85,10,000**	**17,49,20,974.41**

Trades of HBSEMF on BSE

Trade date	No., of share sold	Value of shares in ₹
18-07-2013	39,805	27,863.80
31-10-2013	5,75,812	4,60,649.60
01-11-2013	11,27,769	9,58,603.65
03-11-2013	2,11,000	1,72,471.09
05-11-2013	10,00,000	7,22,314.80
08-11-2013	12,50,000	6,74,711.80
21-11-2013	1,22,950	57,786.50
22-11-2013	2,64,219	1,21,351.19
25-11-2013	92,020	41,409.00
02-12-2013	5,60,000	2,52,000.00
30-12-2013	2,16,369	1,14,675.57
31-12-2013	83,112	45,711.60
01-01-2014	5,00,000	2,85,000.00
02-01-2014	5,00,000	2,89,975.00
03-01-2014	5,00,000	2,95,000.00
23-04-2014	19,60,000	10,97,600.00
08-05-2014	24,50,000	14,28,215.30
22-05-2014	54,614	33,314.54
Total	**1,15,07,670**	**70,78,653.44**

73. From the above table, I note that post conversion of GDRs, IFCF started selling 1,85,10,000 converted shares, from July 6, 2010 i.e., within 8 days from the date of conversion of GDRs and by January 22, 2013, it had sold all converted shares for a sale consideration of ₹ 17,49,20,974.40. Further, I note that HBSEMF had also sold 1,15,07,670 shares out of the 1,45,07,670 converted shares for sale consideration of ₹ 70,78,653.44.

74. A brief summary of sell trades of IFCF and HBSEMF on BSE is placed below:

Name of entity	No. of shares sold on BSE	Trade value on BSE (INR)
India Focus Cardinal Fund	1,85,10,000	17,49,20,974.40
Highblue Sky Emerging Market Fund	1,15,07,670	70,78,653.44
Total	**3,00,17,670**	**18,19,99,627.80**

75. From the above findings, I note that out of the 15,38,462 GDRs subscribed by Vintage, 11,55,000 GDRs were transferred to IFCF, pursuant to which IFCF had converted 11,00,589 GDRs into 3,00,17,670 underlying shares of Hiran.

Thereafter, AP through his connected entities off-loaded 3,00,17,670 underlying shares of GDRs to Indian investors for an amount of ₹ 18,19,99,627.80 during the period July 05, 2010 to May 22, 2014. I note that The Bank of New York Mellon (Global Custodian) issued Termination Notice to holders of GDRs of Hiran on March 16, 2015 and the facility was terminated w.e.f. June 15, 2015. Post termination of the GDR program, I note that no sale of shares of Hiran took place in the market.

76. I note that Hiran had allotted 15,38,462 GDRs (4,61,53,860 underlying shares) to Vintage for a total consideration of $10 Million. Out of the total Loan of $10 Million (which is also GDR proceeds) taken from EURAM Bank for subscribing to GDRs of Hiran, Vintage repaid 50% of the loan (i.e., US$5 Million out of US$10 Million) and balance 50% of loan was forfeited from the GDR proceeds by EURAM Bank. Thus, it is apparent from records that Hiran had actually received only $5 Million as against the total GDR amount of $ 10 Million. In the absence of flow of entire proceeds of GDR to Hiran, it can be inferred that only 50% of total GDRs of 15,38,462 is fully subscribed i.e 7,69,231 GDRs and balance of 50% of GDRs i.e. 7,69,231 GDR (2,30,76,930 underlying shares) can be said to be in circulation without any consideration i.e. free of cost. Further such free GDRs were at the disposal of Vintage i.e., 7,69,231 GDRs representing 2,30,76,930 shares. Whereas, from the above findings it is established that AP through his connected entities off-loaded 3,00,17,670 shares, representing 11,00,589 GDRs. Thus, I conclude that AP connected entities have sold 11,00,589 GDRs (after conversion into underlying shares) which also includes 7,69,231 GDRs. I am of the view that since the GDRs were procured free of cost, corresponding sale consideration of such shares should be considered ill-gotten gains.

