<u>BEFORE THE ADJUDICATING OFFICER</u>

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

[ADJUDICATION ORDER NO.: Order/GR/BM/2023-24/28337]

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: AEVPP6125N)

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

BACKGROUND AND FACTS OF THE CASE

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

2. ZBIL is a company whose shares are listed on the BSE Ltd. (BSE) and National Stock Exchange of India Ltd. (NSE). The investigation, prima facie, revealed that ZBIL had issued 1.81 million GDRs (amounting to USD 22.99 million)

equivalent to its 5,43,57,060 equity shares of Rs.10 each, and the said issue was subscribed by only one entity viz. Vintage FZE (now known as 'Alta Vista International FZE') (hereinafter referred to as **'Vintage'**). It was observed that the subscription amount was paid by Vintage by obtaining a loan from European American Investment Bank AG (hereinafter referred to as **'EURAM Bank'**) by entering into Loan Agreement dated May 12, 2010 with EURAM Bank. The said Loan Agreement was signed by Arun Panchariya (hereinafter also referred to as **'Noticee'**) in the capacity of Managing Director of Vintage.

3. ZBIL was observed to have signed a a '**pledge agreement**' dated May 12, 2010 with EURAM Bank, pledging GDR proceeds as collateral against the loan availed by Vintage vide '**loan agreement'** dated May 12, 2010. The aforesaid pledge agreement was an integral part of the loan agreement (i.e. Vintage shall be provided a loan by EURAM and the same shall be used only to subscribe to GDRs of ZBIL) entered between Vintage and EURAM. This agreement had enabled Vintage to avail a loan from EURAM for subscribing to the GDRs of ZBIL. It was alleged that the GDR issue would not have been subscribed had the company not given any such security towards the loan taken by Vintage. The company reported to the stock exchanges that *"the company has allotted to 'The Bank of New York Mellon' in its capacity as Depository, 5,43,57,060 fully paid equity shares of Rs.10/- each of the company to be represented by a global master GDR certificate representing 18,11,902 Global Depository Receipt…"* which made investors believe that the said GDR issue was genuinely subscribed without disclosing the arrangement of pledge agreement entered by the company with EURAM Bank and pledging of GDR proceeds against the loan availed by Vintage for subscription of GDR issue of ZBIL. Therefore, the entire scheme involving entering into Loan Agreement, Pledge Agreement, making corporate announcement that the GDRs were successfully subscribed

without disclosing the arrangement to the investors resulted in publication of misleading news to the stock exchanges which contained information in distorted manner and which might have influenced the decision of the investors. Such announcements misled Indian retail investors and induced investors to deal in shares of ZBIL. Thereby, the scheme of issuance of GDRs was fraudulent.

4. As the said Loan agreement was integral part of the GDR issue which was executed by the Noticee as Managing Director of Vintage, it was alleged that the Noticee had devised and structured the GDR issue in connivance with ZBIL.

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

6. On examination of the alleged violations, Adjudicating Officer (hereinafter referred to as **'AO'**) vide Order dated June 16, 2022 (**'earlier order'**) held that the Noticee had violated the aforesaid provisions, and had accordingly imposed a penalty on the Noticee.

7. Subsequently, the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **'SAT'**) in Appeal No.134 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 June 16, 2022 was set aside by Hon'ble SAT vide an order dated March 28, 2023 and the matter was remitted back to the Adjudicating Officer(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

8. 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 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

9. The Show Cause Notice bearing No.EAD-2/SS/VS/9961/212019 dated April 18, 2019 ('**SCN**') was issued *inter alia* to the Noticee in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the SEBI Adjudication Rules for the alleged violation of the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.

10. As directed by SAT, the nominated advocate of the Noticee visited SEBI office on April 10, 2023 and the aforesaid SCN bearing No.EAD-2/SS/VS/9961/212019 dated April 18, 2019 along with its annexures was served through hand-delivery and the same was acknowledged.

REPLY OF THE NOTICEE

11. The Noticee vide email dated May 15, 2023, had filed its written submissions in response to the SCN, the contents whereof are summarized as given below:

    a. 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.

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

    c. 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.

d. 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.

e. 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.

f. High Blue Sky(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.

g. 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.

h. 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.

i. 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.

j. 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. 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.

k. 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.

l. 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.

