**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**(ADJUDICATION ORDER NO: Order/GR/HK/2023-24/28336)**

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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: AEVPP6125N)***

**In the matter of disclosures by Southern Ispat and Energy Ltd. in respect of its GDR issue**

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## BACKGROUND

1. The present proceeding emanated from the Hon'ble Securities Appellate Tribunal ("**SAT**") order dated March 28, 2023 in Appeal No. 135 of 2023, setting aside the Adjudication Order dated June 16, 2022 passed against Mr. Arun Panchariya in the instant matter 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*."

## FACTS OF THE CASE

2. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigation into the alleged irregularities in the Global Depository Receipts

(hereinafter referred to as **“GDRs”**) issued by Southern Ispat and Energy Ltd. (‘hereinafter referred to as **“the company”/ “SIEL”**) for the period around issuance of two GDR issues i.e., July 25, 2010 to August 25, 2010 (GDR-I) and May 25, 2011 to June 25, 2011 (GDR-II).

3. SIEL is a company whose shares are listed on the NSE and BSE Ltd. The investigation, prima facie, revealed that SIEL had come up with its GDR issue on two different occasions; first on August 10, 2010 and second on June 10, 2011. SIEL had first issued 1.09 million GDRs (amounting to USD 10 Million) on August 10, 2010, equivalent to 3, 27, 23,400 equity shares of Rs.10 each, and the second one issued 2.946 million GDRs (amounting to USD 19.978 million) on June 10, 2011. SIEL in total issued 4.037 million GDRs amounting to US $ 29.98 million on August 10, 2010 **(‘GDR Issue-I’)** and June 10, 2011 **(‘GDR Issue-II’)**.

4. It was observed that directors of SIEL in its board meeting held on April 7, 2010, had passed Board Resolution inter alia authorizing the opening of an account with European American Investment Bank AG (**“EURAM Bank”**) for the purpose of receiving subscription money in respect of the GDR issues of SIEL and also for using the funds deposited in the said bank account as security in connection with loans, if any. The said issues were subscribed by one entity viz. Vintage FZE (now known as Alta Vista International FZE) (hereinafter referred to as **“Vintage”)**. It was observed that for the aforesaid GDR issues, the subscription amount was paid by Vintage by obtaining a loan from EURAM Bank an entering into Loan Agreement. Arun Panchariya (hereinafter also referred to as **‘Noticee’**) who was director and sole beneficial owner of Vintage signed the **‘Loan Agreement-1’** dated July 19, 2010 for the First issue of GDRs by the Company and Mukesh Chauradiya, signed the **‘Loan Agreement-2’** dated April 28, 2011 for the Second issue of GDRs with EURAM Bank.

5. SIEL had signed **'Pledge Agreements'** dated July 14, 2010 and April 28, 2011 respectively with EURAM Bank pledging GDR proceeds as collateral against the loans availed by Vintage. Vide the said pledge agreements, SIEL had pledged the GDR proceeds against the loan availed by Vintage, vide Loan Agreements 1 and 2, for subscribing to GDRs of SIEL, thus securing Vintage's loan.

6. Further, it was observed that Pan Asia Advisors Limited (**'Pan Asia'**), a UK based entity was the Lead Manager to the GDR issues - I & II of SIEL. Pan Asia vide letter dated February 25, 2016 had provided details of its directorship and connection with the Noticee. On the perusal of the said document, it was observed that Pan Asia was incorporated on April 24, 2006 and Arun Panchariya was director during the period August 30, 2006 to September 29, 2011. Vide letter dated February 20, 2012, Pan Asia had submitted that Arun Panchariya held 100% shareholding in the company during the period July 2008 to January 2012.

7. Subsequently, Vintage defaulted on loan repayment of GDR issue-II of USD 13.679 million including interest and same amount was adjusted by EURAM Bank from the GDR proceeds of SIEL as it had pledged GDR proceeds against this loan. The GDRs acquired by Vintage were later cancelled and converted into shares and subsequently sold through sub-accounts of FIIs in the Indian market.

8. Sub-accounts of FIIs controlled and connected to Noticee i.e. India Focus Cardinal Fund (IFCF), High Blue Sky Emerging Market Fund (HBSF) and Aspire Emerging Fund (ASPIRE) were made to facilitate them in selling the converted equity shares of the company for a total of INR 23.05 Crores. Hence, it was observed that shares sold by HBSF and ASPIRE included shares which were acquired by Vintage free of cost as Vintage defaulted on loan repayment and same was set off using the GDR proceeds kept as security.

