**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

[**ADJUDICATION ORDER NO: Order/GR/PU/2023-24/28332]**

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

**In respect of:**

**Mr. Arun Panchariya (PAN: ABRPM1271B)**

**In the matter of disclosures by Rainbow Papers Ltd. in respect of its GDR issue**

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## BACKGROUND IN BRIEF

1. The Hon'ble Securities Appellate Tribunal ("**SAT**") vide its order dated March 28, 2023, set aside the Adjudication order passed against Mr. Arun Panchariya in the instant matter dated June 16, 2022 and remanded the matter back stating *"…the appellant or the learned counsel for the appellant will appear before the AO on 10th April, 2023 on which date the AO will serve the show cause notice upon the appellant or his learned counsel and from there onwards the matter will proceed in accordance with law."* This aforesaid direction emanated from the Appeal No. 134 of 2023 filed by the Mr. Arun Panchariya,

contending that the show cause notice was never served upon him and no opportunity of hearing was provided. Hence, present proceeding was initiated.

**FACTS OF THE CASE**

2. The Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigation into the alleged irregularities in the **Global Depository Receipts** (herein after referred to as **"GDRs"**) issued by Rainbow Papers Ltd., (hereinafter referred to as **"Company" /"RPL"**) during the period from January 01, 2010 to February 28, 2010 (hereinafter referred to as **"Investigation Period/IP"**).

3. RPL is a company whose shares are listed on the National Stock Exchange of India Ltd. (NSE) and the Bombay Stock Exchange (BSE) Ltd. The investigation, *prima facie,* revealed that RPL had issued 1.02 million GDRs (amounting to USD 27.02 Million), on January 27, 2010 equivalent to 1,02,35,455 equity shares having par value of Rs. 10 each, and the said issue was subscribed by one entity viz. Vintage FZE (now known as Alta Vista International FZE) (hereinafter referred to as **"Vintage").** It was observed that the subscription amount was paid by Vintage by obtaining a loan from European American Investment Bank AG ("**EURAM Bank"**) by entering into Loan Agreement dated January 11, 2010 with EURAM Bank. The said Loan Agreement was signed by Arun Panchariya (hereinafter referred to as ***'the Noticee***') in the capacity of Managing Director of Vintage.

4. Further, RPL had signed a 'pledge agreement' dated January 11, 2010 with EURAM Bank, pledging GDR proceeds as collateral against the loan availed by Vintage vide 'loan agreement' dated January 11, 2010. In view of this, it is noted that RPL had pledged the GDR proceeds against the loan availed by Vintage for subscribing to GDRs of RPL, thus securing Vintage's loan. The loan agreement and the pledge agreement enabled Vintage to avail loan from the EURAM Bank for subscribing to GDR of the company. The said GDR issue would not have been subscribed, had the company not given such security towards the loan taken by Vintage. The bank account in which GDR proceeds were held was in the name of the company but the amount deposited in the account was not at the disposal of the company as the same was pledged as security against the loan availed by Vintage

(the sole subscriber of GDR). Therefore, it was alleged that the scheme of issuance of GDRs was fraudulent.

5. As the said Loan agreement was executed by the Noticee as Managing Director of Vintage, hence it was alleged that the Noticee had acted as party to the fraudulent scheme. It was also observed that on default on loan payment of USD 6.26 million by Vintage the amount was adjusted by EURAM Bank from the GDR proceeds of RPL as it had pledged GDR proceeds against the said loan. Further, it was also observed that some Foreign Institutional Investors (**FIIs**) connected and controlled by the Noticee, namely EURAM Bank and Cardinal Capital Partners made India Focus Cardinal Fund their sub-account. Similarly, Golden Cliff (FII) had also made High Blue Sky Emerging Market Fund its sub-account. They cancelled the GDRs and facilitated the sale of converted shares of RPL.

6. Considering the fact that Vintage was the sole subscriber to GDR issue, with the Noticee being the sole beneficial owner of Vintage, it converted the equity shares sold by the aforesaid FIIs originally and acquired it free of cost. Thus, it is alleged that the Noticee had devised the GDR scheme along with RPL, which misled the Indian investors into believing that GDRs were genuinely subscribed while loan default alone caused loss to the shareholders of RPL to the tune of USD 6.26 million. Therefore, it was alleged that the Noticee was a part of the scheme of fraudulent issuance of GDRs.

7. SEBI had, therefore, initiated adjudication proceedings inter alia against the Noticee under Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") for the alleged violation of the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003 (hereinafter referred to as "**PFUTP Regulations**").

8. On examination of the alleged violations, Adjudicating Officer (hereinafter referred to as 'AO') vide Order dated May 27, 2022 ('earlier order') held that the Noticee had violated the aforesaid provisions, and had accordingly imposed a penalty on the Noticee.

9. Subsequently, the Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT') in Appeal No.136 of 2023 of the Noticee allowed the same on the ground of violation of the principles of natural justice that the show cause notice was never served upon him and no opportunity of personal hearing was provided. Accordingly, the impugned SEBI order dated May 27, 2022 was set aside by Hon'ble SAT vide an order dated March 28, 2023 and the matter was remitted back to the AO for passing a fresh order on merits after giving an opportunity of personal hearing to the appellant. Further, directed the appellant to appear before the AO on April 10, 2023 on which date the AO would serve the show cause notice upon the appellant or his learned counsel and from there onwards the matter would be proceeded in accordance with law.

**APPOINTMENT OF THE ADJUDICATING OFFICER**

10. Subsequent to the Order passed by Hon'ble SAT dated March 28, 2023 and in furtherance to the direction given in the said order, the undersigned was appointed as Adjudicating Officer ("AO"), vide communication order dated April 06, 2023, in terms of Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "SEBI Adjudication Rules") read with Section 15-I of the Act to inquire and adjudge the aforesaid violations under Section 15HA of the SEBI Act, 1992.

**SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

11. Show Cause Notice No. EAD4/ADJ/BS/DS/OW/P/18464/5/2018 dated June 28, 2018 (hereinafter referred to as **"SCN"**) was issued *inter alia* to the Noticee in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the SEBI Adjudication Rules for the alleged violation of the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

12. Accordingly, as directed by the SAT, the nominated advocate of the Noticee visited SEBI office on April 10, 2023 and the SCN along with its annexures was served through hand-delivery and the same was acknowledged.

## REPLY OF THE NOTICEE

13. The Noticee vide email dated July 09, 2023, had filed his written submissions in response to the SCN, the contents whereof are summarized as given below:

- 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.
- Had the company disclosed the required information regarding the pledge agreement and the loan agreement to the stock exchange as advised by SEBI then it might not have influenced the investors and notice cannot be held liable for the act of the company.
- The allegation that Noticee is 100% shareholder of PAN Asia and therefore is connected to it is absolutely wrong and incorrect as per annexure 9 the Noticee resigned from Pan Asia directorship on 29.09.2011.
- Noticee denies any connection with IFCF and further states that no details as regards how much shares were sold and for how much amount and when was no given by SEBI. Noticee also submitted that he resigned from IFCF in October 2010 whereas the default of Vintage was much later. It was later stated that the ownership rights of the GDRs as well as shareholding pattern of Class A share belongs to Euram Bank Austria. Euram bank, Asis has nothing to do with Euram Bank Austria, which was the FII of IFCF and the notice had no control at all over Euram Bank Austria.
- Further, as per interim order 29.09.2011, the notice, Pan Asia, Euram bank and IFCF were already banned from dealing in the securities market.
- There is no escrow agreement placed on record or relied upon.
- As regards the noticee's connection with Vintage FZE, the Noticee does not deny the facts that he was the beneficial owner and Managing Director and Alkarni holding Ltd. was a shareholder in Vintage, however, the said information is not sufficient to connect Noticee with Vintage as on the date of transaction in January 2010 or at the time of redemption by MD Mr. Mukesh Chauradiya.
- The Noticee has no connection with Mukesh Chauradiya and the alleged connects are based on conjectures and surmises. Only some other family members of Noticee are connected to Mukesh Chauradiya that does not mean notice is connected to him.
- High Blue sky 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. The Noticee is not associated with High blue Sky 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 SCN has failed to show any evidence wrt connection of Anant Kailash Chandra Sharma with HBS during the dates of conversion of the GDR and the entire connection shown is are based on conjectures

and surmises. It was further stated that even the connection between ASPIRE and Golden Cliff are without any basis. Similar is the position with regard to Reema Narayan Shetty.

- As per SEBI's own information as contained in e-mails dated 02.09.2016 & 2015, the connections of Euram Bank and IFCF clearly shows that the Noticee has nothing to do IFCF in so far as its business activities are concerned nor any amounts or gain have been transferred from IFCF or Vintage or Euram to Bank to the Noticee.
- Euram Bank provided loans to Vintage to subscribe to the GDRs and held the control of funds and the GDR. It was also submitted that Euram Bank later took the GDRs from Vintage and then sold the same through India focus Cardinal Fund (IFCF).
- All the loan agreements, pledge agreements, escrow agreements etc. were signed with Euram Bank Austria only and Euram Bank Asia has no role to play in those transactions. Further, the Noticee was neither a shareholder nor a board member of Euram Bank, Austria at any point in time. Additionally it was also submitted that even Pan Asia was not having any shareholding in Euram Bank, Austria.
- It was also submitted that the Noticee was not a party to the arrangement to hold the underlying shares in India and carry out conversion of GDR into shares.
- In so far as Vintage FZE is concerned, it has been alleged that the Noticee 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 the Noticee was not even the shareholder. Further, the Noticee has already resigned from Vintage in 2010, which is much prior to the default having been occurred.
- Noticee was a director in IFCF only till October 2010.Cardinal Capital PartnerLtd. 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 the Noticee. 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
- 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.
- 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 the Noticee nor the Vintage FZE (though not connected to the Noticee) 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.
- 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.

- Post the year 2011, the Noticee 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 the Noticee especially when he was already restrained from dealing in Security Markets in the year 2011 itself.
- There is no allegation against the Noticee 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.
- It is wrong to allege that the Noticee (through Vintage FZE) controlled certain sub-accounts Viz. IFCF or HBS etc.

## PERSONAL HEARING

14. Further, in terms of Rule 4(3) of SEBI Adjudication Rules, vide email dated June 09, 2023, an opportunity of personal hearing was granted to the Noticee on July 10, 2023. The authorized representative ("**AR**") of the Noticee, vide email dated July 02, 2023, sought adjournment for the hearing scheduled on July 03, 2023. Subsequently, another opportunity of personal hearing was granted on July 10, 2023. Thereafter, the Noticee submitted its reply dated July 08, 2023, vide its e-mail dated July 09, 2023. On July 10, 2023 the Noticee, through its AR, appeared through web based video conference and reiterated the submissions already made by the Noticee vide letter dated July 08, 2023.

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

## CONSIDERATION OF ISSUES

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

   I. *Whether the Noticee has violated the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations?*

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

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

**<u>OBSERVATIONS AND FINDINGS</u>**

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

**<u>SEBI Act, 1992</u>**

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

**12A. No person shall directly or indirectly –**

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

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

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

**<u>PFUTP Regulations, 2003</u>**

**3. Prohibition of certain dealings in securities**

No person shall directly or indirectly—

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

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

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

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

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

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

**<u>PRELIMINARY ISSUE RAISED BY NOTICEE</u>**

18. Before proceeding with the merits of the matter, it would be appropriate to first deal with the preliminary contention raised by Noticee. The Noticee has contended that the instant proceeding deserves to be dropped on account of delay as the proceedings have been initiated after a lapse of more than eight (8) years and has caused prejudices against him.