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

n. There is an inordinate and unexplained delay in issuing Show Cause Notice qua the Noticee to the extent of more than 8 years.

o. 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.

p. 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.

PERSONAL HEARING

12. In terms of Rule 4(3) of SEBI Adjudication Rules, vide email dated May 03, 2023, an opportunity of personal hearing was granted to the Noticee on May 16, 2023. On the said date, the Noticee through its Authorized Representative (**'AR'**), appeared through web based video conference and reiterated the submissions already made by the Noticee vide email dated January 15, 2023.

13. 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 reply of the Noticee.

CONSIDERATION OF ISSUES

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

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

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

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

OBSERVATIONS AND FINDINGS

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

SEBI Act, 1992:

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

12A. No person shall directly or indirectly –

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

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

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

PFUTP Regulations, 2003:

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

PRELIMINARY ISSUE RAISED BY NOTICEE

16. 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 there is inordinate and unexplained delay in issuance of show cause notice qua the noticee of more than eight (8) years.

17. In this regard, 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. 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 were 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. 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.

18. 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.

19. 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 Mr. Arun Panchariya (Noticee) herein and his connected entities were found to be involved. 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. ZBIL was one such GDR issuer where such modus operandi were also observed and the investigation was completed in 2017-18. I note that after completion of the investigation, the SCN was issued to the Noticee dated April 18, 2019. Therefore, the time taken for completion of collective investigation into a large number of similar cases and also for issuing SCNs to a large number of Noticees is fairly understandable and cannot be ignored.

20. 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...."

21. 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 also kept in mind whereby it is 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.".

22. In view of the above, I am inclined to reject the contention of delay raised by the Noticee as the Hon'ble SAT has accepted the complexity involved in the investigation process of said 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 similar fraudulent GDR issuance and disclosures using similar modus operandi and SEBI has been taking actions against such companies and other associated persons.

23. Further for the instant matter, I note that, an attempt to serve the SCN was previously made in 2019, at the address available in records. However, the said SCN returned undelivered. Thereafter the hearing notice was served upon the Noticee to appear before the AO. However, the Noticee never responded to the same nor appeared for the personal hearing. Hence, I note that despite being aware about the proceedings, the Noticee decided to not respond and therefore the earlier order was passed against the Noticee *exparte*.

24. Having addressed the aforesaid 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?**

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

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USD mn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds deposited	GDRs listed on
28-May-2010	1.81 (at USD 2.58 each GDR)	22.99	HSBC Bank, Mumbai	5,43,57,060	The Bank of New York Mellon	Pan Asia Advisors Ltd.	EURAM Bank, Austria	Luxembourg Stock Exchange

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

27. In view of the above the Noticee, was alleged to have devised and structured the fraudulent scheme along with the company/ZBIL through his connected entities involving Vintage, Pan Asia Advisors Ltd and Mukesh Chauradiya. The Noticee controlled Vintage, subscribed to GDR issue without spending penny by entering into Loan Agreement with EURAM Bank for which ZBIL pledged its GDR proceeds as security. Further, this information regarding loan agreement and pledge agreement being price sensitive in nature were not disclosed to the stock exchanges and hence created a belief in the minds of investing public that the GDRs were genuinely subscribed.

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

   USD 22,993,036.38

   (The amount is exactly the same amount raised by ZBIL through the said GDR offering.) (**Explanation supplied**).

2. _Nature and purpose of facility:_

   To provide funding enabling Vintage FZE to take down GDR issue of 1,811,902 Luxembourg public offering and may only be transferred to EURAM account nr. 580013, Zenith Birla (India) Limited.

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

   6.Security

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

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

- *Pledge of the account no. 580013 held with the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*

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

30. In this connection, from the certified true copy of ZBIL’s Board Resolution dated March 03, 2010 provided by EURAM Bank, and copy of minutes of the board meeting of ZBIL held on the same date provided by ZBIL to SEBI, it was observed that the following resolution was inter alia passed in the said meeting–

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

"*RESOLVED THAT in supersession of all the earlier resolution passed in the connection with the opening of bank account with Euram Bank ("the Bank") or any branch of Euram Bank, including the Offshore Branch, outside India for the purpose of receiving subscription money in respect of the Global Depository Receipt issue of the Company, Shri. M.S. Arora, Managing Director and Shri. P.V.R. Murthy, Director be and are hereby jointly and severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking confirmation, declaration and other paper(s) from time to time as may be required by the Bank and to carry and affix, Common Seal of the company thereon, if and when so required.*

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

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

31. From the aforesaid minutes of the board meeting it is observed that the Board of Directors of ZBIL 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.