9. In view of the above, it was alleged that the Noticee devised GDR scheme along with SIEL and they misled the Indian investors by concealing the information of entering into Pledge Agreement which made investors believe that GDRs were genuinely subscribed while loan default alone caused loss to the shareholders of SIEL to the tune of USD 13.679 million.

10. 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'**).

11. On examination of the alleged violations, Adjudicating Officer (hereinafter referred to as **'AO'**) vide Order dated May 26, 2022 (**'earlier order'**) held that the Noticee had violated the aforesaid provisions, and had accordingly imposed a penalty on the Noticee.

12. Subsequently, the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **'SAT'**) in Appeal No.135 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 26, 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

13. Subsequent to the Order passed by the 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, REPLY AND PERSONAL HEARING

14. Show Cause Notice No. EAD4/ADJ/BS/AE/OW/18583/1/2018 dated June 29, 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.

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

16. The Noticee vide email dated June 21, 2023, had filed its written submissions in response to the SCN, the key contentions raised in the submission are summarized as under:

    a. The Noticee had not gained anything out of the alleged fraud. Noticee never controlled any broker, any Fund or contacted for any purpose of conversion or sale of GDR or underlying shares.

b. 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.

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 in the end has prayed 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.

17. In terms of Rule 4(3) of SEBI Adjudication Rules, vide email dated May 24, 2023, an opportunity of personal hearing was granted to the Noticee on June 15, 2023. The Authorized Representative ('AR') of the Noticee, vide email dated May 24, 2023 requested to adjourn the personal hearing. Accordingly, the hearing was adjourned to June 22, 2023 and the same was communicated vide email dated May 25, 2023. On the said date, the Noticee through its AR, appeared through web based video conference and reiterated the submissions already made by the Noticee vide email dated June 21, 2023.

18. In view of the above, I note that principles of natural justice have been duly complied with, as SCN and hearing notice were duly served upon the Noticee and sufficient opportunity was also granted to the Noticee to submit reply to the SCN and appear for personal hearing. 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

19. 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

20. 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 aforesaid Noticees. The same are reproduced below:

***SEBI Act, 1992:***

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

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

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

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

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

***PFUTP Regulations, 2003:***

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

*No person shall directly or indirectly—*

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

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

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

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

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

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

## PRELIMINARY ISSUE RAISED BY NOTICEE

21. 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.

22. 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.

23. 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.

24. 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) 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. SIEL 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 June 29, 2018. 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.

25. 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...."*

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 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.".*

27. 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.

28. Further for the instant matter, I note that, an attempt to serve the SCN was previously made in 2018, at the address available in records. However, the said SCN returned undelivered thereafter the scanned copy of the same was forwarded to the email ID of the Noticee, however the Noticee never responded to the same. Hence, I note that despite being aware about the SCN and the proceeding previously the Noticee decided to not reply and therefore the earlier order was passed against the Noticee exparte.

29. 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?***

30. From the materials available on record, I note that SIEL had come up with its GDR issues on two different occasions; first on August 10, 2010 and second on June 10, 2011. SIEL had first issued 1.09 million GDRs (amounting to USD 10 Million) on August 10, 2010, equivalent to 3,27,23,400, equity shares of Rs.10 each, and the second one issued 2.946 million GDRs (amounting to USD 19.978 million) on June 10, 2011. In total, SIEL issued 4.037 million GDRs amounting to US $ 29.98 million on August 10, 2010 ('GDR Issue-I') and June 10, 2011 ('GDR Issue-II'). Summary of the aforesaid GDRs issued by SIEL, is tabulated below:

### GDR Issue-I

| 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 |
|---|---|---|---|---|---|---|---|---|
| 10-Aug-2010 | 1.09 (at USD 9.17 each GDR) | 10.00 | DBS Bank | 3,27,23,400 | The Bank of New York Mellon, USA | Pan Asia Advisors Ltd. | EURAM Bank, Austria | Luxembourg Stock Exchange |

### GDR Issue-II

| 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 |
|---|---|---|---|---|---|---|---|---|
| 10-June-2011 | 2.946 (at USD 6.78 each GDR) | 19.978 | DBS Bank | 8,83,99,980 | The Bank of New York Mellon, USA | Pan Asia Advisors Ltd. | EURAM Bank, Austria | Luxembourg Stock Exchange |

31. SEBI Investigation observed that subscription to the above said GDR issues were obtained through loan agreements as well as pledge agreements, details of which are discussed in the following paragraphs, and therefore, it was alleged that both the GDR issues were done through a fraudulent arrangement amounting to a self-financing of the subscription of the GDRs by SIEL.