19. In this regard, I note from the records that SEBI investigated issue of GDRs in the overseas markets by the Indian companies on receipt of a complaint, in the year, 2009, regarding misuse of GDR route by few companies. Subsequently, SEBI started this GDR investigation in the year 2010 and passed an ex-parte order on 21st September, 2011, against several entities, including the Noticee, in his personal capacity as Managing Director of Pan Asia Advisors on September 21, 2011, on the following grounds:-

    a) Market Manipulation & Price speculation in Shares;
    b) Money Laundering;
    c) Creation & Utilization of Fraud devise to execute GDR.

20. The investigation prima facie revealed that in many of the GDR issues, money for subscribing to GDR was availed as a loan by the subscribers, from an overseas Bank wherein the issuer company gave security for such loan taken by the subscribers, by pledging/creating charge on the GDR issue proceeds. It was also observed that such subscribers subscribed the GDRs without any valid consideration and sold the underlying shares in the securities market in India. Accordingly, where such modus operandi was prima facie observed such GDR issues were examined. SEBI initiated investigation as soon as SEBI came to know that such companies have adopted the modus operandi as referred to above.

21. Since, the GDRs are issued abroad and related transactions were carried out outside India, SEBI had to call information from the various entities situated abroad in such large number of fraudulent GDR issues. Such information inter alia included seeking information on diversion of funds and subsequent tracing of proceeds from large number of entities and the details of (a) GDR issuer companies, (b) custodian of securities, (c) overseas depository, (d) overseas banks, (e) subscribers of GDR issue (mostly overseas), (f) lead manager, (g) various layers of transactions, etc., which was not readily forthcoming. Therefore, SEBI had to collect information and documents from various sources including approaching the foreign regulators for assistance in procuring information and documents from the concerned entities situated outside India from many jurisdictions. The foreign regulators had also to collect this information from the concerned entities and then to furnish to SEBI. Thus, the process

of collection of information in the matter was complex, tedious and time consuming. It is noted that in most of these cases the Noticee herein and his connected entities were found to be involved. One of the connected entity of Noticee i.e. Pan Asia Advisors Ltd., even contested the jurisdiction of SEBI over the GDRs which was ultimately decided by Hon'ble Supreme Court in **SEBI Vs. Pan Asia Advisors Ltd. & Anr.** (2015) 14 SCC 71 on July 06, 2015.

22. It is noted from SEBI order dated June 16, 2016 that investigation was initiated in respect of 59 GDR issues made by 51 Indian Companies during the period 2002 to 2014. RPL was one such GDR issuer where such modus operandi was also observed and the investigation was completed in the matter in November 2017. Thereafter, it is noted that shortly after completion of the investigation, the SCN dated June 28, 2018 was issued to the Noticee. However, since the SCN issued by air mail could not be delivered to the Noticee at the address available on record, it was served to the Noticee vide e-mail dated February 03, 2022 on his e-mail id arun.panchariya@me.com, which was duly delivered. The said e-mail id of the Noticee is active till date and recent communications have also taken place.

23. In compliance with the principles of natural justice an opportunity of personal hearing was also granted to Noticee on April 28, 2022, served to the Noticee vide e-mail dated April 21, 2022, but the Noticee neither replied nor attended the personal hearing and finally an ex-parte order was passed against him.

24. Further, in defense to the said contention, I would draw reference to the Hon'ble SAT order in **Jindal Cotex Ltd. and others vs. SEBI** (Appeal No. 376 of 2019 decided on 05.02.2020) whereby while dealing with an appeal emanating from the similar GDR issue wherein a plea of delay was also taken by the appellant therein, Hon'ble SAT observed as under:

> *"....Arguments on delay in investigation and consequently affecting natural justice are also devoid of any merit in the matter since this Tribunal is aware of the complexity involved in the entire manipulative GDR issue; how long it took SEBI to gain information relating to the various entities from multiple jurisdictions in the matter of PAN Asia Advisors Limited (Date of Decision: October 25, 2016 in Appeal No. 126*

*of 2013) and Cals Refineries Limited (Appeal No 04 of 2014; Date of Decision 12.10.2017) etc...."*

25. It is therefore, as seen in Jindal Cortex Ltd. (supra) the Hon'ble SAT has accepted the complexities involved in the matters pertaining to GDR issues and held that the time period taken by SEBI in such cases is justified. Thereafter, in the instant case, the Noticee has failed to demonstrate as to how precisely the delay has caused prejudice to him and his right to properly defend himself.

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

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

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

28. Having addressed the preliminary issue, I shall now proceed to examine the key issues to determine the veracity of allegations raised against the Noticee.

***<u>Issue I:</u> Whether the Noticee has violated the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations?***

29. From the material available on record, I note that RPL had issued 1.02 million GDRs (amounting to USD 27.02 million) on January 27, 2011, equivalent to 1,02,35,455 equity shares having par value of Rs.10 each. Summary of the aforesaid GDRs issued by RPL, is tabulated below.

| GDR issue date | No. of GDRs Issued (mn.) | Capital raised (US$ mn.) | Local custodian | No. of equity shares underlying GDRs | Global Depository | Lead Manager | Bank where GDR deposited | GDRs listed on |
|---|---|---|---|---|---|---|---|---|
| 27-Jan-2010 | 1.02 (at USD 2.64 each GDR) | 27.02 | DBS Bank | 1,02,35,455 | The Bank of New York Mellon, USA | Pan Asia Advisors Ltd. | EURAM Bank, Austria | Luxembourg Stock Exchange |

30. SEBI Investigation observed that subscription to the GDR was obtained through a loan agreement as well as a pledge agreement, details of which are discussed in the following paragraphs, and therefore, it was alleged in the SCN that the Noticee devised a fraudulent scheme along with RPL which misled investors into believing that GDRs were genuinely subscribed and also caused loss to the shareholders due to the loan default. Therefore the Noticee was a part of the scheme of fraudulent issuance of GDR.