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

1. Preamble

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

2. Pledge

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

2.1.1. all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount of $ USD 22,993,036.38 existing from time to time at present or hereafter on the ***<u>securities account(s) no. 580013</u>*** *held with the Bank (hereinafter referred to as the "Pledged Securities Account") and all amounts credited at any particular time therein.*

2.1.2. all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 580013 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and all amounts credited at any particular time therein. The interest rate on the deposit in the amount of facility amount of the Loan Agreement will be fixed at 1.00% p.a.

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

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

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

6. Realisation of the Pledge:

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

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

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

33. I note that the Pledge Agreement refers to the Loan Agreement dated May 12, 2010 between the borrower i.e. Vintage and EURAM Bank, whereby Vintage was granted a loan of USD 22,993,036.38, and it is stated that the Pledger i.e. ZBIL has received a copy of the said Loan Agreement and acknowledges and agrees to its terms and conditions. By signing the Pledge Agreement, ZBIL is deemed to be clearly aware that Vintage was the only subscriber to the GDR issue. On perusal of the contents of the Pledge Agreement, it is noted that the Pledger had agreed to pledge all its rights, title and interest in and to the securities deposited in the Pledge Securities Account and funds in Pledged Time Deposit Account so as to secure the present and future obligations of Vintage. The Pledge Agreement also expressly states that:

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

34. Regarding the dates, it was observed that the Pledge Agreement and the Loan Agreement were both dated May 12, 2010. Further, I also note and stress upon the fact that Clause 6.1 of the Loan Agreement specifies that the Pledge Agreement is an integral part of the Loan Agreement. Another aspect that draws attention in the aforesaid arrangement, is that the company is pledging the GDR proceeds prior to realizing the same, which is in contradiction to the usual pledging mechanism. It is understood that prior to giving something as security against the loan taken by the borrower the pledger need to have that thing in their possession and thereafter the possession can be transferred for the purpose of pledging or keeping that as security. Here, I note that the GDRs were issued in May 28, 2010 and the pledge agreement was entered prior to the said issue and in turn prior to realizing the GDR proceeds. Hence, it can be said that

the GDR proceeds were given as security by ZBIL prior to realizing the same and hence it can be said that there was meeting of minds between the company, EURAM and Vintage and they all were acting in furtherance of common objective to misled the Indian investors by way of fraudulent GDR issue. The whole issue was pre-planned and orchestrated.

35. From the Loan Agreement and the bank account statement of Vintage, I note that Vintage had availed a loan from the EURAM Bank to the extent of USD 22,993,036.38 to subscribe to the GDRs of ZBIL. From the statement of Vintage's bank account and the escrow account for the GDR issue, it is observed that Vintage received the loan amount of USD 22,993,036.38 (USD 22.99 million) on May 12, 2010 and the same was then transferred to the escrow account of ZBIL. From the above, it is evident that GDR subscription money was received from only one entity i.e. Vintage. Accordingly, I note that the GDR issue of ZBIL comprising 1.81 million GDRs amounting to USD 22.99 million, was subscribed by only one entity, i.e. Vintage. As seen in preceding paragraph, ZBIL was aware of this fact prior to the said issuance. I further note that the amount was transferred to ZBIL's bank account held with EURAM Bank on May 27, 2010 and the same ZBIL's account was pledged with EURAM Bank under the Pledge Agreement. In view of this, it can be again inferred that the GDR proceeds were pledged prior to realizing the same.

36. With regard to the loan taken by Vintage for subscribing the GDRs of ZBIL, it had repaid the loan to EURAM Bank in several installments from August 2010 to May 2012. It was further observed that only after Vintage repaid the loan installments, on same day or later date, equal/ less/more amount of money was transferred (barring six instances i.e. August 05, 2010, September 20-22, 2010,

January 05, 2011 and December 14, 2012, when more money was transferred on account of availability of surplus money in ZBIL's account) from ZBIL's account to: i) ZBIL's bank account in India; and ii) Other entities abroad. Thus, the amount transferred from ZBILs account was dependent on the repayment of loan by Vintage. Details of transfer of GDR proceeds (along with the interest earned on it) are tabulated below as Table A and details of repayment of loan by Vintage to EURAM Bank are tabulated below as Table B:

TABLE – A

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

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

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

<u>TABLE - B</u>

Date of transfer of funds	Amount repaid by Vintage (USD)	Amount of funds transferred from ZBIL's EURAM Bank a/c to: 1) ZBIL's bank account in India, and 2) other entities
05.08.2010	103,000.00	100,000.00
06.08.2010	1,000,000.00	1,000,000.00
10.08.2010	1,000,000.00	1,000,000.00
13.08.2010	1,000,000.00	1,000,000.00
18.08.2010	1,000,000.00	1,000,000.00
23.08.2010	1,000,000.00	1,000,000.00
25.08.2010	1,000,000.00	1,000,000.00
27.08.2010	1,000,000.00	1,000,000.00
30.08.2010	1,000,000.00	1,000,000.00
20.09.2010	413,000.00	400,000.00
21.09.2010		10,496.00
22.09.2010		2,373.68

Date of transfer of funds	Amount repaid by Vintage (USD)	Amount of funds transferred from ZBIL's EURAM Bank a/c to: 1) ZBIL's bank account in India, and 2) other entities
05.01.2011	15,000.00	13,396.73
14.12.2012		216,889.65
Total	**8,531,000.00**	**8,743,156.06**

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

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

38. From the details of fund transfer stated above, I observe that only after Vintage repaid loan instalments to EURAM Bank that ZBIL could make payments from its account maintained with the same bank and such payments were exactly for the same amount or less amount except for adjustments on account of bank charges / interest earned by ZBIL. Therefore, it is evident that the amount transferred from ZBIL's EURAM Bank account was dependent on the repayment of the loan by Vintage to EURAM Bank. The GDR subscription amount of USD 22.99 million was not available to ZBIL for utilization until the

loan taken by Vintage for subscribing the GDRs was repaid to the EURAM Bank. 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 for the said subscription.

39. In the present matter, I note that after the subscription of GDR on May 28, 2010, Vintage repaid the loan amount to the extent of USD 8.53 million as on March 31, 2011 and as on March 31, 2012. Hence, only USD 8.53 million was at the disposal of ZBIL out of the total issue of GDR despite the GDRs of ZBIL being fully subscribed. Subsequently, the said GDR proceeds along with the interests accrued thereupon less bank charges was transferred by ZBIL. The outstanding loan amount of USD 14.46 million was defaulted by Vintage and had to be subsequently set off by the GDR proceeds of ZBIL pledged against the loan taken by Vintage.

40. The entire trail of funds as can be observed from the bank account statements of Vintage and ZBIL with EURAM Bank and the pattern of subsequent disbursements as already narrated above, when seen as a whole, strongly establishes collusion between Vintage and ZBIL with respect to the subscription of the said GDR issue of ZBIL. All the actions of ZBIL and Vintage are interdependent on each other from signing of agreements to bank transactions. With regard to the Noticee is it is alleged that he was the managing director of Vintage during the IP and also signed the Loan agreement with EURAM Bank for the GDR issue of ZBIL in the said capacity. Hence, could be said to have devised and structured the GDR issue in connivance with ZBIL.

41. I note that the Noticee has affirmed the fact that he was holding the position of Managing Director of Vintage and also signed the Loan Agreement in the said

capacity. However, he denied being aware about the said fraudulent scheme that was being hatched between Vintage and ZBIL. In this regard it was also submitted by the Noticee that during the second issue of GDR and while conversion and sale of GDRs, the Noticee seized to be the Managing Director and shareholder of Vintage since 2011. However, I note from the Investigation Report that, the Noticee continued to hold the shares of Vintage FZE Investment Holdings Pvt Ltd post 2010 through Vintage FZE (where Noticee was also the director) and continued to hold 99.99% of shares.

42. Further, it was also 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.

43. In the instant case, the allegations against the Noticee is that of violation of Regulation 3(a) (b) (c) and 4(1) PFUTP Regulations, 2003. In this regard, the definition of *'fraud'* provided under PFUTP Regulations, 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.