32. Investigation further observed that an entity viz. Vintage FZE ("**Vintage**") had obtained a loan of USD 10 million by entering into a Loan Agreement dated July 19, 2010 and for loan of USD 19.978 million by entering into a Loan agreement dated April 28, 2011 with EURAM Bank to subscribe to the GDRs of SIEL. For the GDR issue I, the Loan Agreement was signed by Noticee and for GDR issue II, the Loan Agreement was signed by Mr. Mukesh Chauradiya, in the capacity of Managing Director of Vintage for subscription of GDRs of SIEL.

**<u>GDR issue – I</u>**

33. On perusal of the Loan Agreement-1, I note that the following has been inter alia mentioned therein –

(a) *"Nature and purpose of facility" is "To provide funding enabling Vintage FZE to take down GDR issue of 1,090,780 Luxembourg public offering and may only be transferred to EURAM account nr. 580021, Southern Ispat and Energy Limited."* (This account is same where SIEL deposited its GDR proceeds)

The Loan Agreement-1 also states the following:

*6. Security*

*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 a/c no. 540012 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*
- *Pledge of the account no. 580021 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.*

**<u>GDR issue – II</u>**

34. The following was inter-alia mentioned in Loan Agreement-2: -

1. Nature and purpose of facility

"*To provide funding enabling Vintage FZE to take down GDR issue of 2,946,666 Luxembourg public offering and may only be transferred to EURAM account nr. 580021, Southern Ispat and Energy Limited.*"

(This account is same where SIEL deposited its GDR proceeds)

6. Security

"….*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 a/c no. 540012 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*
- *Pledge of the account no. 580021 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."*

35. From the examination of the above referred Loan Agreements, it was observed that Vintage had availed loan facility to the extent of USD 29.978 million from EURAM Bank to subscribe to GDR Issues- I & II of SIEL.

36. From the certified true copy of SIEL's Board Resolution dated April 7, 2010 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."*

*Resolution also states that:*

*"RESOLVED FURTHER THAT Shri Vivek Agarwal, Chairman and Managing Director of the Company, be and is hereby severally authorized to sign, execute, any application, agreement, escrow agreement, document, undertaking, confirmation, declaration and other paper(s) from time to time, as may be required by the Bank and to carry and affix, Common Seal of the Company thereon, if and when so required."*

*Resolution further states that:*

*"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."*

37. From the aforesaid resolution of the board meeting, I note that the Board of Directors had authorized EURAM Bank to use the funds deposited in the SIEL's bank account opened with EURAM Bank for depositing the subscription money received from the GDR issues of the company, as security in connection with loans, if any.

38. Further, I note from the records made available by EURAM Bank that subsequently SIEL had entered into a Pledge Agreement with EURAM Bank on July 19, 2010 and April 28, 2011 for GDR issue I and II respectively. The said Pledge Agreements were signed by Mr. Vivek Agarwal on behalf of SIEL, in the capacity of Chairman and Managing Director of SIEL. The salient Clauses of the Pledge Agreement are inter alia as under:

***GDR Issue-I***

39. A Pledge Agreement dated July 19, 2010 was signed between SIEL (as Pledgor) and EURAM Bank (as Bank). The details of the Agreement are mentioned herein below: -

40. The preamble of the Pledge Agreement states as under:

*"By Loan Agreement K190710-003 (hereinafter referred to as the "Loan Agreement") dated 19 July 2010 the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates (the "Borrower") in the amount of USD 10,002,452.60. The pledger has received a copy of the Loan*

*Agreement No K210311-003 and acknowledges and agrees to its terms and conditions."*

41. The pledge created in the Pledge Agreement is stated below:

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

*2.1.1 all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount USD 10,002,452.60 existing from time to time at present or hereafter on the securities account(s) no. 580021 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. 580021 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and all amounts credited at any particular time therein….*

*(The pledged Securities Account and the Pledged Time Deposit Account hereinafter referred to as the "Pledged Accounts", the Pledged Securities and the Pledged Accounts hereinafter collectively referred to as "Collateral")*