31. Investigations further observed that an entity viz. Vintage FZE (now known as Alta Vista International FZE) (hereinafter referred to as "**Vintage**") had obtained a loan of USD 27.02 million by entering into a Loan Agreement dated January 11, 2010, with EURAM Bank to subscribe to the GDRs of RPL. The aforesaid Loan Agreement was signed by the Noticee in the capacity of Managing Director of Vintage. On perusal of the Loan Agreement, I note that the following has been *inter alia* mentioned therein –

*1. <u>Currency and the amount of facility:</u>*
*USD 27,021,601.20.-*
(The amount is exactly the same amount raised by RPL through the said GDR offering.) (Explanation supplied).
*2. <u>Nature and purpose of facility:</u>*
*To provide funding enabling Vintage FZE to take down GDR issue of 10,235,455 Luxembourg public offering and may only be transferred to EURAM account nr. 580 011, Rainbow Papers Limited*"

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

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

- *Pledge of certain securities held from time to time in the Borrower's account no. 540 012 at the Bank as set out in **<u>a separate pledge agreement</u>** which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.* (emphasis supplied)
- *Pledge of the account no. 580 011 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.*

32. From the aforesaid Loan Agreement, I note that Vintage had availed a loan facility to the extent of USD 27.02 million from EURAM Bank solely for the purpose of subscribing to the GDRs of RPL.

33. And also from the certified true copy of RPL's Board Resolution dated November 27, 2009 provided by EURAM Bank, it is observed that the following resolution was *inter alia* passed in the said meeting–

> **"*RESOLVED THAT*** *a bank account be opened with EURAM Bank ("the Bank") or any branch of EURAM Bank, including the Offshore Branch, outside India for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of the Company."*
>
> ***"RESOLVED FURTHER THAT*** *Shri Ajay Goenka, Managing Director of the Company, be and is hereby authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required."*
>
> ***"RESOLVED FURTHER*** *THAT the Bank be and is hereby authorized to use the funds so deposited in the aforesaid bank account as security in connection with loans if any as well as to enter into any Escrow Agreement or similar arrangements if and when so required*."

34. From the aforesaid resolution of the Board Meeting it is observed that the Board of Directors of RPL had authorized, the Noticee, as the Managing Director, to sign and execute any application, agreement and other paper from time to time as may be required by EURAM Bank. For this purpose, Shri. Ajay Goenka was inter alia authorized to carry and use the seal of RPL. In the said resolution, the Board of Directors had further authorized EURAM Bank to use the funds deposited in the bank account opened with EURAM Bank in the manner of subscription money in respect of the GDR issue of the company, as security in connection with loans, if any.

35. I note from the records made available by EURAM Bank that subsequently RPL had entered into a Pledge Agreement with EURAM Bank on January 11, 2010. The said Pledge Agreement was signed by Shri. Ajay Goenka on behalf of RPL, in the capacity of Managing Director of RPL. The salient Clauses of the Pledge Agreement are *inter alia* as under:

***2. Pledge***

*2.1. In order to secure any and all obligations, Present and future, whether conditional or unconditional of the **Borrowe**r towards the bank under the Loan Agreement and any and all respective amendments thereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the **Loan Agreement** – including those limited as to condition or time or not yet due – irrespective of whether such claims have originated from the account relationship, from bills of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank ("the Obligations") **the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:***

*2.1.1. all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount of $ USD 27,021,601.20 existing from time to time at present or hereafter on the **securities account(s) no. 580011** 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. 580011 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account ") and all amounts credited at any particular time therein. The interest rate on the deposit in the amount of facility amount of the Loan Agreement will be fixed at 1.00% p.a.*

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

6. ***Realisation of the Pledge:***

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

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

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

36. I note that the Pledge Agreement refers to the Loan Agreement dated January 11, 2010 between the borrower i.e. Vintage, and EURAM Bank, whereby Vintage was granted a loan of USD 27.02 million, and it is stated that the Pledgor i.e. RPL has received a copy of the said Loan Agreement and acknowledges and agrees to its terms and conditions. By signing the Pledge Agreement, RPL is deemed to be clearly aware that Vintage was the subscriber to the GDR issue. On perusal of the contents of the Pledge Agreement, it is noted that the Pledgor had agreed to pledge RPL its rights, title and interest in and to the securities deposited in the Pledge Securities Account and funds in Pledged Time Deposit Account so as to secure the present and future obligations of Vintage. As already reproduced above, the Pledge Agreement also expressly states that:

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

37. Regarding the dates, it is noted that the Pledge Agreement and the Loan Agreement were both dated January 11, 2010. Further, I also note that the Loan Agreement expressly states that the Pledge Agreement was an integral part of the Loan Agreement.

38. From the Loan Agreement and the bank account statement of Vintage, I note that Vintage had availed a loan from the EURAM Bank to the extent of USD 27.02 million to subscribe to the GDRs of RPL. From the statement of Vintage's bank account and the escrow account for the GDR issue, it is observed that Vintage had instructed EURAM to transfer an amount of USD 27.02 million from its account and to credit it into the escrow account of RPL. Accordingly, the said amount was credited to the account of RPL on January 27, 2010. The bank account statement of RPL clearly shows that the said amount as received from one entity only, i.e. Vintage. From the above, it is evident that GDR subscription money was received from only one entity i.e. Vintage. Accordingly, I note that the GDR issue of RPL comprising 1.02 million GDRs (amounting to USD 27.02 million), was subscribed by only one entity, i.e. Vintage. I further note that the loan agreement between Vintage and EURAM was signed on January 11, 2010 and on the same date Vintage had instructed EURAM to transfer the said amount of USD 27.02 million from its account to that of RPL and in turn the same RPL account was pledged with EURAM Bank under the Pledge Agreement.