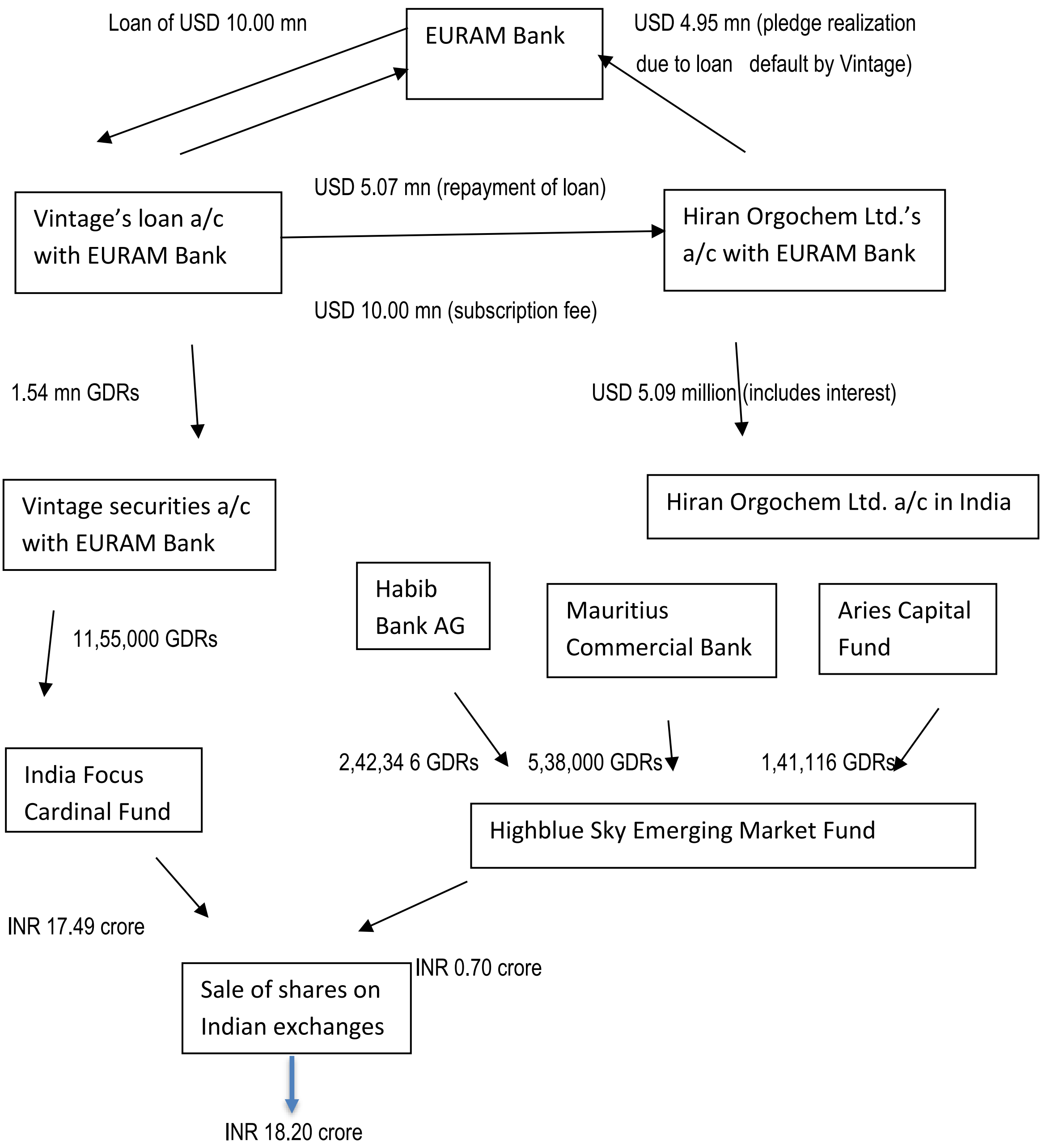
77. It is important to note that immediately after subscribing to the GDRs, Vintage (controlled by AP) transferred GDRs to FIIs/sub accounts such as IFCF & HBSEMF which were also controlled by AP. Thereafter, IFCF & HBSEMF admittedly converted GDRs into underlying equity shares of Hiran from the domestic custodian bank in India (i.e., DBS Bank) and sold the said shares on the Stock Exchanges in India. Thus, at every stage of the GDR issue i.e. from the stage of issuing GDRs, subscribing to the GDRs, transferring the GDRs to FII/sub-

accounts *(connected to AP)* for conversion of GDRs into equity shares and subsequent sales of shares through the FII/Sub-accounts connected to him on Stock Exchanges in India, AP was involved. In other words, apart from making it artificially appear that GDRs have been subscribed by foreign investors when in fact the GDRs were subscribed by AP through Vintage, AP ensured that the GDRs were transferred by Vintage to the entities controlled by AP and further ensured that the equity shares generated on conversion of GDRs were acquired by the entities with which AP was connected. It is a matter of record that 71.54% of GDRs were converted into the underlying equity shares of 3,30,17,670 and out of which 3,00,17,670 shares were sold (i.e., 90.19% of total converted shares) and thereby AP made ill-gotten gain of ₹ 18,19,99,627.80 through his connected entities on the Indian Stock Exchange (i.e., BSE). It is apparent that the modus operandi adopted by AP was not only to create an artificial impression that the GDRs have been subscribed by foreign investors, but also to create an impression that after the GDR issue, investors in India have started subscribing to the shares of issuer companies when in fact the shares were sold by the entities controlled by AP. In these circumstances at every stage of the GDR issue, I conclude that the acts committed by AP constituted fraud on the investors in India.

78. Investment in domestic companies by foreign institutional investors is considered to be positive news. Further, the availability of US$ 10 million for the future business expansion further enhances the trust of investors in the company Hiran. The Indian investors may invest in such companies with high percentage of holding by FIIs/Sub-accounts, despite them being less liquid, since companies with high FII holdings are generally considered more valuable as FIIs are expected to be sophisticated investors. An investment by FIIs in a low priced low volume company may generate false hopes to the investors of a possible turnaround in the financial health of the company. In these circumstances, I note that the Indian investors are ignorant of full market information regarding pre-arrangement for subscription of GDRs and subsequent sale of underlying shares. The victims of the events that are played out, as described in pre-paragraphs are therefore the Indian investors who end up holding shares of companies that are injected with an artificial value due to the misleading acts of AP and at prices that impart virtually

no value. Therefore, I conclude that the scheme articulated, structured and executed by AP constitutes fraud on the Indian investors.