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

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

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

***"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 Account to settle the Obligations. In such case the Bank shall transfer the funds on the Pledged Accounts, even repeatedly, to an account specified by the Bank.*

*6.2 Notwithstanding the foregoing, in the case that the Borrower fails to make payment on any due amount, or defaults in providing or increasing security, the 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 transaction, a selected by the Bank.*

*6.3The 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.*"

**<u>GDR Issue-II</u>**

43. A Pledge Agreement dated April 28, 2011 was entered into between SIEL (*as Pledgor*) and EURAM Bank. The details of the Agreement are mentioned herein below: -

a) The preamble of the Pledge Agreement states as under:

*"By Loan Agreement K270411-001 (hereinafter referred to as the "Loan Agreement") dated 28 April 2011 the Bank granted a loan (hereinafter referred to as the "Loan") to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates (the "Borrower") in the*

*amount of USD 19,978,395.48. The pledger has received a copy of the Loan Agreement No K270411-001 and acknowledges and agrees to its terms and conditions."*

b) The pledge created in the Pledge Agreement is stated below:

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

*2.1.1 all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the "Pledged Securities") and the balance of funds up to the amount USD 10,002,452.60 existing from time to time at present or hereafter on the securities account(s) no. 580021 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. 580021 kept by the Bank (hereinafter referred to as the "Pledged Time Deposit Account") and all amounts credited at any particular time therein….*

*(The pledged Securities Account and the Pledged Time Deposit Account hereinafter referred to as the "Pledged Accounts", the Pledged Securities and the Pledged Accounts hereinafter collectively referred to as "Collateral")*

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

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

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

"*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 Account to settle the Obligations. In such case the Bank shall transfer the funds on the Pledged Accounts, even repeatedly, to an account specified by the Bank.*

*6.2 Notwithstanding the foregoing, in the case that the Borrower fails to make payment on any due amount, or defaults in providing or increasing security, the 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 transaction, a selected by the Bank.*

*6.3The 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."*

44. I note that on examination of Loan Agreements, Pledge Agreements, loan account statement of Vintage**,** Escrow account statement of SIEL revealed that EURAM Bank granted loans to Vintage specifically for subscription of GDRs of SIEL. The Escrow account statement show that GDR subscription money for GDR Issues- I & II was received from only one entity i.e. Vintage. Therefore, I note that GDR Issues- I & II of SIEL (total of 4.039 million GDRs amounting to USD 29.98 million) were subscribed by only one entity, i.e., Vintage. Further, SIEL pledged GDR proceeds even before issuance of GDRs to secure the rights of EURAM Bank against the loans given by EURAM Bank to Vintage for subscription to GDR issues. Hence, the issue and subscription of GDR was pre-planned and facilitated by SIEL.

45. In view of the above, I note that though the GDR proceeds were deposited in the bank account of SIEL, the amount deposited in the account was not at the disposal of the company as same was kept as collateral for the loans availed by Vintage even prior to issuance of GDRs. Further, I note that the Pledge Agreements referred to the Loan Agreements between the borrower i.e. Vintage, and lender i.e. EURAM Bank, whereby Vintage was granted a loan of USD 29.98 million, and it is stated that the Pledger i.e. SIEL has received a copy of the said Loan Agreements and acknowledges and agrees to its terms and conditions. By signing the Pledge Agreements, SIEL is deemed to be clearly aware that Vintage was the subscriber to the GDR issues. On perusal of the contents of the Pledge Agreement, it is noted that the Pledger had agreed to pledge SIEL 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. Hence, it establishes that there was a

tripartite arrangement between SIEL, EURAM and Vintage. As already reproduced above, the Pledge Agreements 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."*

46. Regarding the dates, it is noted that the Pledge Agreement and the Loan Agreement were both dated July 19, 2010 (GDR – I) and April 28, 2011 (GDR – II). Further, I also note that the Loan Agreement expressly states that the Pledge Agreement was 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 and attracts suspicion. 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 thereby the possession can be transferred for the purpose of pledging or keeping that as security. Here I note that the GDRs were issued in August 2010 and June 2011 respectively and these pledge agreements were entered prior to the said issues and in turn prior to realizing the GDR proceeds. Hence, it can be said that the GDR proceeds were given as security by SIEL 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.