39. Further, it is observed from Vintage's loan account statement with EURAM Bank that Vintage repaid the loan amount to the extent of USD 21.03 million in various instalments by July 28, 2011 and thereafter defaulted on the repayment of balance loan amount of USD 6.26 million (including interest on loan amount). Details of repayment of loan by Vintage as observed from information provided by EURAM Bank are tabulated below:

| Date | Repayment of loan by Vintage to EURAM | Amount(USD) | Transfer of amounts/ Payments from Rainbow's EURAM account | Amount(USD) |
|---|---|---|---|---|
| 29-Jan-10 | | | Bank Charges | 209 |
| 12-Feb-10 | | | Bank Charges | 2,500 |
| 19-Mar-10 | Repayment by Vintage | 8,50,000 | | |
| 22-Mar-10 | | | Rainbow Papers Limited A/c. Corporation Bank | 3,84,000 |
| 22-Mar-10 | | | PAN Asia Advisors Limited | 1,00,000 |
| 22-Mar-10 | | | PAN Asia Advisors Limited | 3,62,832 |
| 29-Mar-10 | Repayment by Vintage | 3,10,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 3,10,000 |
| 27-Apr-10 | Repayment by Vintage | 6,40,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 4,00,000 |
| | Repayment by Vintage | | Rainbow Papers Limited A/c. Corporation Bank | 2,40,000 |
| 04-May-10 | Repayment by Vintage | 7,64,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 7,64,000 |
| 21-Jun-10 | Repayment by Vintage | 7,74,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 7,74,000 |
| 22-Jun-10 | Repayment by Vintage | 8,02,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 8,02,000 |
| 01-Jul-10 | Repayment by Vintage | 8,10,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 8,10,000 |
| 06-Jul-10 | Repayment by Vintage | 8,02,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 8,02,000 |
| 07-Jul-10 | Repayment by Vintage | 7,98,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 7,98,000 |
| 12-Jul-10 | Repayment by Vintage | 7,80,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 7,80,000 |
| 26-Jul-10 | Repayment by Vintage | 5,55,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 5,55,000 |
| 11-Aug-10 | Repayment by Vintage | 5,00,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 5,00,000 |
| 05-Oct-10 | Repayment by Vintage | 10,08,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 10,08,000 |
| 07-Oct-10 | Repayment by Vintage | 9,94,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 9,94,000 |
| 12-Oct-10 | Repayment by Vintage | 9,00,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 9,00,000 |
| 11-Nov-10 | Repayment by Vintage | 4,00,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 4,00,000 |
| 22-Nov-10 | Repayment by Vintage | 2,97,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 2,97,000 |
| 12-Jan-11 | Repayment by Vintage | 4,00,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 4,00,000 |
| 24-Jan-11 | Repayment by Vintage | 3,00,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 3,00,000 |
| 27-Jan-11 | Repayment by Vintage | 3,00,000* | Rainbow Papers Limited A/c. Indian Overseas Bank | 3,00,000 |
| 31-Jan-11 | Repayment by Vintage | 3,00,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 3,00,000 |
| 18-Apr-11 | Repayment by Vintage | 5,00,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 5,00,000 |
| 28-Apr-11 | Repayment by Vintage | 20,00,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 20,00,000 |
| 03-May-11 | Repayment by Vintage | 8,00,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 8,00,000 |
| 10-May-11 | Repayment by Vintage | 5,50,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 5,50,000 |
| 27-Jun-11 | Repayment by Vintage | 9,00,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 9,00,000 |
| 30-Jun-11 | Repayment by Vintage | 11,00,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 11,00,000 |
| 11-Jul-11 | Repayment by Vintage | 11,00,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 11,00,000 |
| 27-Jul-11 | Interest Earned | 2,67,446 | | |
| 28-Jul-11 | Repayment by Vintage | 5,40,000 | Rainbow Papers Limited A/c. Indian Overseas Bank | 8,00,000 |

| | | | | |
|---|---|---|---|---|
| | Total | 2,10,41,446 | Total | 2,10,33,541 |
| * The transaction was debited in Vintage's loan account on January 31, 2011. However, the redemption request was faxed to EURAM on 27 Jan 2011 at 03:11 PM and also bears a stamp which reads 27 JAN'11 14:50. | | | | |

40. In the present matter, I note that the GDR subscription amount of USD 27.02 million was not available to RPL for utilization until the loan taken by Vintage for subscribing to the GDRs was repaid to the EURAM Bank. I also note that after the subscription of GDR on January 27, 2010, a partial amount of USD 8,50,00 could be made available to RPL only on March 19, 2010, i.e. after a period of almost 2 months since the subscription money for the GDR issue was received in the EURAM Bank account of RPL.

41. From the above mentioned table, I note that the dates and amounts of repayment of loan by Vintage to Euram Bank are synchronous with every transfer by Rainbow out of its account held with Euram Bank, which was pledged as security for the loan. Hence, it appears that only when Vintage repaid a sum of money, Rainbow was able to transfer a similar sum to its bank accounts in India and was able to use the same for any other purpose, as the charge on the pledged account was removed to that extent. Therefore, it is apparent that the amount transferred from RPL's Euram Bank Account was dependent on the repayment of the loan by Vintage.

42. From the details of fund transfer stated above, I observe that only after Vintage repaid loan installments to EURAM Bank that RPL could make payments from its account maintained with the same bank and such payments were exactly for the same amount that Vintage repaid to EURAM Bank except for adjustments on account of bank charges / interest earned by RPL. Therefore, it is evident that the amount transferred from RPL's EURAM Bank account was dependent on the repayment of the loan by Vintage to EURAM Bank.

43. I note that as and when, loan repayments were made by Vintage, RPL used to transfer funds from its EURAM Bank account to the other bank accounts of RPL. In view of the above, I note that every transfer from RPL's EURAM account to other accounts of RPL is in sync with the date and amount of loan repaid by Vintage to EURAM Bank (the details pertaining to this have already been tabulated in preceding paragraph). Therefore, I note that the amounts transferred from RPL's EURAM account to RPL's other bank accounts

were dependent on the repayment of the loan by Vintage. It also establishes that the purpose of the Pledge Agreement was to facilitate the subscription of GDR issue and securing the loan obtained by Vintage.

44. Thus, I note that in the above manner, the obligation of Vintage under the Loan Agreement was secured by RPL through the Pledge Agreement, and accordingly, the subscription of the GDR issue was facilitated in the above manner. I note that due to such pledging of the GDR proceeds, the funds were not available at RPL's disposal. In view of the above, I note that the GDRs were not issued in a genuine manner, but through a fraudulent arrangement.