79. The issuance of Hiran's GDRs, flow of funds and subsequent sale of shares is shown diagrammatically below:



80. I note that fraud in the present case was committed on the investors in India, in two stages. Firstly, AP in connivance with the Issuer Company (i.e., Hiran) subscribed to their GDRs through Vintage which was wholly owned by him by obtaining loan from EURAM Bank (connected entity), for which the proceeds of

GDRs were pledged by Hiran by executing a Pledge agreement with EURAM Bank. Thus, the investors in India were falsely made to believe that the foreign investors have shown keen interest in the scrip of Hiran when in fact the GDRs were not subscribed by foreign investors but by AP through Vintage, which was wholly owned by AP. Secondly, the GDRs so acquired were then transferred to IFCF & HBSEMF (entities controlled by AP), who then converted the GDRs into underlying shares and sold the said shares in the Indian securities market. These transactions gave an impression that the investors in India have started subscribing to the shares of Hiran when in fact the shares were sold by the entities controlled by AP.

81. It is noted that GDRs finally resulted in substantial conversion and selling of the underlying shares in the Indian securities market. GDR derives its existence from securities listed in Indian Stock markets. The issuance of GDRs are from the authorised share capital (falling under the jurisdiction of SEBI and other Indian regulators) of a company listed in Indian Stock Exchanges. Any structuring or manipulation related to GDRs has a direct impact on the stocks of the companies trading in Indian market. In view of the flawless collaborative evidence as brought out in the instant Order, I conclude that AP was the key person who committed fraud at every stage of the GDR process to the ultimate detriment of investors in Indian securities market, which had acted as an inducement for other persons to offer to buy the shares of Hiran in the Indian securities market.

82. In this context, I further find it proper to refer to the observations of Hon'ble Supreme Court of India dated July 6, 2015 in the matter of SEBI vs PAN Asia Advisors Ltd & anr., (2015) 14 SCC 71 wherein Hon'ble Supreme Court, while dealing with issue of GDR by way of a similar arrangement of Loan and Pledge Agreement, have observed the following:

> *"the most relevant fact which is to be borne in mind is that the existence of GDRs is always dependent upon the extent of underlying ordinary shares lying with the Domestic Custodian Bank…………….. ….that for creation of GDRs which can be traded only at the global level, the issuing company should have developed a reputation at a level where the marketability of its investment creation potential*

will have a demand at the hands of the foreign investors. Simultaneously, having regard to the development of the issuing company in the market and the confidence built up with the investors both internally as well as at global level, the issuing company's desire to raise foreign funds by creating GDRs should have the appreciation of investors for them to develop a keen interest to invest in such GDRs. Mere desire to raise foreign investments without any scope for the issuing company to develop a market demand for its GDRs by increasing the share capital for that purpose is not the underlying basis for creation of GDRs………. To put it differently, by artificial creation of global level investment operation, either the issuing company on its own or with the aid of its lead Manager cannot attempt to make it appear as though there is scope for trading GDRs at the global level while in reality there is none…."

83. Further, I find it appropriate to refer to the Order of the Hon'ble SAT dated February 5, 2020 in the matter of Jindal Cotex Ltd., Vs SEBI (*Appeal No. 376 of 2019)*, wherein Hon'ble SAT held as under:

"We do not agree with the submissions made by the learned counsel for the appellants. This Tribunal had passed a number of orders relating to manipulations and fraudulent behaviour from the part of a few companies and several connected entities including Vintage. EURAM Bank has also been one of the entities found to be part of those transactions. Such judgements include PAN Asia Advisors Limited and Anr. vs. SEBI (Appeal No. 126 of 2013 decided on 25.10.2016) and Cals Refineries Limited vs. SEBI (Appeal No. 04 of 2014 decided on 12.10.2017). The modus operandi adopted in all such cases have been similar i.e. the subscriber to the GDR issue (Vintage here) taking a loan from a foreign bank/ investment bank (EURAM Bank here) enabled by a Pledge Agreement signed between the issuer company (JCL here) and the loaner bank. This arrangement itself vitiates the entire issue of GDR as it is through an artificial arrangement supported by the company itself which enables the subscription to the GDR. Therefore, the contention in the order that it is a fraudulent scheme created by the appellants along with some other entities cannot be faulted. In this context, it is relevant to note that in our order in the matter of PAN Asia Advisors Limited (Supra) (Lead Manager) and Vintage (subscriber) whose beneficial

owner was Arun Panchariya were all found to be guilty of the violations of Indian Securities Laws under the PFUTP Regulations. The same has been the modus operandi in respect of Cals Refineries Limited (Supra) though the entities connected therein were different."

84. In view of the above findings and in line with the ratio laid down by the Hon'ble Supreme Court and Hon'ble SAT, I conclude that the Noticee 1 i.e., Arun Panchariya who was the key person in articulating, devising, structuring and executing the deceptive and manipulative scheme of GDR issue by Hiran had violated the provisions of Section 12A(a), (b), (c) of the SEBI Act r/w Regulations 3(a),(b),(c),(d) and 4(1) of PFUTP Regulations.

85. It has been alleged in the SCN that Mukesh Chauradiya, close associate of AP, in the capacity of Managing Director of Vintage, collaborated with AP, Hiran and Vintage and performed the role assigned to him and thus acted as party to the fraudulent scheme.