47. From the Loan Agreements and the bank account statement of Vintage, I note that Vintage had availed a loan from the EURAM Bank to the extent of USD 29.98 million to subscribe to the GDRs of SIEL. From the statement of Vintage's bank account and

the escrow account for the GDR issue, I note that Vintage had instructed EURAM to transfer an amount of USD 29.98 million from its account and to credit it into the escrow account of SIEL. The said amount was credited to the account of SIEL on August 9, 2010 (10 million) and on June 9, 2011 (19.98 million). The bank account statement of SIEL 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 issues of SIEL comprising 4.037 million GDRs amounting to USD 29.98 million, was subscribed by only one entity, i.e. Vintage and the same was facilitated by SIEL. I further note that the loan agreements between Vintage and EURAM was signed on July 19, 2010 and April 28, 2011 and on the same dates Vintage had instructed EURAM to transfer the said amount of USD 29.98 million from it account to that of SIEL and that SIEL's account was pledged with EURAM Bank under the Pledge Agreements.

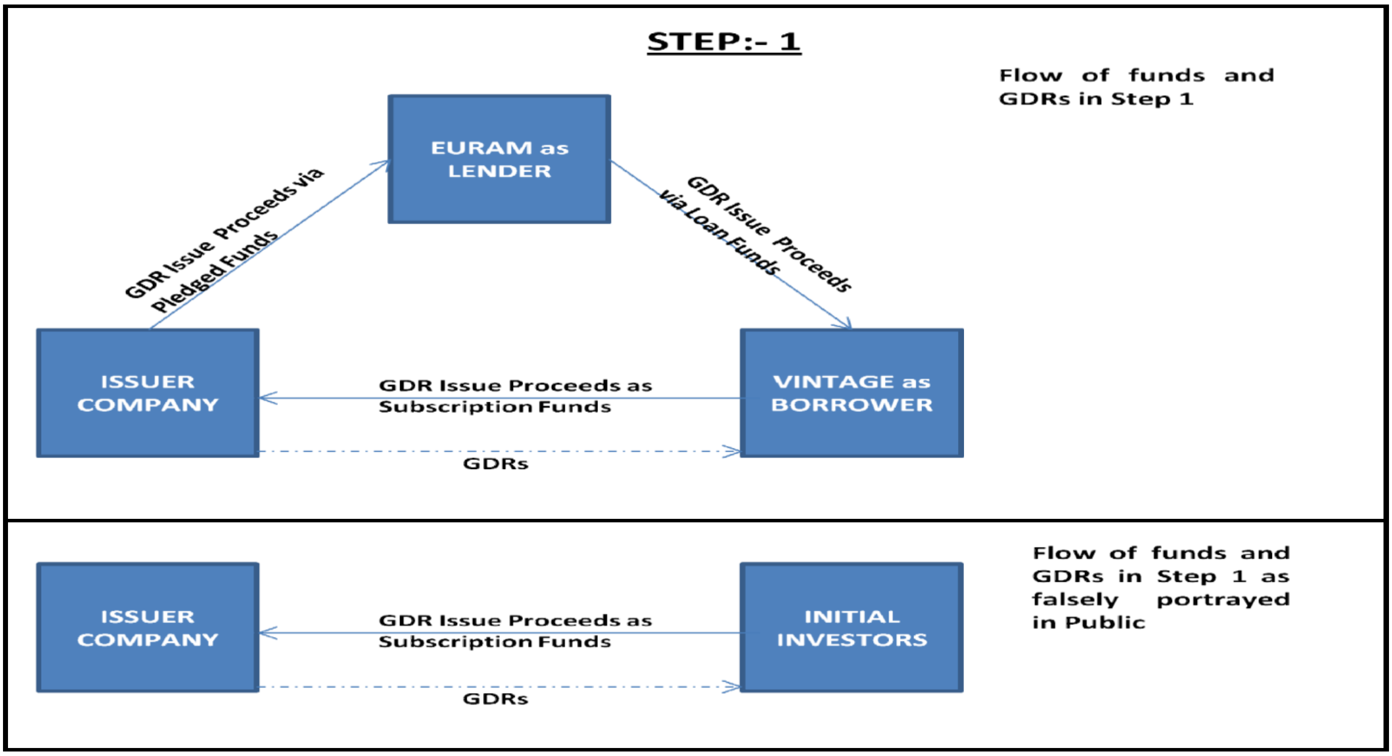
48. It was observed that out of GDR proceeds of USD 10 million of GDR Issue-I, SIEL transferred USD 2.20 million to its Indian bank account and USD 7.46 million to SIEL FZE. Similarly, for GDR Issue-II, SIEL transferred USD 6.35 million to SIEL FZE. It was also observed that only after Vintage repaid the loan instalments, SIEL transferred monies from EURAM Bank. The manner in which the funds were transferred/ withdrawn from SIEL's EURAM Bank account and the fact that the transfer of funds was dependent on the loan repayment by Vintage, led to establish that monies transferred from SIEL's EURAM Bank account was dependent on repayment of loan by Vintage.