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

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

46. From the documents available on record, it is observed that the GDRs were subscribed by one entity only, viz. Vintage FZE. I also note that the Pledge Agreement dated January 11, 2010, which was specifically signed by the authorized representative of RPL makes reference to Vintage. The same also clearly shows that RPL was aware that the subscriber to the GDR issue was just Vintage. Such actions also indicate *mala fide* intention on the part of RPL and Vintage.

47. As discussed above and as per the disclosure made by RPL to stock exchange during investigation period it is observed that the RPL suppressed the material and price sensitive

information from the stock exchange by not informing the following viz. (i). execution of pledge agreement dated January 11, 2010 by RPL in favor of EURAM Bank pledging the GDR proceeds for providing security to the loan taken by Vintage, (ii) linking of the aforesaid pledge agreement to the loan agreement dated January 11, 2010 by Vintage for obtaining loan from the EURAM bank for subscribing the GDR issue of RPL and (iii) Vintage was the only subscriber of GDR issued by RPL. I find that these three events were price sensitive information and could have impacted the scrip price of RPL and also could have mislead the investors and created a false impression in the minds of the investors that the GDR issue was fully subscribed whereas RPL had itself facilitated subscription of its GDR issue wherein the subscriber (Vintage) obtained loan from the EURAM Bank for subscribing the GDR issue of RPL and RPL secured that loan by pledging the GDR proceeds with the EURAM Bank.

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

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

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

50. It is therefore, the aforementioned act of RPL resulted in 'fraud' as defined under the PFUTP Regulations, 2003. In this respect, it would be appropriate to refer to the Order of

the Hon'ble SAT in ***Pan Asia Advisors Limited vs. SEBI*** cited above wherein, while interpreting the expression of 'fraud' under the PFUTP Regulations, 2003, it was observed that:

> *"From the aforesaid definition (of 'fraud') it is absolutely clear that if a person by his act either directly or indirectly causes the investors in the securities market in India to believe in something which is not true and thereby induces the investors in India to deal in securities, then that person is said to have committed fraud on the investors in India. In such a case, action can be taken under the PFUTP Regulations against the person committing the fraud, irrespective of the fact any investor has actually become a victim of such fraud or not. In other words, under the PFUTP Regulations, SEBI is empowered to take action against any person if his act constitutes fraud on the securities market, even though no investor has actually become a victim of such fraud. In fact, object of framing PFUTP Regulations is to prevent fraud being committed on the investors dealing in the securities market and not to take action only after the investors have become victims of such fraud."*

51. In view of the above, I note that RPL had entered into a Pledge Agreement with EURAM Bank on January 11, 2010 and Vintage entered into a Loan Agreement with EURAM Bank also on January 11, 2010. Further, the Pledge agreement states that the Pledgor i.e. RPL has received a copy of the said Loan Agreement and acknowledges and agrees to its terms and conditions. By signing the Pledge Agreement, RPL is deemed to be clearly aware that Vintage was the subscriber to the GDR issue. Thereafter, the Loan Agreement expressly states that the Pledge Agreement was an integral part of the Loan Agreement. This scheme of arrangement of RPL, in allotting GDR issue to only one entity i.e. Vintage which subscribed the GDR issue by obtaining loan from Euram Bank and the same was again secured by the RPL by pledging its GDR proceeds, seen along with the relevant disclosure w.r.t. subscription of GDR, without disclosing the crucial details pertaining to the aforesaid loan and pledge agreements which were price sensitive information, lead to conclusion that the same was done in a fraudulent manner. Also the meticulous organizing of the above mentioned scheme between three parties i.e. RPL, the Noticee through Vintage and Euram Bank, clearly indicates pre-planned arrangement with a motive to mislead the investors in India in believing that the global investors have shown keen

interest in investing in the GDRs of issuer companies and influence their decision. Therefore, they were consciously aware of the fraudulent scheme they were entering into and curated it the whole thing for their benefit. I note that no justifiable rationale has been given for entering into such transactions by the Noticee as the behaviour exhibited by the Noticee defies the logic and basic economic sense.

52. As regards the Noticee's contention that he is not connected to Pan Asia, Vintage, IFCF, High Blue Sky, Euram Bank and Mukesh Chauradiya, I note that vide order dated 25.10.2016 in the matter of **Pan Asia Advisors Ltd. and Arun Panchariya Vs. SEBI**, the Honb'le SAT has confirmed that the Noticee was the Managing Director of PAN Asia, Vintage and IFCF were controlled by the Noticee, thus establishing his connection between them. Further, the Hon'ble SAT has already affirmed with the findings of SEBI wherein Noticee was found to be orchestrating similar GDR issues involving similar modus operandi. The order states:

> *"21. Thus, instead of ensuring that the foreign investors subscribe to the GDRs of Asahi, Arun Panchariya (AP) as Managing Director of PAN Asia planned to subscribe to the GDRs of Asahi through Vintage and in fact as Managing Director of Vintage took loan of 5.98 Million USD from Euram Bank for subscribing to the GDRs of Asahi and made Asahi to pledge to the Euram Bank the GDR subscription amount of 5.98 Million USD as security for the loan taken by Vintage. Similar modus operandi was adopted in case of other issuer companies. Thus, the investors in India were made to believe that in the global market the issuer companies have acquired high reputation in terms of investment potential and hence the foreign investors have fully subscribed to the GDRs, when in fact, the GDRs were subscribed by AP through Vintage which was wholly owned by AP. In other words, PAN Asia as a Lead Manager and AP as Managing Director of PAN Asia attempted to mislead the investors in India that the GDRs have been subscribed by foreign investors when in fact the GDRs were subscribed by AP through Vintage. Any attempt to mislead the investors in India constitutes fraud on the investors under the PFUTP Regulations.*
>
> *…*
>
> *25. It is apparent that the appellants knew that if the investors in India come to know that the GDRs of the issuer companies have not been subscribed by foreign investors but by the entities controlled by the Managing Director (AP) of PAN Asia, then it would not generate interest in minds of the investors in India to subscribe to the shares of issuer companies. Therefore, in order to create an artificial impression that global investors have shown keen interest in investing in the issuer companies by subscribing to the GDRs, appellants by a dubious method*