86. Noticee No 2 has submitted that no opportunity of cross–examination has been provided to it, the complete materials/documents in support of the aforesaid allegations have not been made available to him, complete evidence and the details connected with the counter parties has not been provided. In this regard, I note that the allegations against the Noticee are clearly delineated in the SCN and all the relevant documents that have been relied upon in the SCN have been provided to the Noticees as enclosures to the SCN and it is the Noticees' responsibility to defend his case by referring to the documents on which SEBI has relied upon in the SCN. The documents provided to the Noticee along with the SCN are tabulated hereunder:

Annexure No.	Particulars	No. of pages
1.	Copy of shareholding details of Hiran Orgochem Limited	04
2.	Copy of corporate announcements by Hiran	04
3.	Copy of letter of Hiran Orgochem Limited dated June 22, 2015	25
4.	email dated September 03, 2015 from DBS Bank	03

4A	Copy of page no. 53 of offering circular of Hiran Orgochem Ltd. evidencing use of proceeds	01
5A	Copy of Loan Agreement No. K150310-001	08
5B	Copy of Pledge Agreement	06
5C	Copy of Escrow agreement	15
5D	Copy of Hiran Orgochem Ltd.'s retail bank account no. 580012 statement	07
5E	Copy of Vintage's loan account no 540012 statement	03
5F	Copy of Escrow Account no 580012 Statement	01
6	Copy of Know Your Customer documents (signed on June 06, 2007) of Vintage, available with EURAM Bank	02
7	Copy of Vintage's redemption of loan amount request (signed by Mr. Mukesh Chauradiya) for GDR issue of Hiran	07
8	Copy of the details of the Vintage's repayment of loan to the extent of US$ 5.07 million	09
9	Copy of certified copy of board resolution dated October 31, 2009 of Hiran Orgochem Ltd. (signed by Mr. Kantilal Hiran)	02
10	Copy of the corporate announcements made by Hiran on stock exchange (BSE) for the period from March-June 2010, evidencing the non-information about Pledge Agreement	02
11	Copy of Mr. Kantilal Hiran's statement	06
11A	Copy of the relevant page no. 7 of Annual Report of FY 2012-13	01
12	Copy of a letter dated October 31, 2012 sent by Hiran to EURAM Bank	03
13	Copy of the letters dated August 21, 2012, April 11, 2013 and May 28, 2013	06
14	Copy of the relevant pages (page no. 10 and 15) of Annual Report of FY 2013-14	02
15	Copy of Hiran's emails dated March 11, 2016 providing copy of GPCB's closure notice	06
16	Copy of the relevant page (page no. 7, 28 and 37) of Annual Report of FY 2012-13	03
17	Copy of emails dated May 12, 2016, in respect of AGM/ Board meeting agenda, resolution and minutes/ resolution regarding write off by Hiran	05
18	Copy of corporate announcement made to Stock Exchange on May 31, 2013	01
19	Copy of the relevant pages (FY 2013-14 page no. 15 and FY 2014-15 page no. 31)	02
20	Copy of the CSSF Luxembourg letter dated December 01, 2015	04
21	Copy of the page no. 51 of Annual Report of Hiran for FY 2014-15	01
22	Copy of the corporate announcements made by Hiran on BSE during the period April 03, 2014 till April 30, 2014	01
23	Details of GDR transactions as submitted by EURAM Bank	03
24	Copy of the custodian DBS Bank email dated August 22, 2015 and January 05, 2017	05
25	Copy of email dated November 26, 2015 received from Division of Foreign Portfolio Investors & Custodians	02
26	e-mail dated April 29, 2016 from Highblue Sky Emerging Market Fund	06
27	Copy of letter dated September 15, 2016 and e-mail dated September 22, 2016	14
28	NSDL's email dated March 01, 2016 and January 05, 2017	12
29	BSE's email dated February 25, 2017	03
30	Copy of the termination notice available on The Bank of New York Mellon's website	02
31	Custodian DBS Bank's email dated January 05, 2017	02
32	Copy of Administrative Fine Statement	04

33	Documents in respect of Pan Asia Advisors Ltd. had joint venture with EURAM Bank namely EURAM Bank Asia Limited	08
34	Copy of MCA documents indicating details of directors / owners connected to Mr Arun Panchariya	14
35	Highblue Sky's emails dated March 02, 2016 and April 29, 2016 providing details of its shareholders and directors	07
36	KBC Aldini emails dated May 02, 2016 and April 28, 2016 submitting its directorship and shareholder details	12
37	India Focus Cardinal Fund letter dated April 02, 2012 and Arun Panchariya's email dated July 12, 2010 evidencing AP's connection with India Focus and Cardinal Capital	06
38	Copy of Pan Asia Advisor's letter dated February 25, 2016 from OIA, SEBI and letter dated February 20, 2012, evidencing Arun Panchariya's beneficial ownership in Pan Asia	20
39	Copy of the KYC documents received from ICICI Bank vide email dated November 27, 2015 and information obtained through Google search	07
40	India Focus Cardinal Fund's account opening form with EURAM Bank showing Reema Narayan Shetty as authorized signatory of India Focus Cardinal Fund	09
41	DBS bank email dated September 03, 2015 providing conversion details of several scrips (Southern Ispat, Syncom , Vikash Metal, Texmo Pipes, Bhoruka, Sybly, Birla Cotsyn) showing conversion by Highblue Sky Emerging Market Fund	09
42	Securities transactions (GDR transactions) provided by EURAM Bank showing receipt of GDRs by India Focus Cardinal Fund from Vintage for several scrips (through letter dated January 22, 2016)	11
43	DFPI&C SEBI email dated November 30, 2015 evidencing India Focus Cardinal Fund was only sub account registered with EURAM Bank	01
44	ICICI Bank email dated December 01, 2015 and March 16, 2016 evidencing nil investment by FIIs EURAM Bank, KBC Aldini capital, Vaibhav Investments (Golden Cliff) and Cardinal Capital Partners	01
45	Hiran AR (FY 2010-11 page no. 4 and FY 2011-12 page no. 3, FY 2012-13 page no. 5 and FY 2013-14 page no. 10) for cash and cash equivalent amount	04
46	Hiran AR (FY 2010-11 page no.. 20-23, FY 2011-12 page no. 28 and 37) for cash and cash equivalent amount which included cash with EURAM Bank	06
47	Hiran AR (FY 2010-11 page no. 28, FY 2011-12 page no. 43) evidencing non provision of contingent liability for amount lying with EURAM Bank which was pledged against the Vintage's loan	02