And "fraudulent" shall be construed accordingly

44. With regard to the Noticee's submission, I note that, upon perusal of the PFUTP Regulations, 2003, the allegation of non-disclosure of the pledge agreement and the loan agreement to the stock exchange is not made out against the Noticee. However, I note that in the above manner, the obligation of Vintage under the Loan Agreement was secured by ZBIL through the Pledge Agreement, and accordingly, the subscription of the GDR issue was facilitated in the above manner by Vintage. Further, I note that due to such pledging of the GDR proceeds, the funds were not available at ZBIL's disposal. In view of the above, the GDRs were not issued in a genuine manner, but rather through a fraudulent arrangement. This created a false impression on the minds of investors that the GDR of ZBIL were genuinely subscribed, which was not the case. Hence, the act of ZBIL and Vintage resulted in 'fraud' as defined under the PFUTP Regulations, 2003. In this respect, it would be appropriate to refer to the Order of the Hon'ble SAT in ***Pan Asia Advisors Limited vs. SEBI*** (Civil

Appeal No. 10560/2013, AIR 2015 SC 2782) wherein, while interpreting the expression of '*fraud*' under the PFUTP Regulations, 2003, it was observed that:

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

45. Further, I refer to the Hon'ble SAT Order dated July 14, 2006, in the case of ***Ketan Parekh vs. SEBI*** (Appeal no. 2/2004), wherein, Hon'ble SAT has observed that:

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

46. The Noticee has submitted that he only signed the loan agreement and when the loan default occurred he already resigned. In this regard, I note that, it is important to view the scheme in entirety rather observing/mentioning events in isolation. As seen in earlier order, there was a chain of events carried out with common understanding and in connivance with each other by various entities to execute this entire scheme of GDR. The fraudulent scheme of GDR issue was formally kicked off by entering into the said Loan and Pledge Agreements.

47. Here it is also pertinent to note that, Noticee along with Vintage and Pan Asia has been involved in other similar fraudulent GDR issues, wherein similar modus operandi were employed, and various orders had been passed against them by SEBI, establishing the same. Hence, it can be said that Noticee is the mastermind behind all these fraudulent schemes and Noticee being the managing director of Vintage at the relevant time can be said to be the acting on behalf of Vintage in furtherance of the common objective. Noticee was also director and 100% shareholder of Pan Asia (lead manager of the GDR of ZBIL) during the GDR issue. In this regard, the Noticee has submitted that since Vintage and Pan Asia has not been made party in the present proceedings the allegations against the Noticee fall to the ground and cannot be sustained due to lack of legality and fairness.

48. For the abovementioned submission, I note that Vintage and Pan Asia, being separate legal entities, can be proceeded against separately and SEBI had already taken appropriate actions against them. Further, it has not been brought out clearly and specifically by the Noticee as how the absence of Vintage/ Pan Asia in the present proceeding prejudice his defence and validity of instant

proceedings as the fact that Noticee was holding the position of Managing Director during the GDR issue is also admitted by the Noticee.

49. Also, for the said purpose, I note that, the concept of *'lifting of corporate veil'* is a commonly employed mechanism applied in various cases to find out the person/s acting for the legal corporate entities or their role in the contraventions committed by the corporate entities. Noticee being Managing Director and by also signing agreements on behalf of Vintage was acting on behalf of Vintage when this entire fraudulent scheme was designed and carried out. The concept of *'lifting of corporate veil'* is also incorporated in the SEBI Act, 1992:

27. Contravention by companies.

(1) …

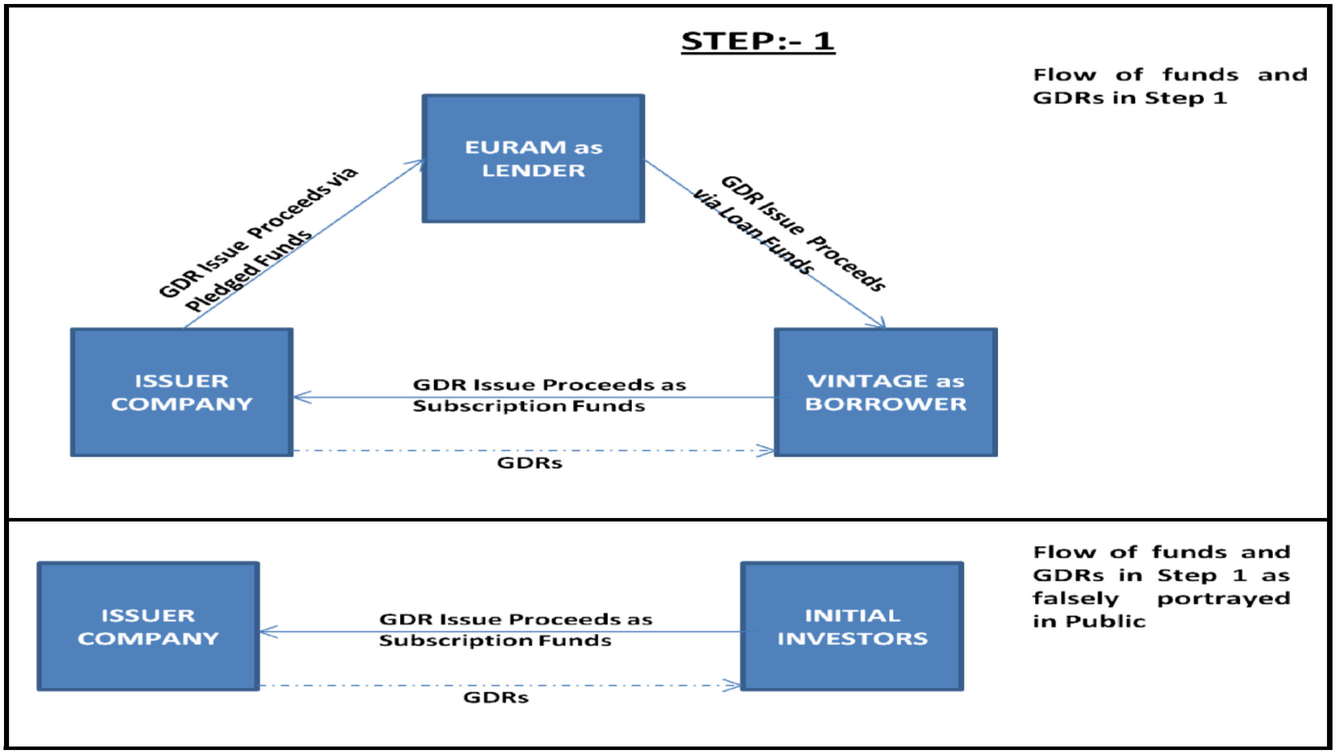
(2) Notwithstanding anything contained in sub-section (1), where an contravention under this Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary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

50. Hon'ble SAT in ***Mukesh Chauradiya vs. SEBI*** (Date of Decision: January 7, 2021 Appeal No. 260 of 2020) had also examined the relevance of designations in foreign corporate entities, where it 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."

51. In view of the above observations, I note that the scheme of arrangement of ZBIL, in allotting GDR issue to only one entity i.e. Vintage which subscribed the GDR issue by obtaining loan from EURAM Bank and the same was again secured by the ZBIL by pledging its GDR proceeds, seen along with the false and misleading corporate announcements made by ZBIL, without disclosing the crucial details pertaining to the aforesaid loan and pledge agreements which were price sensitive information, lead to conclusion that the same were done in a fraudulent manner. The aforesaid scheme can be depicted in the following manner:



52. 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 ***PAN Asia Advisors Limited and Anr. Vs SEBI*** (Appeal No. 126 of 2013) has already affirmed with the findings of SEBI wherein Noticee was found to be orchestrating a GDR issue 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 37 that the appellants attempted to committed fraud on the investors in India by introducing fictitious initial subscribers cannot be faulted."

53. In view of the above observations, I note that the Noticee being the Managing Director of Vintage while exercising his power and acting on behalf of Vintage

executed loan agreement with the EURAM Bank whereby it was stated that the amount shall be utilised by Vintage for subscribing the GDR issue of ZBIL suggests that the Noticee played key role in the entire fraudulent GDR issue.

54. Further, I will also refer to the order of Hon'ble Supreme Court, in the order of ***N Narayanan v. Adjudicating Officer, SEBI*** (Civil Appeals No. 4112-4113 of 2013) wherein it held that:

"33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."

55. I note that vide the earlier order, ZBIL has already been found to be in violation of various provisions of SEBI (PFUTP) Regulations and Securities Contract (Regulations) Act, 1956 with the same GDR issue that is examined in the present proceeding.