*introduced fictitious and non-existent initial subscribers to the GDRs of the issuer companies so as to mislead the investors in India in believing that the global investors have shown keen interest in investing in the GDRs of issuer companies. In these circumstances, decision of SEBI that the appellants attempted to committed fraud on the investors in India by introducing fictitious initial subscribers cannot be faulted."*

53. Also in **Aksh Optifibre Ltd. vs SEBI** (Appeal No.535 of 2019), the Hon'ble SAT took similar view and held as under,

*"35. …we are of the opinion that even though the appellants had misled the investors into believing that the GDR was successful whereas there was only one subscriber. Further, the loan agreement, pledge agreement was not disclosed to the shareholders and to the stock exchange. Such scheme was totally fraudulent. If the Company had not given security for the loan taken by Vintage then Vintage could not have subscribed to the GDRs and, consequently, the GDR issue would have failed. Thus, by entering into the pledge agreement for facilitating subscription of its GDRs, we are of the view that the appellant had played a fraud on the securities market and misled the investors by creating a false impression and, thus, violated Section 12A of the SEBI Act and Regulations 3 and 4 of the PFUTP Regulations."*

54. Thereafter, as regards the Noticee's connection with Mr. Mukesh Chauradiya, I rely on the the Hon'ble SAT, where in, vide its order dated 06.06.2023, in the matter of **Mukesh Chauradiya and Ors Vs. SEBI,** while acknowledging the positions held by Mr. Muksh Chauradiya, in the companies related to the Noticee, stated that, " *In our opinion, the reasoning adopted by the AO that Mr. Mukesh Chauradiya is a close associate of Mr. Arun Panchariya may be true to some extent…*", confirming the connection between the them. With regard to Noticee's connection with High Blue Sky, I note that, Highblue Sky Emerging Market Fund was registered as a sub-account of FII Golden Cliff (also known as Vaibhav Investment Ltd.) and connected entities of the Noticee were beneficial owners and directors in it. The detailed connection has been elaborated in the Adjudication order dated 29.10.2020, in the matter of Winsome Yarns Ltd. and it is noted that the same has not been challenged in SAT by High Blue Sky. Further, as regards the Noticee's connection with Euram Bank, 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*."

55. I also note from the recent orders passed by SAT that the SEBI orders are not being challenged in SAT with regards to the connection of the above mentioned entities with the Noticee. Therefore, the said contention of the Noticee cannot be accepted.

56. As regards the Noticee's contention that he does not hold 100% shares of Pan Asia, I note that the Noticee has not produced any documentary evidence in support of the same. Therefore, the said contention of the Noticee cannot be accepted.

57. Further, as regards as the Noticee's contention that all the loan agreements, pledge agreements, escrow agreements etc. were signed with Euram Bank Austria only and Euram Bank Asia has no role to play in those transactions and also as regards his contention that he was neither a shareholder nor a board member of Euram Bank, Austria at any point in time. I note that Noticee was director and president of Euram Bank Asia, till he resigned on September 22, 2011 (during the IP), by way of which he was also connected to Euram Bank, Austria. Furthermore, I note that the Noticee connected Pan Asia Advisors Ltd. which had joint venture with EURAM Bank namely EURAM Bank Asia Limited and EURAM Bank AG held 51% and Pan Asia Advisors Ltd held 49%. Therefore, the said contention of the Noticee is without any merit.

58. The Noticee has argued that it is the responsibility of the company to disclose the information regarding the pledge agreement and the loan agreement to the stock exchange and that the Noticee cannot be held liable for the same. In this regard he has also referred to and Appeal No.745 of 2021 titled as M/s. Winsome Yarns Ltd. Vs. SEBI before Hon'ble SAT to state that neither him nor Vintage FZE (though not connected to the Noticee) 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. Further it was submitted that the issue of GDR is not 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 which misled the investors. Hence there is nothing against the Noticee.

59. In this regard, I note that, upon perusal of the PFUTP Regulations, 2003, the allegation of non-discloure of the pledge agreement and the loan agreement to the stock exchange is not made out against the Noticee. However, I note that as detailed above, the obligation of Vintage under the Loan Agreement was secured by RPL through the Pledge Agreement, and accordingly, the subscription of the GDR issue was facilitated. I also note that due to such pledging of the GDR proceeds, the funds were not available at RPL's disposal. In view of the above, I note that the GDRs were not issued in a genuine manner, but through a fraudulent arrangement.

60. In the instant case the charges against the Noticee is that of violation of PFUTP Regulations, 2003. The definition of 'fraud' provided under PFUTP, 2003 is:

> *Reg. 2(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—*
>
> *(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*
>
> *(2) a suggestion as to a fact which is not true by one who does not believe it to be true;*
>
> *(3) an active concealment of a fact by a person having knowledge or belief of the fact;*
>
> *(4) a promise made without any intention of performing it;*
>
> *(5) a representation made in a reckless and careless manner whether it be true or false;*
>
> *(6) any such act or omission as any other law specifically declares to be fraudulent,*
>
> *(7) deceptive behaviour by a person depriving another of informed consent or full participation,*
>
> *(8) a false statement made without reasonable ground for believing it to be true.*

61. Upon perusal of the definition as given under Section 2 (1) (c) of the PFUTP Regulations, 2003 indicates that inducement is an essential ingredient for establishing fraud. Since vintage was the sole subscriber to its GDR issue and it had subscribed to the GDRs through a loan obtained from EURAM Bank to the extent of USD 27.02 million which it later defaulted in repaying to the extent of USD 6.26 million. Hence, it is evident that Vintage acquired GDRs of RPL to the tune of USD 6.26 million and then converted equity shares sold by the certain FIIs were originally acquired by Vintage free of cost, the scheme is said to be fraudulent. In the matter of **Price Waterhouse & Co. SEBI**, 2019 SCC Online

SAT 165, SAT held that inducement is an essential element to fraud and this decision is squarely applicable in the instant case. The existing shareholders and prospective investors were aware of the positive news that the Issuer Companies had raised foreign capital through GDRs but equally they were completely unaware of the activities of the Noticee, in such GDR issues. As a result, the investors in India were lulled into thinking that stocks of the Issuing Companies have been highly valued by foreign investors and were adversely affected by misleading activities of the Noticee.