87. In view of the above, since all the documents which were relevant and relied upon in the instant proceedings as mentioned above, have been provided to the Noticee along with the SCN, I am of the opinion that principles of natural justice have been duly complied with in the instant proceedings. The Noticee has not given any details of the persons whom he wants to cross examine and/ or the documents which have not been provided to him, both in his submissions dated June 25, 2023 and June 28, 2023 and during the hearing granted to him on June 26, 2023.

Hence, his submissions are frivolous in nature and has no material for consideration.

88. I note from the basis of connections of AP connected entities as tabulated in Para 50 above that Mukesh Chauradiya was closely associated with AP, as he was shown Managing Director / Director of Vintage, in which AP was the Beneficial Owner. Further, I note that the Noticee was an Authorized Signatory of Vintage and he signed redemption of loan amount request of Vintage to EURAM Bank in the instant matter. I also note that Mukesh Chauradiya was a Director in Ramsai Investment Holdings Private Ltd., wherein AP was Director in the same company and was holding 99.98% shares. It is pertinent to note that Mukesh Chauradiya is also connected with one Mr. Anant Kailash Chandra Sharma (beneficial owner of HBSEMF & GC – AP connected entities) who served as Additional Director of Alka India Ltd., (from December 01, 2009 till date), wherein Mukesh Chauradiya also served as Director of Alka India Ltd., from January 31, 2006 till June 01, 2010. In this connection, it is relevant to note that Alka India Ltd., is promoted by AP. From these connections, it is clearly established that the Mukesh Chauradiya was close associate of Arun Panchariya.

89. Further, I also note that Mukesh Chauradiya signed a Loan Agreement dated March 22, 2011 on behalf of Vintage in the capacity of its Managing Director for obtaining loan for subscription of GDRs issued by Vikash Metal and Power Ltd., From the aforesaid records, during the relevant time, I note that he was Managing Director of the Vintage when Vintage defaulted on the repayment of loan availed by Vintage for subscription of GDRs of Hiran. I also take cognizance of the Loan Agreement dated February 14, 2011 executed by Mukesh Chauradiya as Managing Director of Vintage for subscription of GDRs issued by Rasoya Proteins Ltd., I note that vide letter dated July 26, 2016 Comissão do Mercado de Valores Mobiliários (CMVM), Portugal Regulator, provided copy of deposit account opening form and Account Charge Agreement available with Banco Efisa (a bank based out of Portugal where Visu International Ltd., GDR proceeds were deposited) for the GDR issue of Visu International Ltd., On perusal of the above documents, I note that Mukesh Chauradiya signed the Account Charge Agreement in the capacity of Authorized Signatory of Visu International Ltd., (listed

company based in India) and he was shown as General Manager of Visu International Ltd., in the deposit account opening form.

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

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

92. From the above, it is clear that Mukesh Chauradiya dealt in several GDR issues with AP and acted as party to fraud in collaboration with AP, AP connected entities, by being Authorised Signatory to an Indian Listed Company (Visu International) to execute Pledge agreement, Managing Director of Vintage to execute Loan agreements with Vikash Metal & Rasoya Proteins (Indian Listed Companies) for securing the GDRs issued by these two companies and Director in Alka India Ltd., (Promoted by AP) & Ramsai Investment Holdings Private Ltd., (almost 100% shareholding by AP) besides being Authorised Signatory in the GDR issue of Hiran. From the above, it is evident that Mukesh Chauradiya was fully aware of the fraudulent plan/arrangement with regard to the subscription of GDRs and thereafter monetizing those GDRs through the sale of underlying shares of the GDRs and thus had acted in a fraudulent and deceptive manner, which is in violation of the provisions of Section 12A(a), (b), (c) of SEBI Act r/w Regulations 3(a),(b), (c), (d) and 4(1) of PFUTP Regulations.