56. In ***N. Narayanan v. SEBI*** [(2013) 12 SCC 152], the Supreme Court observed that Section 12-A of the SEBI Act read with Regulations 3 and 4 of the PFUTP Regulations, 2003 specifically aim to curb market manipulations which can have an adverse effect on investor confidence and the healthy growth of the securities market. It held:

"33. Prevention of market abuse and preservation of market integrity is the hallmark of securities law. Section 12-A read with Regulations 3 and 4 of the 2003 Regulations essentially intended to preserve "market integrity" and to prevent "market abuse". The object of the SEBI Act is to protect the interest of investors in securities and to promote the development and to regulate the securities market, so as to promote orderly, healthy growth of securities market and to promote investors' protection. Securities market is based on free and open access to information, the integrity of the market is predicated on the quality and the manner on which it is made available to market. "Market abuse" impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abusers. The statutory provisions mentioned earlier deal with the situations where a person, who deals in securities, takes advantage of the impact of an action, may be manipulative, on the anticipated impact on the market resulting in the "creation of artificiality". The same can be achieved by inflating the company's revenue, profits, security deposits and receivables, resulting in price rise of the scrip of the company. Investors are then lured to make their "investment decisions" on those manipulated inflated results, using the above devices which will amount to market abuse."

Analogy can be drawn in the instant case wherein the Noticee alongwith issuer company of GDR (ZBIL) designed the instant scheme to create the façade of successful issuance of GDRs wherein the subscription of those GDRs were secured by way of loan and pledge agreements entered prior to the issuance of GDRs. The said arrangement was never disclosed to the investors.

57. In the end, regarding the violations of PFUTP Regulations by Noticee, I note that the Hon'ble Supreme Court in its judgment in the matter of ***Kanaiyalal Baldevbhai Patel v. SEBI*** (Civil appeal no. 2595 of 2013) has observed that:

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

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

59. In view of the above, I hold that the GDR issue would not have been subscribed had ZBIL not given any such security towards the loan taken by Vintage and the entire scheme involving entering into loan and pledge agreement, making corporate announcement that the GDRs were subscribed without disclosing the arrangement to the investors resulted in publication of misleading news to the stock exchanges which contained information in a distorted manner so as to influence the decision of the investors by creating a make belief picture that GDR issue was genuinely subscribed. The Noticee, being managing director of Vintage and acting on behalf of it, had devised the fraudulent GDR issue alongwith Zenith, and has violated the provisions of 12A(a), (b), (c) of SEBI Act, 1992 read with regulation 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations, 2003.

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

60. Since the violations against the Noticee is established in the preceding paragraphs, I hereby refer to the judgment of the Hon'ble Supreme Court of India in the matter of ***SEBI vs. Shri Ram Mutual Fund*** [(2006) 68 SCL 216 (SC)] held that:

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

61. In view of the above, since the charge of violation of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations, 2003 against the Noticee stands established, it makes him liable for imposition of penalty under Section 15HA of the SEBI Act, 1992.

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."*

62. 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."*

63. 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): [(1983) 1 SCC 177], 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?

64. Since the answer to the above issue was in affirmative, the provisions of Section 15J of the SEBI Act, 1992 read with Rule 5 (2) of the SEBI Adjudication Rules needs to be referred which 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.

65. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that no quantifiable figures or data is available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default of the Noticee. However, from the documents made available, it is noted that in few other GDR issues also the Noticee was found to be involved in the similar role and actions have been taken against the same. In the present case, With regard to the amount of money involved, I note that ZBIL had issued 1.81 million GDRs worth USD 22.99 million to Vintage on May 08, 2010. However, it had pledged the entire GDR proceeds as collateral against the loan availed by Vintage from EURAM Bank. It is observed that the GDR issue would not have been subscribed had ZBIL not given such security towards the loan taken by Vintage through the pledge agreement executed by the Noticee. Such facilitation of the GDR issue and its subscription was not known to the public

and investors. Therefore, the entire scheme of issuance of GDRs was fraudulent which was devised by the Noticee. Also, the outstanding loan amount of USD 14.46 million was defaulted by Vintage and had to be subsequently set off by the GDR proceeds of ZBIL pledged against the loan taken by Vintage and was never received by ZBIL.

ORDER

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

Noticee	Violations and Penal Provision	Penalty (Rs.)
Mr. 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 Only)**

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

68. The Noticee shall forward said confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding 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

69. 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.

70. 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**