49. On perusal of the Bank statement of Vintage, in respect of loan availed by it for subscription of GDR Issue-II of SIEL, I note that Vintage repaid loan amount of USD 6.313 million and thereafter defaulted on the loan repayment of USD 13.679 million including interest. In this regard, vide letter dated August 08, 2012, SIEL confirmed the

rights of EURAM Bank to set-off the pledged deposit with the outstanding loan amount of USD 13.665 million and outstanding interest.

50. Vintage repaid loan amount in full for the first GDR issue. However for the second GDR issue of USD 19.978 million Vintage repaid USD 6.131 million and thereafter defaulted on the repayment of balance loan amount of USD 13.679 million (includes interest on loan amount).

51. In line with the above, EURAM Bank adjusted USD 13.679 (including interest on loan amount) on August 27, 2012. Hence, I note that GDRs to the tune of USD 13.679 million were issued by SIEL to Vintage without any consideration. The aforesaid scheme can be depicted in the following manner:



52. It was also observed that SIEL was aware of the loan defaulted by Vintage and based on the information available on records, it is observed that SIEL did not take any step to safeguard the interest of the company or its shareholders to recover the GDRs issued without receiving payment for the same.

53. Further, from the SIEL's Annual Report for FY 2012-13, I note that SIEL did not mention about the loan default by Vintage or adjustment of GDR proceeds to the extent of USD 13.679 million by EURAM Bank. Further, on examination of corporate announcements made by SIEL to BSE during the period August 27, 2012 to September 30, 2012, I note that SIEL did not intimate the stock exchange also in this regard. Thus, it was observed that the Noticee along with his connected entities involving Vintage, Pan Asia Advisors Ltd, Mukesh Chauradiya, Cardinal Capital Partners and Golden Cliff was acting hand in glove with the company and caused the loss to its shareholders to the tune of USD 13.679 million. With regard to SIEL the violations are already settled in earlier order.

**Role of Noticee**

54. In the present matter, Vintage was sole subscriber of GDR issue of SIEL and subscription was arranged through a loan availed from EURAM Bank to the extent of USD 29.980 million for which security was provided by SIEL by pledging its GDR proceeds. Arun Panchariya had signed the Loan Agreement of GDR Issue-I in capacity of the Managing Director of Vintage. Further, Vintage defaulted in repayment of loan to the extent of USD 13.679 million, thereby GDR proceeds to that extent were adjusted by EURAM. Hence, it is apparent that Vintage acquired GDRs of SIEL to the tune of USD 13.679 million at free of cost. Further, on perusal of Administrative Fine Statement passed by the Dubai Financial Services Authority against Arun Panchariya, he had disclosed that he was controller/director/partner in three firms including Vintage FZE. So, it shows that Noticee is the beneficial/ sole owner of Vintage.

55. Further, I note that the Noticee who was connected with various other entities including Foreign Institutional Investors (FIIs) and Sub-accounts involved in the issuance of GDRs that facilitated FIIs in selling the converted equity shares of the company. From the Investigation Report, I note that, the Noticee was director and 100% shareholder in Pan Asia (who acted as merchant banker for the GDR issues of SIEL). With regard to connection with EURAM Bank, I note that Pan Asia had joint venture with EURAM Bank, Austria (namely EURAM Bank Asia Limited wherein EURAM Bank held 51% and Pan Asia Advisors Ltd held 49%), with whom loan and pledge agreements were entered by Vintage and SIEL respectively. Further, Mukesh Chauradiya served as Managing Director of Vintage, whose sole beneficiary was the Noticee.