93. The Noticee 2 in his submissions contended that he was never been Managing Director of Vintage and to substantiate he had produced various documents which

depicts his role as Manager employed with Vintage. On perusal of the documents, even though the contention put forth by the Noticee 2 appears to be justifiable, but on a deeper examination, it is found that it lacks substance for the following reasons:

(a) *On behalf of Vintage, the Noticee 2 had admittedly executed the loan documents in the capacity of Managing Director, Vintage, with EURAM Bank for subscribing to the GDRs of Rasoya Proteins Ltd., and Vikash Metal & Power Ltd.,*
(b) *He was Authorised Signatory of Vintage when Vintage had defaulted in repayment of loan to EURAM in the GDR issue of Hiran.*
(c) *Further, on perusal of the letter dated December 30, 2010 addressed by Vintage to EURAM Bank, I note that Vintage certified the credentials of Mukesh Chauradiya Managing Director of the Vintage. It is pertinent to note that the said letter was signed by Mukesh Chauradiya himself in the capacity of Managing Director of Vintage.*

94. Noticee No. 2 stated that for the purpose of convenience and for avoiding conflict of interest arisen due to AP being Managing Director of Vintage and Director of EURAM Bank, he had signed various documents in the capacity of Managing Director. However, I note that Mukesh Chauradiya has not produced any evidence or any submission to support that he has actually acted responsibly or that he has raised all pertinent issues before signing all the documents as stated above for recusing himself that he had signed the documents as Proxy to AP in good faith and confidence.

95. I note that redemption of loan amount requests of Vintage FZE with EURAM Bank dated June 7, 2010, July 8, 2010, October 8, 2010, October 12, 2010, October 14, 2010, October 18, 2010 and October 19, 2020, which were all signed by Mukesh Chauradiya. Vide the aforementioned *requests*, Vintage FZE had requested EURAM Bank to *debit its retail account no. 540012 and redeem the loan regarding Hiran Orgochem GDRs Issue with value dated (date of redemption of loan amount request) for an amount mentioned therein.* Post repayment of loan instalments by Vintage FZE, an equal or lesser amount of money was transferred/ released from Hiran Orgochem's EURAM Bank account to Hiran Orgochem's bank account in India (ICICI Bank account no. 001105011836), which occurred on the same date of

such loan repayment. From the said requests, it is observed that Mukesh Chauradiya was the authorised signatory of Vintage FZE from June 7, 2010 to October 19, 2010. Further, I note that the letter dated December 30, 2010 addressed by Vintage FZE to EURAM Bank, has been signed by Mukesh Chauradiya, suffixing Director to his name. It is relevant to note that by way of the said letter, it has been represented to EURAM Bank that *"Mr. Mukesh Chauradiya, Managing Director of the company, has successfully completed the Training Program of DGCX in 2005."* In addition to the above, a letter dated December 28, 2010, issued by the Jebel Ali Free Zone Authority, shows Mukesh Chauradiya as a Manager of Vintage FZE. Also, the UAE Residence Permits submitted by the Noticee show his profession during the period September 14, 2008 to September 13, 2014 as General Manager. Further, the Employment Card for entry into the Jebel Ali Free Zone mentioned his occupation as General Manager.

96. I note from the letter dated December 30, 2010 addressed to EURAM Bank that the Noticee has represented himself to be the Managing Director/General Manager of Vintage FZE and having done so, cannot now seek relief from the consequences of such representation by asserting that he was merely an employee. The circumstances indicate that Mukesh Chauradiya was playing an important role in the affairs of Vintage FZE during the relevant period. It is also noted that Mukesh Chauradiya had signed the Loan Agreement for subscription of the GDR Issue of Rasoya Proteins Ltd. as Managing Director of the Vintage FZE on February 14, 2011. In this regard, I note that a similar contention (as raised in these proceedings) had been raised by Mukesh Chauradiya before the Hon'ble SAT in *Mukesh Chauradiya vs. SEBI (Date of Decision: January 7, 2021 Appeal No. 260 of 2020)* wherein it was argued that he was never a Managing Director of Vintage FZE; he was initially only a Manager and later on a General Manager. It was contended that he was never a beneficial owner of Vintage FZE and he had never gained any benefits as he was only a salaried employee of Vintage FZE. In the matter, the Hon'ble SAT had held:

> *"It is an undisputed fact that the appellant has signed as Managing Director as we also note at page 94 of the Memo of appeal. It is not that he signed "for managing director" or "on behalf of managing director" etc. Therefore,*

irrespective of the dispute relating to the designation as contended by the appellant, the appellant was undoubtedly having the power to sign as Managing Director. In the certificate given by the JAFZA only 3 names [and 4 designations, with the sole Director, being named as the Secretary also] are indicated who are responsible people in Vintage FZE and appellant was one of them. Therefore, the dispute as to what was the exact designation of the appellant is irrelevant in the context that admittedly the appellant signed as Managing Director of Vintage FZE. It is also important to clarify here that using a designation in other jurisdictions, such as UAE in the instant case, or elsewhere, for comparison to similar designations in India is also not relevant because designations vary widely even with respect to similarly placed officials across multiple jurisdictions. What is relevant is only whether the appellant was holding a position in which he could put his signature, that too in a loan agreement for USD 13.24 million with a bank under the designation of Managing Director. In any case designation of a person and whether a person is "an officer in default" in an organization etc. are irrelevant when the charge is that of aiding and abetting fraud under the PFUTP Regulations, which is the case herein."