62. In this respect, it would be appropriate to refer to the Order of the Hon'ble SAT in Pan Asia Advisors Limited vs. SEBI (Civil Appeal No. 10560/2013, AIR 2015 SC 2782) wherein, while interpreting the expression of 'fraud' under the PFUTP Regulations, 2003, it was observed that:

"*From the aforesaid definition (of 'fraud') it is absolutely clear that if a person by his act either directly or indirectly causes the investors in the securities market in India to believe in something which is not true and thereby induces the investors in India to deal in securities, then that person is said to have committed fraud on the investors in India. In such a case, action can be taken under the PFUTP Regulations against the person committing the fraud, irrespective of the fact any investor has actually become a victim of such fraud or not. In other words, under the PFUTP Regulations, SEBI is empowered to take action against any person if his act constitutes fraud on the securities market, even though no investor has actually become a victim of such fraud. In fact, object of framing PFUTP Regulations is to prevent fraud being committed on the investors dealing in the securities market and not to take action only after the investors have become victims of such fraud.*"

63. Furthermore, since the Noticee was the sole beneficial owner of Vintage during the relevant period and also since he had devised the said scheme it can be sufficiently inferred that he has caused inducement in the market with respect to the shares of RPL, which is fraud. I also note that the Noticee had signed the Loan Agreement in capacity of the Managing Director of Vintage. I find that the Noticee had devised the fraudulent scheme of self-financing of the GDR issue of RPL by acting on behalf of Vintage in the

capacity of its Managing Director by executing the loan agreement on behalf of Vintage with EURAM Bank. The role played by Vintage in the fraudulent scheme has already been brought out in details in the preceding paragraphs. Therefore, the said arguments of the Noticee cannot be accepted as it is without any merit.

64. Thus, the Noticee had devised the fraudulent scheme of self-financing of the GDR issue of RPL by acting on behalf of Vintage in the capacity of its Managing Director by executing the loan agreement on behalf of Vintage with EURAM Bank, which misled the Indian investors into believing that GDRs were genuinely subscribed while loan default alone caused loss to the shareholders of RPL to the tune of USD 6.26 million. Therefore, the Noticee being the sole beneficial owner of Vintage and also a key managerial personnel, devised Vintage in selling the converted equity shares of the company, is squarely responsible for the fraud perpetrated and I hold that he has violated Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003.

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

65. The Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Fund (cited above) held that:

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

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

*"33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to*

*be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."*

67. The Noticee had jointly and in close connivance with certain others, had acted as the one part of the entire fraudulent scheme by arranging for the subscription of the GDRs through Vintage using the pledge agreement signed on behalf of RPL to obtain a loan from the EURAM Bank and then to dispose the shares acquired through such GDRs, routing of the monies received from RPL, thereby creating an elaborate façade of demand for the securities of RPL.

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

**SEBI Act, 1992**

**"Penalty for fraudulent and unfair trade practices.**

***15HA.*** *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty [which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher]."*

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

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

69. As per the dates of violations, Section 15HA of SEBI Act, as it stood prior to the amendment, is applicable. Nevertheless, guided by the principle of rule of beneficial construction of even *ex post facto* law to mitigate the rigour of law, as was laid by the

Hon’ble Supreme Court in ***T. Barai vs. Henry Ah Hoe and Ors***. (07.12.1982 -SC): MANU/SC/0123/1982 [(1983)1SCC177], the amended version of section 15HA of SEBI Act is being applied.

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

70. In this regard, the provisions of Section 15J of the SEBI Act, 1992, Rule 5 of the SEBI Adjudication Rules require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely; -

*(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*

*(b) the amount of loss caused to an investor or group of investors as a result of the default;*

*(c) the repetitive nature of the default.*

71. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that RPL had misled the Indian investors by concealing the information of entering into Pledge Agreement and informing GDR related news in a distorted manner to stock exchange which made investors believe that GDRs were genuinely subscribed. Out of the GDR proceeds of USD 27.02 million, USD 21.04 million was transferred for GDR issue expenses to RPL’s bank account in India. Vintage repaid the loan amount to the extent of USD 20.77 million and thereafter defaulted on the remaining loan amount. On account of the loan default by Vintage and the subsequent instruction to EURAM by RPL, EURAM adjusted outstanding loan amount (includes interest on loan amounts) of USD 6.26 million from RPL’s GDR proceeds. Hence, GDRs to the tune of USD 6.26 million were issued by RPL to vintage at free of cost and at the cost of other investors of RPL. The said subscription of the GDRs by Vintage was funded by RPL itself, through the Noticee. Therefore, the magnitude of the fraud committed by the Noticee is enormous as is evident from the issue size of USD 27.02 million. Also, against

Vintage and the Noticee, in past also actions have been taken by SEBI for his involvement in similar fraudulent GDR schemes.

**ORDER**

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

| Noticee | Violation and Penal Provisions | Penalty |
|---|---|---|
| **Mr. Arun Panchariya (PAN: AEVPP6125N)** | Penalty imposed under Section 15HA of the SEBI Act, 1992 for violation of the provisions of Section 12A (a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations | **Rs. 20,00,000/- (Rupees Twenty Lakhs)** |

73. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link.

**ENFORCEMENT →Orders →Orders of AO →PAY NOW**

74. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – 1 of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity (Noticee):
b) Name of the case / matter:
c) Purpose of Payment: Payment of penalty under AO proceedings
d) Bank Name and Account Number:
e) Transaction Number:

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

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

**Place: Mumbai** **G. Ramar**

**Date: July 26, 2023** **Adjudicating Officer**