**Cancellation of GDRs and sale of converted equity shares:**

56. As regard to the cancellation of GDRs and sale of converted equity shares, I note that even though consideration for a substantial portion of Issue-II had not effectively passed from Vintage to SIEL, the GDRs issued (GDR-II) were allowed to be converted into equity shares, and these shares were eventually sold in the Indian market. The cancellation of GDRs started from September 02, 2010 and went on till April 06, 2015.

57. GDRs were converted into equity shares and these shares were sold in the Indian Securities Market. Credit of the converted equity shares of GDRs in the beneficiaries' account started from September 02, 2010 and continued till April 06, 2015. All 4,037,446 GDRs (100% GDRs issued) were converted.

58. Post cancellation of GDRs, FII-sub accounts namely 1) India Focus Cardinal Fund ('IFCF') 2) High Blue Sky Emerging Market Fund ('HBSF') and 3) Aspire Emerging Fund ('ASPIRE'), received total 42,45,17,250 shares on conversion of 40,37,446 GDRs.

**Sale of converted equity shares:**

59. Vide email dated December 05, 2017, depository NSDL provided the transaction statement for above mentioned three FII sub-accounts. The sub-account wise summary is tabulated below:

| *Sl. No.* | *Name of the entity* | *No of shares sold* | *Trade Value (Rs.)* | *No of shares held* |
|---|---|---|---|---|
| *1* | *IFCF* | *2,50,43,400* | *27,12,68,471.05* | *-* |
| *2* | *HBSF* | *33,32,96,980* | *22,60,90,313.22* | *3,18,22,577* |
| *3* | *ASPIRE* | *5,95,74,218* | *44,19,453.08* | *4,65,30,082* |
| ***TOTAL*** | | ***41,79,14,598*** | ***50,17,78,237.35*** | ***7,83,52,659*** |

60. From the above table, I note that 41,79,14,598 converted shares of GDRs of SIEL were sold by the sub-accounts in the Indian market for a consideration of Rs.50.18 crore.

61. From the IR, I note that, the aforesaid sub-accounts were connected to the Noticee in the following manner:

IFCF – Noticee was director from August 22, 2008 to October 28, 2010, Investment Officer (100% shareholder) and Beneficial Owner.

HBSF – Ms. Reema Narayan Shetty was beneficial owner of HBSF from April 21, 2014 to September 09, 2014. Ms. Reema Narayan Shetty is connected to Noticee as she was authorized signatory of IFCF.

62. The entire trail of funds as can be observed from the bank account statements of Vintage and SIEL with EURAM Bank and further conversion and sale of GDRs and its underlying shares, when seen as a whole, strongly establishes collusion between Noticee and SIEL with respect to the subscription of the said GDR issue of SIEL. All the actions of SIEL and Vintage are interdependent on each other from signing of agreements to bank

transactions. With regard to the Noticee it is alleged that he was the managing director of Vintage and also signed the Loan Agreement-1 with EURAM Bank for the GDR issue of SIEL in the said capacity. Later through his connected entities got the GDRs converted and sold in the Indian market. Hence, the Noticee had devised and structured the GDR issue in connivance with SIEL.

63. 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-1 in the said capacity. However, he denied being aware about the said fraudulent scheme that was being hatched between Vintage and SIEL. 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 the director) and continued to hold 99.99% of shares.

64. 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.

65. With regard to the aforesaid contention of the Noticee, in the instant case, I note that, 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*

66. In this regard, I note that, upon perusal of the PFUTP Regulations, 2003 charged against the Noticee, 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 SIEL 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 SIEL'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 GDRs of SIEL were genuinely subscribed, which was not the case.

67. 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. In the instant matter 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 29.97 million which it later defaulted in repaying to the extent of USD 13.67 million. In the matter of ***Price Waterhouse & Co. vs. 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 were completely unaware of the activities of the Noticee and SIEL, in such GDR issues. As a result, the investors in India were lulled into thinking that stocks of the Issuing Companies were in demand among the foreign investors and were induced to believe something that is not true. Hence, the act of Noticee resulted in *'fraud'* as defined under the PFUTP Regulations, 2003.

68. 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."*

69. 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]

70. 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.

71. 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 have been passed against them by SEBI, establishing the same. Hence, it can be said that Noticee is the mastermind behind all these fraudulent schemes as Noticee was also the managing director of Vintage as well as beneficiary owner 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 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.

72. 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.