97. So, as held by the Hon'ble SAT, the exact designation of Mukesh Chauradiya in Vintage FZE is not relevant. What is relevant is whether Mukesh Chauradiya was holding a position in which he could put his signature under the designation of Managing Director of Vintage FZE. Upon a consideration of the facts in the instant proceedings, it is clear that Mukesh Chauradiya was holding a position by way of which he could execute binding agreements/ documents on behalf of Vintage FZE. Thus, the circumstances indicate that Mukesh Chauradiya was playing an important role in the affairs of Vintage during the relevant period. Mukesh Chauradiya, a key person in Vintage FZE was fully involved in the day–to–day activities of Vintage FZE and had signed the redemption of loan amount requests for the GDR Issue of Hiran Orgochem.

98. I note that Mukesh Chauradiya by executing the documents as stated above in the capacity of Authorised Signatory/ Managing Director of Vintage for the purposes of convenience and to avoid conflict interest, cannot avoid the consequential actions, as he acted as conduit to AP, knowingly fully aware of the fraudulent and

deceptive scheme devised by AP. The claim made by the Noticee that he was ignorant of the fraud perpetrated by AP and that he was a just a Signatory, is a mere post thought and devoid of merit.

99. Therefore, in light of the above observation of Hon'ble SAT, the contention of Mukesh Chauradiya has no merit and the same cannot be accepted. Further, the judgements referred by the Noticee, in its responses dated June 25, 2023 and June 28, 2023, are for specific matters each based on facts of the respective matters and I do not find them relevant for the facts of the instant proceedings. In this matter, the allegations against the Noticees have been proven to be true and beyond doubt.

100. I note that the provisions of Section 12A(a), (b), (c) of the SEBI Act r/w Regulations 3(c), (d) of the PFUTP Regulations, inter alia prohibit buying, selling or dealing in securities in a fraudulent manner; employment of any manipulative/deceptive device, scheme or artifice to defraud in connection with dealing in securities; engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with dealing in securities. Further, Regulations 4(1) and 4(2) (f), 4(2) (k), 4(2) (r) of the PFUTP Regulations, inter alia, prohibit indulgence in fraudulent and unfair trade practices in securities through various acts, omissions stated therein. In my view, any fraudulent or deceptive device, scheme, act, omission, etc., which has the potential to inter alia induce sale/purchase of securities of any company; influence investment decisions of investors in such company; or result in wrongful gain, etc. would be covered within the prohibition under the aforementioned provisions of law.

101. The Hon'ble SAT in the matter of *Pan Asia Advisors Ltd. vs. SEBI*, while interpreting the expression of *'fraud'* under the PFUTP Regulations, observed as under:

> *"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."

102. In this regard, I note that the Hon'ble Supreme Court in its judgment in the matter of *Kanaiyalal Baldevbhai Patel vs. SEBI* has also observed as under:

"if Regulation 2(c) of the 2003 Regulations was to be dissected and analysed, 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".

103. I note that the Hon'ble Supreme Court in the same judgement, has also observed that *"that the provisions of Regulations 3 (a), (b), (c), (d) and 4(1) of PFUTP Regulations 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....".*

104. In this regard, 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. ....”

105. Based on evidence on record, I note that all the essential ingredients of fraud as defined in PFUTP Regulations are present in this case. I note that the Noticee 1 i.e., Arun Panchariya was the key person actively involved in the GDR process of Hiran at every stage and perpetrated fraud on the investors in Indian securities market by way of subscribing to GDRs in fraudulent manner by obtaining loan, defaulting on loan payment, converting GDRs into equity shares and subsequently selling converted shares. Therefore, I find that such acts of the Noticee 1 are in violation of the provisions of Section 12 A (a) (b) (c) of SEBI Act r/w Regulation 3 (a) (b) (c) (d) and 4 (1) of PFUTP Regulations. Further, the Noticee 2 by acting as a conduit to AP in furtherance of common intention to defraud the investors had violated the provisions of Section 12 A (a) (b) (c) of SEBI Act r/w Regulation 3 (a) (b) (c) (d) and 4 (1) of PFUTP Regulations

ISSUE–II: Does the violation, if any, attract monetary penalty under Section 15HA of SEBI Act.?

106. It is established that the Noticee 1 indulged in employing fraudulent plan/arrangement, device, artifice and contrivance with regard to the subscription

of GDRs, creation of underlying shares using the facade of GDR issue, monetizing those GDRs through the sale of underlying shares of the GDRs and inducing and alluring Indian investors to deal in shares of Hiran. I also note that the Noticee 2 had acted as party to the fraud perpetrated on the Indian investors by the Noticee 1. The pre-determined fraudulent and manipulative acts of a few entities damage the integrity of the market. Further, the genuine investors are put at risk because of the fraudulent artifice employed by the entities as observed in this case.

107. Therefore, as the alleged violation against the Noticees stands established, the Noticees are liable for monetary penalty under Section 15HA of SEBI Act, the provisions of which are reproduced hereunder:

Section 15HA of SEBI Act - Penalty for fraudulent and unfair trade practices

"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".

ISSUE-III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 23J of SCRA and Section 15J of SEBI Act?

108. While determining the quantum of monetary penalty under Section 15HA of SEBI Act, I have considered the factors stipulated in Section 15J of SEBI Act, which reads as under:

15J. While adjudging quantum of penalty under Section 15-I of SEBI Act, 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.

109. It is established that the Noticee 1 i.e., Arun Panchariya devised and structured the GDR issue of Hiran through his connected entities at all stages by ensuring that AP controlled Vintage subscribed to GDR issue by entering into Loan Agreement, AP connected EURAM Bank extended loan to Vintage and made AP controlled IFCF its sub account to facilitate off-loading of converted equity shares. I also note that AP connected entities IFCF and HBSMEF cancelled GDRs and off loaded converted shares. It is a matter of record that Hiran wrote off US$ 4.95 million on account of loan default by AP controlled Vintage as Hiran had pledged GDR proceeds against this loan. It is evident that the shares sold by IFCF and HBSEMF were issued without proper consideration as Vintage defaulted on loan repayment and post realisation of the proceeds upon sale of underlying shares by these two entities, Vintage had repaid 50% of the loan amount i.e., US$ 5 Million.

110. From the material available on record, it is seen that Noticee No. 1 acquired GDRs worth USD 10 million. Further, out of GDRs acquired free of cost by Noticee controlled Vintage, around Rs.18.20 crores worth of GDRs were sold in Indian stock market after converting them into equity shares through various connected entities. I further note that as per the GDR proceeds received by Hiran in its bank account in India, there was a shortfall of around Rs 27.50 Crores out of the total GDR issue size of around Rs.40 Crores as on May 31, 2013. I note that Noticee was responsible for the fraudulent scheme and arrangement for subscription of GDRs issued by several companies in which separate enforcement proceedings are going on.

111. I note that in the appeal filed by Kantilal Hiran against the order of AO dated June 17, 2020 in the instant matter, in its order dated 11.08.2022, Hon’ble SAT, held as under;

> *“8. The modus operandi adopted by the Company in the issuance of GDRs is identical and was considered by this Tribunal in several appeals. This Tribunal found that the modus operandi was the same and that the investors were misled into believing that the GDR was subscribed by many investors whereas the fact remained that the GDR was subscribed by one entity who received a loan from*

the bank for the purpose of subscribing the issue. Further, the bank had given a collateral security by the Company in the form of a Pledge Agreement securing the GDR proceeds as collateral securities for the loan given to that entity. This Tribunal found that such scheme was fraudulent.

18. The AO has rightly noted from the annual reports of Hiran for the financial year 2012-13, that the Euram Bank had seized US$ 4,945,613 (equivalent to Rs. 27,50,74,047) on May 27, 2013, in its retail account with the bank to recover as alleged third party loan to Alta Vista International FZE (earlier known as Vintage) pursuant to a Pledge Agreement alleged to have been executed by the Company with EURAM Bank. Further, Hiran made a provision of Rs. 27,50,74,047 for balance seized by EURAM Bank in its annual report for the financial year 2012-13. However, Hiran did not mention the same in its annual report for the financial year 2012-13 that it has written off US$ 4,945,613 (equivalent to Rs. 27,50,74,047).”

112. I note that AP perpetrated these fraudulent schemes in connivance with the promoters/ directors of various issuer companies listed in India, wherein AP is found to have been guilty of executing similar modus operandi with the same set of entities connected to him, resulting into Indian investors becoming ultimate bearer of the cost of these GDRs. To put it in nutshell, the issuance of these GDRs was for private gain at the cost of public good.

113. Therefore, I am of the view that, in order to meet the ends of justice, exemplary penalty is warranted against the Noticee 1, given the gravity of fraudulent scheme devised and executed in Indian Markets, which affected the integrity of markets and resulted in huge loss to Hiran and consequently its shareholders. Therefore, in terms of Section 15HA of the SEBI Act, the maximum penalty must be imposed on the Noticee 1. The consequences resulting from violations committed by the Noticees are of very grave nature and are prejudicial to the interests of investors in the securities market. If violations of this nature and magnitude are not dealt with seriously with a firm hand, then investors will lose faith in the Indian Securities Market and even good companies will find it extremely difficult to raise capital in future. I note that numerous orders have been passed by SEBI, both

under section 11 and under section 15 of SEBI Act, against the Noticees in matters of GDRs of various other companies in the past.

ORDER

114. In view of the foregoing, I, therefore, in exercise of the powers conferred upon me under Section 15-I of SEBI Act r/w Rule 5 of Adjudication Rules, hereby impose a penalty on the Noticees as under;

Name of the Noticee (PAN)	**Penalty amount in ₹ and words**	**Imposition of penalty under**
Arun Panchariya *(PAN: AEVPP6125N)*	25,00,00,000 (Rupees Twenty Five Crores only)	Section 15HA of SEBI Act for violation of the provisions of Section 12 A (a) (b) (c) of SEBI Act r/w Regulation 3 (a) (b) (c) (d) and 4 (1) of PFUTP Regulations
Mukesh Chauradiya *(PAN: AAVPC0966A)*	20,00,000 (Rupees Twenty lakhs only)	Section 15HA of SEBI Act for violation of the provisions of Section 12 A (a) (b) (c) of SEBI Act r/w Regulation 3 (a) (b) (c) (d) and 4 (1) of PFUTP Regulations

I find that the said penalty is commensurate with the violations committed by Noticees in this case.

115. Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

116. 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 for realization

of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

117. In terms of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and to the Securities and Exchange Board of India.

Date: July 11, 2023	**AMIT KAPOOR**
Place: Mumbai	**ADJUDICATING OFFICER**