73. Also, for the said purpose, I note that, the concept of *'lifting of corporate veil'* is a commonly employed mechanism to apply in such cases to find out the person/s acting for the legal corporate entities or their role in the contraventions committed by the corporate entities. Being a Managing Director and by also signing the agreements on behalf of Vintage, it is sufficient to establish that Noticee was acting on behalf of Vintage when this entire fraudulent scheme was designed. 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)

74. 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."*

75. In view of the above observations, I note that the scheme of arrangement of SIEL, 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 SIEL by pledging its GDR proceeds, seen along with the false and misleading corporate announcements made by SIEL and allotted, 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.

76. In view of the above observations, I note that the Noticee being the Managing Director and sole beneficiary of Vintage while exercising his power executed loan agreement-1 with the EURAM Bank whereby it was stated that the amount shall be utilised by Vintage for subscribing the GDR issue of SIEL suggests that the Noticee played key role in the entire fraudulent GDR issue. More so through its connected entities, he conceived the entire fraudulent GDR scheme with SIEL.

77. In this regard, I note that vide the earlier order, SIEL 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. Further, I will also refer to the order of Hon'ble Supreme Court, in the appeal of ***N Narayanan v. Adjudicating Officer, SEBI*** *(Civil Appeals No. 4112-4113 of 2013)* wherein it was observed 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."*

78. The Noticee has also, in his submission, has stated that the process of giving out of loans by EURAM Bank to Vintage and then subsequently the selling of converted GDRs in Indian market by Vintage through IFCF, the Noticee cannot be considered as a party of this arrangement. For this submission I would refer to the order of 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 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."*

79. Further, with respect to the connection of Noticee with other connected entities and their involvement in similar fraudulent GDR issues, I note that 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 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."*

80. 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 and his connected entities alongwith SIEL 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.

81. 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".*

82. 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....".*

83. On account of loan default by Arun Panchariya controlled Vintage, USD 13.679 million were adjusted by EURAM Bank from the GDR proceeds of SIEL. So effectively, the shares converted from the GDRs equivalent to the value of USD 13.679 million were acquired by Vintage free of cost. Thereafter, sub-accounts IFCF, HBSF and ASPIRE who are connected to Arun Panchariya converted GDRs into Equity shares and sold converted equity shares of SIEL in Indian Securities Market through Arun Panchariya for a total of INR 23.05 Crore. Hence it can be concluded that the shares sold by IFCF, HBSF and ASPIRE were the shares which were acquired by Vintage at free of cost as Vintage defaulted on loan repayment. Therefore, Noticee, on account of being the sole beneficiary of Vintage alongwith other connected entities which involved the lead manager of the GDR issue and the sub-accounts who sold the converted GDRs in Indian market, is found to have devised the entire fraudulent GDR issue alongwith SIEL and 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 SEBI (PFUTP) Regulations, 2003.

***Issue II*: Does the violation, attract monetary penalty under Section 15HA of the SEBI Act, 1992?**

84. 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."*

85. The Noticee had jointly and in close connivance with SIEL, had acted in concert in the entire fraudulent scheme by arranging for the subscription of the GDRs through Vintage using the pledge agreement signed on behalf of SIEL to obtain a loan from the EURAM Bank and then to dispose the shares acquired through such GDRs, thereby creating an elaborate façade of demand for the securities of SIEL.

86. Thus, the violation of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4 (1), of SEBI (PFUTP) Regulations, 2003, by the Noticee make 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."*

87. 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."*

88. 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.

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

89. 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.*

90. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that SIEL 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 29.98 million, an amount of USD 16.13 million was transferred to SIEL and USD 13.67 million were adjusted by EURAM against the loan of Vintage. Since the GDR proceeds amounting to USD 13.67 million were used to set off the loan amount taken by Vintage for subscription of SIEL's GDR, the shares converted against those GDRs were effectively issued at free of cost to Vintage aided by the Noticee, and this had caused a loss to the shareholders of SIEL to the tune of USD 13.67 million. The said subscription of the GDRs by Vintage was funded by SIEL itself. The magnitude of the fraud committed by the Noticee is enormous as is evident from the issue size of USD 29.980 million.

**ORDER**

91. 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 mentioned hereunder –

| Entity | 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 only)** |

92. The abovementioned Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of 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**

93. The Noticee shall forward said 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 payment information:

Name and PAN of the entity (Noticee):

Name of the case / matter:

Purpose of Payment – Payment of penalty under AO proceedings:

Bank Name and Account Number:

Transaction Number:

94. 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.

95. 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** |